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# Contents

**Federal Register**

Vol. 77, No. 247

Wednesday, December 26, 2012

**Editorial Note:** Federal Energy Regulatory Commission notice document 2012-30397, originally scheduled to appear in the issue of Tuesday, December 18, 2012, was placed on public inspection on Monday, December 17, 2012. However, it was omitted from publication in the Federal Register. This document will publish in its entirety on December 26, 2012.

**Agency for Healthcare Research and Quality**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 76043–76044

**Agriculture Department**
*See* Rural Utilities Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 75968–75969

**Census Bureau**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
American Community Survey 2014 Content Change, 75971–75972

**Centers for Disease Control and Prevention**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 76044–76046
Meetings:
Advisory Committee to the Director; Health Disparities Subcommittee, 76046

**Coast Guard**
RULES
Regulated Navigation Areas:
Upper Mississippi River MM 0.0 to MM 185.0; Cairo, IL to St. Louis, MO, 75850–75853
Safety Zones:
Bone Island Triathlon; Atlantic Ocean; Key West, FL, 75853–75855
PROPOSED RULES
Drawbridge Operations:
New Haven Harbor; Quinnipiac and Mill Rivers, CT, 75917–75918

**Commerce Department**
*See* Census Bureau
*See* Foreign-Trade Zones Board
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 75970–75971

**Consumer Product Safety Commission**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Flammability Standards for Children's Sleepwear, 76004–76005
Requirements for Electrically Operated Toys and Children's Articles, 76005
Safety Standard for Automatic Residential Garage Door Operators, 76003
Safety Standard for Omnidirectional Citizens Band Base Station Antennas, 76003–76004
Safety Standard for Walk-Behind Power Lawn Mowers, 76005–76006
Complaints:
Star Networks USA, LLC, 76006–76011

**Defense Department**
NOTICES
Meetings:
Defense Legal Policy Board, 76011–76012

**Education Department**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Study of Implementation and Outcomes in Upward Bound and Other TRIO Programs, 76012
Privacy Act; Systems of Records, 76012–76013

**Energy Department**
*See* Federal Energy Regulatory Commission
NOTICES
Applications to Export Previously Imported Liquefied Natural Gas:
Sempra LNG Marketing, LLC, 76013–76015

**Environmental Protection Agency**
RULES
Approval and Promulgation of Implementation Plans:
South Carolina; Redesignation of the Charlotte–Gastonia–Rock Hill, Nonattainment Area, 75862–75865
Approvals and Promulgations of Implementation Plans:
Kentucky; Redesignation of Kentucky Portion of Huntington–Ashland, WV–KY–OH Nonattainment Area to Attainment, 75865–75868
Pesticide Tolerances for Emergency Exemptions:
Spirotetramat, 75855–75859
Pesticide Tolerances:
Pyraflufen-ethyl; Time-Limited Extension, 75859–75862
Regulation of Fuels and Fuel Additives:
Modifications to the Transmix Provisions Under the Diesel Sulfur Program, 75868–75880
PROPOSED RULES
Approvals and Promulgations of Air Quality Implementation Plans:
West Virginia; 2002 Base Year Emissions Inventory for West Virginia Portion of Steubenville–Weirton, OH–WV Nonattainment Area, 75933–75935
Approvals and Promulgations of Implementation Plans:
Regional Haze State Implementation Plan; WA, etc., 76174–76209
NOTICES
Access to Confidential Business Information:
Science Applications International Corp. and Impact Innovations Systems, Inc., 76028–76029
Certain New Chemicals; Receipt and Status Information, 76029–76034

National Water Program 2012 Strategy:
Response to Climate Change, 76034
Public Water System Supervision Program Approvals:
State of Ohio, 76034–76035
Quality Standard for Environmental Data Collection, Production, and Use by Non-EPA Organizations, etc.; Availability, 76035–76036

**Executive Office of the President**
*See* Presidential Documents
*See* Trade Representative, Office of United States

**Export-Import Bank**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 76036

**Federal Aviation Administration**
RULES
Airworthiness Directives:
Airbus Airplanes, 75825–75827, 75833–75836
Rolls-Royce plc Turbofan Engines, 75831–75833
The Boeing Company Airplanes, 75827–75831
Amendments of Time of Designations:
Restricted Area R–6501B; Underhill, VT, 75837–75838
Establishments of Class E Airspace:
Walsenburg, CO, 75836–75837
PROPOSED RULES
Airworthiness Directives:
Bombardier, Inc. Airplanes, 75906–75908
Embraer S.A. Airplanes, 75911–75915
Gulfstream Aerospace Corporation, 75908–75911

**Federal Communications Commission**
RULES
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities:
E911 Requirements for IP-Enabled Service Providers, 75894–75896
PROPOSED RULES
Radio Broadcasting Services:
Dove Creek, CO, 75946

**Federal Deposit Insurance Corporation**
NOTICES
Charter Renewals:
Advisory Committee on Economic Inclusion, 76036
Determinations of Insufficient Assets to Satisfy Claims Against Financial Institutions in Receiverships:
Second Correction, 76037
Updated Listing of Financial Institutions in Liquidation, 76037

**Federal Emergency Management Agency**
RULES
Suspensions of Community Eligibility, 75891–75894
NOTICES
Major Disaster Declarations:
Maryland; Amendment No. 2, 76060
Major Disasters and Related Determinations:
Alaska, 76062
New Hampshire, 76061
Virginia, 76060–76061
West Virginia, 76061–76062

**Federal Energy Regulatory Commission**
RULES
Regional Reliability Standards:
PRC–006–SERC–01 – Automatic Underfrequency Load Shedding Requirements, 75838–75844
NOTICES
Activities under Blanket Certificates:
Dominion Transmission, Inc., 76015
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 76015–76017
Applications:
City of Avenal, CA, 76017–76018
Free Flow Power Corp., 76018–76019
Combined Filings, 76019–76024
Environmental Assessments; Availability, etc.:
Carbon Zero, LLC, 76026
Perryville Gas Storage LLC Crowville Salt Dome Storage Project, 76024–76026
Preliminary Permit Applications:
Tlingit-Haida Regional Electric Authority, 76026–76027
Termination of Exemptions:
PowerWheel Associates, 76027–76028

**Federal Housing Finance Agency**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 76037–76039

**Federal Motor Carrier Safety Administration**
NOTICES
Qualification of Drivers; Exemption Applications; Vision, 76166–76168

**Federal Railroad Administration**
RULES
Alcohol and Drug Testing:
Determination of Minimum Random Testing Rates for 2013, 75896

**Federal Reserve System**
NOTICES
Changes in Bank Control:
Acquisitions of Shares of Bank or Bank Holding Company, 76039
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 76039–76040
Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies, 76040

**Fish and Wildlife Service**
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
Reclassification of the Continental U.S. Breeding Population of the Wood Stork from Endangered to Threatened, 75947–75966
NOTICES
Endangered and Threatened Wildlife and Plants:
Draft Recovery Plan for Gulf Coast Jaguarundi, 76066–76067
Draft Revised Recovery Plan for Kendall Warm Springs Dace, 76065–76066

**Food and Drug Administration**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Experimental Study; Examination of Corrective Direct-to-Consumer Television Advertising, 76046–76049

Draft Guidances for Industry; Availability, etc.:
Electronic Source Data in Clinical Investigations; Correction, 76049–76050
Environmental Assessments; Availability, etc.:
Genetically Engineered Atlantic Salmon, 76050
Public Workshops:
Minimal Residual Disease, 76050–76052

**Foreign Assets Control Office**
**RULES**
Iranian Transactions and Sanctions Regulations, 75845–75850

**Foreign-Trade Zones Board**
**NOTICES**
Extensions of Comment Periods on New Evidence:
Foreign Trade Zone 148, Toho Tenax America, Inc., Subzone 148C (Carbon Fiber Manufacturing Authority), Knoxville, TN , 75972
Proposed Production Activities:
Foreign-Trade Zone 26, Atlanta, GA; Suzuki Mfg. of America Corp. (All-Terrain Vehicles), Rome, Jonesboro and Cartersville, GA, 75972–75973

**General Services Administration**
**NOTICES**
Establishments of Federal Advisory Committees and Nominations for Membership:
Government-wide Travel Advisory Committee, 76040–76041

**Health and Human Services Department**
*See* Agency for Healthcare Research and Quality
*See* Centers for Disease Control and Prevention
*See* Food and Drug Administration
*See* Health Resources and Services Administration
*See* National Institutes of Health
*See* Substance Abuse and Mental Health Services Administration
**RULES**
Control of Communicable Diseases:
Foreign; Scope and Definitions, 75885–75891
Interstate; Scope and Definitions, 75880–75884
**PROPOSED RULES**
Control of Communicable Diseases:
Foreign; Scope and Definitions, 75939–75946
Interstate; Scope and Definitions, 75936–75939
**NOTICES**
Findings of Research Misconduct, 76041–76042
Meetings:
Presidential Commission for the Study of Bioethical Issues, 76042–76043

**Health Resources and Services Administration**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 76052–76053

**Healthcare Research and Quality Agency**
*See* Agency for Healthcare Research and Quality

**Homeland Security Department**
*See* Coast Guard
*See* Federal Emergency Management Agency
*See* U.S. Citizenship and Immigration Services
*See* U.S. Customs and Border Protection
**RULES**
Closing of the Port of Whitetail, MT, 75823–75825

**Housing and Urban Development Department**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Changes to Admission and Occupancy Requirements for the Public Housing and Section 8 Assistance Programs, 76064–76065

**Information Security Oversight Office**
**NOTICES**
Meetings:
State, Local, Tribal, and Private Sector Policy Advisory Committee, 76076–76077

**Interior Department**
*See* Fish and Wildlife Service
*See* Land Management Bureau

**Internal Revenue Service**
**RULES**
Use of Controlled Corporations to Avoid the Application of Section 304, 75844–75845

**International Trade Administration**
**NOTICES**
Antidumping Duty Administrative Reviews; Results, Extensions, Amendments, etc.:
Ball Bearings and Parts Thereof from France, Germany, and Italy, 75973
Countervailing Duty Determinations and Critical Circumstances Determinations:
Certain Steel Wire Garment Hangers from Socialist Republic of Vietnam, 75973–75975
Countervailing Duty Determinations; Results, Extensions, Amendments, etc.:
Large Residential Washers from Republic of Korea, 75975–75978
Utility Scale Wind Towers from People's Republic of China, 75978–75980
Final Determinations of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances:
Steel Wire Garment Hangers from Socialist Republic of Vietnam, 75980–75984
Final Determinations of Sales at Less Than Fair Value:
Large Residential Washers from Republic of Korea, 75988–75992
Utility Scale Wind Towers from People's Republic of China, 75992–75997
Utility Scale Wind Towers from Socialist Republic of Vietnam, 75984–75988
Requests for Nominations:
Environmental Technologies Trade Advisory Committee, 75997–75998
Sunset Reviews; Results, Extensions, Amendments, etc.:
Lemon Juice from Mexico; Suspended Antidumping Duty Investigation, 75998–75999

**International Trade Commission**
**NOTICES**
Economic Effects of Significant U.S. Import Restraints; Eighth Update:
Services' Contribution to Manufacturing, 76071–76072

**Judicial Conference of the United States**
**NOTICES**
Meetings:
Advisory Committee on Rules of Appellate Procedure; Cancellation, 76072

Advisory Committee on Rules of Bankruptcy Procedure; Cancellation, 76072

**Justice Department**
**NOTICES**
Remedial Design/Remedial Action Consent Decree under CERCLA, 76072–76073

**Labor Department**
*See* Occupational Safety and Health Administration
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Notice of Pre-Existing Condition Exclusion under Group Health Plans, 76073–76074
Special Enrollment Rights under Group Health Plans, 76073
Meetings:
Advisory Committee on Veterans' Employment, Training and Employer Outreach, 76074–76075

**Land Management Bureau**
**NOTICES**
Environmental Impact Statements; Availability, etc.:
Proposed McCoy Solar Energy Project, CA; Proposed Land Use Plan Amendment, 76067–76069
Filings of Plats of Surveys:
Arizona, 76069
Proposed Reinstatement of Terminated Oil and Gas Leases:
Utah; Class II, 76069–76070
Proposed Reinstatements of Terminated Oil and Gas Leases:
LAES 056461, LA, 76070–76071
NMNM 126063, NM, 76070
OKNM 110359, OK, 76070

**Maritime Administration**
**NOTICES**
Requested Administrative Waivers of Coastwise Trade Laws:
Vessel AQUADISIAC, 76169

**National Archives and Records Administration**
*See* Information Security Oversight Office

**National Institutes of Health**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Pediatric Palliative Care Campaign Pilot Survey, 76053–76054
Meetings:
Center for Scientific Review, 76055–76056
Eunice Kennedy Shriver National Institute of Child Health and Human Development, 76057–76058
National Cancer Institute, 76057
National Heart, Lung, and Blood Institute, 76056–76058
National Institute of Allergy and Infectious Diseases, 76057–76059
National Institute of Diabetes and Digestive and Kidney Diseases, 76056
National Institute of General Medical Sciences, 76059
National Institute of Neurological Disorders and Stroke, 76054
National Institute of Nursing Research, 76054
National Institute on Aging, 76054–76055
Scientific Management Review Board, 76055

**National Oceanic and Atmospheric Administration**
**RULES**
Atlantic Highly Migratory Species:
2013 Atlantic Shark Commercial Fishing Season, 75896–75905
**PROPOSED RULES**
Control Date for Qualifying Landings History in the Central Gulf of Alaska Trawl Groundfish Fisheries, 75966–75967
**NOTICES**
2013 Annual Determinations:
Sea Turtle Observer Requirement, 75999–76000
Draft Reports; Availability, etc.:
NOAA Research and Development Portfolio Review Task Force, 76000–76001
Endangered and Threatened Species:
Take of Anadromous Fish, 76001
Membership Solicitations:
Hydrographic Services Review Panel, 76001–76002

**National Science Foundation**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 76077–76078

**Neighborhood Reinvestment Corporation**
**NOTICES**
Meetings; Sunshine Act, 76078

**Nuclear Regulatory Commission**
**NOTICES**
Facility Operating and Combined Licenses:
Applications and Amendments Involving No Significant Hazards Considerations, 76078–76089
Meetings:
Advisory Committee on Reactor Safeguards Subcommittee on Advanced Boiling Water Reactor, 76089–76090

**Occupational Safety and Health Administration**
**NOTICES**
Meetings:
Whistleblower Protection Advisory Committee, 76075–76076

**Office of United States Trade Representative**
*See* Trade Representative, Office of United States

**Pension Benefit Guaranty Corporation**
**NOTICES**
Pendency of Request for Approval of Special Withdrawal Liability Rules:
The I.A.M. National Pension Fund National Pension Plan, 76090–76091

**Postal Regulatory Commission**
**NOTICES**
International Mail Contracts, 76091–76092
New Postal Products, 76092–76096

**Postal Service**
**NOTICES**
Meetings; Sunshine Act, 76096
Product Changes:
First-Class Package Service Negotiated Service Agreement, 76096–76097

**Presidential Documents**
**ADMINISTRATIVE ORDERS**
National Defense Authorization Act for Fiscal Year 2012 (Presidential Determination):
No. 2013–3 of December 7, 2012, 76211–76213

**Recovery Accountability and Transparency Board**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 76097

**Rural Utilities Service**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 75970

**Securities and Exchange Commission**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 76097–76099
Applications:
Yorkville ETF Trust and Yorkville ETF Advisors, LLC, 76099–76106
Meetings; Sunshine Act, 76106
Orders Granting Limited Exemptions from Exchange Act Rules:
ALPS ETF Trust; ALPS/GS Momentum Builder Growth Markets Equities and U.S. Treasuries Index ETF, et al., 76106–76108
Orders Suspending Trading:
IAS Energy, Inc., et al., 76109
Self-Regulatory Organizations; Proposed Rule Changes:
BOX Options Exchange LLC, 76132–76135
C2 Options Exchange, Incorporated, 76131–76132
Chicago Board Options Exchange, Inc., 76119–76120, 76135–76139
Chicago Stock Exchange, Inc., 76141–76145
Financial Industry Regulatory Authority, Inc., 76112–76116, 76129–76131
ICE Clear Credit LLC, 76109–76112, 76156–76158
Municipal Securities Rulemaking Board, 76146–76148
NASDAQ OMX PHLX LLC, 76128–76129
New York Stock Exchange LLC, 76116–76119
NYSE Arca, Inc., 76121–76127, 76139–76141, 76148–76156
NYSE MKT LLC, 76145–76146, 76158–76160
Trading Suspension Orders:
New Generation Biofuels Holdings, Inc., 76160

**Social Security Administration**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 76160–76163

**State Department**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Consular Report of Birth Abroad of a Citizen of the United States of America, 76163–76164
Meetings:
Shipping Coordinating Committee, 76164–76165

**Substance Abuse and Mental Health Services Administration**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 76059–76060

**Surface Transportation Board**
**NOTICES**
Quarterly Rail Cost Adjustment Factor, 76169

**Susquehanna River Basin Commission**
**PROPOSED RULES**
Review and Approval of Projects, 75915–75916

**Trade Representative, Office of United States**
**NOTICES**
WTO Dispute Settlement Proceedings:
Argentina, Measures Affecting Importation of Goods, 76165–76166

**Transportation Department**
*See* Federal Aviation Administration
*See* Federal Motor Carrier Safety Administration
*See* Federal Railroad Administration
*See* Maritime Administration
*See* Surface Transportation Board

**Treasury Department**
*See* Foreign Assets Control Office
*See* Internal Revenue Service

**U.S. Citizenship and Immigration Services**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
E-Verify Program Data Collections, 76062–76063

**U.S. Customs and Border Protection**
**RULES**
Closing of the Port of Whitetail, MT, 75823–75825
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Declaration for Free Entry of Unaccompanied Articles, 76063–76064
Reopenings of Application Periods:
Air Cargo Advance Screening Pilot Program, 76064

**Veterans Affairs Department**
**PROPOSED RULES**
VA Health Professional Scholarship and Visual Impairment and Orientation and Mobility Professional Scholarship Programs, 75918–75933
**NOTICES**
Increase in Maximum Tuition and Fee Amounts Payable under Post-9/11 GI Bill, 76169–76170
Meetings:
National Academic Affiliations Council, 76170
Presumption of Exposure to Herbicides for Blue Water Navy Vietnam Veterans not Supported, 76170–76171

---

**Separate Parts In This Issue**

**Part II**
Environmental Protection Agency, 76174–76209

**Part III**
Presidential Documents, 76211–76213

---

**Reader Aids**
Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.


**3 CFR**

**Administrative Orders:**

Presidential Determinations:

No. 2013–03 of December 7, 2012 .....76213

**8 CFR**

100.....75823

**14 CFR**

39 (4 documents) .....75825, 75827, 75831, 75833

71.....75836

73.....75837

**Proposed Rules:**

39 (3 documents) .....75906, 75908, 75911

**18 CFR**

40.....75838

**Proposed Rules:**

806.....75915

**19 CFR**

101.....75823

**26 CFR**

1.....75844

**31 CFR**

560.....75845

**33 CFR**

165 (2 documents) .....75850, 75853

**Proposed Rules:**

117.....75917

**38 CFR**

**Proposed Rules:**

17.....75918

**40 CFR**

52 (2 documents) .....75862, 75865

80.....75868

81 (2 documents) .....75862, 75865

180 (2 documents) .....75855, 75859

**Proposed Rules:**

52 (2 documents) .....75933, 76174

**42 CFR**

70.....75880

71.....75885

**Proposed Rules:**

70.....75936

71.....75939

**44 CFR**

64.....75891

**47 CFR**

64.....75894

**Proposed Rules:**

73.....75946

**49 CFR**

219.....75896

**50 CFR**

635.....75896

**Proposed Rules:**

17.....75947

679.....75966

# Rules and Regulations

Federal Register

Vol. 77, No. 247

Wednesday, December 26, 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.

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## DEPARTMENT OF HOMELAND SECURITY

## 8 CFR Part 100

## U.S. Customs and Border Protection

## 19 CFR Part 101

**[Docket No. USCBP–2011–0017: CBP Dec. 12–22]**

**RIN 1651–AA93**

## Closing of the Port of Whitetail, MT

**AGENCY:** U.S. Customs and Border Protection, DHS.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Homeland Security (DHS) regulations pertaining to the field organization of U.S. Customs and Border Protection (CBP) to reflect the closure of the port of entry of Whitetail, Montana. The change is part of CBP's continuing program to more efficiently utilize its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

**DATES:** *Effective Date:* January 25, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger Kaplan, Office of Field Operations, U.S. Customs and Border Protection, (202) 325–4543, or by email at *Roger.Kaplan@dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On August 24, 2011, CBP published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (76 FR 52890), proposing to close the port of entry of Whitetail, Montana, and amend the lists of CBP ports of entry to reflect the change. The primary reason for the proposed closure was the Canada Border Services Agency's (CBSA) closure of its adjacent port of entry of Big Beaver, Saskatchewan, Canada, on April 1, 2011. As set forth in the NPRM, other factors were the limited usage of the port; the locations of the alternative ports of entry of Raymond, Montana, and Scobey, Montana; and the analysis of the net benefit of the port closure, including the cost of necessary renovations were the port to remain open.

### II. Analysis of Comments

*A. Comments Received*

CBP received four public comments in response to the NPRM. One commenter supports the closure of Whitetail and three commenters are opposed.

The commenter who supports the proposed closure of the port of Whitetail believes that the costs of operating the port and maintaining the surrounding area are too high considering the low usage. This commenter points out that, using the figures provided in the NPRM for 2007 to 2009, with the annual crossing average of 1,261 cars and 57 trucks and the port's total annual operating cost of $492,000, it currently costs the taxpayers of the United States in excess of $373 for each vehicle to cross at Whitetail. This commenter thinks that these costs are not warranted considering the limited increase in time and mileage that crossers would incur if the port of Whitetail were closed. Additionally, this commenter claims the closure of the port would have no effect on cross border commerce because there are currently no commercial carriers processed at the port. This commenter also asserts that basing any increase in travel time resulting from the proposed closure on the distance from the port of Whitetail to the alternate ports of Raymond and Scobey was not realistic, as the actual increase in mileage would be much less considering the more likely points of origin and destination.

The other three commenters opposed the proposed closure, citing the disruptions the closure would cause them. Two commenters said that the increased travel time would cause them to discontinue their frequent trips from Canada to the United States to buy goods and visit shops and restaurants. Another commenter stated that the closure would increase the cost to the commenter to move hay bales between the commenter's farms in Canada and Montana. This commenter also surmised that the closure could be detrimental to other Canadian and Montanan agricultural producers.

*B. CBP Response*

With regard to the comment about increased travel time, CBP acknowledged in the NPRM that using the distance between the ports may overstate the cost of the closure to travelers. However, CBP does not collect data on these travelers' points of origin and destination. Thus, CBP based the analysis on the assumption that the closure would create a detour adding 1 hour and 40 miles to each crosser's trip. The actual additional time and mileage U.S. travelers may incur to drive to an alternate port may be less.

With regard to the comments about usage and cost, as discussed in the NPRM, the port of Whitetail is one of CBP's least trafficked ports and has processed an average of less than 4 vehicles per day for the last 4 years. From 2007 to 2009, Whitetail averaged only 1,318 cars and trucks a year. More recently, in fiscal year 2011, southbound traffic dropped to less than 960 vehicles, with almost all of the decrease in southbound traffic occurring after CBSA closed the port of Big Beaver to northbound traffic in April 2011. The commercial traffic is even lower. In fiscal year 2011 CBP processed only 24 commercial vehicles at the port of Whitetail. This was a significant decrease from the already low annual average of about 60 commercial vehicles between 2007 and 2009. Notwithstanding this very low usage, as explained in the NPRM, CBP would incur substantial costs in order to keep the port open. In addition to the nearly $500,000 annual operational budget, CBP would need to construct a replacement facility, an estimated $8 million cost, because the current facility does not have the infrastructure to meet modern operational, safety, and technological demands for ports of entry. Although CBP regrets the disruptions to personal and business routines that some individuals will experience due to the closure of Whitetail, CBP cannot justify the above-referenced costs for so few vehicles.

### III. Conclusion

After consideration of the comments received, the low usage of the port, the locations of the alternative ports of entry, and the analysis of the net benefit of the port closure, including the cost of

necessary renovations were the port to remain open, CBP is closing the port of entry of Whitetail, Montana. The lists of CBP ports of entry at 8 CFR 100.4(a) and 19 CFR 101.3(b)(1) are being amended to reflect the change.

CBP is working with the Montana Department of Transportation and CBSA to identify the permanent barrier and signage necessary to prevent entry and reroute traffic to nearby ports of entry. CBP expects that any impact on the environment and any costs incurred for this purpose will be minimal. If necessary, CBP will conduct appropriate environmental studies in the course of decommissioning and prior to facility demolition.

## IV. Congressional Notification

On September 28, 2010, the Commissioner of CBP notified Congress of CBP's intention to close the port of entry at Whitetail, Montana, fulfilling the congressional notification requirements of 19 U.S.C. 2075(g)(2) and section 417 of the Homeland Security Act (6 U.S.C. 217).

## V. Regulatory Requirements

### *A. Signing Authority*

The signing authority for this document falls under 19 CFR 0.2(a). Accordingly, this final rule is signed by the Secretary of Homeland Security.

### *B. Executive Orders 12866 and 13563*

This rule is not a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563, and has not been reviewed by the Office of Management and Budget under that order. Nevertheless, CBP provided its assessment of the benefits and costs of this regulatory action in the NPRM and CBP adopts the NPRM's economic analysis for this final rule without any change.

In summary, if the port of entry of Whitetail, Montana remained open, it would need significant renovation to meet current safety and security standards, which CBP estimates would cost approximately $8 million. Whitetail also costs CBP approximately $500,000 in yearly operating expenses to pay for staff and utilities. If Whitetail closed, travelers would need to find an alternative crossing. As alternative crossings would require travelers to travel additional miles, CBP estimates travelers would incur an additional $104,000 annually in additional driving time and mileage costs if the Whitetail crossing was not available. In addition, if Whitetail was closed, CBP would incur a onetime cost of $158,000 in closure expenses. Thus, the net benefit of the Whitetail closure is about $8.2 million the first year and $396,000 each year after that.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires federal agencies to examine the impact a rule would have on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

Because CBP does not collect data on the number of small businesses that use the port of Whitetail, we cannot estimate how many would be affected by this rule. However, an average of less than four vehicles crossed into the United States at Whitetail each day even before closure of the Canadian port of Big Beaver further reduced traffic. Commercial traffic is even lower—an average of fewer than 60 commercial vehicles crossed at Whitetail each year from 2007 to 2009, with only 24 commercial vehicles crossing in fiscal year 2011. The assessment of the benefits and costs of this regulatory action included in the NPRM concluded that the total cost of the rule to the public is about $104,000 a year, even assuming the longest possible detour for all traffic. DHS does not believe that this cost rises to the level of a significant economic impact. DHS thus believes that this rule will not have a significant economic impact on a substantial number of small entities. DHS did not receive any comments contradicting this finding. Accordingly, DHS certifies that this rule will not have a significant economic impact on a substantial number of small entities.

### *D. Unfunded Mandates Reform Act of 1995*

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### *E. Executive Order 13132*

The 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. Therefore, in accordance with section 6 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

## List of Subjects

*8 CFR Part 100*

Organization and functions (Government agencies).

*19 CFR Part 101*

Customs duties and inspection, Customs ports of entry, Exports, Imports, Organization and functions (Government agencies).

## Amendments to DHS Regulations

For the reasons set forth above, DHS amends part 100 of title 8 of the Code of Federal Regulations and part 101 of title 19 of the Code of Federal Regulations as set forth below.

**8 CFR CHAPTER 1—AMENDMENTS**

## PART 100—STATEMENT OF ORGANIZATION

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 8 U.S.C. 1103; 8 CFR part 2.

**§ 100.4 [Amended]**

■ 2. The list of ports in § 100.4(a) is amended by removing ''Whitetail, MT'' from the list of Class A ports of entry under District No. 30—Helena, Montana.

**19 CFR CHAPTER 1—AMENDMENTS**

## PART 101—GENERAL PROVISIONS

■ 3. The general authority citation for part 101 and the specific authority citation for section 101.3 continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

* * * * *

**§ 101.3 [Amended]**

■ 4. The list of ports in § 101.3(b)(1) is amended by removing, under the state of Montana, the entry ''Whitetail'' from the ''Ports of entry'' column and removing the corresponding entry ''E.O. 7632, June 15, 1937 (2 FR 1245).'' from the ''Limits of port'' column.

Dated: December 20, 2012.

**Janet Napolitano,**

*Secretary of Homeland Security.*

[FR Doc. 2012–31105 Filed 12–21–12; 4:15 pm]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2012–0934; Directorate Identifier 2011–NM–260–AD; Amendment 39–17293; AD 2012–25–12]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all Airbus Model A330–200 and –300 series airplanes. This AD was prompted by a report of a prematurely fractured main landing gear (MLG) bogie beam. This AD requires replacing certain MLG bogie beams before reaching new reduced life limits. We are issuing this AD to prevent fracture of the MLG bogie beam, which, under high speed, could ultimately result in the airplane departing the runway, the bogie beam detaching from the airplane, or collapse of the MLG; and consequent structural damage to the airplane and injury to the occupants.

**DATES:** This AD becomes effective January 30, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 30, 2013.

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

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

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 12, 2012 (77 FR 56172). That NPRM proposed to correct an unsafe condition for the specified products. The Mandatory Continuing Airworthiness Information (MCAI) states:

> During ground load test cycles on an A340–600 aeroplane, the MLG bogie beam has prematurely fractured.
>
> The results of the investigation identified that this premature fracture was due to high tensile standing stress, resulting from dry fit axle assembly method. Improvement has been introduced subsequently with a grease fit axle assembly method.
>
> Fatigue and damage tolerance analyses were performed, whose results demonstrated that the current life limit of certain MLG bogie beams with dry fit axles installed on A330 aeroplanes only must be reduced compared to the life limit stated in the A330 Airworthiness Limitations Section (ALS) Part 1-Safe Life Airworthiness Limitation Items revision 05 approved by EASA [European Aviation Safety Agency] on 29 July 2010.
>
> Failure to comply with the reduced life limit of the MLG bogie beam with dry fit axle might jeopardize the MLG structural integrity.
>
> For the reasons described above, this [EASA] AD requires the replacement of the affected MLG bogie beams before reaching the new reduced life limit.

The unsafe condition is a possible fracture of the MLG bogie beam, which, under high speed, could ultimately result in the airplane departing the runway, the bogie beam detaching from the airplane, or collapse of the MLG; and consequent structural damage to the airplane and injury to the occupants. You may obtain further information by examining the MCAI in the AD docket.

### Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 56172, September 12, 2012) or on the determination of the cost to the public.

### Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (77 FR 56172, September 12, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 56172, September 12, 2012).

### Costs of Compliance

We estimate that this AD will affect 53 products of U.S. registry. We also estimate that it will take about 16 work-hours per MLG bogie beam (2 MLG bogie beams per airplane) to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $255,000 per MLG bogie beam. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be up to $27,174,160, or $256,360 per MLG bogie beam.

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

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

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

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

## Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 56172, September 12, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2012–25–12 Airbus:** Amendment 39–17293. Docket No. FAA–2012–0934; Directorate Identifier 2011–NM–260–AD.

**(a) Effective Date**

This airworthiness directive (AD) becomes effective January 30, 2013.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, certificated in any category, all manufacturer serial numbers (S/Ns).

**(d) Subject**

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

**(e) Reason**

This AD was prompted by a report of a prematurely fractured main landing gear (MLG) bogie beam. We are issuing this AD to prevent fracture of the MLG bogie beam, which, under high speed, could ultimately result in the airplane departing the runway, the bogie beam detaching from the airplane, or collapse of the MLG; and consequent structural damage to the airplane and injury to the occupants.

**(f) Compliance**

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

**(g) Bogie Beam Replacement**

At the later of the times specified in paragraph (g)(1) or (g)(2) of this AD, replace all MLG bogie beams having part number (P/N) 201485300, 201485301, 201272302, 201272304, 201272306, or 201272307, except those that have S/N S2A, S2B, or S2C, as identified in Messier-Dowty Service Letter A33–34 A20, Revision 5, including Appendices A through F, dated July 31, 2009, with a new or serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or European Aviation Safety Agency (EASA) (or its delegated agent).

(1) Before the accumulation of the flight hours or landings, whichever occurs first, specified in table 1 to paragraph (g)(1) of this AD, as applicable to airplane type, model, and weight variant (WV).

TABLE 1 TO PARAGRAPH (G)(1) OF THIS AD—MLG BOGIE BEAM LIFE LIMIT

| Affected airplanes— | Life limit from first installation of MLG bogie beam on an airplane— |
|---|---|
| Model A330–201, –202, –203, –223, –243, weight variant (WV)02x, WV05x (except WV058), and WV06x series. | 50,000 landings or 72,300 total flight hours. |
| Model A330–201, –202, –203, –223, –243 WV058 | 50,000 landings or 57,900 total flight hours. |
| Model A330–301, –302, –303, –321, –322, –323, –341, –342, –343 WV00x, WV01x, WV02x, and WV05x series. | 46,000 landings or 75,000 total flight hours. |

(2) Within 6 months after the effective date of this AD.

**(h) Parts Installation Limitation**

As of the effective date of this AD, a MLG bogie beam having any part number identified in paragraph (g) of this AD, may be installed on an airplane, provided its life has not exceeded the life limit defined in table 1 to paragraph (g)(1) of this AD, and is replaced with a new or serviceable part before reaching the life limit defined in table 1 to paragraph (g)(1) of this AD.

**(i) Other FAA AD Provisions**

The following provisions also apply to this AD:

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

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

**(j) Related Information**

Refer to MCAI EASA Airworthiness Directive 2011–0212, dated October 31, 2011; and Messier-Dowty Service Letter A33–34 A20, Revision 5, including Appendices A through F, dated July 31, 2009; for related information.

**(k) Material Incorporated by Reference**

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

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

(i) Messier-Dowty Service Letter A33–34 A20, Revision 5, including Appendices A through F, dated July 31, 2009.

(ii) Reserved.

(3) For service information identified in this AD, contact Messier-Dowty: Messier Services Americas, Customer Support Center, 45360 Severn Way, Sterling, VA 20166–8910; telephone 703–450–8233; fax 703–404–1621;

Internet *https://techpubs.services/messier-dowty.com.*

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

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

Issued in Renton, Washington, on December 5, 2012.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2012–30370 Filed 12–21–12; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2012–1228; Directorate Identifier 2012–NM–190–AD; Amendment 39–17292; AD 2012–25–11]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are superseding an existing airworthiness directive (AD) for certain The Boeing Company Model 757–200, -200CB, and -300 series airplanes. That AD currently requires initial and repetitive inspections of the fuselage skin and bear strap at the forward, upper corner of the L1 entry door cutout for cracking, and repair if necessary. That action also provides an optional terminating action for the repetitive inspections. That AD also requires additional inspections for airplanes having repairs or preventative modifications installed and inspections for certain other airplanes. This AD requires the previous actions with additional airplane group configurations added to paragraph (n) of this AD. This AD was prompted by a determination that certain airplane group configurations in paragraph (n) of the existing AD were inadvertently removed in the final rule. We are issuing this AD to detect and correct cracking of the fuselage skin and bear strap at the forward upper corner of the L1 entry door cutout, which could result in reduced structural integrity of the L1 entry door, and consequent rapid decompression of the airplane.

**DATES:** This AD is effective January 10, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 3, 2012 (77 FR 52212, August 29, 2012).

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of May 24, 2004 (69 FR 25481, May 7, 2004).

We must receive any comments on this AD by February 11, 2013.

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

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

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

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6440; fax: 425–917–6590; email: *nancy.marsh@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Discussion

On July 23, 2012, we issued AD 2012–15–15, Amendment 39–17144 (77 FR 52212, August 29, 2012), which superseded AD 2004–09–32, Amendment 39–13622 (69 FR 25481, May 7, 2004), for certain The Boeing Company Model 757–200, -200CB, and -300 series airplanes. AD 2012–15–15 requires initial and repetitive inspections of the fuselage skin and bear strap at the forward, upper corner of the L1 entry door cutout for cracking, and repair if necessary. That action also provides an optional terminating action for the repetitive inspections. That AD also requires additional inspections for airplanes having repairs or preventative modifications installed and inspections for certain other airplanes. That AD resulted from reports of additional cracking in the fuselage skin. We issued that AD to detect and correct cracking of the fuselage skin and bear strap at the forward upper corner of the L1 entry door cutout, which could result in reduced structural integrity of the L1 entry door, and consequent rapid decompression of the airplane.

### Actions Since AD Was Issued

Since we issued AD 2012–15–15, Amendment 39–17144 (77 FR 52212, August 29, 2012), it was noted that certain airplane group configurations included in paragraph (n) of the NPRM were inadvertently removed in the final rule. This AD includes Group 1, Configuration 4, and Group 2, Configuration 3, in paragraph (n) of this AD.

### FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

### AD Requirements

This AD requires retaining all requirements of AD 2012–15–15, Amendment 39–17144 (77 FR 52212, August 29, 2012).

### FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this

rule because all actions of AD 2012–15–15, Amendment 39–17144 (77 FR 52212, August 29, 2012), are retained and include certain airplane group configurations in paragraph (n) of this AD that were specified in the NPRM (76 FR 81890, December 29, 2011), but were inadvertently removed in the final rule of AD 2012–15–15. Therefore, we find that notice and opportunity for prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2012–1228 and directorate identifier 2012–NM–190–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

**Costs of Compliance**

We estimate that this AD affects 591 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Work-hours | Average labor rate per hour | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|
| Inspections (retained actions from existing AD 2012-15-15, Amendment 39-17144 (77 FR 52212, August 29, 2012)). | 2 | $85 | $170 per inspection cycle ..... | 57 | $9,690 per inspection cycle. |
| Inspection (retained actions from existing AD 2012–15–15, Amendment 39-17144 (77 FR 52212, August 29, 2012)). | 3 | $85 | $255 per inspection cycle ..... | 591 | $150,705 per inspection cycle. |
| Supplemental inspection (retained actions from existing AD 2012–15–15, Amendment 39-17144 (77 FR 52212, August 29, 2012)). | 15 | $85 | $1,275 per inspection cycle .. | 591 | $753,525 per inspection cycle. |

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

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Repair (retained actions from existing AD 2012-15–15, Amendment 39-17144 (77 FR 52212, August 29, 2012)). | Up to 26 work-hours × $85 = Up to $2,210. | Up to $2,661 | Up to $4,871 depending on configuration. |
| Preventive modification (retained actions from existing AD 2012–15–15, Amendment 39-17144 (77 FR 52212, August 29, 2012)). | 18 work-hours × $85 = $1,530 | $1,338 ..... | $2,868 |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2012–15–15, Amendment 39–17144 (77 FR 52212, August 29, 2012), and adding the following new AD:

**2012–25–11 The Boeing Company:** Amendment 39–17292; Docket No. FAA–2012–1228; Directorate Identifier 2012–NM–190–AD.

**(a) Effective Date**

This AD is effective January 10, 2013.

**(b) Affected ADs**

This AD supersedes AD 2012–15–15, Amendment 39–17144 (77 FR 52212, August 29, 2012).

**(c) Applicability**

This AD applies to all The Boeing Company Model 757–200, -200CB, and -300 series airplanes, certificated in any category. Model 757–200PF series airplanes are not affected by this AD.

**(d) Subject**

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 53: Fuselage.

**(e) Unsafe Condition**

This AD was prompted by reports of cracks in the fuselage skin and bear strap at the forward upper corner of the L1 entry door cutout. We are issuing this AD to detect and correct cracking of the fuselage skin and bear strap at the forward, upper corner of the L1 entry door cutout, which could result in reduced structural integrity of the L1 entry door and consequent rapid decompression of the airplane.

**(f) Compliance**

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

**(g) Retained Initial Inspection With Terminating Action**

This paragraph restates the requirements of paragraph (g) of AD 2012–15–15, Amendment 39–17144 (77 FR 52212, August 29, 2012), with a terminating action. For airplanes having line numbers 1 through 90 inclusive: Within 500 flight cycles after May 24, 2004 (the effective date of AD 2004–09–32, Amendment 39–13622 (69 FR 25481, May 7, 2004)), or within 90 days after May 24, 2004 (the effective date of AD 2004–09–32), whichever occurs later, do the inspections of the forward upper corner of the L1 entry door cutout specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, per Part 1 of the Work Instructions of Boeing Special Attention Service Bulletin 757–53–0089, dated March 18, 2004, until the initial inspection required by paragraph (k) of this AD has been done. Doing the repair specified in paragraph (i) or (l) of this AD, or doing the preventive modification specified in paragraph (j) of this AD, terminates the inspections required by this paragraph.

(1) Do a high frequency eddy current (HFEC) inspection for cracking of the fuselage skin around the adjacent fasteners.

(2) Do an HFEC inspection for cracking along the edge of the skin and bear strap.

(3) Do a low frequency eddy current (LFEC) inspection for cracking of the bear strap around each fastener.

**(h) Retained Repetitive Inspections and Terminating Modification When No Crack Is Detected**

This paragraph restates the requirements of paragraph (h) of AD 2012–15–15, Amendment 39–17144 (77 FR 52212, August 29, 2012), with a terminating modification. If no crack is detected during any inspection required by paragraph (g) of this AD: Repeat the inspections required by paragraph (g) of this AD at intervals not to exceed 1,400 flight cycles, until the requirements of paragraph (k) of this AD are done. Doing the repair specified in paragraph (i) or (l) of this AD, or doing the preventive modification specified in paragraph (j) of this AD, as applicable, terminates the repetitive inspections required by this paragraph.

**(i) Retained Repair, With Repair Option When Any Crack Is Detected**

This paragraph restates the requirements of paragraph (i) of AD 2012–15–15, Amendment 39–17144 (77 FR 52212, August 29, 2012), with a repair option. If any crack is detected during any inspection required by paragraph (g) or (h) of this AD, and Boeing Special Attention Service Bulletin 757–53–0089, dated March 18, 2004, specifies to contact Boeing for appropriate action: Before further flight, repair, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make such findings; or using a method approved in accordance with the procedures specified in paragraph (r) of this AD. For a repair method to be approved, the approval must specifically reference this AD. Doing the repair terminates the inspections required by paragraphs (g) and (h) of this AD.

**(j) Retained Optional Preventive Modification**

This paragraph restates the optional preventive modification specified in paragraph (j) of AD 2012–15–15, Amendment 39–17144 (77 FR 52212, August 29, 2012). As an alternative to accomplishing the inspections required by paragraphs (g) and (h) of this AD, do the optional preventative modification of the forward upper corner of the L1 entry door cutout, and do all applicable related investigative/corrective actions, by accomplishing all the actions specified in Part 2 of the Work Instructions of Boeing Special Attention Service Bulletin 757–53–0089, dated March 18, 2004. Accomplishment of the modification constitutes terminating action for the inspections required by paragraphs (g) and (h) of this AD.

**(k) Retained Inspections**

This paragraph restates the requirements of paragraph (k) of AD 2012–15–15, Amendment 39–17144 (77 FR 52212, August 29, 2012). For airplanes in Group 1, Configurations 1 and 2, and Group 2, Configuration 1, as defined in Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009: Except as provided by paragraph (p)(1) of this AD, at the applicable times specified in paragraph 1.E, ''Compliance,'' of Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009, do HFEC and LFEC inspections for cracking of the skin and bear strap at the forward upper corner of the L1 entry door cutout, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009, except as provided by paragraph (p) of this AD. Repeat the inspections thereafter at intervals not to exceed 1,400 flight cycles. Doing the initial inspection required by this paragraph terminates the inspections required by paragraphs (g) and (h) of this AD. Doing the repair specified in paragraph (l) of this AD, or doing the optional preventive modification specified in paragraph (m) of this AD, terminates the inspections required by this paragraph.

**(l) Retained Terminating Repair**

This paragraph restates the terminating repair specified in paragraph (l) of AD 2012–15–15, Amendment 39–17144 (77 FR 52212, August 29, 2012). If any cracking is found during any inspection required by paragraph (k) of this AD, before further flight, repair in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009, except as required by paragraph (p) of this AD. Doing the repair terminates the repetitive inspections required by paragraph (k) of this AD.

**(m) Retained Optional Preventive Modification**

This paragraph restates the optional preventive modification specified in paragraph (m) of AD 2012–15–15, Amendment 39–17144 (77 FR 52212, August 29, 2012). Accomplishing the optional preventive modification, in accordance with

the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009, except as provided by paragraph (p) of this AD, terminates the repetitive inspections required by paragraph (k) of this AD.

**(n) Retained Inspections and Repair With New Airplane Group Configurations**

This paragraph restates the requirements of paragraph (n) of AD 2012–15–15, Amendment 39–17144 (77 FR 52212, August 29, 2012), with new airplane group configurations. For airplanes in Group 1, Configurations 3, 4, and 5; and Group 2, Configurations 2, 3, and 4; as identified in Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009; with a repair doubler; a doubler and a tripler; or a doubler, tripler, and quadrupler installed; or with a preventive modification doubler installed: At the applicable times specified in paragraph 1.E, ''Compliance,'' of Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009, except as required by paragraph (p)(2) of this AD, do LFEC, HFEC, and detailed inspections, as applicable, for cracking of the doubler, tripler, quadrupler, skin, bear strap, and inner chord strap, as applicable, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009. Repeat the inspections thereafter at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009.

**(o) Retained Repair**

This paragraph restates the requirements of paragraph (o) of AD 2012–15–15, Amendment 39–17144 (77 FR 52212, August 29, 2012). If any cracking is found during any inspection required by paragraph (n) of this AD, before further flight, repair the crack in accordance with the procedures specified in paragraph (r) of this AD.

**(p) Retained Exceptions to Service Bulletin Specifications**

This paragraph restates the exceptions specified in paragraph (p) of AD 2012–15–15, Amendment 39–17144 (77 FR 52212, August 29, 2012). The following exceptions apply to this AD.

(1) Where Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009, specifies a compliance time after the ''original issue date'' or ''Revision 1 date of the service bulletin,'' this AD requires compliance within the specified compliance time after October 3, 2012 (the effective date of AD 2012–15–15, Amendment 39–17144 (77 FR 52212, August 29, 2012)).

(2) Where Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009, specifies doing the HFEC, LFEC, and detailed inspections required by paragraph (n) of this AD before the accumulation of 37,500 total flight cycles, this AD requires the inspections to be accomplished at the latest of the times specified in paragraphs (p)(2)(i), (p)(2)(ii), and (p)(2)(iii) of this AD.

(i) Before the accumulation of 37,500 total flight cycles.

(ii) Within 24 months after October 3, 2012 (the effective date of AD 2012–15–15, Amendment 39–17144 (77 FR 52212, August 29, 2012)).

(iii) Within 4,000 flight cycles since installation of a repair doubler; a doubler and a tripler; or a doubler, tripler, and quadrupler; or on which a preventive modification doubler is installed; in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009; or in accordance with paragraph (h) of this AD.

(3) Where Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009, specifies contacting Boeing for repair instructions, this AD requires repairing in accordance with the procedures specified in paragraph (r) of this AD.

(4) Where Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009, specifies a specific fastener and material to be used for accomplishing a repair, this AD allows the substitution of fastener and material, as specified in Chapter 51 of the Boeing 757 Structural Repair Manual.

(5) Where Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009, specifies a specific fastener grip length, this AD allows substitution of a fastener grip length, as specified in Chapter 51 of the Boeing 757 Structural Repair Manual.

(6) If it is necessary to remove more parts for access, those parts may be removed. If access is possible without removing identified parts, it is not necessary to remove all of the identified parts.

**(q) Retained Credit for Previous Actions**

This paragraph restates the credit provisions specified in paragraph (q) of AD 2012–15–15, Amendment 39–17144 (77 FR 52212, August 29, 2012). For airplanes in Group 1, Configurations 1 and 2; and Group 2, Configuration 1; as defined in Boeing Special Attention 757–53–0094, Revision 1, dated August 12, 2009: This paragraph provides credit for the actions required by paragraph (k) of this AD, if those actions were performed before October 3, 2012 (the effective date of AD 2012–15–15), using Boeing Special Attention Service Bulletin 757–53–0094, dated January 16, 2008; or Boeing Special Attention Service Bulletin 757–53–0089, dated March 18, 2004 (which are not incorporated by reference in this AD).

**(r) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6440; fax: 425–917–6432; email: *nancy.marsh@faa.gov.*

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

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

(4) AMOCs previously approved in accordance with AD 2004–09–32, Amendment 39–13622 (69 FR 25481, May 7, 2004), are approved as AMOCs for the corresponding actions specified in paragraphs (g), (h), and (i) of this AD.

(5) AMOCs previously approved in accordance with AD 2012–15–15, Amendment 39–17144 (77 FR 52212, August 29, 2012)), are approved as AMOCs for the corresponding actions specified in this AD.

**(s) Related Information**

(1) For more information about this AD, contact Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6440; fax: 425–917–6432; email: *nancy.marsh@faa.gov.*

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

**(t) Material Incorporated by Reference**

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

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

(3) The following service information was approved for IBR on October 3, 2012 (77 FR 52212, August 29, 2012).

(i) Boeing Special Attention Service Bulletin 757–53–0094, Revision 1, dated August 12, 2009.

(ii) Reserved.

(4) The following service information was approved for IBR on May 24, 2004 (69 FR 25481, May 7, 2004).

(i) Boeing Special Attention Service Bulletin 757–53–0089, dated March 18, 2004.

(ii) Reserved.

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

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

(7) You may also review copies of the service information that is incorporated by

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

Issued in Renton, Washington, on December 5, 2012.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2012–30305 Filed 12–21–12; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2012–1198; Directorate Identifier 2012–NE–35–AD; Amendment 39–17289; AD 2012–25–08]**

**RIN 2120–AA64**

## Airworthiness Directives; Rolls-Royce plc Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain serial numbers (S/Ns) of Rolls-Royce plc (RR) RB211-Trent 768–60, 772–60, and 772B–60 turbofan engines. This AD requires initial and repetitive on-wing or in-shop inspections of the high pressure/intermediate pressure (HP/IP) turbine bearing support oil feed tube outer heat shield. This AD also requires installation of a revised HP/IP turbine bearing support structure as terminating action to the repetitive inspections of the HP/IP turbine bearing support oil feed tube outer heat shield. This AD was prompted by a report of high oil consumption due to an oil leak from the HP/IP turbine bearing support oil feed tube. We are issuing this AD to prevent failure of the HP turbine disc, uncontained engine failure, and damage to the airplane.

**DATES:** This AD becomes effective January 10, 2013.

We must receive comments on this AD by February 11, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication as of January 10, 2013.

The Director of the Federal Register approved the incorporation by reference of certain other publications as of December 14, 2007 (72 FR 67568, November 29, 2007).

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

For service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE248BJ, phone: 011–44–1332–242424; fax: 011–44–1332–245418, or email: *http://www.rolls-royce.com/contact/civil_team.jsp.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125.

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Robert Morlath, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238 7154; fax: 781–238 7199; email: *robert.c.morlath@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2012–0201, dated September 26, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> In August 2011, a Trent 700 engine was removed for high oil consumption, which was found to have been caused by a small hole in the oil feed tube of the High Pressure/Intermediate Pressure (HP/IP) Bearing Support. The hole was the result of frettage (chafing) with a fractured outer heat shield. This is a known problem and recognized unsafe condition that has re-emerged having been previously addressed by EASA AD 2007–0260R1.
>
> Investigation by RR revealed a build error that, in contradiction to the build records, the previous configuration of outer heat shield (Pre-Service Bulletin (SB) 72–F117 standard) was fitted on the oil feed tube service pipe of the HP/IP structure. As the build error may have been reproduced several times, it is assumed that further post-SB 72–F117 standard structures may be in service with pre-SB 72–F117 outer heat shields fitted to the oil feed tube.
>
> The frettage on the oil feed tube within the HP/IP turbine bearings support structure results from contact with the fracture edges of the tubes outermost heat shield, which has been found to fracture under thermal cycling and then to chafe against the oil tube with the potential to cause holes and consequent oil leaks.

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

On November 20, 2007, we issued AD 2007–24–09 (72 FR 67568, November 29, 2007) which corresponds with EASA AD 2007–0260R1. Our AD has a mandatory terminating action date of May 31, 2010, however, there were, and currently are, no U.S. operators of the engines affected by those ADs. Those ADs are only applicable to engines that do not incorporate Modification Standard 72–F117. Since those ADs were issued, EASA has issued AD 2012–0201 that is applicable to a specific set of engines that may have had Modification Standard 72–F117 incorporated incorrectly. EASA did not supersede EASA AD 2007–0260R1 with EASA AD 2012–0201 because EASA AD 2012–0201 only affects a very specific population of engines that, having incorporated Modification Standard 72–F117, either correctly or incorrectly, are no longer affected by EASA AD 2007–0260R1. We are issuing our AD as a standalone document for the same reasons. This new AD also is applicable only to the engines specified in the MCAI, none of which are currently registered to U.S. operators. Also, this new AD lists certain service bulletins that were previously incorporated by reference in AD 2007–24–09.

### Relevant Service Information

RR has issued Alert Service Bulletin No. RB.211–72–AG873, dated February 27, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

**FAA's Determination and Requirements of This AD**

This product has been approved by the United Kingdom and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

**FAA's Determination of the Effective Date**

No domestic operators use any of the RB211-Trent 768–60, 772–60, and 772B–60 turbofan engines listed by S/N in this AD. Therefore, we find that notice and opportunity for prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–1198; Directorate Identifier 2012–NE–35–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this AD:

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2012–25–08 Rolls-Royce plc:** Amendment 39–17289; Docket No. FAA–2012–1198; Directorate Identifier 2012–NE–35–AD.

**(a) Effective Date**

This airworthiness directive (AD) becomes effective January 10, 2013.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Rolls-Royce plc (RR) RB211 Trent 768–60, 772–60, and 772B–60 turbofan engines with serial numbers (S/Ns) listed in Table 1 to paragraph (c) of this AD.

TABLE 1 TO PARAGRAPH (C)—AFFECTED ENGINE S/NS

| | | | | |
|---|---|---|---|---|
| 41221 | 41435 | 41446 | 41459 | 41465 |
| 41425 | 41437 | 41451 | 41460 | 41466 |
| 41428 | 41438 | 41452 | 41461 | 41468 |
| 41430 | 41440 | 41454 | 41462 | 41469 |
| 41431 | 41442 | 41455 | 41463 | 41470 |
| 41432 | 41445 | 41456 | 41464 | 41471 |

**(d) Reason**

This AD was prompted by a report of high oil consumption due to an oil leak from the high pressure/intermediate pressure (HP/IP) turbine bearing support oil feed tube. We are issuing this AD to prevent a failure of the HP turbine disc, uncontained engine failure, and damage to the airplane.

**(e) Actions and Compliance**

Unless already done, do the following actions.

**(f) Initial Inspection**

(1) Initially inspect the HP/IP turbine bearing support oil feed tube within the compliance times specified in paragraphs 1.D.(1)(a) through 1.D.(1)(a)(ii) of RR Alert Service Bulletin (ASB) No. RB.211–72–AG873, dated February 27, 2012. Perform the initial inspection in accordance with paragraphs 3.A (1)(a) through 3.A (1)(j) of RR ASB No. RB.211–72–AG873, dated February 27, 2012.

(2) If the HP/IP turbine bearing support oil feed tube outer heat shield is not present, accept the module as compliant. No further action is required.

**(g) Repetitive Inspections**

If the HP/IP turbine bearing support oil feed tube outer heat shield is present, perform repetitive inspections of the HP/IP turbine bearing support oil feed tube, in accordance with paragraphs 3.A (2)(b) through 3.A (2)(f) of RR ASB No. RB.211–72–AG873, dated February 27, 2012.

**(h) Mandatory Terminating Action**

As mandatory terminating action to the repetitive inspections required by this AD, install a revised HP/IP turbine bearing support structure, at the next 05 Module overhaul after the effective date of this AD, in accordance with either:

(1) Sections 3.B (1)(a) through 3.B (1)(f) of RR Service Bulletin (SB) No. RB.211–72–F117, Revision 2, dated September 25, 2006; or

(2) Sections 3.B (1)(a) through 3.B (1)(e) and 3.B (2)(a) of RR SB No. RB.211–72–F227, Revision 1, dated October 8, 2007.

**(i) Definition**

For the purpose of this AD, ''next 05 Module overhaul'' is any time that the HP/IP turbine internal oil tubes have been exposed and the HP/IP turbine bearing support oil feed tube heat shields are subjected to visual inspection.

**(j) Alternative Methods of Compliance (AMOCs)**

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

**(k) Related Information**

(1) For more information about this AD, contact Robert Morlath, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238 7154; fax: 781–238 7199; email: *robert.c.morlath@faa.gov.*

(2) Refer to European Aviation Safety Agency AD 2012–0201, dated September 26, 2012, for related information.

**(l) Material Incorporated by Reference**

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

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

(i) Rolls-Royce plc Alert Service Bulletin No. RB.211–72–AG873, dated February 27, 2012, approved for IBR January 10, 2013.

(ii) Reserved.

(3) The following service information was approved for IBR on December 14, 2007 (72 FR 67568, November 29, 2007).

(i) Rolls-Royce plc Service Bulletin No. RB.211–72–F117, Revision 2, dated September 25, 2006.

(ii) Rolls-Royce plc Service Bulletin No. RB.211–72–F227, Revision 1, dated October 8, 2007.

(4) For service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE248BJ, phone: 011–44–1332–242424; fax: 011–44–1332–245418; or email: *http://www.rolls-royce.com/contact/civil_team.jsp.*

(5) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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

Issued in Burlington, Massachusetts, on December 4, 2012.

**Colleen M. D'Alessandro,**

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

[FR Doc. 2012–30650 Filed 12–21–12; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2012–0858; Directorate Identifier 2011–NM–183–AD; Amendment 39–17287; AD 2012–25–06]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are superseding an existing airworthiness directive (AD) for certain Airbus Model A300 B4–2C, B4–103, and B4–203 airplanes; and Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, and B4–622R airplanes. That AD currently requires performing a one-time detailed visual inspection of the forward fitting at frame (FR) 40 on both sides of the airplane for cracks, and repair if necessary. This new AD requires repetitive detailed inspections of the forward fitting at FR 40 without nut removal, and a one-time eddy current or liquid penetrant inspection of the forward fitting at FR 40 with nut removal, and repair if necessary. This AD was prompted by reports that new cracks were found in the FR 40 forward fitting. We are issuing this AD to detect and correct cracking of the FR 40 forward fitting, which could result in a deterioration of the structural integrity of the frame.

**DATES:** This AD becomes effective January 30, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 30, 2013.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of April 15, 2010 (75 FR 11435, March 11, 2010).

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

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

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 27, 2012 (77 FR 51717), and proposed to supersede AD 2010–06–05, Amendment 39–16229 (75 FR 11435, March 11, 2010). That NPRM proposed to correct an unsafe condition for the specified products. The Mandatory Continuing Airworthiness Information (MCAI) states:

One A300–600 aeroplane operator reported that, during a routine inspection, a crack was found in the right hand frame (FR) 40 forward fitting between stringer 32 and stringer 33. The subject aeroplane had previously been modified in accordance with Airbus SB A300–57–6053 (Mod. 10453).

Therefore and pending completion of the full analysis using a refined Finite Element Model, EASA [European Aviation Safety Agency] issued AD 2009–0094 [which corresponds with FAA AD 2010–06–05, Amendment 39–16229 (75 FR 11435, March 11, 2010)] to require a one-time Detailed Visual Inspection (DVI) of the post-SB A300–57–6053 A300–600 aeroplanes and post-SB A300–53–0297 A300 aeroplanes in order to ensure the structural integrity of frame 40.

During a recent maintenance check, on two aeroplanes (one A300B4 and one A300–600), cracks were found in the FR 40 forward fitting.

These new crack findings are considered as unexpected, since they were found after:

—Application of modification SB A300–57–6053 or SB A300–53–0297 which cancels the inspection programme, and

—Accomplishment of EASA AD 2009–0094.

For the reasons described above, this new [EASA] AD, which supersedes EASA AD 2009–0094, requires repetitive DVI of the FR 40 forward fitting (without nut removal), accomplishment of a one time Eddy Current (EC) inspection or liquid penetrant inspection of this area (with nut removal) and, depending on findings, the accomplishment of associated corrective action [repair if any cracking found]. Passing the EC or liquid penetrant inspection constitutes terminating action for the repetitive DVI.

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

## Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 51717, August 27, 2012), or on the determination of the cost to the public.

## Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

## Costs of Compliance

We estimate that this AD will affect about 134 products of U.S. registry.

The actions that are required by AD 2010–06–05, Amendment 39–16229 (75 FR 11435, March 11, 2010), and retained in this AD take about 3 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the currently required actions is $255 per product.

We estimate that it will take about 3 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $34,170, or $255 per product.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

## Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 51717, August 27, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2010–06–05, Amendment 39–16229 (75 FR 11435, March 11, 2010), and adding the following new AD:

**2012–25–06 Airbus:** Amendment 39–17287. Docket No. FAA–2012–0858; Directorate Identifier 2011–NM–183–AD.

**(a) Effective Date**

This airworthiness directive (AD) becomes effective January 30, 2013.

**(b) Affected ADs**

This AD supersedes AD 2010–06–05, Amendment 39–16229 (75 FR 11435, March 11, 2010).

**(c) Applicability**

This AD applies to Airbus airplanes, certificated in any category, as identified in paragraphs (c)(1) and (c)(2) of this AD. For airplanes on which Airbus Service Bulletin A300–53–0297 or A300–57–6053 (Airbus Modification 10453), as applicable, has been incorporated as a corrective action (repair following crack finding), no action is required by this AD.

(1) Model A300 B4–2C, B4–103, and B4–203 airplanes, all serial numbers, modified preventively in service (without any preliminary crack findings), as specified in Airbus Service Bulletin A300–53–0297 (Airbus Modification 10453).

(2) Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes, all serial numbers, modified preventively in service (without any preliminary crack findings), as specified in Airbus Service Bulletin A300–57–6053 (Airbus Modification 10453).

**(d) Subject**

Air Transport Association (ATA) of America Code 53, 57: Fuselage, Wings.

**(e) Reason**

This AD was prompted by reports that cracks were found in the frame (FR) 40 forward fitting. We are issuing this AD to detect and correct cracking of the FR 40 forward fitting, which could result in a deterioration of the structural integrity of the frame.

**(f) Compliance**

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

**(g) Retained Detailed Inspection**

This paragraph restates the actions required by paragraphs (f)(1), (f)(2), and (f)(3) of AD 2010–06–05, Amendment 39–16229 (75 FR 11435, March 11, 2010).

(1) At the applicable time specified in table 1 to paragraph (g)(1) of this AD: Do a one-time detailed visual inspection of the forward fitting at FR 40 on both sides of the airplane, in accordance with Airbus Mandatory Service Bulletin A300–57A6108 (for Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes) or A300–53A0387 (for Model A300 B4–2C, B4–103, and B4–203 airplanes), both including Appendices 01 and 02, both dated September 12, 2008.

TABLE 1 TO PARAGRAPH (g)(1) OF THIS AD—COMPLIANCE TIMES

| Airplane models/configuration | Compliance time |
|---|---|
| A300 B4–2C and B4–103 airplanes on which Airbus Service Bulletin A300–53–0297 was done prior to the accumulation of 9,000 total flight cycles. | Prior to the accumulation of 18,000 total flight cycles, or within 3 months after April 15, 2010 (the effective date of AD 2010–06–05, Amendment 39–16229 (75 FR 11435, March 11, 2010)), whichever occurs later. |
| A300 B4–2C and B4–103 airplanes on which Airbus Service Bulletin A300–53–0297 was done on or after the accumulation of 9,000 total flight cycles. | Within 5,500 flight cycles after accomplishment of Airbus Service Bulletin A300–53–0297, or within 6 months after April 15, 2010 (the effective date of AD 2010–06–05, Amendment 39–16229 (75 FR 11435, March 11, 2010)), whichever occurs later; except, for airplanes that, as of April 15, 2010 (the effective date of AD 2010–06–05), have accumulated 11,000 flight cycles or more since accomplishment of Airbus Service Bulletin A300–53–0297, within 3 months after April 15, 2010 (the effective date of AD 2010–06–05). |
| A300 B4–203 airplanes on which Airbus Service Bulletin A300–53–0297 was done prior to the accumulation of 8,300 total flight cycles. | Prior to the accumulation of 15,000 total flight cycles, or within 3 months after April 15, 2010 (the effective date of AD 2010–06–05, Amendment 39–16229 (75 FR 11435, March 11, 2010)), whichever occurs later. |
| A300 B4–203 airplanes on which Airbus Service Bulletin A300–53–0297 was done on or after the accumulation of 8,300 total flight cycles. | Within 4,100 flight cycles after accomplishment of Airbus Service Bulletin A300–53–0297, or within 6 months after April 15, 2010 (the effective date of AD 2010–06–05, Amendment 39–16229 (75 FR 11435, March 11, 2010)), whichever occurs later; except, for airplanes that, as of April 15, 2010 (the effective date of AD 2010–06–05), have accumulated 8,200 flight cycles or more since accomplishment of Airbus Service Bulletin A300–53–0297, within 3 months after April 15, 2010 (the effective date of AD 2010–06–05). |
| A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes on which Airbus Service Bulletin A300–57–6053 was done prior to the accumulation of 6,100 total flight cycles. | Prior to the accumulation of 11,500 total flight cycles, or within 3 months after April 15, 2010 (the effective date of AD 2010–06–05, Amendment 39–16229 (75 FR 11435, March 11, 2010)), whichever occurs later. |
| A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes on which Airbus Service Bulletin A300–57–6053 was done on or after the accumulation of 6,100 total flight cycles. | Within 3,300 flight cycles after accomplishment of Airbus Service Bulletin A300–57–6053, or within 6 months after April 15, 2010 (the effective date of AD 2010–06–05, Amendment 39–16229 (75 FR 11435, March 11, 2010)), whichever occurs later; except, for airplanes that, as of April 15, 2010 (the effective date of AD 2010–06–05), have accumulated 6,600 flight cycles or more since accomplishment of Airbus Service Bulletin A300–57–6053, within 3 months after April 15, 2010 (the effective date of AD 2010–06–05). |

(2) Except as required by paragraph (g)(3) of this AD: If any crack is found during the inspection required by paragraph (g)(1) of this AD, before further flight, do a temporary or definitive repair, as applicable, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–0268, Revision 06, dated January 7, 2002 (for Model A300 B4–2C, B4–103, and B4–203 airplanes); or A300–57–6052, Revision 03, dated May 27, 2002, including Airbus Drawings 15R53810394, Issue A, dated December 21, 1998, and 21R57110247, Issue A, dated June 20, 1997 (for Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes).

(3) If any crack found during the inspection required by paragraph (g)(1) of this AD cannot be repaired in accordance with Airbus Service Bulletin A300–53–0268, Revision 06, dated January 7, 2002 (for Model A300 B4–2C, B4–103, and B4–203 airplanes); or A300–57–6052, Revision 03, dated May 27, 2002, including Airbus Drawings 15R53810394, Issue A, dated December 21, 1998, and 21R57110247, Issue A, dated June 20, 1997 (for Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes): Contact Airbus for repair instructions and, before further flight, repair the crack using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the European Aviation Safety Agency (EASA) (or its delegated agent).

**(h) Retained Reporting Requirement**

This paragraph restates the requirements of paragraph (f)(4) of AD 2010–06–05, Amendment 39–16229 (75 FR 11435, March 11, 2010). Submit an inspection report in accordance with Appendix 01 of Airbus Mandatory Service Bulletin A300–53A0387, including Appendices 01 and 02, dated September 12, 2008 (for Model A300 B4–2C, B4–103, and B4–203 airplanes); or Airbus Mandatory Service Bulletin A300–57A6108, including Appendices 01 and 02, dated September 12, 2008 (for Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes); to the address identified on the reporting sheet, at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD.

(1) If the inspection was done on or after April 15, 2010 (the effective date of AD 2010–06–05, Amendment 39–16229 (75 FR 11435, March 11, 2010)): Submit the report within 30 days after the inspection.

(2) If the inspection was done before April 15, 2010 (the effective date of AD 2010–06–05, Amendment 39–16229 (75 FR 11435, March 11, 2010)): Submit the report within 30 days after April 15, 2010 (the effective date of AD 2010–06–05).

**(i) New Requirement: Repetitive Detailed Inspections**

Within 300 flight cycles after the effective date of this AD: Perform a detailed inspection for cracks of the forward fitting at FR 40 without nut removal on both sides of the airplane, in accordance with Airbus All Operator Telex A300–53A0391, dated August 9, 2011 (for Model A300 B4–2C, B4–103, and B4–203 airplanes); or Airbus All Operator Telex A300–57A6111, dated August 9, 2011 (for Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes). Thereafter, repeat the inspection at intervals not to exceed 300 flight cycles.

**(j) New Requirement: Eddy Current Inspection or Liquid Penetrant Inspection**

Within 36 months after the effective date of this AD: Perform an eddy current inspection or a liquid penetrant inspection for cracks of the forward fitting at FR 40 with nut removal on both sides of the airplane, in accordance with Airbus All Operator Telex A300–53A0391, dated August 9, 2011 (for Model A300 B4–2C, B4–103, and B4–203 airplanes); or Airbus All Operator Telex A300–57A6111, dated August 9, 2011 (for Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes).

**(k) New Requirement: Corrective Action**

If, during any inspection required by paragraph (i) or (j) of this AD, any crack is detected: Before further flight, repair the crack in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or EASA (or its delegated agent).

**(l) New Requirement: Reporting Requirement**

Submit a one-time report of the findings (both positive and negative) of the inspections required by paragraphs (i) and (j) of this AD to Airbus, Sebastien Faure, SEES1, SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 31 68; fax +33 5 61 93 36 14; email *sebastien.s.faure@airbus.com*, at the applicable time specified in paragraph (l)(1) or (l)(2) of this AD.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

**(m) New Requirement: Terminating Action**

Accomplishment of the one-time eddy current inspection or a liquid penetrant inspection required by paragraph (j) of this AD, including doing all applicable repairs, constitutes terminating action for the inspections required by paragraph (i) of this AD.

**(n) Other FAA AD Provisions**

The following provisions also apply to this AD:

*(1) Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD. AMOCs approved previously in accordance with AD 2010–06–05, Amendment 39–16229 (75 FR 11435, March 11, 2010), are approved as AMOCs for the corresponding provisions of this AD.

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

*(3) Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

**(o) Related Information**

Refer to MCAI EASA Airworthiness Directive 2011–0163, dated August 30, 2011, and the service information specified in paragraphs (o)(1) through (o)(6) of this AD, for related information.

(1) Airbus All Operator Telex A300–53A0391, dated August 9, 2011.

(2) Airbus All Operator Telex A300–57A6111, dated August 9, 2011.

(3) Airbus Mandatory Service Bulletin A300–57A6108, including Appendices 01 and 02, dated September 12, 2008.

(4) Airbus Mandatory Service Bulletin A300–53A0387, including Appendices 01 and 02, dated September 12, 2008.

(5) Airbus Service Bulletin A300–53–0268, Revision 06, dated January 7, 2002.

(6) Airbus Service Bulletin A300–57–6052, Revision 03, dated May 27, 2002, including Airbus Drawings 15R53810394, Issue A, dated December 21, 1998, and 21R57110247, Issue A, dated June 20, 1997.

**(p) Material Incorporated by Reference**

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

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

(3) The following service information was approved for IBR on January 30, 2013.

(i) Airbus All Operator Telex A300–53A0391, dated August 9, 2011. (The issue date and document number of this document are specified on only the first page of the document.)

(ii) Airbus All Operator Telex A300–57A6111, dated August 9, 2011. (The issue date and document number of this document are specified on only the first page of the document.)

(4) The following service information was approved for IBR on April 15, 2010 (75 FR 11435, March 11, 2010).

(i) Airbus Mandatory Service Bulletin A300–57A6108, including Appendices 01 and 02, dated September 12, 2008.

(ii) Airbus Mandatory Service Bulletin A300–53A0387, including Appendices 01 and 02, dated September 12, 2008.

(iii) Airbus Service Bulletin A300–53–0268, Revision 06, dated January 7, 2002. (Pages 1–6, 9, 10, and 25–27 of this document are identified as Revision 06, dated January 7, 2002. Pages 7, 8, 11–24, and 28–84 of this AD document are identified as Revision 05, dated June 9, 2000).

(iv) Airbus Service Bulletin A300–57–6052, Revision 03, dated May 27, 2002, which includes Airbus Drawing 15R53810394, Issue A, dated December 21, 1998 and Airbus Drawing 21R57110247, Issue A, dated June 20, 1997. Airbus Drawing 21R57110247, Issue A, dated June 20, 1997 has effective pages 1 and 2, dated May 28, 1997 and pages 3 and 4, dated June 20, 1997.

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

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

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

Issued in Renton, Washington, on December 4, 2012.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2012–29992 Filed 12–21–12; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2012–0660; Airspace Docket No. 12–ANM–20]**

## Establishment of Class E Airspace; Walsenburg, CO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at Spanish Peaks Airfield, Walsenburg, CO, to accommodate aircraft using new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach

procedures at the airport. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport. Also, the geographic coordinates of the airport are updated at the request of National Aeronautical Navigation Services.

**DATES:** Effective date, 0901 UTC, March 7, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA, 98057; telephone (425) 203–4537.

**SUPPLEMENTARY INFORMATION:**

### History

On September 11, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish controlled airspace at Spanish Peaks Airfield, Walsenburg, CO (77 FR 55776). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 and 1,200 feet above the surface, at Spanish Peaks Airfield, Walsenburg, CO, to accommodate IFR aircraft executing new RNAV (GPS) standard instrument approach procedures at the airport. Also, the geographic coordinates of the airport are updated to coincide with the FAA's aeronautical database. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Spanish Peaks Airfield, Walsenburg, CO.

### Environmental Review

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

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

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

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

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

### § 71.1 [Amended]

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

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ANM CO E5 Walsenburg, CO [New]**

Walsenburg, Spanish Peaks Airfield, CO
(Lat. 37°41′47″ N., long. 104°47′05″ W.)

That airspace extending upward from 700 feet above the surface within a 9.7-mile radius of the Spanish Peaks Airfield; that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 37°58′00″ N., long. 105°00′00″ W.; to lat. 37°52′00″ N., long. 104°13′00″ W.; to lat. 37°17′00″ N., long. 104°10′00″ W.; to lat. 37°22′00″ N., long. 105°22′00″ W., thence to the point of beginning.

Issued in Seattle, Washington, on November 8, 2012.

**John Warner,**

*Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2012–30792 Filed 12–21–12; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 73

**[Docket No. FAA–2012–1150; Airspace Docket No. 12–ANE–16]**

**RIN 2120–AA66**

## Amendment of Time of Designation for Restricted Area R–6501B; Underhill, VT

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends the time of designation for restricted area R–6501B, Underhill, VT by adding a requirement for issuance of a Notice to Airmen (NOTAM) 24 hours in advance of any activation of the restricted area. This action does not affect the boundaries, altitudes or activities conducted within the area.

**DATES:** Effective date 0901 UTC, January 10, 2013.

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Airspace Policy and ATC Procedures Group, AJV–11, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### Background

The current time of designation of restricted area R–6501B reads

''Intermittent.'' The term ''intermittent'' signifies limited or infrequent use the area. FAA Order 7400.2 requires that an ''intermittent'' time of designation for special use airspace areas must include either an associated time period or a ''by NOTAM'' provision. In all cases, an 'intermittent'' time of designation must not be used for restricted areas without a ''by NOTAM'' provision.

**The Rule**

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by changing the time of designation for Restricted area R–6501B, Underhill, VT, from ''Intermittent'' to ''Intermittent by NOTAM 24 hours in advance.'' This change brings the time of designation into compliance with FAA Order 7400.2 requirements.

This change adds a NOTAM requirement to the time of designation of R–6501B. The change benefits the flying public by providing advance notice of planned activation periods of the restricted area. Because the amendment does not affect the boundaries, designated altitudes, or activities conducted within the restricted area and provides the public with advance notice of restricted area usage, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

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

**Environmental Review**

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with 311d., FAA Order 1050.1E, Environmental Impacts: Policies and Procedures. This airspace action is an administrative change to the description of the affected restricted area to clarify the time of designation. It does not alter the dimensions, altitudes, or activities conducted within the airspace; therefore, it is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exists that warrant preparation of an environmental assessment.

**List of Subjects in 14 CFR Part 73**

Airspace, Prohibited areas, Restricted areas.

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

## PART 73—SPECIAL USE AIRSPACE

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

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

**§ 73.65 [Amended]**

■ 2. Section 73.65 is amended as follows:

* * * * *

**R–6501B Underhill, VT [Amended]**

* * * * *

By removing the word ''Intermittent'' under Time of designation. and inserting the words ''Intermittent by NOTAM 24 hours in advance.''

* * * * *

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

**Gary A. Norek,**

*Manager, Airspace Policy and ATC Procedures Group.*

[FR Doc. 2012–30806 Filed 12–21–12; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF ENERGY

## 18 CFR Part 40

**[Docket No. RM12–9–000; Order No. 772]**

## Regional Reliability Standard PRC–006–SERC–01; Automatic Underfrequency Load Shedding Requirements

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** Under section 215 of the Federal Power Act, the Federal Energy Regulatory Commission (Commission) approves regional Reliability Standard PRC–006–SERC–01 (Automatic Underfrequency Load Shedding Requirements), submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC). Regional Reliability Standard PRC–006–SERC–01 is designed to ensure that automatic underfrequency load shedding protection schemes, designed by planning coordinators and implemented by applicable distribution providers and transmission owners in the SERC Reliability Corporation Region, are coordinated to mitigate the consequences of an underfrequency event effectively. The Commission approves the related violation risk factors, with one modification, violation severity levels, implementation plan, and effective date proposed by NERC.

**DATES:** This rule will become effective February 25, 2013.

**FOR FURTHER INFORMATION CONTACT:**

Susan Morris (Technical Information), Office of Electric Reliability, Division of Reliability Standards, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 502–6803, *Susan.Morris@ferc.gov.*

Matthew Vlissides (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 502–8408, *Matthew.Vlissides@ferc.gov.*

**SUPPLEMENTARY INFORMATION:**

**Final Rule**

*Order No. 772*

(Issued December 20, 2012)

1. Under section 215 of the Federal Power Act (FPA), the Commission approves regional Reliability Standard PRC–006–SERC–01 (Automatic Underfrequency Load Shedding Requirements) in the SERC Reliability Corporation (SERC) Region. The Commission also approves the related violation risk factors (VRF), with one modification, violation severity levels (VSL), implementation plan, and effective date proposed by the North American Electric Reliability Corporation (NERC). NERC submitted regional Reliability Standard PRC–006–SERC–01 to the Commission for approval and the new standard is designed to ensure that automatic underfrequency load shedding (UFLS) protection schemes, designed by planning coordinators and implemented by applicable distribution providers and transmission owners in the SERC Region, are coordinated to mitigate the consequences of an underfrequency event effectively.

## I. Background

### A. Mandatory Reliability Standards

2. Section 215 of the FPA requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by NERC, subject to Commission oversight, or by the Commission independently.[1]

3. Reliability Standards that NERC proposes to the Commission may include Reliability Standards that are proposed by a Regional Entity to be effective in that region.[2] In Order No. 672, the Commission noted that:

> As a general matter, we will accept the following two types of regional differences, provided they are otherwise just, reasonable, not unduly discriminatory or preferential and in the public interest, as required under the statute: (1) a regional difference that is more stringent than the continent-wide Reliability Standard, including a regional difference that addresses matters that the continent-wide Reliability Standard does not; and (2) a regional Reliability Standard that is necessitated by a physical difference in the Bulk-Power System.[3]

When NERC reviews a regional Reliability Standard that would be applicable on an interconnection-wide basis and that has been proposed by a Regional Entity organized on an interconnection-wide basis, NERC must rebuttably presume that the regional Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.[4] In turn, the Commission must give ''due weight'' to the technical expertise of NERC and of a Regional Entity organized on an interconnection-wide basis.[5]

4. On April 19, 2007, the Commission accepted delegation agreements between NERC and each of the eight Regional Entities.[6] In the order, the Commission accepted SERC as a Regional Entity organized on less than an interconnection-wide basis. As a Regional Entity, SERC oversees Bulk-Power System reliability within the SERC Region, which covers a geographic area of approximately 560,000 square miles in a sixteen-state area in the southeastern and central United States (all of Missouri, Alabama, Tennessee, North Carolina, South Carolina, Georgia, Mississippi, and portions of Iowa, Illinois, Kentucky, Virginia, Oklahoma, Arkansas, Louisiana, Texas and Florida).

### B. NERC Petition

5. On February 1, 2012, NERC submitted a petition to the Commission seeking approval of regional Reliability Standard PRC–006–SERC–01.[7] NERC stated that regional Reliability Standard PRC–006–SERC–01 is designed to ensure that automatic UFLS protection schemes, designed by planning coordinators and implemented by applicable distribution providers and transmission owners in the SERC Region, are coordinated to mitigate the consequences of an underfrequency event effectively.[8] According to NERC, regional Reliability Standard PRC–006–SERC–01 adds specificity for UFLS schemes in the SERC Region that are not present in the NERC UFLS Reliability Standard PRC–006–1.[9] NERC explained that regional Reliability Standard PRC–006–SERC–01 effectively mitigates, in conjunction with Reliability Standard PRC–006–1, the consequences of an underfrequency event while accommodating differences in system transmission and distribution topology among SERC planning coordinators resulting from historical design criteria, makeup of load demands, and generation resources.[10]

6. In the petition, NERC also proposed violation risk factors and violation severity levels for each Requirement of the regional Reliability Standard, an implementation plan, and an effective date. NERC stated that these proposals were developed and reviewed for consistency with NERC and Commission guidelines. NERC proposed specific implementation plans for each Requirement in the regional Reliability Standard, with the regional Reliability Standard becoming fully effective thirty months after the first day of the first quarter following regulatory approval. NERC stated that the implementation plan is reasonable, as it balances the need for reliability with the practicability of implementation.

### C. Notice of Proposed Rulemaking

7. On July 19, 2012, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to approve regional Reliability Standard PRC–006–SERC–01 as just, reasonable, not unduly discriminatory or preferential, and in the public interest.[11] The Commission proposed to approve regional Reliability Standard PRC–006–SERC–01 because it is designed to work in conjunction with NERC Reliability Standard PRC–006–1 to mitigate the consequences of an underfrequency event effectively, while accommodating differences in system transmission and distribution topology among SERC planning coordinators due to historical design criteria, makeup of load demands, and generation resources. The NOPR determined that PRC–006–SERC–01 covers topics not covered by the corresponding NERC Reliability Standard PRC–006–1 because it adds specificity for UFLS schemes in the SERC Region.

8. While proposing to approve regional Reliability Standard PRC–006–SERC–01, the NOPR identified a possible inconsistency between, on the one hand, the separate rationale for Requirement R6 of the regional Reliability Standard and, on the other, Order No. 763, which approved NERC Reliability Standard PRC–006–1.[12]

9. Regional Reliability Standard PRC–006–SERC–01, Requirement R6 states:

> R6. Each UFLS entity shall implement changes to the UFLS scheme which involve frequency settings, relay time delays, or changes to the percentage of load in the scheme within 18 months of notification by the Planning Coordinator. *[Violation Risk Factor: Medium] [Time Horizon: Long-term Planning]*

10. The rationale for Requirement R6 included in the NERC petition states:

> Rationale for R6:
> The SDT believes it is necessary to put a requirement on how quickly changes to the scheme should be made. This requirement specifies that changes must be made within 18 months of notification by the PC [planning coordinator]. The 18-month interval was chosen to give a reasonable amount of time for making changes in the field. All of the SERC region has existing UFLS schemes

[1] *See* 16 U.S.C. 824o(e) (2006).

[2] 16 U.S.C. 824o(e)(4). A Regional Entity is an entity that has been approved by the Commission to enforce Reliability Standards under delegated authority from the ERO. *See* 16 U.S.C. 824o(a)(7) and (e)(4).

[3] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, at P 291, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[4] 16 U.S.C. 824o(d)(3).

[5] *Id.* § 824o(d)(2).

[6] *North American Electric Reliability Corp.,* 119 FERC ¶ 61,060, *order on reh'g,* 120 FERC ¶ 61,260 (2007).

[7] North American Electric Reliability Corp., February 1, 2012 Petition for Approval of Regional Reliability Standard PRC–006–SERC–01 (NERC Petition). Regional Reliability Standard PRC–006–SERC–01 is not codified in the CFR. However, it is available on the Commission's eLibrary document retrieval system in Docket No. RM12–9–000 and is available on the NERC's Web site, *www.nerc.com.*

[8] NERC Petition at 7.

[9] *Id.* at 18.

[10] *Id.* at 18–19.

[11] *Regional Reliability Standard PRC–006–SERC–01 —Automatic Underfrequency Load Shedding Requirements,* Notice of Proposed Rulemaking, 77 Fed. Reg. 43,190 (July 24, 2012), 140 FERC ¶ 61,056 (2012) (NOPR).

[12] *Automatic Underfrequency Load Shedding and Load Shedding Plans Reliability Standards,* Order No. 763, 139 FERC ¶ 61,098 (2012).

which, based on periodic simulations, have provided reliable protection for years. Events which result in islanding and an activation of the UFLS schemes are extremely rare. Therefore, the SDT does not believe that changes to an existing UFLS scheme will be needed in less than 18 months. *However, if a PC desires that changes to the UFLS scheme be made faster than that, then the PC may request the implementation to be done sooner than 18 months. The UFLS entity may oblige but will not be required to do so.*[13]

11. The NOPR stated that the rationale for Requirement R6 could result in Requirement R6 being read to allow applicable entities not to adopt a planning coordinator's schedule for implementing corrective actions to UFLS schemes if the schedule is less than 18 months. The NOPR stated that such an interpretation would be inconsistent with Order No. 763, which, in approving PRC–006–1, held that planning coordinators should be responsible for establishing schedules for the completion of corrective actions in response to UFLS events.[14] The NOPR stated that the Commission interprets the language in Requirement R6, that UFLS entities must implement changes ''within 18-months,'' as a ''maximum'' timeframe to comply with a planning coordinator's schedule to implement changes to UFLS schemes, but the interpretation further recognized that the planning coordinator could establish a schedule requiring the changes to be implemented in less time. The NOPR stated that the inclusion of a maximum timeframe is more stringent than Reliability Standard PRC–006–1, which does not contain a maximum timeframe to implement changes to a UFLS scheme.

12. The NOPR proposed to approve the related violation risk factors, with one modification, violation severity levels, implementation plan, and effective date proposed by NERC. The NOPR proposed to direct NERC to modify the violation risk factor assigned to Requirement R6 from ''medium'' to ''high'' to make it consistent with the Commission's VRF guidelines and the violation risk factor for Requirement R9 of NERC Reliability Standard PRC–006–1, since both Requirements address a similar reliability goal.[15]

13. In response to the NOPR, comments were filed by NERC and three interested entities regarding the Commission's interpretation of Requirement R6, aspects of Requirement R2 that were not addressed in the NOPR, and the proposed modification to the violation risk factor associated with Requirement R6.[16]

## II. Discussion

14. Pursuant to FPA section 215(d)(2), we approve regional Reliability Standard PRC–006–SERC–01 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. PRC–006–SERC–01 is designed to work in conjunction with NERC Reliability Standard PRC–006–1 to mitigate the consequences of an underfrequency event effectively while accommodating differences in system transmission and distribution topology among SERC planning coordinators due to historical design criteria, makeup of load demands, and generation resources.[17] As indicated above, PRC–006–SERC–01 addresses topics not covered by the corresponding NERC Reliability Standard PRC–006–1 because it adds specificity for UFLS schemes in the SERC Region. The Commission also approves the related violation risk factors, with one modification, violation severity levels, implementation plan, and effective date proposed by NERC.

15. We address below the three issues raised in the comments to the NOPR.

### *A. PRC–006–SERC–01, Requirement R6*

16. In the NOPR, the Commission interpreted Requirement R6 as imposing an 18-month maximum schedule for implementing changes to UFLS schemes in the SERC Region but, consistent with NERC Reliability Standard PRC–006–1 and Order No. 763, as allowing planning coordinators to require applicable entities to implement changes in less time.[18] The NOPR stated that the proposed rationale for Requirement R6 was potentially inconsistent with this interpretation and the treatment of NERC Reliability Standard PRC–006–1 in Order No. 763.

Comments

17. In its initial comments, SERC points to NERC's compliance filing to Order No. 763, in which NERC states that PRC–006–SERC–01 does not replace PRC–006–1 for UFLS entities in the SERC Region and that such entities must comply with both standards. To explain the basis for the 18-month schedule in PRC–006–SERC–01, Requirement R6, SERC states that the drafting team was concerned that, in situations where a UFLS entity is not a planning coordinator, planning coordinators might impose unreasonable schedules on UFLS entities when major UFLS scheme changes are made, not as part of a corrective action plan (i.e., actions taken in response to event assessments made pursuant to PRC–006–1, Requirement R11), but for other reasons (e.g., ''for consistency purposes, a change in UFLS scheme philosophy, or for other reasons'').[19] SERC states that planning coordinators are allowed to make such changes under PRC–006–1, but Requirement R3 of PRC–006–1 does not require planning coordinators to consider UFLS entity budgeting and procurement limitations when establishing implementation schedules.

18. SERC states that the drafting team felt it was important to provide a practical timeframe for UFLS entities that are not planning coordinators by establishing an upper bound on the timeframe for implementing major changes to an entity's UFLS scheme and to ensure that the UFLS entities that are not planning coordinators have adequate time to budget, procure, and install the necessary equipment.[20]

19. SERC states that it does not oppose the Commission's interpretation of Requirement R6 (i.e., that Requirement R6 does not provide a UFLS entity with the discretion not to follow the schedule set by the planning coordinator when the schedule is less than 18 months). SERC proposes to revise the rationale statement for Requirement R6 to make it consistent with the Commission's interpretation.[21]

20. NERC states that, in its compliance filing to Order No. 763, it explained that UFLS entities in the SERC Region must comply with PRC–

[13] NERC Petition, Exhibit A at 14 (emphasis added).

[14] Order No. 763, 139 FERC ¶ 61,098 at P 48 (citing Reliability Standard PRC–006–1, Requirement R9, ''Each UFLS entity shall provide automatic tripping of Load in accordance with the UFLS program design and schedule for application determined by its Planning Coordinator(s) in each Planning Coordinator area in which it owns assets.'').

[15] *North American Electric Reliability Corp.,* 119 FERC ¶ 61,145, *order on reh'g,* 120 FERC ¶ 61,145 (2007).

[16] Comments were received from Dominion Resources Services, Inc. (Dominion), on behalf of Virginia Electric and Power Company d/b/a Dominion Virginia Power, Dominion Energy Kewaunee, Inc., Dominion Nuclear Connecticut, Inc. Dominion Energy Brayton Point, LLC, Dominion Energy Manchester Street, Inc., Elwood Energy, LLC, Kincaid Generation, LLC and Fairless Energy, LLC; Midwest Independent Transmission System Operator, Inc. (MISO); and SERC. Dominion and SERC also filed reply comments.

[17] NERC Petition at 18.

[18] NOPR, 140 FERC ¶ 61,056 at P 16.

[19] SERC Initial Comments at 4.

[20] SERC states that 26 of the 43 UFLS entities in the SERC Region do not serve as their own planning coordinators. SERC Initial Comments at 4.

[21] SERC proposes to revise the rationale to include a statement that ''[i]f a PC [planning coordinator] determines there is a need for changing the UFLS scheme faster than 18 months, then the PC may require the implementation to be done sooner as allowed by NERC Reliability Standard PRC–006–1.'' *Id.* at 6.

006–1 and PRC–006–SERC–01 and that the latter does not replace the former. NERC stated in the compliance filing that ''UFLS entities must meet the schedule set by the Planning Coordinator to comply with PRC–006–1, Requirement R9, but the timeframe must not exceed 18 months in the SERC Reliability Corporation Region to comply with PRC–SERC–006–1, Requirement R6.'' [22] NERC states that SERC does not oppose NERC's clarification, above, and further states that it supports SERC's proposed revision to the rationale statement for Requirement R6.

21. Dominion states in its initial comments that it supports PRC–006–SERC–01 as proposed but is concerned that it may conflict with Order No. 763. Dominion states that NERC's compliance filing to Order No. 763 adds ''an unreasonable burden and complexity in the compliance efforts of affected registered entities.''[23] Specifically, Dominion is concerned that compliance with PRC–006–1 and PRC–006–SERC–01 will create a ''new, or at least unrealized, level of complexity imposed upon registered entities.'' [24] Dominion states that it ''recommends that the Commission approve the SERC regional standard but remand Requirement R6 and direct it be modified to be consistent with the scheduling requirements of Order No. 763 * * * to require each UFLS entity in the SERC region to implement changes to the UFLS scheme within *the lesser of* 18 months of notification by the planning coordinator, or the schedule established by the planning coordinator.'' [25]

22. In responsive comments, SERC states that Dominion's concerns have been adequately addressed. SERC states that the Commission indicated in the NOPR that it will not read Requirement R6 as providing UFLS entities with the discretion not to follow the schedule set by planning coordinators when the schedule is less than 18 months. SERC also states that it proposed, in its initial comments, to revise the rationale for Requirement R6 to make the rationale consistent with this interpretation.

23. In reply to SERC's responsive comments, Dominion disagrees that its concerns have been adequately addressed. Dominion states that ''it is unjust to hold a registered entity responsible for compliance to any requirement within a reliability standard where such compliance is dependent upon that registered entity having also read, and taken into consideration, all statements issued by FERC, NERC and the Regional Entity in this docket.'' [26]

Commission Determination

24. The Commission affirms the interpretation of Requirement R6 set forth in the NOPR and accepts NERC and SERC's proposal to revise the rationale statement for Requirement R6, as set forth in NERC and SERC's comments. NERC, SERC, and Dominion do not oppose the Commission's interpretation of Requirement R6.

25. The remaining dispute, therefore, centers on Dominion's request that Requirement R6 should be revised to eliminate any ambiguity, as opposed to relying on the Commission's interpretation of Requirement R6 and the proposed revision to the separate rationale for Requirement R6. We reject this request because, as we stated in the NOPR, the ambiguity regarding Requirement R6 was a result of the separate rationale statement for Requirement R6.[27] Absent the problematic language in the rationale, there is no inconsistency created by the text of Requirement R6 itself. As NERC notes, UFLS entities must comply with both PRC–006–1 and PRC–006–SERC–01.[28] A plain reading of Requirement R6 (i.e., that UFLS entities shall implement changes within 18 months of notification by planning coordinators) in conjunction with a reading of PRC–006–1 (i.e., requiring UFLS entities to follow the schedules set by planning coordinators) indicates that, in the SERC Region, there will be an 18-month maximum period for implementing changes to UFLS schemes but planning coordinators may require UFLS entities to complete changes in less time consistent with PRC–006–1. Accordingly, we accept NERC and SERC's proposal to revise the rationale statement for Requirement R6, consistent with SERC's proposal, but we will not require the revision to Requirement R6 proposed by Dominion. We direct NERC and SERC to make an informational filing within 30 days of the effective date of this final rule that provides a schedule for implementing the revision.

*B. PRC–006–SERC–01, Requirements R2.3, R2.4, R2.5, and R2.6*

26. In the NOPR, the Commission noted that Requirement R2 requires each planning coordinator to select or develop an automatic UFLS scheme (percent of load to be shed, frequency set points, and time delays) for implementation by UFLS entities within its area that meets the specified minimum requirements. Without addressing Requirement R2 specifically, the Commission proposed to approve regional Reliability Standard PRC–006–SERC–01 as just, reasonable, not unduly discriminatory or preferential, and in the public interest.

Comments

27. MISO states that PRC–006–SERC–01 is overly prescriptive and may not allow planning coordinators the flexibility needed to ensure reliability. MISO states that Requirements R2.3, R2.4, R2.5, and R2.6 specify acceptable ranges and limits for the UFLS design. MISO states that PRC–006–SERC–01 makes no provision to accommodate a planning coordinator's determination that the best performing design does not fall within the specified set points and ranges in the regional Reliability Standard, which MISO acknowledges reflect historical practice. MISO states that there may be sound technical reasons to deviate from the prescribed set points. MISO also states that these set points could frustrate coordination with systems that deviate from the PRC–006–SERC–01 without regard to the reliability benefits of deviating from historical practice.

28. In responsive comments, SERC states that MISO's comments are outside the scope of the comments sought in the NOPR. SERC also states that MISO participated in the standard development process for PRC–006–SERC–01 and provided comments similar to those offered here (i.e., that Requirement R2 is too prescriptive and planning coordinators should not be restricted to the acceptable ranges and limits specified in Requirement R2). SERC notes that MISO acknowledged that the set points specified in Requirement R2 reflect historical practice. SERC states that the standard drafting team responded to MISO's comments by pointing to the 18 different UFLS schemes in the SERC Region and by noting that Requirement R2 was ''needed to ensure coordination and consistency among the UFLS

[22] NERC, Compliance Filing, Docket No. RM11–20–002, at 6–7 (filed Aug. 9, 2012).

[23] Dominion Initial Comments at 3.

[24] *Id.* at 4.

[25] *Id.* at 4–5 (emphasis in original).

[26] Dominion Reply Comments at 2–3.

[27] NOPR, 140 FERC ¶ 61,056 at P 16 (''[w]e are concerned, however, that the italicized language in the rationale NERC provides for Requirement R6 may be incompatible with Order No. 763'').

[28] *See* Order No. 672 at P 294 (''A user, owner or operator must follow the Reliability Standards of the ERO and the Regional Entity within which it is located.'')

schemes in SERC.'' [29] SERC states that MISO's comments were considered and rejected by the standard drafting team and that the Commission should likewise reject them.

Commission Determination

29. We reject MISO's protest that the acceptable ranges and limits for the UFLS design in Requirement R2 are overly prescriptive or do not afford planning coordinators sufficient flexibility. As noted in NERC's petition and the NOPR, regional Reliability Standard PRC–006–SERC–01 sets minimum automatic UFLS design requirements, which are equivalent to the design requirements in the SERC UFLS program that have been in effect since September 3, 1999.[30] Imposing uniform, minimum requirements on UFLS programs in the SERC Region necessarily limits the flexibility of planning coordinators and UFLS entities. However, based on the record before us, we find that the benefits of requiring minimum standards outweighs any loss in flexibility, particularly when those minimum standards are based on historical practices in SERC. Other than asserting the loss of flexibility, MISO does not question the ranges and limits in Requirement R2, or explain how they are not technically justified. In addition, MISO does not suggest alternate ranges and limits, other than to note that the Midwest Reliability Organization is ''investigating the reliability benefits of setting the frequency set point blocks at less than 0.2 Hz apart to create finer system control.'' [31] While we reject MISO's protest, we do not foreclose the possibility that NERC and SERC may wish to revise the ranges and limits in Requirement R2 at some future time based on changed circumstances or with added experience.

*C. Violation Risk Factors, Violation Severity Levels, Implementation Plan, and Effective Date*

30. In the NOPR, the Commission proposed to approve the violation risk factors, with one modification, violation severity levels, implementation plan, and effective date proposed by NERC. The NOPR proposed to direct NERC to modify the violation risk factor assigned to Requirement R6 from ''medium'' to ''high'' to make it consistent with the Commission's VRF guidelines and the violation risk factor for Requirement R9 of NERC Reliability Standard PRC–006–1, since both Requirements address a similar reliability goal.

Comments

31. NERC and SERC state that they do not oppose the Commission's proposal to direct modification of the violation risk factor for Requirement R6 from ''medium'' to ''high.''

Commission Determination

32. The Commission directs NERC and SERC to modify the violation risk factor for regional Reliability Standard PRC–006–SERC–01, Requirement R6, from ''medium'' to ''high.'' NERC and SERC are directed to submit the revised violation risk factor within 30 days of the effective date of this final rule. The Commission approves the remaining violation risk factors, violation severity levels, implementation plan, and effective date proposed by NERC.

**III. Information Collection Statement**

33. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency.[32] Upon approval of a collection(s) of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

34. The Commission is submitting these reporting and recordkeeping requirements to OMB for its review and approval under section 3507(d) of Paperwork Reduction Act of 1995.[33] The Commission solicited comments on the need for and the purpose of the information contained in regional Reliability Standard PRC–006–SERC–01 and the corresponding burden to implement the regional Reliability Standard. The Commission received comments on specific requirements in the regional Reliability Standard, which we address in this final rule. However, the Commission did not receive any comments on our reporting burden estimates.

35. This final rule approves regional Reliability Standard PRC–006–SERC–01. This is the first time NERC has requested Commission approval of this regional Reliability Standard. NERC states in its petition that UFLS requirements have been in place at a continent-wide level and within SERC for many years prior to implementation of the Commission-approved Reliability Standards in 2007. Because the UFLS requirements have been in place prior to the development of PRC–006–SERC–01, the regional Reliability Standard is largely associated with requirements that applicable entities are already following.[34] Regional Reliability Standard PRC–006–SERC–01 is designed to ensure that automatic UFLS protection schemes, designed by planning coordinators and implemented by applicable distribution providers and transmission owners in the SERC Region, are coordinated so they may effectively mitigate the consequences of an underfrequency event. The regional Reliability Standard is only applicable to generator owners, planning coordinators, and UFLS entities in the SERC Region. The term ''UFLS entities'' means all entities that are responsible for the ownership, operation, or control of automatic UFLS equipment as required by the UFLS program established by the planning coordinators. Such entities may include distribution providers and transmission owners. The reporting requirements in regional Reliability Standard PRC–006–SERC–01 only pertain to entities within the SERC Region.

36. *Public Reporting Burden:* Our estimate below regarding the number of respondents is based on the NERC compliance registry as of May 29, 2012. According to the NERC compliance registry, there are 21 planning coordinators and 104 generator owners within the SERC Region. The individual burden estimates are based on the time needed for planning coordinators to incrementally gather data, run studies, and analyze study results to design or update the UFLS programs that are required in the regional Reliability Standard in addition to the requirements of the NERC Reliability Standard PRC–006–1.[35] Additionally, generator owners must provide a detailed set of data and documentation to SERC within 30 days of a request to facilitate post event analysis of frequency disturbances. These burden estimates are consistent with estimates for similar tasks in other Commission-approved Reliability Standards.

[29] SERC Reply Comments at 3–4 (citing standard drafting team response).

[30] NOPR, 140 FERC ¶ 61,056 at P7 (citing NERC Petition at 12).

[31] MISO Comments at 2.

[32] 5 CFR 1320.11.

[33] 44 U.S.C. 3507(d)

[34] *See* 5 CFR 1320.3(b)(2) (''The time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records) will be excluded from the 'burden' if the agency demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.'').

[35] The burden estimates for Reliability Standard PRC–006–1 are included in Order No. 763 and are not repeated here.

| PRC–006–SERC–01 (Automatic underfrequency load shedding requirements) [36] | Number of respondents annually (1) | Number of responses per respondent (2) | Average burden hours per response (3) | Total annual burden hours (1)x(2)x(3) |
|---|---|---|---|---|
| PCs*: Design and document Automatic UFLS Program | 21 | 1 | 8 | 168 |
| PCs: Provide Documentation and Data to SERC | | | 16 | 336 |
| GOs*: Provide Documentation and Data to SERC | 104 | 1 | 16 | 1,664 |
| GOs: Record Retention | | | 4 | 416 |
| Total | | | | 2,584 |

* PC=planning coordinator; GO=generator owner.

*Total Annual Hours for Collection:* (Compliance/Documentation) = 2,584 hours.

*Total Reporting Cost for planning coordinators:* = 504 hours @$120/hour = $60,480.

*Total Reporting Cost for generator owners:* = 1,664 hours @$120/hour = $199,680.

*Total Record Retention Cost for generator owners:* 416 hours @$28/hour = $11,648.

Total Annual Cost (Reporting + Record Retention):[37] = $60,480 + $199,680 +$11,648 = $271,808.

*Title:* Mandatory Reliability Standards for the SERC Region

*Action:* Proposed Collection FERC–725K.

*OMB Control No.:* 1902–0260.

*Respondents:* Businesses or other for-profit institutions; not-for-profit institutions.

*Frequency of Responses:* On Occasion.

*Necessity of the Information:* This final rule approves the regional Reliability Standard pertaining to automatic underfrequency load shedding. The regional Reliability Standard helps ensure the reliable operation of the Bulk-Power System by arresting declining frequency and assisting recovery of frequency following system events leading to frequency degradation.

*Internal Review:* The Commission has reviewed the regional Reliability Standard and made a determination that its action is necessary to implement section 215 of the FPA. These requirements, if accepted, should conform to the Commission's expectation for UFLS programs as well as procedures within the SERC Region.

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

38. For submitting comments concerning the collection(s) of information and the associated burden estimate(s), please send your comments to the Commission and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4638, fax: (202) 395–7285]. For security reasons, comments to OMB should be submitted by email to: *oira_submission@omb.eop.gov*. Comments submitted to OMB should include Docket Number RM12–09 and an OMB Control Number 1902–0260.

## IV. Environmental Analysis

39. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[38] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[39] The actions proposed here fall within this categorical exclusion in the Commission's regulations.

## V. Regulatory Flexibility Act

40. The Regulatory Flexibility Act of 1980 (RFA)[40] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[41] The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.[42]

41. Regional Reliability Standard PRC–006–SERC–01 establishes consistent and coordinated requirements for the design, implementation, and analysis of automatic UFLS schemes among all applicable entities within the SERC Region. It is applicable to planning coordinators, generator owners and entities that are responsible for the ownership, operation, or control of UFLS equipment. Comparison of the NERC Compliance Registry with data submitted to the Energy Information Administration on Form EIA–861 indicates that perhaps as many as 1 small entity is registered as a planning coordinator and 5 small entities are registered as generator owners in the SERC Region. The Commission estimates that the small planning coordinator to whom the proposed regional Reliability Standard will apply will incur compliance costs of $2,880 ($2,880 per planning coordinator) associated with the regional Reliability Standard's requirements. The small generator owners will incur compliance and record keeping costs of $10,160 ($2,032 per generator owner). Accordingly, regional Reliability Standard PRC–006–SERC–01 should not impose a significant operating cost

[36] Regional Reliability Standard PRC–006–SERC–01 applies to planning coordinators, UFLS entities and generator owners. However, the burden associated with the UFLS entities is not new because it was accounted for under Commission-approved Reliability Standards PRC–006–1.

[37] The hourly reporting cost is based on the cost of an engineer to implement the requirements of the rule. The record retention cost comes from Commission staff research on record retention requirements.

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

[39] 18 CFR 380.4(a)(2)(ii).

[40] 5 U.S.C. 601–612.

[41] 13 CFR 121.101.

[42] 13 CFR 121.201, Sector 22, Utilities & n.1.

increase or decrease on the affected small entities.

42. Further, NERC explains that the cost for smaller entities to implement regional Reliability Standard PRC–006–SERC–01 was considered during the development process. The continent-wide NERC UFLS Reliability Standard PRC–006–1 requires a planning coordinator to identify which entities will participate in its UFLS scheme, including the number of steps and percent load that UFLS entities will shed. The standard drafting team recognized that UFLS entities with a load of less than 100 MW may have difficulty in implementing more than one UFLS step and in meeting a tight tolerance. Therefore, the standard drafting team included Requirement R5, which states that such small entities shall not be required to have more than one UFLS step, and sets their implementation tolerance to a wider level. Requirement R5 limits additional compliance costs for smaller entities to comply with the regional Reliability Standard.

43. Based on this understanding, the Commission certifies that regional Reliability Standard PRC–006–SERC–01 will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

## VI. Document Availability

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

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

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

## VII. Effective Date and Congressional Notification

47. These regulations are effective February 25, 2013. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the Commission.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–31034 Filed 12–24–12; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[TD 9606]**

**RIN 1545–BI13**

## Use of Controlled Corporations To Avoid the Application of Section 304

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations addressing sales of stock between related corporations. The regulations finalize proposed regulations and remove temporary regulations that apply to certain sales of stock that are recharacterized as contributions and redemptions, but that are structured with a principal purpose of redesignating the issuing corporation or the acquiring corporation. The regulations affect persons treated as receiving distributions in redemption of stock as a result of such transactions.

**DATES:** *Effective Date:* These regulations are effective on December 26, 2012.

*Applicability Date:* These regulations apply to acquisitions of stock occurring on or after December 29, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ryan A. Bowen, (202) 622–3860 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## Background

On December 30, 2009, the IRS and the Treasury Department published final and temporary regulations and a notice of proposed rulemaking by cross-reference to temporary regulations in the **Federal Register** (74 FR 69021, TD 9477, 2010–1 CB 385; REG–132232–08, 74 FR 69043) (2009 regulations) under section 304. A correction to the 2009 regulations was published in the **Federal Register** on February 26, 2010 (75 FR 8796). The 2009 regulations amended the anti-abuse rule of § 1.304–4T, which was published in the **Federal Register** on June 14, 1988 (TD 8209), to address transactions that are subject to section 304 but are structured with a principal purpose of avoiding the application of section 304 to certain corporations. No public hearing on the 2009 regulations was requested or held, and no written comments were received. Accordingly, this Treasury decision adopts the 2009 regulations without change as final regulations and removes the temporary regulations under section 304.

## Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. Chapter 6) do not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. Chapter 6), it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. These regulations primarily will affect large corporations. Thus, the number of affected small entities will not be substantial. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small business.

## Drafting Information

The principal author of the regulations is Ryan A. Bowen of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

## List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.304–4 is revised to read as follows:

**§ 1.304–4 Special rules for the use of related corporations to avoid the application of section 304.**

(a) *Scope and purpose.* This section applies to determine the amount of a property distribution constituting a dividend (and the source thereof) under section 304(b)(2), for certain transactions involving controlled corporations. The purpose of this section is to prevent the avoidance of the application of section 304 to a controlled corporation.

(b) *Amount and source of dividend.* For purposes of determining the amount constituting a dividend (and source thereof) under section 304(b)(2), the following rules shall apply:

(1) *Deemed acquiring corporation.* A corporation (deemed acquiring corporation) shall be treated as acquiring for property the stock of a corporation (issuing corporation) acquired for property by another corporation (acquiring corporation) that is controlled by the deemed acquiring corporation, if a principal purpose for creating, organizing, or funding the acquiring corporation by any means (including through capital contributions or debt) is to avoid the application of section 304 to the deemed acquiring corporation. See paragraph (c) *Example 1* of this section for an illustration of this paragraph.

(2) *Deemed issuing corporation.* The acquiring corporation shall be treated as acquiring for property the stock of a corporation (deemed issuing corporation) controlled by the issuing corporation if, in connection with the acquisition for property of stock of the issuing corporation by the acquiring corporation, the issuing corporation acquired stock of the deemed issuing corporation with a principal purpose of avoiding the application of section 304 to the deemed issuing corporation. See paragraph (c) *Example 2* of this section for an illustration of this paragraph.

(c) *Examples.* The rules of this section are illustrated by the following examples:

*Example 1.* (i) *Facts.* P, a domestic corporation, wholly owns CFC1, a controlled foreign corporation with substantial accumulated earnings and profits. CFC1 is organized in Country X, which imposes a high rate of tax on the income of CFC1. P also wholly owns CFC2, a controlled foreign corporation with accumulated earnings and profits of $200x. CFC2 is organized in Country Y, which imposes a low rate of tax on the income of CFC2. P wishes to own all of its foreign corporations in a direct chain and to repatriate the cash of CFC2. In order to avoid having to obtain Country X approval for the acquisition of CFC1 (a Country X corporation) by CFC2 (a Country Y corporation) and to avoid the dividend distribution from CFC2 to P that would result if CFC2 were the acquiring corporation, P causes CFC2 to form CFC3 in Country X and to contribute $100x to CFC3. CFC3 then acquires all of the stock of CFC1 from P for $100x.

(ii) *Result.* Because a principal purpose for creating, organizing, or funding CFC3 (acquiring corporation) is to avoid the application of section 304 to CFC2 (deemed acquiring corporation), under paragraph (b)(1) of this section, for purposes of determining the amount of the $100x distribution constituting a dividend (and source thereof) under section 304(b)(2), CFC2 shall be treated as acquiring the stock of CFC1 (issuing corporation) from P for $100x. As a result, P receives a $100x distribution out of the earnings and profits of CFC2 to which section 301(c)(1) applies.

*Example 2.* (i) *Facts.* P, a domestic corporation, wholly owns CFC1, a controlled foreign corporation with substantial accumulated earnings and profits. The CFC1 stock has a basis of $100x. CFC1 is organized in Country X. P also wholly owns CFC2, a controlled foreign corporation with zero accumulated earnings and profits. CFC2 is organized in Country Y. P wishes to own all of its foreign corporations in a direct chain and to repatriate the cash of CFC2. In order to avoid having to obtain Country X approval for the acquisition of CFC1 (a Country X corporation) by CFC2 (a Country Y corporation) and to avoid a dividend distribution from CFC1 to P, P forms a new corporation (CFC3) in Country X and transfers the stock of CFC1 to CFC3 in exchange for CFC3 stock. P then transfers the stock of CFC3 to CFC2 in exchange for $100x.

(ii) *Result.* Because a principal purpose for the transfer of the stock of CFC1 (deemed issuing corporation) by P to CFC3 (issuing corporation) is to avoid the application of section 304 to CFC1, under paragraph (b)(2) of this section, for purposes of determining the amount of the $100x distribution constituting a dividend (and source thereof) under section 304(b)(2), CFC2 (acquiring corporation) shall be treated as acquiring the stock of CFC1 from P for $100x . As a result, P receives a $100x distribution out of the earnings and profits of CFC1 to which section 301(c)(1) applies.

(d) *Effective/applicability date.* This section applies to acquisitions of stock occurring on or after December 29, 2009.

**§ 1.304–4T [Removed]**

■ **Par. 3.** Section 1.304–4T is removed.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

Approved: December 12, 2012.

**Mark J. Mazur,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2012–30967 Filed 12–21–12; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

## Office of Foreign Assets Control

## 31 CFR Part 560

## Iranian Transactions and Sanctions Regulations

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is amending the Iranian Transactions and Sanctions Regulations (the ''ITSR'') to implement section 218 and portions of sections 602 and 603 of the Iran Threat Reduction and Syria Human Rights Act of 2012; section 5, portions of section 6, and other related provisions of Executive Order 13622 of July 30, 2012; and section 4 of Executive Order 13628 of October 9, 2012. These amendments, *inter alia,* add a new section to the ITSR to prohibit certain transactions by entities owned or controlled by a U.S. person and established or maintained outside the United States. They also expand the categories of persons whose property and interests in property are blocked to include any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to have provided material support for certain Government of Iran-related entities or certain activities by the Government of Iran.

**DATES:** *Effective Date:* December 26, 2012.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Assistant Director for Policy, tel.: 202/622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

**SUPPLEMENTARY INFORMATION:**

### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

### Background

On October 22, 2012, the Department of the Treasury's Office of Foreign Assets Control (''OFAC'') published a

final rule in the **Federal Register** (77 FR 64664) changing the heading of the former Iranian Transactions Regulations to the Iranian Transactions and Sanctions Regulations, 31 CFR part 560 (the ''ITSR''), amending the renamed ITSR, and reissuing them in their entirety, to implement Executive Order 13599 of February 5, 2012 (''E.O. 13599''), and sections 1245(c) and (d)(1)(B) of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81). This final rule made many significant amendments, as well as technical and conforming changes, to the ITSR. OFAC is now amending the ITSR to implement the sections discussed below of Executive Order 13622 of July 30, 2012, ''Authorizing Additional Sanctions With Respect to Iran'' (''E.O. 13622''), the Iran Threat Reduction and Syria Human Rights Act of 2012 (Pub. L. 112–158) (the ''TRA''), and Executive Order 13628 of October 9, 2012, ''Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Threat Reduction and Syria Human Rights Act of 2012 and Additional Sanctions With Respect to Iran'' (''E.O. 13628'').

On July 30, 2012, the President, invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (''IEEPA''), issued E.O. 13622. The President issued E.O. 13622 to take additional steps with respect to the national emergency declared in Executive Order 12957 of March 15, 1995 (''E.O. 12957''), particularly in light of the Government of Iran's use of revenues from petroleum, petroleum products, and petrochemicals for illicit purposes, Iran's continued attempts to evade international sanctions through deceptive practices, and the unacceptable risk posed to the international financial system by Iran's activities.

Section 5 of E.O. 13622 blocks all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any U.S. person, including any foreign branch, of any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the National Iranian Oil Company (''NIOC''), the Naftiran Intertrade Company (''NICO''), or the Central Bank of Iran, or the purchase or acquisition of U.S. bank notes or precious metals by the Government of Iran. Section 10 of E.O. 13622 defines the terms *NIOC* and *NICO* as including any entity owned or controlled by, or operating for or on behalf of, respectively, NIOC and NICO.

Section 6 of E.O. 13622 provides that section 5(a) of the order, among other specified provisions, shall not apply to any person for conducting or facilitating a transaction involving a natural gas development and pipeline project initiated prior to July 31, 2012, to bring gas from Azerbaijan to Europe and Turkey, as described in section 6. Although it is not named in the section, section 6 refers to the Shah Deniz natural gas field in Azerbaijan's sector of the Caspian Sea and related pipeline projects to bring the gas from Azerbaijan to Europe and Turkey.

On August 10, 2012, the President signed into law the TRA. Section 218 of the TRA directs the President to prohibit entities owned or controlled by a United States person and established or maintained outside the United States from knowingly engaging in any transaction directly or indirectly with the Government of Iran or any person subject to the jurisdiction of the Government of Iran that would be prohibited by an order or regulation issued pursuant to IEEPA if the transaction were engaged in by a United States person or in the United States. Section 218 also extends civil penalty liability under IEEPA to U.S. parent companies if the foreign entities they own or control violate, attempt to violate, conspire to violate, or cause a violation of any order or regulation issued to implement this section. The law allows the U.S. person to avoid civil penalties for violations if it divests or terminates its business with the foreign entity by February 6, 2013.

Sections 602 and 603 of the TRA provide that nothing in that law, including section 218, shall apply to, respectively, the authorized intelligence activities of the United States and any activity relating to a project for the development of natural gas and the construction and operation of a pipeline to transport natural gas from Azerbaijan to Turkey and Europe that meets certain specified criteria. The project that meets the criteria in section 603 is the project to develop the Shah Deniz natural gas field in Azerbaijan's sector of the Caspian Sea and related pipeline projects to bring the gas from Azerbaijan to Europe and Turkey, as discussed above in connection with section 6 of E.O. 13622. The exemption in section 603 will not apply in the event that the President makes certain certifications to Congress to the effect that an Iranian entity's share of the project has increased relative to its share on January 1, 2002, or that an Iranian entity has assumed an operational role in the project, as described in section 603(b) of the TRA.

On October 9, 2012, the President, invoking the authority of, *inter alia,* IEEPA and the TRA, issued E.O. 13628, in order to take additional steps to deal with the national emergency declared in E.O. 12957 with respect to Iran. In implementation of section 218 of the TRA, section 4(a) of E.O. 13628 prohibits entities owned or controlled by a United States person and established or maintained outside the United States from knowingly engaging in any transactions, directly or indirectly, with the Government of Iran or any person subject to the jurisdiction of the Government of Iran, if the transactions would be prohibited by E.O. 12957, Executive Order 12959 of May 6, 1995, Executive Order 13059 of August 19, 1997, E.O. 13599, section 5 of E.O. 13622, or section 12 of E.O. 13628, or any regulation issued pursuant to the foregoing, if the transaction were engaged in by a United States person or in the United States. Section 4(d) of E.O. 13628 provides that the prohibition in section 4(a) applies except to the extent provided by statutes, or in regulations, orders directives, or licenses that may be issued pursuant to this order.

Section 4(b) of E.O. 13628 provides that penalties for violations of the prohibition in section 4(a) may be assessed against the United States person that owns or controls the foreign entity that engaged in the prohibited transaction. Section 4(c) provides that such penalties shall not apply if the United States person that owns or controls the foreign entity divests or terminates its business with that entity not later than February 6, 2013.

Today, OFAC is amending the ITSR to implement sections 5 and 6 of E.O. 13622, sections 218, 602, and 603 of the TRA, and section 4 of E.O. 13628. To implement the relevant provisions of E.O. 13622, OFAC is amending paragraph (c) of section 560.211 of the ITSR to add the new blocking criteria set forth in section 5(a) of the order, as well as the exemption from this new authority for a natural gas development and pipeline project described in section 6 of the order.

OFAC is making a number of changes to the ITSR to implement the relevant provisions of the TRA and E.O. 13628. First, new section 560.215 is being added to subpart B of the ITSR to prohibit entities owned or controlled by a United States person and established or maintained outside the United States from knowingly engaging in any

transaction directly or indirectly with the Government of Iran or any person subject to the jurisdiction of the Government of Iran that would be prohibited by the ITSR if the transaction were engaged in by a United States person or in the United States. This new section also contains the exemptions set forth in sections 602 and 603 of the TRA for, respectively, U.S. intelligence activities and a natural gas-related project, as described above.

Second, new section 560.555 is being added to subpart E of the ITSR to authorize, from October 9, 2012, through March 8, 2013, all transactions ordinarily incident and necessary to the winding-down of transactions prohibited by new section 560.215, provided that the authorized transactions do not involve a U.S. person or occur in the United States. Paragraph (b) of section 560.555 specifies that this new general license does not authorize any transactions prohibited by section 560.205. Paragraph (c) of section 560.555 provides that transactions involving Iranian financial institutions are authorized pursuant to this new general license only if the property and interests in property of the Iranian financial institution are blocked solely pursuant to this part.

Third, another general license, new section 560.556, is being added to subpart E of the ITSR to authorize an entity owned or controlled by a United States person and established or maintained outside the United States (a ''U.S.-owned or -controlled foreign entity'') to engage in a transaction otherwise prohibited by section 560.215 that would be authorized by a general license set forth in or issued pursuant to this part if engaged in by a U.S. person or in the United States. Paragraph (b) of new section 560.556 provides that this section does not authorize any transaction by a U.S.-owned or -controlled foreign entity otherwise prohibited by section 560.215 if the transaction would be prohibited by any other part of chapter V of 31 CFR if engaged in by a U.S. person or in the United States.

Fourth, OFAC is amending several existing general licenses that, by their terms, apply to transactions by U.S.-owned or -controlled foreign entities to exclude from the scope of each authorization any transaction by a U.S.-owned or -controlled foreign entity otherwise prohibited by section 560.215 if the transaction would be prohibited by any other part of chapter V of 31 CFR if engaged in by a U.S. person or in the United States. This change is being made to sections 560.508, 560.509, 560.510, 560.522, 560.525, 560.530, 560.532, 560.539, and 560.553. OFAC is making further conforming changes to sections 560.532 and 560.539 to account for the new prohibition in section 560.215.

Fifth, OFAC is amending section 560.701 of subpart G of the ITSR by adding new paragraph (a)(3), which provides for civil penalties under section 206(b) of IEEPA (50 U.S.C. 1705(b)) to be imposed on a United States person if an entity owned or controlled by the United States person and established or maintained outside the United States violates, attempts to violate, conspires to violate, or causes a violation of the prohibition set forth in section 560.215, unless the United States person divests or terminates its business with the entity by February 6, 2013, such that the U.S. person no longer owns or controls the entity, as defined in new section 560.215.

Finally, OFAC is making two technical corrections to section 560.505 of subpart E of the ITSR.

## Public Participation

Because the amendment of the ITSR involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

## Paperwork Reduction Act

The collections of information related to the ITSR are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

## List of Subjects in 31 CFR Part 560

Administrative practice and procedure, Banks, Banking, Blocking of Assets, Brokers, Credit, Foreign Trade, Investments, Loans, Securities, Services, Iran.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends part 560 of 31 CFR chapter V as follows:

## PART 560—IRANIAN TRANSACTIONS AND SANCTIONS REGULATIONS

■ 1. The authority citation for part 560 is revised to read as follows:

**Authority:** 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa–9; 22 U.S.C. 7201–7211; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); Pub. L. 111–195, 124 Stat. 1312 (22 U.S.C. 8501–8551); Pub. L. 112–81, 125 Stat. 1298; Pub. L. 112–158, 126 Stat. 1214; E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217; E.O. 13599, 77 FR 6659, February 8, 2012; E.O. 13622, 77 FR 45897, August 2, 2012; E.O. 13628, 77 FR 62139, October 12, 2012.

### Subpart B—Prohibitions

■ 2. Amend § 560.210 by revising paragraph (e) to read as follows:

**§ 560.210 Exempt transactions.**

* * * * *

(e) *Official Business.* The prohibitions in § 560.211(a) through (c)(1) do not apply to transactions for the conduct of the official business of the Federal Government by employees, grantees, or contractors thereof.

* * * * *

■ 3. Amend § 560.211 by revising paragraph (c) and Note 1 to paragraphs (a) through (c) of § 560.211 to read as follows:

**§ 560.211 Prohibited transactions involving blocked property.**

* * * * *

(c) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any foreign branch, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(1) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to paragraphs (a) through (c)(1) of this section; or

(2) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or

services in support of, the National Iranian Oil Company (''NIOC''); the Naftiran Intertrade Company (''NICO''); any entity owned or controlled by, or operating for or on behalf of, NIOC or NICO; the Central Bank of Iran; or the purchase or acquisition of U.S. bank notes or precious metals by the Government of Iran. This paragraph shall not apply with respect to any person for conducting or facilitating a transaction that involves a natural gas development and pipeline project initiated prior to July 31, 2012, to bring gas from Azerbaijan to Europe and Turkey in furtherance of a production sharing agreement or license awarded by a sovereign government other than the Government of Iran before July 31, 2012.

**Note to Paragraph (c)(2) of § 560.211:** The natural gas development and pipeline project referred to in this paragraph is the project to develop the Shah Deniz natural gas field in Azerbaijan's sector of the Caspian Sea and related pipeline projects to bring the gas from Azerbaijan to Europe and Turkey.

**Note 1 to Paragraphs (a) Through (c) of § 560.211:** The names of persons identified as already blocked or designated for blocking pursuant to Executive Order 13599 of February 5, 2012, and Executive Order 13622 of July 30, 2012, whose property and interests in property therefore are blocked pursuant to this section, are published in the **Federal Register** and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[IRAN].'' The SDN List is accessible through the following page on the Office of Foreign Control's Web site: *www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in Appendix A to this chapter. *See* § 560.425 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to this section. Executive Order 13599 blocks the property and interests in property of the Government of Iran and Iranian financial institutions, as defined in § 560.304 and § 560.324, respectively. The property and interests in property of persons falling within the definitions of the terms *Government of Iran* and *Iranian financial institution* are blocked pursuant to this section regardless of whether the names of such persons are published in the **Federal Register** or incorporated into the SDN List.

* * * * *

■ 4. Add new section § 560.215 to read as follows:

**§ 560.215 Prohibitions on foreign entities owned or controlled by U.S. persons.**

(a) Except as otherwise authorized pursuant to this part, an entity that is owned or controlled by a United States person and established or maintained outside the United States is prohibited from knowingly engaging in any transaction, directly or indirectly, with the Government of Iran or any person subject to the jurisdiction of the Government of Iran that would be prohibited pursuant to this part if engaged in by a United States person or in the United States.

**Note to Paragraph (a) of § 560.215:** If a transaction is exempt from the prohibitions of this part if engaged in by a U.S. person, it would not be prohibited for an entity that is owned or controlled by a United States person and established or maintained outside the United States (a ''U.S.-owned or -controlled foreign entity'') to engage in the transaction to the same extent that it would not be prohibited for the U.S. person to engage in the transaction and provided that the U.S.-owned or -controlled foreign entity satisfies all the requirements of the exemption. *See also* § 560.556 of this part for a general license authorizing a U.S.-owned or -controlled foreign entity to engage in a transaction otherwise prohibited by § 560.215 that would be authorized by a general license set forth in or issued pursuant to this part if engaged in by a U.S. person or in the United States, subject to certain exclusions. Finally, if a transaction prohibited by § 560.215 is one for which a U.S. person might apply for a specific license—for example, the exportation of medical devices to Iran—a U.S.-owned or -controlled foreign entity may apply for a specific license to engage in the transaction.

(b) *Definitions:* (1) For purposes of paragraph (a) of this section, an entity is ''owned or controlled'' by a United States person if the United States person:

(i) Holds a 50 percent or greater equity interest by vote or value in the entity;

(ii) Holds a majority of seats on the board of directors of the entity; or

(iii) Otherwise controls the actions, policies, or personnel decisions of the entity.

(2) For purposes of paragraph (a) of this section, the term *knowingly* means that the person engages in the transaction with actual knowledge or reason to know.

(3) For purposes of paragraph (a) of this section, a person is ''subject to the jurisdiction of the Government of Iran'' if the person is organized under the laws of Iran or any jurisdiction within Iran, ordinarily resident in Iran, or in Iran, or owned or controlled by any of the foregoing.

**Note to Paragraph (b) of § 560.215:** *See* § 560.304 of this part for the definition of the term *Government of Iran.*

(c) The prohibition in paragraph (a) of this section does not apply to any activity relating to a project:

(1) For the development of natural gas and the construction and operation of a pipeline to transport natural gas from Azerbaijan to Turkey and Europe;

(2) That provides to Turkey and countries in Europe energy security and energy independence from the Government of the Russian Federation and the Government of Iran; and

(3) That was initiated before August 10, 2012, pursuant to a production-sharing agreement, or an ancillary agreement necessary to further a production-sharing agreement, entered into with, or a license granted by, the government of a country other than Iran before August 10, 2012.

**Note to Paragraph (c) of § 560.215:** The exemption in paragraph (c) of this section applies to the Shah Deniz natural gas field in Azerbaijan's sector of the Caspian Sea and related pipeline projects to bring the gas from Azerbaijan to Europe and Turkey.

(d) The prohibition in paragraph (a) of this section does not apply to the authorized intelligence activities of the United States Government.

**Note to § 560.215:** A U.S. person is subject to the civil penalties provided for in section 206(b) of the International Emergency Economic Powers Act (''IEEPA'') (50 U.S.C. 1705(b)) if any foreign entity that it owns or controls violates the prohibition set forth in this section. *See* § 560.701(a)(3) of this part for civil penalties.

## Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 5. Amend § 560.505 by revising paragraph (a)(2) and the Note to § 560.505 to read as follows:

**§ 560.505 Activities and services related to certain nonimmigrant and immigrant categories authorized.**

(a)(1) * * *

(2) U.S. persons are authorized to export services to Iran in connection with the filing of an individual's application for the non-immigrant visa categories listed in paragraph (a)(1) of this section.

* * * * *

**Note to § 560.505:** *See* § 560.554 of this part for general licenses authorizing the importation and exportation of services related to conferences in the United States or third countries.

■ 6. Amend § 560.508 by redesignating paragraph (b) as paragraph (c) and adding new paragraph (b) to read as follows:

**§ 560.508 Telecommunications and mail transactions authorized.**

* * * * *

(b) Paragraph (a) of this section does not authorize any transaction by an entity owned or controlled by a United States person and established or maintained outside the United States otherwise prohibited by § 560.215 if the

transaction would be prohibited by any other part of this chapter V if engaged in by a U.S. person or in the United States.

* * * * *

■ 7. Add new paragraph (c) to § 560.509 to read as follows:

**§ 560.509 Certain transactions related to patents, trademarks, and copyrights authorized.**

* * * * *

(c) This section does not authorize any transaction by an entity owned or controlled by a United States person and established or maintained outside the United States otherwise prohibited by § 560.215 if the transaction would be prohibited by any other part of this chapter V if engaged in by a U.S. person or in the United States.

■ 8. Add new paragraph (e) to § 560.510 to read as follows:

**§ 560.510 Transactions related to the resolution of disputes between the United States or United States nationals and the Government of Iran.**

* * * * *

(e) This section does not authorize any transaction by an entity owned or controlled by a United States person and established or maintained outside the United States otherwise prohibited by § 560.215 if the transaction would be prohibited by any other part of this chapter V if engaged in by a U.S. person or in the United States.

■ 9. Amend § 560.522 by redesignating the existing text as paragraph (a) and adding new paragraph (b) to read as follows:

**§ 560.522 Allowable payments for overflights of Iranian airspace.**

* * * * *

(b) This section does not authorize any transaction by an entity owned or controlled by a United States person and established or maintained outside the United States otherwise prohibited by § 560.215 if the transaction would be prohibited by any other part of this chapter V if engaged in by a U.S. person or in the United States.

■ 10. Add new paragraph (e) to § 560.525 to read as follows:

**§ 560.525 Provision of certain legal services.**

* * * * *

(e) This section does not authorize any transaction by an entity owned or controlled by a United States person and established or maintained outside the United States otherwise prohibited by § 560.215 if the transaction would be prohibited by any other part of this chapter V if engaged in by a U.S. person or in the United States.

■ 11. Add new paragraph (g) to § 560.530 to read as follows:

**§ 560.530 Commercial sales, exportation, and reexportation of agricultural commodities, medicine, and medical devices.**

* * * * *

(g) *Excluded transactions by U.S.-owned or -controlled foreign entities.* Nothing in this section or in any general license set forth in or issued pursuant to this section authorizes any transaction by an entity owned or controlled by a United States person and established or maintained outside the United States otherwise prohibited by § 560.215 if the transaction would be prohibited by any other part of this chapter V if engaged in by a U.S. person or in the United States.

■ 12. Amend § 560.532 by revising paragraphs (a)(3) and (a)(4) and adding new paragraph (e) to read as follows:

**§ 560.532 Payment for and financing of exports and reexports of agricultural commodities, medicine, and medical devices.**

(a) * * *

(3) Financing by third-country financial institutions that are not United States persons, entities owned or controlled by United States persons and established or maintained outside the United States, Iranian financial institutions, or the Government of Iran. Such financing may be confirmed or advised by U.S. financial institutions and by financial institutions that are entities owned or controlled by United States persons and established or maintained outside the United States; or

(4) Letter of credit issued by an Iranian financial institution whose property and interests in property are blocked solely pursuant to this part. Such letter of credit must be initially advised, confirmed, or otherwise dealt in by a third-country financial institution that is not a United States person, an entity owned or controlled by a United States person and established or maintained outside the United States, an Iranian financial institution, or the Government of Iran before it is advised, confirmed, or dealt in by a U.S. financial institution or a financial institution that is an entity owned or controlled by a United States person and established or maintained outside the United States.

* * * * *

(e) Nothing in this section authorizes any transaction by an entity owned or controlled by a United States person and established or maintained outside the United States otherwise prohibited by § 560.215 if the transaction would be prohibited by any other part of this chapter V if engaged in by a U.S. person or in the United States.

■ 13. Amend § 560.539 by revising paragraphs (a)(4), (a)(5), (b)(2), and (b)(3) and adding new paragraph (b)(4) to read as follows:

**§ 560.539 Official activities of certain international organizations.**

(a) * * *

(4) Funds transfers to or from accounts of the international organizations covered in this section, provided that funds transfers to or from Iran are not routed through an account of an Iranian bank on the books of a U.S. financial institution or a financial institution that is an entity owned or controlled by a United States person and established or maintained outside the United States; and

(5) The operation of accounts for employees, contractors, and grantees located in Iran of the international organizations covered in this section. Transactions conducted through these accounts must be solely for the employee's, contractor's, or grantee's personal use and not for any commercial purposes in or involving Iran. Any funds transfers to or from an Iranian bank must be routed through a third-country bank that is not a United States person or an entity owned or controlled by a United States person and established or maintained outside the United States.

(b) * * *

(2) The reexportation to Iran of any U.S.-origin goods or technology listed on the CCL;

(3) The exportation or reexportation from the United States or by a U.S. person, wherever located, to Iran of any services not necessary and ordinarily incident to the official business in Iran. Such transactions require separate authorization from OFAC; or

(4) Any transaction by an entity owned or controlled by a United States person and established or maintained outside the United States otherwise prohibited by § 560.215 if the transaction would be prohibited by any other part of this chapter V if engaged in by a U.S. person or in the United States.

* * * * *

■ 14. Add new paragraph (d) to § 560.553 to read as follows:

**§ 560.553 Payments from funds originating outside the United States authorized.**

* * * * *

(d) Nothing in this section authorizes any transaction by an entity owned or controlled by a United States person and established or maintained outside

the United States otherwise prohibited by § 560.215 if the transaction would be prohibited by any other part of this chapter V if engaged in by a U.S. person or in the United States.

* * * * *

■ 15. Add new § 560.555 to read as follows:

**§ 560.555 Winding-down of transactions prohibited by § 560.215.**

(a) Except as set forth in paragraphs (b) and (c) of this section, all transactions ordinarily incident and necessary to the winding-down of transactions prohibited by § 560.215 are authorized from October 9, 2012, through March 8, 2013, provided that those ordinarily incident and necessary transactions do not involve a U.S. person or occur in the United States.

(b) Nothing in this section authorizes any transactions prohibited by § 560.205.

(c) Transactions involving Iranian financial institutions are authorized pursuant to paragraph (a) of this section only if the property and interests in property of the Iranian financial institution are blocked solely pursuant to this part.

■ 16. Add new § 560.556 to read as follows:

**§ 560.556 Foreign entities owned or controlled by U.S. persons authorized to engage in transactions that are authorized by general license if engaged in by a U.S. person or in the United States.**

(a) Except as set forth in paragraph (b) of this section, an entity owned or controlled by a United States person and established or maintained outside the United States (a ''U.S.-owned or -controlled foreign entity'') is authorized to engage in a transaction otherwise prohibited by § 560.215 that would be authorized by a general license set forth in or issued pursuant to this part if engaged in by a U.S. person or in the United States, provided the U.S.-owned or -controlled foreign entity is authorized to engage in the transaction only to the same extent as the U.S. person is authorized to engage in the transaction and subject to all the conditions and requirements set forth in the general license for the U.S. person.

(b) This section does not authorize any transaction by a U.S.-owned or -controlled foreign entity otherwise prohibited by § 560.215 if the transaction would be prohibited by any other part of this chapter V if engaged in by a U.S. person or in the United States.

## Subpart G—Civil Penalties

■ 17. Amend § 560.701 by adding new paragraph (a)(3) to read as follows:

**§ 560.701 Penalties.**

(a) * * *

(3) As set forth in section 218 of the Iran Threat Reduction and Syria Human Rights Act of 2012 (Pub. L. 112–158), a civil penalty not to exceed the amount set forth in section 206 of IEEPA may be imposed on a United States person if an entity owned or controlled by the United States person and established or maintained outside the United States violates, attempts to violate, conspires to violate, or causes a violation of the prohibition set forth in § 560.215 or of any order, regulation, or license set forth in or issued pursuant to this part concerning such prohibition. The penalties set forth in this paragraph shall not apply with respect to a transaction described in § 560.215 by an entity owned or controlled by the United States person and established or maintained outside the United States if the United States person divests or terminates its business with the entity not later than February 6, 2013, such that the U.S. person no longer owns or controls the entity, as defined in § 560.215(b)(1).

* * * * *

Dated: December 14, 2012.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2012–30680 Filed 12–21–12; 4:15 pm]

BILLING CODE P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2012–1044]**

**RIN 1625–AA11**

## Regulated Navigation Area; Upper Mississippi River MM 0.0 to MM 185.0; Cairo, IL to St. Louis, MO

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary regulated navigation area (RNA) for all waters of the Upper Mississippi River between miles 0.0 and 185.0. This RNA is needed to protect persons, property, and infrastructure from potential damage and safety hazards associated with extreme low water conditions on the Upper Mississippi River. Any deviation from the conditions and requirements put into place are prohibited unless specifically authorized by the cognizant Captain of the Port (COTP) (COTP Ohio Valley for MM 0.0 to MM 109.9 or COTP Upper Mississippi River for MM 109.9 to MM 185.0) or their designated representatives.

**DATES:** This rule is effective in the CFR on December 26, 2012 and effective with actual notice for purposes of enforcement on December 1, 2012, until March 31, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2012–1044]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LT Dan McQuate, U.S. Coast Guard; telephone 270–442–1621, email *daniel.j.mcquate@uscg.mil* or CWO Scott Coder, U.S. Coast Guard; telephone 314–269–2575, email *justin.s.coder@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

AIS Automatic Identification System
COTP Captain of the Port
DHS Department of Homeland Security
FR **Federal Register**
MM Mile Marker
M/V Motor Vessel
NPRM Notice of Proposed Rulemaking
RIAC River Industry Action Committee
RNA Regulated Navigation Area
UMR Upper Mississippi River
USACE United States Army Corps of Engineers

### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are

''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. The Coast Guard has tracked low water conditions throughout the Western Rivers during the summer and fall of 2012. Throughout this time, it has not been possible to accurately predict the extent to which rivers may be affected due to uncertainties with local weather, specifically rainfall amounts. On November 20, 2012 the United States Army Corps of Engineers (USACE) and Coast Guard hosted a joint meeting with the River Industry Action Committee (RIAC), the industry committee for the Upper Mississippi River (UMR), in St. Louis, MO. During this meeting the USACE noted that approximately two-thirds of the continental United States continues to be affected by an ongoing and persistent drought. As a result of the drought and the normal annual reduced flows per the operational plan for the Missouri River, they predicted extreme low water conditions in the UMR beginning in early December 2012. Therefore, various control measures or directions to vessels operating on the UMR are immediately needed to address safe navigation concerns brought on by the extreme low water conditions. Due to the timing of the actual notice of definitive low water conditions, there is not enough time to complete the NPRM process before the onset of extreme low water conditions that will expose persons and property to safety hazards, contrary to the public interest.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Providing 30 days notice and delaying the RNA's effective date would be contrary to public interest because immediate action is needed to protect persons, property and infrastructure from the potential damage and safety hazards associated with low water conditions on the UMR.

## B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define RNAs.

The purpose of this RNA is to address safe navigation concerns for persons and vessels while extreme low water conditions exist on the UMR from mile 0.0 to mile 185.0. The extreme low water conditions pose significant safety hazards to vessels and mariners operating on the UMR. For this reason, the Coast Guard is establishing this RNA to implement various waterway operational controls that vessels will have to follow while operating on the UMR.

## C. Discussion of the Temporary Final Rule

The Coast Guard is establishing a temporary RNA for all vessel traffic on the UMR between mile 0.0 and 185.0, extending the entire width of the river. Within this RNA various restrictions and requirements may be put into effect based on actual or projected channel widths and depths. These restrictions and requirements will be the minimum necessary for the protection of persons, property and infrastructure from the potential damage and safety hazards associated the extreme low water and may include, but are not limited to, limitations on tow size, tow configuration, vessel/barge draft, assist vessels, speed, under keel clearance, vessel traffic reporting, hours of transit, one way traffic, and use of Automatic Identification System (AIS) if fitted onboard a vessel. Enforcement times and specific restrictions and requirements for the entire regulated navigation area, or specific areas within the regulated navigation area, will be announced via Broadcast Notice to Mariners (BNM), through outreach with RIAC,the Local Notice to Mariners, and through other public notice.

Any deviation from the requirements put into place are prohibited unless specifically authorized by the COTP Ohio Valley, COTP Upper Mississippi River, or a designated representative. Deviations for the specific restrictions and regulations will be considered and reviewed on a case-by-case basis. The COTP Ohio Valley may be contacted by telephone at 1–800–253–7465. The COTP Upper Mississippi River may be contacted by telephone at 314–269–2332. All COTPs can be reached by VHF–FM channel 16.

## D. Regulatory Analyses

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

### *1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule establishes a temporary RNA for vessels on all waters of the UMR from mile 0.0 to mile 185.0. Notifications of enforcement times of control measures and requirements put into effect for the entire RNA, or specific areas within the RNA, will be communicated to the marine community via BNM, through outreach with RIAC, Local Notice to mariners, and through other public notice. The impacts on navigation will be limited to addressing the safety of mariners and vessels associated with hazards due to river conditions during low water. Operational controls under this RNA will be the minimum necessary to protect mariners, vessels, the public, and the environment from risks due to extreme low water conditions.

### *2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the UMR, from December 1, 2012 to March 31, 2013. This RNA will not have a significant economic impact on a substantial number of small entities because traffic in this area is limited almost entirely to recreational vessels and commercial towing vessels, and this rule allows vessels to pass through the area, subject to certain restrictions. Notifications to the marine community will be made through BNM, communications with RIAC, and other public notice. Notices of changes to the RNA and effective times will also be made. Deviation from the restrictions may be requested from the COTP or designated representative and will be considered on a case-by-case basis.

### *3. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in

understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*4. Collection of Information*

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

*5. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination will be made available as indicated under the **ADDRESSES** section.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add new temporary § 165.T08–1044 to read as follows:

**§ 165.T08–1044 Regulated Navigation Area; Upper Mississippi River between mile 0.0 and 185.0, Cairo, IL to St. Louis, MO.**

(a) *Location.* The following area is a regulated navigation area (RNA): all waters of the Upper Mississippi River between mile 0.0 and 185.0, Cairo, Illinois, to St. Louis, Missouri, extending the entire width of the river.

(b) *Effective dates.* This RNA is effective and enforceable with actual notice from December 1, 2012 through March 31, 2013.

(c) *Regulations.* (1) Within their respective portions of the RNA, the Captains of the Port (COTP) Ohio Valley and Upper Mississippi River may prescribe, for all or specific portions of the RNA, periods of enforcement and minimum operational requirements necessary to preserve safe navigation on the Upper Mississippi River despite extreme low water conditions, including, but not limited to, the required use of assist vessels, vessel traffic reporting, and Automatic Information Systems when fitted onboard a vessel; and restrictions on the following:

(i) tow size;
(ii) tow configuration;
(iii) vessel/barge draft;
(iv) speed;
(v) under Keel Clearance;
(vi) hours of transit; and
(vii) one way traffic.

(2) All persons and vessels must comply with any requirement prescribed under paragraph (c)(1) of this section.

(3) Persons or vessels may request an exception from any requirement prescribed under paragraph (c)(1) of this section from the cognizant COTP or their designated representative who may be a commissioned, warrant, or petty officer of the Coast Guard or a military or civilian member of the U.S. Army Corps of Engineers. The COTP Ohio Valley may be contacted by telephone at 1–800–253–7465. The COTP Upper Mississippi River may be contacted by telephone at 314–269–2332. Both may also be contacted on VHF–FM channel 16.

(d) *Enforcement.* The COTP Ohio Valley and COTP Upper Mississippi River will notify the public of the specific requirements prescribed under paragraph (c)(1) of this section and of the times when those requirements will be enforced or when enforcement will be suspended, using means designed to ensure maximum effectual notice including, but not limited to, broadcast notices to mariners (BNM) and communications through the River Industry Action Committee.

Dated: December 14, 2012.

**R.A. Nash,**

*Rear Admiral, U.S. Coast Guard Eighth District Commander.*

[FR Doc. 2012–30983 Filed 12–21–12; 4:15 pm]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2012–0956]**

**RIN 1625–AA00**

## Safety Zone; Bone Island Triathlon, Atlantic Ocean; Key West, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the waters of the Atlantic Ocean in Key West, Florida, during the Bone Island Triathlon on Saturday, January 12, 2013. The safety zone is necessary to provide for the safety of life on navigable waters during the event. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Key West or a designated representative.

**DATES:** This rule is effective from 7:00 a.m. until 12:00 p.m. on January 12, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2012–0956]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary final rule, call or email Marine Science Technician First Class William G. Winegar, Sector Key West Prevention Department, Coast Guard; telephone (305) 292–8809, email *William.G.Winegar@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive necessary information about the event until November 27, 2012. As a result, the Coast Guard did not have sufficient time to publish an NPRM and to receive public comments prior to the event. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the race participants, participant vessels, spectators, and the general public.

For the same reason discussed above, under 5 U.S.C. 553(d)(3) the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

### B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to protect race participants, participant vessels, spectators, and the general public from the hazards associated with the event.

### C. Discussion of the Final Rule

On January 12, 2013, Questor Multisport, LLC is hosting the Bone Island Triathlon. The event will be held on the waters of the Atlantic Ocean located south of Key West, Florida. Approximately 1000 swimmers will be participating in the race. It is anticipated that at least 10 spectator vessels will be present during the races.

The safety zone encompasses certain waters of the Atlantic Ocean located south of Key West, Florida. The safety zone will be enforced from 7 a.m. until 12 p.m. on January 12, 2013. All persons and vessels, except those participating in the event, are prohibited from entering, transiting, anchoring, or remaining in the safety zone area.

Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the race area by contacting the Captain of the Port Key West by telephone at 305–292–8727, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the race area is granted by the Captain of the Port Key West or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Key West or a designated representative. The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

*1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of

Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The economic impact of this rule is not significant for the following reasons: (1) The safety zone will only be enforced for five hours; (2) vessel traffic in the area is expected to be minimal during the enforcement period; (3) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Key West or a designated representative, they may operate in the surrounding area during the enforcement period; (4) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port Key West or a designated representative; and (5) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

*2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Atlantic Ocean encompassed within the safety zone from 7:00 a.m. until 12:00 p.m. on January 12, 2013. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

*3. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*4. Collection of Information*

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*5. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human

environment. This rule is categorically excluded, under Figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a temporary safety zone that will be enforced for a total of five hours. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0956 to read as follows:

**§ 165.T07–0956 Safety Zone; Bone Island Triathlon, Atlantic Ocean, Key West, FL.**

(a) *Regulated Area.* All waters of the Atlantic Ocean located south of Key West encompassed within a line connecting the following points are designated a safety zone: Starting at Point 1 in position 24°32′49″ N, 81°47′21″ W; thence south to Point 2 in position 24°32′33″ N, 81°47′05″ W; thence northeast to Point 3 in position 24°32′56″ N, 81°45′40″ W; thence north to Point 4 in position 24°33′09″ N, 81°45′40″ W; thence southwest following the shoreline back to origin. All coordinates are North American Datum.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Key West in the enforcement of the regulated area.

(c) *Regulations.* (1) All persons and vessels, except those participating in the event, are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Key West or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Key West by telephone at (305) 292–8727, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Key West or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Key West or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene representatives.

(d) *Effective Date.* This rule is effective from 7:00 a.m. until 12:00 p.m. on January 12, 2013.

Dated: December 6, 2012.

**A.S. Young Sr.,**

*Captain, U.S. Coast Guard, Captain of the Port Key West.*

[FR Doc. 2012–30913 Filed 12–21–12; 8:45 am]

BILLING CODE 9110–04–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2012–0900; FRL–9373–2]**

## Spirotetramat; Pesticide Tolerance for Emergency Exemption

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a time-limited tolerance for residues of spirotetramat in or on watercress. This action is in response to EPA's granting of an emergency exemption under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on watercress. This regulation establishes a maximum permissible level for residues of spirotetramat in or on watercress. The time-limited tolerance expires on December 31, 2015.

**DATES:** This regulation is effective December 26, 2012. Objections and requests for hearings must be received on or before February 25, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0900, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. 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 OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Keri Grinstead, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8373; email address: *grinstead.keri@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

*C. How can I file an objection or hearing request?*

Under section 408(g) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must

identify docket ID number EPA–HQ–OPP–2012–0900 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 25, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0900, 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 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.*

## II. Background and Statutory Findings

EPA, on its own initiative, in accordance with FFDCA sections 408(e) and 408(l)(6), 21 U.S.C. 346a(e) and 346a(1)(6), is establishing a time-limited tolerance for residues of spirotetramat, including its metabolites and degradates, in or on watercress at 1.5 parts per million (ppm). This time-limited tolerance expires on December 31, 2015.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on FIFRA section 18 related time-limited tolerances to set binding precedents for the application of FFDCA section 408 and the safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

## III. Emergency Exemption for Spirotetramat on Watercress and FFDCA Tolerances

This is the first Section 18 request received for the use of spirotetramat on watercress. Florida and Tennessee are experiencing high pest pressure from melon/cotton aphids in the watercress industry. Aphids infest watercress fields from surrounding areas, and attack the apical stem tips of plants. Watercress plants respond with reduced vigor (growth rate) and yields per acre (bunch number) are subsequently reduced. Due to lack of effective alternative insecticides, increasing resistance to the historically effective insecticide imidacloprid, and marketable yield losses, the Agency has determined the situation is non-routine and urgent and likely to result in significant economic losses. After having reviewed the submission, EPA determined that an emergency condition exists for these States, and that the criteria for approval of an emergency exemption are met. EPA has authorized a specific exemption under FIFRA section 18 for the use of spirotetramat on watercress for control of melon/cotton aphids in Florida and Tennessee.

As part of its evaluation of the emergency exemption application, EPA assessed the potential risks presented by residues of spirotetramat in or on watercress. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation, and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in FFDCA section 408(l)(6). Although these time-limited tolerances expire on December 31, 2015, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on watercress after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these time-limited tolerances at the time of that application. EPA will take action to revoke these time-limited tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these time-limited tolerances are being approved under emergency conditions, EPA has not made any decisions about whether spirotetramat meets FIFRA's registration requirements for use on watercress or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that this time-limited tolerance decision serves as a basis for registration of spirotetramat by a State for special local needs under FIFRA section 24(c). Nor does this tolerance by itself serve as the authority for persons in any State, other than Florida and Tennessee, to use this pesticide on the applicable crops under FIFRA section 18 absent the issuance of an emergency exemption applicable within that State. For additional information regarding the emergency exemption for spirotetramat, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

## IV. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.* * *''

Consistent with the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure expected as a result of the emergency exemption requests and the time-limited tolerance for residues of spirotetramat, including its metabolites and degradates, in or on watercress at 1.5 ppm. EPA's assessment of exposures and risks associated with establishing a time-limited tolerance follows.

### *A. Toxicological Points of Departure/ Levels of Concern*

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern (LOC) to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/ safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.* A summary of the toxicological endpoints for spirotetramat used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of May 18, 2011 (76 FR 28675) (FRL–8865–8).

### *B. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to spirotetramat, EPA considered exposure under the time-limited tolerance established by this action as well as all existing spirotetramat tolerances in § 180.641. EPA assessed dietary exposures from spirotetramat in food as follows:

i. *Acute and chronic exposure.* Such effects were identified for spirotetramat. In estimating acute and chronic dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA used tolerance-level residues and 100 percent crop treated (PCT) for all commodities. Empirical processing factors were used for apple, orange, grape and tomato juice, applesauce, and dried apples, and Dietary Exposure Evaluation Model (DEEM (Ver. 7.81)) default processing factors were used for the remaining processed commodities (where provided).

ii. *Cancer.* Based on the data summarized in Unit IV.A., EPA has concluded that spirotetramat does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iii. *Anticipated residue and PCT information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for spirotetramat. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for spirotetramat in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of spirotetramat. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Tier 1 Rice Model and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of total toxic residues (TTR) of spirotetramat, spirotetramat-enol, and spirotetramat-ketohydroxy for acute and chronic exposures are estimated to be 158 parts per billion (ppb) for surface water and $3.96 \times 10^{-4}$ ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute and chronic dietary risk assessment, the water concentration value of 158 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). There are currently no registered or proposed residential uses for spirotetramat; therefore a residential exposure assessment was not conducted.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found spirotetramat to share a common mechanism of toxicity with any other substances, and spirotetramat does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that spirotetramat does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

### *C. Safety Factor for Infants and Children*

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of

safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor (FQPA SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* Based on the results of developmental toxicity studies in rats and rabbits and two reproduction studies in rats with spirotetramat, there was no evidence of increased susceptibility of offspring following prenatal or postnatal exposure.

3. *Conclusion.* EPA has determined that reliable data show that the safety of infants and children would be adequately protected if the Food Quality Protection Act (Pub. L. 104–170) Safety Factor (FQPA SF) were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for spirotetramat is complete, except for a subchronic neurotoxicity study which is now required as part of the revisions to 40 CFR part 158. However, the existing toxicological database indicates that spirotetramat is not a neurotoxic chemical in mammals. In addition, acute, subchronic and developmental neurotoxicity studies available for structurally-related compounds (spirodiclofen and spiromesifen) do not show evidence of neurotoxicity in adults or young.

ii. There is no indication that spirotetramat is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that spirotetramat results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats, in both the 1- and 2-generation reproduction studies.

iv. There are no residual uncertainties identified in the exposure databases that will result in underestimation of exposure. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to spirotetramat in drinking water. These assessments will not underestimate the exposure and risks posed by spirotetramat.

*D. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to spirotetramat will occupy 10% of the aPAD for children ages 1–2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to spirotetramat from food and water will utilize 83% of the cPAD for children ages 1–2 years old, the population group receiving the greatest exposure. There are no residential uses for spirotetramat.

3. *Short-term and Intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short-term and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). A short-term and intermediate-term adverse effect was identified; however, spirotetramat is not registered for any use patterns that would result in short-term or intermediate-term residential exposure. Short-term and intermediate-term risk is assessed based on short-term or intermediate-term residential exposure plus chronic dietary exposure. Because there is no short-term or intermediate-term residential exposure and, chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short-term or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short-term and intermediate-term risk for spirotetramat.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, spirotetramat is not expected to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to spirotetramat residues.

## V. Other Considerations

*A. Analytical Enforcement Methodology*

Adequate enforcement methodology, high-performance liquid chromatography with tandem spectrometry (HPLC–MS/MS), is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

*B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established a MRL for spirotetramat.

## VI. Conclusion

Therefore, time-limited tolerances are established for residues of spirotetramat, including its metabolites and degradates, in or on watercress at 1.5 ppm. This tolerance expires on December 31, 2015.

## VII. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA sections 408(e) and 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735,

October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established in accordance with FFDCA sections 408(e) and 408(l)(6), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

## VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 12, 2012.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.641, add alphabetically the following new entry to the table in paragraph (b).

**§ 180.641 Spirotetramat; tolerances for residues.**

* * * * *

(b) * * *

| Commodity | Parts per million | Expiration date |
|---|---|---|
| * | * | * |
| Watercress .... | 1.5 | 12/31/15 |
| * | * | * |

* * * * *

[FR Doc. 2012–30854 Filed 12–21–12; 4:15 pm]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2012–0750; FRL–9373–5]**

## Pyraflufen-Ethyl; Extension of Time-Limited Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation extends already established time-limited tolerances for residues of pyraflufen-ethyl in or on cattle, meat byproducts; goat, meat byproducts; horse, meat byproducts; sheep, meat byproducts; and milk. Nichino America, Inc. requested the tolerance extensions under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective December 26, 2012. Objections and requests for hearings must be received on or before February 25, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0750, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. 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 OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Kathryn Montague, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–1243; email address: *montague.kathryn@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of 40 CFR part 180

through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/textidx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

*C. How can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0750 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 25, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0750, 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 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.*

## II. Summary of Petitioned-For Tolerance Extension

In the **Federal Register** of September 28, 2012 (77 FR 59576) (FRL–9363–8), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2F8075 by Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808. The petition requested that 40 CFR 180.585 be amended by extending the expiration date for temporary tolerances for residues of the herbicide, pyraflufen-ethyl, pyraflufen-ethyl, ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetate and its acid metabolite, E-1, 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetic acid, in or on: Cattle, meat byproducts; goat, meat byproducts; horse, meat byproducts; sheep, meat byproducts; and milk until December 31, 2016. That document referenced a summary of the petition prepared by Nichino America, Inc., the registrant, which is available to the public in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to those comments is discussed in Unit IV.C. These tolerances expire on December 31, 2016.

## III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.* * *''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for pyraflufen-ethyl including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with pyraflufen-ethyl follows.

In 2008, the EPA assessed the use of pyraflufen-ethyl on pasture and rangeland grasses. The existing cattle feeding study conducted at the 5X dose was sufficient to establish tolerances for cattle, goat, horse, and sheep meat byproducts and milk; however, since the OPPTS 860.1480 guidelines require that the cattle feeding study be conducted at a 10X dose, the Agency set time-limited tolerances (**Federal Register** of September 5, 2008 (73 FR 51739) until a new feeding study at the 10X dose could be submitted for permanent tolerances to be established.

In the most recent pyraflufen-ethyl tolerance rulemaking, 76 FR 31479 (June 1, 2011) EPA assessed risk of aggregate exposure to pyraflufen-ethyl assuming that exposure occurred in animal meat byproducts and milk at the levels of the established time-limited tolerances. In that action, EPA determined that aggregate risk from exposure was safe. The dietary exposure estimates assumed 100 percent crop treated, so EPA is confident that aggregate dietary exposure is not underestimated and concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children, from aggregate exposure to pyraflufen-ethyl residues. This action to extend time-limited tolerances for animal meat byproducts and milk relies on the assessments supporting the June 1, 2011 rulemaking. These assessments are posted to docket ID, EPA–HQ–OPP–2010–0426 at *http://www.regulations.gov.*

## IV. Other Considerations

*A. Analytical Enforcement Methodology*

Adequate enforcement methodology (Gas Chromatography with Mass Spectrometry (GC/MS)) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

*B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever

possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established a MRL for pyraflufen-ethyl.

*C. Response to Comments*

EPA received one comment to the Notice of Filing that made a general objection to establishing and/or extending tolerances for pesticides. The Agency recognizes that some individuals believe that certain pesticide chemicals should not be permitted in our food. However, the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. When new or amended tolerances are requested for residues of a pesticide in food or feed, the Agency, as is required by section 408 of the FFDCA, estimates the risk of the potential exposure to these residues. The Agency has concluded after this assessment, that there is a reasonable certainty that no harm will result from aggregate human exposure to pyraflufen-ethyl and that, accordingly, the pyraflufen-ethyl temporary tolerances for cattle, goat, horse and sheep meat byproducts, and milk are ''safe'' and can be extended.

## V. Conclusion

Therefore, time-limited tolerances are extended to December 31, 2016 for residues of pyraflufen-ethyl, pyraflufen-ethyl, ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetate and its acid metabolite, E-1, 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetic acid, in or on: Cattle, meat byproducts; goat, meat byproducts; horse, meat byproducts; sheep, meat byproducts; and milk. A time limitation has been imposed until a cattle feeding study at the 10X dose is found acceptable to support permanent tolerances.

## VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

## VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 17, 2012.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.585, revise the following entries in the table in paragraph (a) to read as follows:

**§ 180.585 Pyraflufen-ethyl; tolerances for residues.**

(a) * * *

| Commodity | Parts per million | Expiration/ Revocation date |
|---|---|---|
| * * * | * | * |
| Cattle, meat by-products ..... | 0.02 | 12/31/16 |
| * * * | * | * |
| Goat, meat by-products ..... | 0.02 | 12/31/16 |
| * * * | * | * |
| Horse, meat by-products ..... | 0.02 | 12/31/16 |
| Milk ..... | 0.02 | 12/31/16 |

| Commodity | Parts per million | Expiration/ Revocation date |
|---|---|---|
| * * | * * | * |
| Sheep, meat by-products ..... | 0.02 | 12/31/16 |
| * * | * * | * |

* * * * *

[FR Doc. 2012–31067 Filed 12–21–12; 4:15 pm]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

**[EPA–R04–OAR–2012–0327; FRL–9763–8]**

### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; South Carolina; Redesignation of the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina 1997 8-Hour Ozone Moderate Nonattainment Area to Attainment

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve a request submitted on June 1, 2011, from the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC), to redesignate the portion of York County, South Carolina that is within the bi-state Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina ozone nonattainment area (hereafter referred to as the ''bi-state Charlotte Area,'' or ''Area'') to attainment for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS). The bi-state Charlotte Area consists of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union and a portion of Iredell County (Davidson and Coddle Creek Townships) in North Carolina; and a portion of York County in South Carolina, including the Catawba Indian Nation reservation lands (hereafter referred to as ''the York County Area''). EPA's approval of the redesignation request is based on the determination that South Carolina has met the criteria for redesignation to attainment set forth in the Clean Air Act (CAA or Act). Additionally, EPA is approving a revision to the South Carolina State Implementation Plan (SIP) to include the 1997 8-hour ozone maintenance plan for the York County Area that contains the new 2013 and 2022 motor vehicle emission budgets (MVEBs) for nitrogen oxides (NOx) and volatile organic compounds (VOC) for the years 2013 and 2022. EPA will take action on the North Carolina submission for the 1997 8-hour ozone redesignation request and maintenance plan for its portion of the bi-state Charlotte Area in a separate action. EPA did not receive comments on the November 15, 2012, proposed rulemaking.

**DATES:** *Effective Date:* This rule will be effective on December 26, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2012–0327. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jane Spann or Sara Waterson of the Regulatory Development Section, in the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Spann may be reached by phone at (404) 562–9029, or via electronic mail at *spann.jane@epa.gov*. Ms. Waterson may be reached by phone at (404) 562–9061, or via electronic mail at *waterson.sara@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. What is the background for the actions?
II. What are the actions EPA is taking?
III. Why is EPA taking these actions?
IV. What are the effects of these actions?
V. Final Action
VI. Statutory and Executive Order Reviews

### I. What is the background for the actions?

On June 1, 2011, South Carolina made a submission to EPA requesting redesignation of the York County Area to attainment for the 1997 8-hour ozone NAAQS and approval of the South Carolina SIP revision containing a maintenance plan for the York County Area. In an action published on November 15, 2012 (77 FR 68087), EPA proposed approval of South Carolina's plan for maintaining the 1997 8-hour ozone NAAQS and the NOx and VOC MVEBs for the York County Area as contained in the maintenance plan. At that time, EPA also proposed to approve the redesignation of the York County Area to attainment.[1] Additional background for today's action is set forth in EPA's November 15, 2012, proposal.

The MVEBs, specified in kilograms per day (kg/day), included in the maintenance plan are as follows:

TABLE 1—YORK COUNTY PORTION OF THE BI-STATE CHARLOTTE AREA $NO_X$ AND VOC MVEB

[kg/day]

| | 2013 | 2022 |
|---|---|---|
| *$NO_X$ Emissions:* | | |
| Base Emissions ..... | 7,924 | 4,011 |
| Safety Margin Allocated to MVEB ..... | 3,348 | 7,357 |
| $NO_X$ Conformity MVEB ..... | 11,272 | 11,368 |
| *VOC Emissions:* | | |
| Base Emissions ..... | 2,846 | 1,939 |
| Safety Margin Allocated to MVEB ..... | 853 | 1,297 |
| VOC Conformity MVEB ..... | 3,699 | 3,236 |

In its November 15, 2012, proposed action, EPA noted that the adequacy public comment period on these MVEBs (as contained in South Carolina's submittal) began on October 28, 2011, and closed on November 28, 2011. No comments were received during the public comment period.

As stated in the November 15, 2012, proposal, this redesignation addresses the York County Area's status solely with respect to the 1997 8-hour ozone NAAQS, for which designations were finalized on April 30, 2004. *See* 69 FR 23857. Effective July 20, 2012, EPA designated a portion of York County

[1] On March 7, 2012, at 77 FR 13493, EPA determined that the bi-state Charlotte Area attained the 1997 8-hour ozone NAAQS by its applicable attainment date of June 15, 2011, and that the Area was continuing to attain the ozone standard with monitoring data that was currently available.

(excluding the Catawba Indian Nation reservation lands) as nonattainment for the 2008 8-hour ozone NAAQS. This rulemaking does not address requirements for the portion of York County that was designated nonattainment for the 2008 8-hour ozone NAAQS. Requirements for the portion of York County that was designated nonattainment for the 2008 8-hour ozone NAAQS will be addressed in the future.

EPA reviewed ozone monitoring data from ambient ozone monitoring stations in the bi-state Charlotte Area from 2009–2011. These data have been quality-assured and are recorded in Air Quality System (AQS). The 3-year average of the annual fourth highest daily maximum 8-hour average (i.e., design values) for 2008–2010 and 2009–2011 are summarized in Table 2. The design values demonstrate that the bi-state Charlotte Area continues to meet the 1997 8-hour ozone NAAQS. EPA has also reviewed preliminary monitoring data for 2012, which indicate that the bi-state Charlotte Area continues to attain the 1997 8-hour ozone NAAQS.

TABLE 2—DESIGN VALUE CONCENTRATIONS FOR THE BI-STATE CHARLOTTE AREA FOR THE 1997 8-HOUR OZONE NAAQS

[Parts per million]

| Location | County | Monitor ID | Annual mean concentrations | | | | 3-Year design values | |
|---|---|---|---|---|---|---|---|---|
| | | | 2008 | 2009 | 2010 | 2011 | 2008–2010 | 2009–2011 |
| Lincoln County Replacing Iron Station. | Lincoln | 37–109–0004 | 0.079 | 0.065 | 0.072 | 0.077 | 0.072 | 0.071 |
| Garinger High School | Mecklenburg | 37–119–0041 | 0.085 | 0.069 | 0.082 | 0.088 | 0.078 | 0.079 |
| Westinghouse Blvd | Mecklenburg | 37–119–1005 | 0.073 | 0.068 | 0.078 | 0.082 | 0.073 | 0.076 |
| 29 N at Mecklenburg Cab Co.. | Mecklenburg | 37–119–1009 | 0.093 | 0.071 | 0.082 | 0.083 | 0.082 | 0.078 |
| Rockwell | Rowan | 37–159–0021 | 0.084 | 0.071 | 0.077 | 0.077 | 0.077 | 0.075 |
| Enochville School | Rowan | 37–159–0022 | 0.082 | 0.073 | 0.078 | 0.078 | 0.077 | 0.076 |
| Monroe Middle School | Union | 37–179–0003 | 0.08 | 0.067 | 0.071 | 0.073 | 0.072 | 0.070 |

## II. What are the actions EPA is taking?

In today's rulemaking, EPA is approving: (1) South Carolina's 1997 8-hour ozone maintenance plan (such approval being one of the CAA criteria for redesignation to attainment status) for the York County Area, including MVEBs; and, (2) South Carolina's redesignation request to change the legal designation of the portion of York County in the bi-state Charlotte nonattainment area from nonattainment to attainment for the 1997 8-hour ozone NAAQS. The maintenance plan is designed to demonstrate that the York County Area (as part of the bi-state Charlotte Area) will continue to attain the 1997 8-hour ozone NAAQS through 2022. EPA's approval of the redesignation request is based on EPA's determination that South Carolina meets the criteria for the York County Area for redesignation set forth in CAA, sections 107(d)(3)(E) and 175A, including EPA's determination that the York County Area has attained the 1997 8-hour ozone NAAQS. EPA's analyses of South Carolina's redesignation request, and maintenance plan are described in detail in the November 15, 2012, proposed rule. *See* 77 FR 68087. EPA did not receive any comments, adverse or otherwise, on the November 15, 2012, proposed rule to redesignate the South Carolina portion of the bi-state Charlotte Area to attainment for the 1997 8-hour ozone NAAQS.

Consistent with the CAA, the maintenance plan that EPA is approving also includes 2013 and 2022 MVEBs for $NO_X$ and VOC for the York County Area. In this action, EPA is approving these $NO_X$ and VOC MVEBs for the purposes of transportation conformity. For required regional emissions analysis years involving 2013 and prior to 2022, the applicable budgets will be the new 2013 MVEBs. For required regional emissions analysis years that involve 2022 or beyond, the applicable budgets will be the new 2022 MVEBs.

## III. Why is EPA taking these actions?

EPA has determined that the York County Area (as part of the bi-state Charlotte Area) has attained the 1997 8-hour ozone NAAQS and has also determined that all other criteria for the redesignation of the York County Area from nonattainment to attainment of the 1997 8-hour ozone NAAQS have been met. *See* CAA section 107(d)(3)(E). One of those requirements is that the York County Area has an approved plan demonstrating maintenance of the 1997 8-hour ozone NAAQS. EPA is also taking final action to approve the maintenance plan for the York County Area as meeting the requirements of sections 175A and 107(d)(3)(E) of the CAA. EPA is also approving the new $NO_X$ and VOC MVEBs for the years 2013 and 2022 as contained in South Carolina's maintenance plan for the York County Area because these MVEBs are consistent with maintenance of the 1997 8-hour ozone NAAQS in the Area. The detailed rationale for EPA's findings and actions are set forth in the November 15, 2012, proposed rulemaking and in other discussion in this final rulemaking.

## IV. What are the effects of these actions?

Approval of the redesignation request changes the legal designation of the portion of York County in the bi-state Charlotte Area from nonattainment to attainment for the 1997 8-hour ozone NAAQS. EPA is modifying the regulatory table in 40 CFR 81.341 to reflect a designation of attainment for the county. EPA is also approving, as a revision to the South Carolina SIP, the State's plan for maintaining the 1997 8-hour ozone NAAQS in the York County Area through 2022. The maintenance plan includes contingency measures to remedy possible future violations of the 1997 8-hour ozone NAAQS, and establishes $NO_X$ and VOC MVEBs for the years 2013 and 2022 for the York County Area.

## V. Final Action

EPA is taking final action to approve the redesignation and change the legal designation of the portion of York County in bi-state Charlotte Area from nonattainment to attainment for the 1997 8-hour ozone NAAQS. Through this action, EPA is also approving into the South Carolina SIP the 1997 8-hour ozone maintenance plan for the York County Area, which includes for this Area the new $NO_X$ MVEB for 2013 and

2022 for the York County Area of 11,272 kg/day and 11,368 kg/day, respectively. The VOC MVEB for 2013 and 2022 for the York County Area are 3,699 kg/day and 3,236 kg/day, respectively.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the Area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule grants or recognizes an exemption or relieves a restriction, and section 553(d)(3), which allows an effective date less than 30 days after publication as otherwise provided by the agency for good cause found and published with the rule. The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the State of various requirements for the York County Area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective on the date of publication of this action.

## VI. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by State law. For these reasons, these actions:

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

In addition, the redesignation for the York County Area does have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it may have substantial direct effects on the Catawba Indian Nation as the Tribe's reservation lands are within the York County Area for the 1997 8-hour ozone NAAQS. As such, today's final action to redesignate the York County Area to attainment for the 1997 8-hour ozone NAAQS includes the Catawba Indian Nation reservation lands. Accordingly, EPA and the Catawba Indian Nation consulted on this redesignation prior to today's final action. EPA's consultation on this and other ozone SIP matters for the York County Area with the Catawba Indian Nation commenced on October 14, 2011, and concluded on October 31, 2011. EPA further notes that today's action is not anticipated to impose substantial direct costs on Tribal governments or preempt Tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 25, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

### List of Subjects

*40 CFR Part 52*

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

*40 CFR Part 81*

Environmental protection, Air pollution control.

Dated: December 13, 2012.

**Gwendolyn Keyes Fleming,**

*Regional Administrator, Region 4.*

40 CFR parts 52 and 81 are amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart PP—South Carolina

■ 2. Section 52.2120(e) is amended by adding a new entry ''1997 8-hour ozone

Maintenance Plan for the South Carolina portion of the bi-state Charlotte Area'' at the end of the table to read as follows:

**§ 52.2120 Identification of plan.**

* * * * *

(e) * * *

EPA-APPROVED SOUTH CAROLINA NON-REGULATORY PROVISIONS

| Provision | State effective date | EPA Approval date | Explanation |
|---|---|---|---|
| * | * | * | * |
| 1997 8-hour ozone Maintenance Plan for the South Carolina portion of the bi-state Charlotte Area. | June 1, 2011 .... | 12/26/12 [Insert citation of publication]. | Applicable to the 1997 8-hour ozone boundary in York County only (Rock Hill-Fort Mill Area Transportation Study Metropolitan Planning Organization Area). |

## PART 81—[AMENDED]

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. In § 81.341, the table entitled ''South Carolina-1997 8-Hour Ozone NAAQS (Primary and Secondary)'' is amended under ''Charlotte-Gastonia-Rock Hill, NC–SC'' by revising the entries for ''York County (part) Portion along MPO lines'' to read as follows:

**§ 81.341 South Carolina.**

* * * * *

SOUTH CAROLINA—1997 8-HOUR OZONE NAAQS

[Primary and secondary]

| Designated area | Designation [a] | | Category/Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| * | * | * | * | * |
| Charlotte-Gastonia-Rock Hill, NC–SC: | | | | |
| York County (part) Portion along MPO lines .... | This action is effective 12/26/12 ... | Attainment. | | |
| * | * | * | * | * |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

* * * * *

[FR Doc. 2012–30956 Filed 12–21–12; 4:15 pm]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 52 and 81

**[EPA–R04–OAR–2012–0751; FRL- 9763–9]**

## Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Kentucky; Redesignation of the Kentucky Portion of the Huntington-Ashland, WV–KY–OH 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve a request submitted on February 12, 2012, by the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet, Division for Air Quality (DAQ), to redesignate the Kentucky portion of the tri-state Huntington-Ashland, West Virginia-Kentucky-Ohio fine particulate matter ($PM_{2.5}$) nonattainment area (hereafter referred to as the ''Huntington-Ashland Area'' or ''Area'') to attainment for the 1997 Annual $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS). The Huntington-Ashland Area is composed of Boyd County and a portion of Lawrence County in Kentucky; Lawrence and Scioto Counties and portions of Adams and Gallia Counties in Ohio; and Cabell and Wayne Counties and a portion of Mason County in West Virginia. EPA's approval of the redesignation request is based on the determination that Kentucky has met the criteria for redesignation to attainment set forth in the Clean Air Act (CAA or Act). EPA is approving a revision to the Kentucky State Implementation Plan (SIP) to include the 1997 Annual $PM_{2.5}$ maintenance plan for the Kentucky portion of the Huntington-Ashland Area. EPA is also approving the on-road motor vehicle insignificance finding for direct $PM_{2.5}$ and nitrogen oxides (NOx) for the Kentucky portion of the Huntington-Ashland Area.

**DATES:** *Effective Date:* This rule will be effective on December 26, 2012

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2012–0751. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR**

**FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Joel Huey, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Joel Huey may be reached by phone at (404) 562–9104 or via electronic mail at *huey.joel@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. What is the Background for the Actions?
II. What are the Actions EPA is Taking?
III. Why is EPA Taking These Actions?
IV. What are the Effects of These Actions?
V. Final Action
VI. Statutory and Executive Order Reviews

## I. What is the Background for the Actions?

As stated in EPA's proposed approval notice published on November 19, 2012 (77 FR 69409), this redesignation action addresses the Kentucky portion of the Huntington-Ashland Area's status solely with respect to the 1997 Annual $PM_{2.5}$ NAAQS, for which designations were finalized on November 13, 2009 (74 FR 58688). On February 12, 2012,[1] the Commonwealth of Kentucky, through DAQ, submitted a request to redesignate the Kentucky portion of the Huntington-Ashland Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS, and for EPA approval of the Kentucky SIP revision containing a maintenance plan for the Area. In the November 19, 2012, notice, EPA proposed to take the following separate but related actions, some of which involve multiple elements: (1) To redesignate the Kentucky portion of the Huntington-Ashland Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS, and (2) to approve into the Kentucky SIP, under section 175A of the CAA, Kentucky's 1997 Annual $PM_{2.5}$ NAAQS maintenance plan, including the on-road motor vehicle insignificance finding for direct $PM_{2.5}$ and NOx for the Kentucky portion of the Huntington-Ashland Area. EPA received no comments, adverse or otherwise, on the November 19, 2012, proposed rulemaking. As noted in the November 19, 2012, proposal notice, on April 11, 2012, EPA approved, under section 172(c)(3) of the CAA, Kentucky's 2002 base-year emissions inventory for the Huntington-Ashland Area as part of the SIP revision submitted by the Commonwealth to provide for attainment of the 1997 p.m.$_{2.5}$ NAAQS in the Area. EPA received no comments, adverse or otherwise, on the proposal related to approval of Kentucky's 2002 base-year emissions inventory.

EPA is now taking final action on the three actions identified above. Additional background for today's action is set forth in EPA's November 19, 2012, proposal and is summarized below.

EPA has reviewed the most recent ambient monitoring data, which indicate that the Huntington-Ashland Area continues to attain the 1997 Annual $PM_{2.5}$ NAAQS beyond the submitted 3-year attainment period of 2008–2010. As stated in EPA's November 19, 2012, proposal notice, the 3-year design value of 13.1 $\mu g/m^3$ for 2008–2010 meets the NAAQS of 15.0 $\mu g/m^3$. Quality assured and certified data in EPA's Air Quality System (AQS) for 2011 provide a 3-year design value of 12.1 $\mu g/m^3$ for 2009–2011. Furthermore, preliminary monitoring data for 2012 indicate that the Area is continuing to attain the 1997 Annual $PM_{2.5}$ NAAQS. The 2012 preliminary data are available AQS although not yet quality assured and certified.

## II. What are the actions EPA is taking?

In today's rulemaking, EPA is approving: (1) Kentucky's redesignation request to change the legal designation of Boyd County and a portion of Lawrence County in Kentucky from nonattainment to attainment for the 1997 Annual $PM_{2.5}$ NAAQS, and (2) Kentucky's 1997 Annual $PM_{2.5}$ maintenance plan (such approval being one of the CAA criteria for redesignation to attainment status) for the Kentucky portion of the Huntington-Ashland Area. The maintenance plan is designed to demonstrate that the Kentucky portion of the Huntington-Ashland Area will continue to attain the 1997 Annual $PM_{2.5}$ NAAQS through 2022. EPA's approval of the redesignation request is based on EPA's determination that the Kentucky portion of the Huntington-Ashland Area meets the criteria for redesignation set forth in CAA, sections 107(d)(3)(E) and 175A, including EPA's determination that the Kentucky portion of the Huntington-Ashland Area has attained the 1997 Annual $PM_{2.5}$ NAAQS. EPA's analyses of Kentucky's redesignation request, maintenance plan, and emissions inventory are described in detail in the November 19, 2012, proposed rule (77 FR 69409).

Consistent with the CAA, the maintenance plan that EPA is approving also includes an on-road motor vehicle insignificance finding for direct $PM_{2.5}$ and NOx for the Kentucky portion of the Huntington-Ashland Area. In this action, EPA is approving this insignificance finding for the purposes of transportation conformity.

## III. Why is EPA taking these actions?

EPA has determined that the Kentucky portion of the Huntington-Ashland Area has attained the 1997 Annual $PM_{2.5}$ NAAQS and has also determined that all other criteria for the redesignation of the Kentucky portion of the Huntington-Ashland Area from nonattainment to attainment of the 1997 Annual $PM_{2.5}$ NAAQS have been met. *See* CAA section 107(d)(3)(E). One of those requirements is that the Kentucky portion of the Huntington-Ashland Area has an approved plan demonstrating maintenance of the 1997 Annual $PM_{2.5}$ NAAQS. EPA is also taking final action to approve the maintenance plan for the Kentucky portion of the Huntington-Ashland Area as meeting the requirements of sections 175A and 107(d)(3)(E) of the CAA. In addition, EPA is approving the on-road motor vehicle insignificance finding for direct $PM_{2.5}$ and NOx for the Kentucky portion of the Huntington-Ashland Area. The detailed rationale for EPA's findings and actions are set forth in the proposed rulemaking and in other discussion in this final rulemaking.

## IV. What are the effects of these actions?

Approval of the redesignation request changes the legal designation of Boyd County and a portion of Lawrence County in Kentucky from nonattainment to attainment for the 1997 Annual $PM_{2.5}$ NAAQS. EPA is modifying the regulatory table in 40 CFR 81.318 to reflect a designation of attainment for these counties. EPA is also approving, as a revision to the Kentucky SIP, the Commonwealth's plan for maintaining the 1997 Annual $PM_{2.5}$ NAAQS in the Kentucky portion of the Huntington-Ashland Area through 2022. The maintenance plan includes contingency measures to remedy possible future violations of the 1997 Annual $PM_{2.5}$ NAAQS and establishes an on-road motor vehicle insignificance finding for direct $PM_{2.5}$ and NOx for the Kentucky portion of the Huntington-Ashland Area.

[1] Although EPA received Kentucky's the request to redesignate the Kentucky portion of the Huntington-Ashland Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS on February 12, 2012, the official SIP submittal date and state effective date is the date of the submittal cover letter, February 9, 2012.

## V. Final Action

EPA is taking final action to approve the redesignation and change the legal designation of Boyd County and a portion of Lawrence County in Kentucky from nonattainment to attainment for the 1997 Annual $PM_{2.5}$ NAAQS. Through this action, EPA is also approving into the Kentucky SIP the 1997Annual $PM_{2.5}$ maintenance plan for the Kentucky portion of the Huntington-Ashland Area, which includes an on-road motor vehicle insignificance finding for direct $PM_{2.5}$ and NOx for the Kentucky portion of the Huntington-Ashland Area.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the Area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule grants or recognizes an exemption or relieves a restriction, and section 553(d)(3), which allows an effective date less than 30 days after publication as otherwise provided by the agency for good cause found and published with the rule. The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the Commonwealth of various requirements for the Kentucky portion of the Huntington-Ashland Area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective on the date of publication of this action.

## VI. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For these reasons, these actions:

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 25, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

### List of Subjects

*40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, and Particulate matter.

*40 CFR Part 81*

Environmental protection, Air pollution control, National parks.

Dated: December 13, 2012.

**Gwendolyn Keyes Fleming,**

*Regional Administrator, Region 4.*

40 CFR parts 52 and 81 are amended as follows:

## PART 52-[AMENDED]

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

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

## Subpart S—Kentucky

■ 2. Section 52.920(e) is amended by adding a new entry ''1997 Annual $PM_{2.5}$ Maintenance Plan for the Kentucky portion of the Huntington-Ashland Area'' at the end of the table to read as follows:

**§ 52.920 Identification of plan.**

* * * * *

(e) * * *

EPA-APPROVED KENTUCKY NON-REGULATORY PROVISIONS

| Name of non-regulatory SIP provision | Applicable geographic or nonattainment area | State submittal date/effective date | EPA approval date | Explanations |
|---|---|---|---|---|
| * | * | * | * | * |
| 1997 Annual $PM_{2.5}$ Maintenance Plan for the Kentucky portion of the Huntington-Ashland Area. | Boyd County and Lawrence County (part) (Kentucky portion of the Huntington-Ashland WV–KY–OH Area). | 2/9/12 | 12/26/12 [Insert citation of publication]. | For the 1997 Annual $PM_{2.5}$ NAAQS. |

## PART 81-[AMENDED]

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. In § 81.318, the table entitled ''Kentucky-$PM_{2.5}$ (Annual NAAQS)'' is amended under ''Huntington-Ashland, WV–KY–OH'' by revising the entries for ''Boyd County'' and ''Lawrence County (part)'' to read as follows:

**§ 81.318 Kentucky.**

* * * * *

KENTUCKY—$PM_{2.5}$—(ANNUAL NAAQS)

| Designated area | Designation[a] | |
|---|---|---|
| | Date[1] | Type |
| Huntington-Ashland, WV–KY–OH: | | |
| * | * | * |
| Boyd County ..... | This action is effective 12/26/12. | Attainment |
| Lawrence County (part). | This action is effective 12/26/12. | Attainment |
| * | * | * |

[a] Includes Indian Country located in each county or area, except as otherwise specified.

[1] This date is 90 days after January 5, 2005, unless otherwise noted.

* * * * *

[FR Doc. 2012–30954 Filed 12–21–12; 4:15 pm]

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 80

**[EPA–HQ–OAR–2012–0223; FRL–9763–7]**

## Regulation of Fuels and Fuel Additives: Modifications to the Transmix Provisions Under the Diesel Sulfur Program

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

**ACTION:** Final rule.

**SUMMARY:** EPA is amending the requirements under EPA's diesel sulfur program related to the sulfur content of locomotive and marine (LM) diesel fuel produced by transmix processors and pipeline facilities. These amendments will reinstate the ability of locomotive and marine diesel fuel produced from transmix by transmix processors and pipeline operators to meet a maximum 500 parts per million (ppm) sulfur standard outside of the Northeast Mid-Atlantic Area and Alaska and expand this ability to within the Northeast Mid-Atlantic Area provided that: the fuel is used in older technology locomotive and marine engines that do not require 15 ppm sulfur diesel fuel, and the fuel is kept segregated from other fuel. These amendments will provide significant regulatory relief for transmix processors and pipeline operators to allow the petroleum distribution system to function efficiently while continuing to transition the market to virtually all ultra-low sulfur diesel fuel (ULSD, *i.e.* 15 ppm sulfur diesel fuel) and the environmental benefits it provides.

**DATES:** This rule is effective on February 25, 2013 without further notice.

**ADDRESSES:** EPA established a docket for this action under Docket ID No. EPA–HQ–OAR–2012–0223. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information may not be 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 and Information Center, EPA, 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 Docket is (202) 566–1742. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey A. Herzog, Office of Transportation and Air Quality, National Vehicle and Fuel Emissions Laboratory, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, Michigan, 48105; telephone number: (734) 214–4227; fax number: (734) 214–4816; email address: *herzog.jeff@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Executive Summary

*A. Purpose*

EPA is issuing a final rule to amend provisions in the diesel sulfur fuel programs. The diesel sulfur amendments provide necessary flexibility for transmix processors and pipeline operators who produce locomotive and marine diesel fuel. EPA is taking this action under section 211 of the Clean Air Act.

*B. Summary of Today's Rule*

The diesel transmix amendments will reinstate an allowance for transmix processors and pipeline operators to produce 500 ppm sulfur diesel fuel for use in older technology locomotive and marine diesel outside of the Northeast Mid-Atlantic (NEMA) Area and Alaska

after 2014.[1] These provisions were originally put in place as a necessary flexibility to address feasibility and cost issues associated with handling of the transmix volume generated in the pipeline distribution system. These provisions allowed the fuel distribution system to continue to function while transitioning to ULSD. The technology to economically reduce the sulfur content of transmix distillate product to 15 ppm at transmix processor and pipeline facilities did not exist, and any alternative measures of disposing of transmix were likewise deemed infeasible or cost prohibitive as the market was then configured. Thus, in order to implement the ULSD regulations, an outlet for the consumption of transmix distillate product was necessary. With no outlet, transmix would build up in storage tanks and pipelines would need to cease operations. When the ULSD standards were expanded to nonroad, locomotive, and marine (NRLM) diesel fuel, this would have removed the sole outlet in most areas of the country. Consequently, the transmix flexibility was finalized.

EPA's ocean-going vessels rule, however, removed this allowance beginning 2014 to streamline our ULSD compliance provisions and avoid additional complications that would otherwise result from adding a new stream of diesel, containing up to 1,000 ppm sulfur, for category 3 (C3) marine. EPA believed at the time that this new 1,000 ppm sulfur product could provide a suitable outlet for transmix distillate product. Thus, we believed that it was possible to remove the transmix flexibility. Transmix processors stated that they were not aware of the changes to the 500-ppm LM transmix provisions until after they were finalized, and that the C3 marine market would not be a viable outlet for their distillate product. Not only are most locations for refueling C3 marine vessels not located near transmix facilities, but C3 marine terminals also do not lend themselves easily to the receipt of small batches of transmix distillate product by tank truck. It might be possible over time to modify C3 terminals and fueling operations to receive transmix, but such changes were not within their control. Until such time, the locomotive and marine diesel market remained the only viable market.

On June 29, 2010, EPA received a petition from a group of transmix processors requesting that the Agency reconsider and reverse the 2014 sunset date for the 500-ppm LM transmix flexibility. Based on additional input that we received from transmix processors and other stakeholders in the fuel distribution system during our consideration of the petition, EPA believed that it would be appropriate to extend the 500-ppm diesel transmix flexibility for older locomotive and marine engines beyond 2014 for reasons discussed below. On October 9, 2012, EPA published in the **Federal Register** a Direct Final Rule (DFR) and parallel Notice of Proposed Rule (NPRM).[2] The DFR and NPRM also included other provisions not relevant to this final rule. The DFR was withdrawn on this issue due to the receipt of a negative comment.[3] Based on EPA's consideration of the comments on the NPRM, EPA is finalizing the proposal to extend the 500-ppm transmix flexibility outside of the NEMA area and Alaska beyond 2014.

In response to industry input, EPA also requested comments in the NPRM on whether the 500-ppm transmix flexibility should be extended to the NEMA area. Based on EPA's consideration of the comments we received, we are extending the transmix flexibility to within the NEMA area beginning with the effective date of this final rule.

Comments on the NPRM stated that the regulations did not provide adequate certainty that pipeline operators as well as transmix processors may produce 500 ppm LM from transmix. Based on these comments we are amending the regulations to provide clarity regarding EPA's long standing policy that pipeline operators as well as transmix processors may take advantage of the 500-ppm LM transmix flexibility.

*C. Costs and Benefits*

The flexibilities promulgated in this rule will provide a feasible and cost effective means for the continued operation of the fuel distribution system under our ULSD program regulations as the locomotive and marine market transitions to equipment that require the use of ULSD and until such time as alternative methods of treatment or disposal for transmix can be developed. These amendments will impose no new direct costs or burdens on regulated entities beyond the minimal costs associated with reporting and recordkeeping requirements. These amendments will provide significant regulatory relief for transmix processors and pipeline operators to allow the petroleum distribution system to function efficiently while continuing to transition the market to virtually all ultra-low sulfur diesel fuel (ULSD, *i.e.* 15 ppm sulfur diesel fuel) and the environmental benefits it provides.

## II. Does this action apply to me?

Entities potentially affected by this action include those involved with the production, distribution and sale of diesel fuel. Regulated categories and entities affected by this action include:

| Category | NAICS codes [a] | SIC codes [b] | Examples of potentially regulated parties |
|---|---|---|---|
| Industry | 324110 | 2911 | Petroleum refiners. |
| Industry | Various | Various | Transmix processors. |
| Industry | 486910 | 4613 | Refined petroleum product pipelines. |
| Industry | 424710 | 5171 | Petroleum bulk stations and terminals. |
| Industry | 424720 | 5172 | Petroleum and petroleum products merchant wholesalers. |
| Industry | 454319 | 5989 | Other fuel dealers. |

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

[1] The NEMA area is defined in 40 CFR 80.510(g)(1) as follows: North Carolina, Virginia, Maryland, Delaware, New Jersey, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, Maine, Washington DC, New York (except for the counties of Chautauqua, Cattaraugus, and Allegany), Pennsylvania (except for the counties of Erie, Warren, McKean, Potter, Cameron, Elk, Jefferson, Clarion, Forest, Venango, Mercer, Crawford, Lawrence, Beaver, Washington, and Greene), and the eight eastern-most counties of West Virginia (Jefferson, Berkeley, Morgan, Hampshire, Mineral, Hardy, Grant, and Pendleton).

[2] Regulation of Fuels and Fuel Additives: Modifications to Renewable Fuel Standard and Diesel Sulfur Programs, Direct final rule, 77 FR 61281, October 9, 2012. Regulation of Fuels and Fuel Additives: Modifications to Renewable Fuel Standard and Diesel Sulfur Programs, Notice of Proposed Rule, 77 FR 61313, October 9, 2012.

[3] Regulation of Fuels and Fuel Additives: Modifications to Renewable Fuel Standard and Diesel Sulfur Programs, Withdrawal of direct final rule, 77 FR 72746, December 6, 2012.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria of Part 80, subparts D, E and F of title 40 of the Code of Federal Regulations. If you have any question regarding applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section above.

## III. Amendments to the Diesel Transmix Provisions

The final regulations for the nonroad diesel program were published in the **Federal Register** on June 24, 2004.[4] The provisions in the nonroad diesel rule related to diesel fuel produced from transmix by transmix processors and pipeline operators were modified by the C3 Marine diesel final rule that was published on April 30, 2010.[5] This action further amends the requirements for diesel fuel produced from transmix by transmix processors and pipeline operators. Below is a table listing the provisions that we are amending. The following sections provide a discussion of these amendments.

| Proposed amendments to the diesel program | Description |
|---|---|
| Section: | |
| 80.511(b)(4) | Amended to allow for the production and sale of 500 ppm locomotive and marine (LM) diesel fuel produced from transmix past 2014. |
| 80.513 (entire section). | Amended to allow for the production and sale of 500 ppm LM diesel fuel produced from transmix outside the NEMA area and Alaska past 2014, to extend this flexibility to within the NEMA area, and to provide additional clarity regarding the production of 500 ppm LM from transmix by pipeline operators. |
| 80.572(d) | Amended to extend 500ppm LM diesel fuel label past 2012. |
| 80.597(d)(3)(ii) | Amended to include 500 ppm LM diesel fuel in the list of fuels that an entity may deliver or receive custody of past June 1, 2014. |

### *A. Extension of the Diesel Transmix Provisions Outside of the Northeast Mid-Atlantic Area and Alaska Beyond 2014*

Batches of different fuel products commonly abut each other as they are shipped in sequence by pipeline. When the mixture between two adjacent products is not compatible with either product, it is removed from the pipeline and segregated as transmix. Transmix primarily is gathered for reprocessing at the end of the pipeline distribution system and downstream from any refinery that might possibly be able to desulfurize the transmix. Transmix is also sometimes gathered at intermediate points in the pipeline distribution system. In addition to the long and inefficient transportation distances to return transmix to a refinery for reprocessing, incorporating transmix into a refinery's feed also presents technical and logistical refining process challenges that typically make refinery reprocessing infeasible. In particular, refineries are not set up to safely receive small batches of feedstock by truck, crude towers are not designed to safely handle the large swings in distillation range of their feed that would accompany the introduction of transmix to the tower, and other locations in the refinery (such as hydrodesulfurization units) are not designed to safely receive additional feedstock. Thus, transmix processors and pipeline facilities that produce diesel fuel from transmix are necessary to dispose of transmix and maintain an efficient fuel distribution system. However, they can only do so if they can find a market that can utilize the transmix they produce.

Transmix processing facilities handle an average of 5,000 barrels per day of transmix compared to an average of 125,000 barrels per day of crude oil for diesel fuel refineries. The low volumes handled by transmix processors as well as other constraints mean that transmix processors are limited to the use of a simple distillation tower and additional blendstocks to manufacture finished fuels. Pipeline transmix gathering facilities handle even lower volumes of fuel. Such facilities manufacture diesel fuel from the transmix that results from the interface between batches of ULSD and jet fuel. The presence of diesel fuel in the mixture results in the transmix not meeting the stringent quality specifications for jet fuel (*e.g.,* distillation and additive requirements unique to jet fuel). Because this transmix does not contain gasoline, a finished distillate fuel from the transmix can be produced without the need for further distillation. However, the high sulfur contribution from jet fuel (*e.g.,* maximum 3,000 ppm for jet fuel) and other high sulfur products in multi-product pipelines results in this transmix not meeting the 15 ppm sulfur specification for ULSD. There is currently no desulfurization equipment which has been demonstrated to be suitable for application at a transmix processor or pipeline transmix gathering facility. The cost of installing and operating a currently available desulfurization unit is too high in relation to the small volume of distillate fuel produced at such facilities. Without an outlet for the transmix, it would build up and could eventually force a shutdown of pipeline operations until an outlet could be found.

The engine emission standards finalized in the rulemakings for new nonroad, locomotive, and Category 1 & 2 (C1 & C2) marine engines necessitate the use of sulfur-sensitive emissions control equipment which requires 15 ppm sulfur diesel fuel to function properly.[6] Accordingly, the nonroad rule required that nonroad, locomotive and marine (NRLM) diesel fuel must meet a 15 ppm sulfur standard in parallel with the introduction of new sulfur-sensitive emission control technology to NRLM equipment. Beginning June 1, 2014, the nonroad diesel rule required that all NRLM diesel fuel produced by refiners and importers must meet a 15 ppm sulfur standard. The nonroad diesel rule included special provisions to allow the continued use of 500 ppm sulfur locomotive and marine diesel fuel produced from transmix by transmix processors and pipeline operators beyond 2014 in older technology engines as long as such engines remained in the in-use fleet. These provisions along with other now

[4] 69 FR 38958 (June 24, 2004).

[5] 75 FR 22896 (April 30, 2010).

[6] Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel, Final Rule, 69 FR 38958, June 24, 2004. Control of Emissions of Air Pollution From Locomotive and Marine Compression-Ignition Engines Less Than 30 Liters per Cylinder; Republication, Final Rule, 73 FR 37096, June 30, 2008.

expired flexibilities in the diesel program were designed to provide a feasible and cost effective means for the continued operation of the fuel distribution system under our ULSD program regulations as the locomotive and marine market transitioned to equipment that required the use of ULSD and until such time as alternative methods of treatment or disposal of transmix could be developed.[7] The 500-ppm LM diesel transmix provisions were limited to areas outside of the Northeast Mid-Atlantic area and Alaska because it was judged that the heating oil market in these areas would provide a sufficient outlet for transmix distillate in these areas. In addition, the disposition of transmix in Alaska is not a concern since there are no refined product pipelines in Alaska. Excluding the NEMA area and Alaska allowed us to exempt the NEMA area and Alaska from the fuel marker provisions that are a part of the compliance assurance regime. The continuation of the 500-ppm LM diesel transmix provisions beyond 2014 (finalized in the nonroad rule) was supported by ongoing recordkeeping, reporting, and fuel marker provisions that were established to facilitate enforcement during the phase-in of the diesel sulfur program.[8]

In the development of the proposed requirements for Category 3 (C3) marine engines, EPA worked with industry to evaluate how the enforcement provisions for the new 1,000-ppm C3 marine diesel fuel to be introduced in June of 2014 could be incorporated into existing diesel program provisions.[9] Our assessment based on input from industry at the time indicated that incorporating the new C3 marine fuel into the diesel program enforcement mechanisms while preserving the 500-ppm diesel transmix flexibility could not be accomplished without retaining significant existing regulatory burdens (''designate and track'' and fuel marker requirements) and introducing new burdens on a broad number of regulated parties. We also believed that the new C3 marine diesel market would provide a sufficient outlet for transmix distillate product in place of the 500 ppm LM diesel market. Thus, we believed the 500-ppm LM diesel transmix flexibility would no longer be needed after 2014. Hence, we requested comment on whether we should eliminate the 500-ppm LM transmix provisions in parallel with the implementation of the C3 marine diesel sulfur requirement. This approach allowed for a significant reduction in the regulatory burden on a large number of industry stakeholders through the retirement of the diesel program's designate-and-track and fuel marker requirements. All of the comments that we received on the proposed rule were supportive of the approach. Consequently, we finalized the approach in the C3 marine final rule that was published on April 30, 2010.[10]

EPA received a petition from a group of transmix processors on June 29, 2010, requesting that the Agency reconsider and reverse the 2014 sunset date for the 500-ppm LM transmix flexibility.[11] A parallel petition for judicial review was filed with the U.S. Court of Appeals, D.C. Circuit.[12] The transmix processors stated that they were not aware of the changes to the 500-ppm LM transmix provisions until after they were finalized. The petitioners also stated that they believe that the C3 marine market would not be a viable outlet for their distillate product. Not only are most locations for refueling C3 marine vessels not located near transmix facilities, but C3 marine terminals also do not lend themselves easily to the receipt of small batches of transmix distillate product by tank truck. It might be possible over time to modify C3 terminals and fueling operations to receive transmix, but such changes were not within their control. Until such time the locomotive and marine diesel market remained the only viable market. Based on the additional input that we received from transmix processors and other stakeholders in the fuel distribution system during our consideration of the petition and the comments on the NPRM, EPA believes that it is appropriate to reinstate the 500-ppm diesel transmix flexibility beyond 2014.[13]

These amendments will provide significant regulatory relief for transmix processors and pipeline operators to allow the petroleum distribution system to function efficiently while contributing to transition the market to virtually all ultra-low sulfur diesel fuel (ULSD, *i.e.* 15 ppm sulfur diesel fuel) and the environmental benefits it provides. Reinstating this transmix flexibility will provide a feasible and cost effective means for the continued operation of the fuel distribution system under our ULSD program regulations as the locomotive and marine market transitioned to equipment that required the use of ULSD and until such time as alternative methods of treatment or disposal for transmix can be developed. As the locomotive and marine engine fleet turns over to equipment that require the use of ULSD, this flexibility will naturally phase out.[14] Providing additional time for transmix processors and pipeline operators will allow them to develop other markets for transmix, including perhaps the C3 marine market, export, or perhaps treatment technology. Therefore, extending this flexibility would reduce the overall burden on industry of compliance with EPA's diesel sulfur program and facilitate a smoother transition of the entire market to ULSD. EPA will consider removing the 500-ppm transmix flexibility when it appears that it no longer serves a purpose.

### *B. Expansion of the Diesel Transmix Provisions To Include the Northeast Mid-Atlantic Area*

The nonroad diesel rule specified that the small diesel refiner, credit, and transmix provisions would not apply in the Northeast Mid-Atlantic area. Hence, all LM diesel fuel shipped from refineries, transmix processors, and importers for use in the NEMA area was required to meet a 15-ppm sulfur standard beginning June 1, 2012 when

[7] As discussed in the original nonroad diesel rulemaking, as LM equipment is retired from service, the market for 500 ppm LM will gradually diminish and eventually disappear. Given the long lifetime of LM equipment (in many cases 40 years or more), we anticipate that a market for 500 ppm LM will remain for a significant amount of time. This phase-out time will allow transmix processors and pipeline operators to either transition their >15 ppm sulfur distillate product to other markets (*e.g.* C3 marine, heating oil, process heat, export), develop a means to desulfurize fuel at their facilities, or to implement other alternatives to dispose of transmix.

[8] This included the now-completed phase-in of 15 ppm highway diesel fuel and 15 ppm nonroad diesel fuel as well as the phase-out of the small refiner and credits provisions for LM diesel fuel that will be completed in 2014.

[9] Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder; Proposed Rule, 74 FR 44442 (August 28, 2009).

[10] Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder; Final Rule, 75 FR 22896 (April 30, 2010).

[11] ''Petition to Reconsider Final Rule: Control of Emissions from New Marine Compression Ignition Engines at or Above 30 Liters per Cylinder; Final Rule,'' 75 FR 22,896 (April 30, 2010), Letter to EPA Administrator Lisa Jackson dated June 29, 2010, from Chet Thompson of Crowell and Moring LLP, on behalf of Allied Energy Company, Gladieux Trading and Marketing, Insight Equity Acquisition Partners, LP, Liquid Titan, LLC, and Seaport Refining and Environmental, LLC.

[12] Petition for Review, United States Court of Appeals for the District of Columbia Circuit, Petitioners, *Allied Energy Company, Gladieux Trading and Marketing, Insight Equity Acquisition Partners, LP, LiquidTitan, LLC, and Seaport Refining and Environmental LLC,* v. Respondent, *U.S. Environmental Protection Agency,* Case 10–1146, Document 1252640, Filed 06/29/2010.

[13] See Section IV of today's notice for our summary and analysis of comments.

[14] The useful life of LM engines can exceed 40 years. In the 2011 edition of ''Railroad Facts,'' the Association of American Railroads reported that in 2010 approximately 35% of the locomotive fleet was at least 21 years old.

the 15-ppm standard becomes effective for large refiners and importers.[15] This approach allowed the NEMA area to be exempted from fuel marker provisions that are a component of the compliance assurance provisions associated with the small diesel refiner, credit, and transmix provisions. As discussed previously a significant factor in the decision made in the nonroad diesel rule to exclude the NEMA from the diesel transmix provisions was our assessment that the heating oil market provided a sufficient outlet for transmix distillate product in this area. Since the publication of the nonroad diesel rule in 2004, a number of states in the NEMA area have moved towards implementing a 15-ppm sulfur standard for heating oil. A significant fraction of heating oil in the area will be subject to a 15-ppm sulfur standard beginning in 2012, and it is likely that other states will adopt a 15-ppm sulfur standard for heating oil in the following years.

Transmix processors and other fuel distributors in the NEMA area stated that they were concerned that the changing state heating oil specifications would impact their ability to market transmix distillate product beginning in 2012. They requested that EPA extend the 500-ppm LM flexibility to the NEMA area by 2012 to lessen the impact on the fuel distribution system of complying with more stringent federal and state distillate sulfur standards. Consequently, we requested comment in the NPRM on expanding the 500-ppm LM transmix flexibility to include the NEMA area. Based on our review of the comments on the NPRM, today's final rule expands the 500-ppm transmix flexibility to include the NEMA area beginning on the effective date of today's rule.[16]

Allowing 500-ppm LM from transmix to be used outside of the NEMA area after 2014 reinstates a flexibility that was withdrawn by the C3 marine final rule. Allowing 500-ppm LM to be used inside the NEMA area provides flexibility that was previously not included in EPA's diesel program to offset a portion of the flexibility lost with the transition to ultra-low sulfur heating oil in the NEMA. This will serve to allow the ULSD and ultra-low sulfur heating oil provisions to continue to be successfully implemented and maintain the integrity of the petroleum distribution system. Otherwise, as in the discussion for outside the NEMA above, without a practical outlet for the sale/disposal of transmix, the pipeline distribution system which provides much of the fuel to the NEMA could not continue to function.

Expanding the transmix flexibility to the NEMA area will provide significant regulatory relief for transmix processors and pipeline operators to allow the petroleum distribution system to function efficiently while continuing to transition the market to virtually all ultra-low sulfur diesel fuel (ULSD, *i.e.* 15 ppm sulfur diesel fuel) and the environmental benefits it provides. The same compliance assurance requirements that we are finalizing for use outside of the NEMA area will be applied within the NEMA area. A substantial fraction of the transmix processing industry markets fuel within the NEMA area. Thus, the additional time to prepare for a transition to other markets for transmix distillate product that is afforded by the extension of the 500-ppm LM transmix flexibility to the NEMA is particularly significant.

*C. Transmix Flexibility Emission Effects*

It is difficult to assess the environmental consequences of the diesel transmix provisions finalized by today's action because it is difficult to know how the market would function without today's action. Based on the feedback received, desulfurization of transmix at either transmix facilities or refineries is not currently viable and the C3 marine and other potential markets are not set up to handle the receipt and use of transmix. Thus, while it is possible to assess the emission impacts associated with the use of transmix in lieu of ULSD in locomotive and marine applications, it is difficult to know what the baseline for comparison would be, as all other options at present appear infeasible. Nevertheless, in order to provide an estimate of the potential emission impacts we have conservatively modeled a base case where we assume, as in the C3 marine final rule, that the diesel transmix could in fact be consumed in the C3 market. Other possible assumptions (*e.g.,* export, shipped to a refinery for reprocessing) would only add transport distance, increasing the emissions in the base case.

Thus, to evaluate the environmental consequences of the diesel transmix provisions finalized by today's notice, we compared the potential increase in emissions of sulfate particulate matter (PM) and sulfur dioxide ($SO_2$) from the use of 500 ppm LM from transmix in older engines to the additional transportation emissions associated with shipment of transmix to the Category 3 (C3) marine market which might be avoided by allowing continued access to the 500 ppm LM market. Markets for locomotive and marine diesel tend to be nearer to transmix processing facilities than markets for C3 marine diesel.[17] Therefore, the diesel transmix provisions in today's rule will result in a reduction in nitrogen oxides ($NO_X$), volatile organic compounds (VOCs), carbon monoxide (CO), PM, and toxics as well as other emissions that would otherwise be associated with transporting diesel transmix to the more distant markets.

We estimate that approximately 450 million gallons of distillate fuel per year is produced from transmix.[18] However, some of this transmix distillate product would continue to be used as heating oil regardless of whether the diesel transmix provisions were finalized as long at some of that market remained higher than 15 ppm. Given that today's rule includes provisions to expand the transmix flexibility to the NEMA area where the majority of heating oil is used, we estimate that as much as 337 million gallons per year of transmix distillate product might be used in older LM engines initially, and then decline over time as the locomotive and marine diesel fleet transitions to engines requiring ULSD.[19] An estimated 6,994 million gallons of diesel fuel was estimated to be used in locomotive and marine engines in 2004.[20] Thus, the volume of transmix distillate product that may be used in LM engines represents at most 4.8% of the total diesel fuel use in such engines. Although some batches of diesel transmix may approach the 500 ppm sulfur limit, the average sulfur content

[15] LM diesel fuel in terminals located in the NEMA area is subject to a 15-ppm sulfur standard beginning August 1, 2012. LM diesel fuel at retailers and wholesale purchaser consumers must meet a 15-ppm sulfur standard beginning October 1, 2012.

[16] See Section IV in today's notice for the summary and analysis of comments.

[17] Transmix processing facilities are located at downstream locations on refined petroleum product pipelines. Such pipeline locations are typically not located close to the coasts where a C3 market exists. A number of such locations are located in the center of the United States. Locomotive refueling facilities are located throughout the United States and C2 marine refueling locations are located on navigable rivers as well as on the coasts.

[18] Based on information provided by transmix processors, we estimate that approximately 750 million gallons per year of transmix is produced annually, approximately 60% of the transmix-derived product is distillate fuel, and the remainder is gasoline.

[19] We estimate that approximately 50 percent of diesel transmix is produced by pipelines that serve the NEMA area. We believe that it is reasonable to assume that 50 percent of the diesel transmix within the NEMA area will continue to be used as heating oil despite access to the LM market. Thus, we estimate that 25 percent of all diesel transmix will continue to be used in heating oil.

[20] Regulatory Impact Analysis: Control of Emissions of Air Pollution from Locomotive Engines and Marine Compression-Ignition Engines Less Than 30 Liters per Cylinder, EPA420–R–08–001, February 2008.

is considerably less. Comments on the NPRM stated that the sulfur content of diesel transmix is often 100 ppm to 200 ppm. Based on these comments, we have assumed for this analysis that the sulfur content of diesel transmix will average about 150 ppm. When burned in non-catalyst equipped engines, the vast majority (approximately 98 percent) of sulfur in diesel fuel comes out of the exhaust as $SO_2$, with the remainder coming out as $H_2SO_4$ (sulfate PM). Thus, as shown in Table 1, $SO_2$ emissions from locomotive and marine diesel engines would be expected to rise nationwide by approximately 321 tons, and sulfate PM emissions by about 26 tons.

At the same time, emissions from highway diesel engines would be expected to decline due to the reduced distances associated with transporting diesel transmix to locomotive and marine diesel terminals instead of C3 marine terminals. Based on an assessment of the locations of potential C3 marine outlets as opposed to locomotive and marine outlets, and based on comments we received on the proposal, we estimate that allowing the use of transmix in the locomotive and marine diesel market would decrease trucking distances by an average of approximately 250 miles (one way). In reality trucking distances and associated emissions could be considerably higher in order to reach a refinery that might be reconfigured to process transmix, or to be exported. Based on an assumed capacity for a transport truck of 8,000 gallons of transmix distillate, and EPA's emission factors for transport trucks, as shown in Table 1, allowing diesel transmix to continue to be burned in the older locomotive and marine applications thereby resulting in deferred additional truck transport of transmix distillate would decrease nationwide emissions of $NO_X$ by 194 tons, VOC by 19 tons, CO by 58 tons, $PM_{2.5}$ by 7 tons, $SO_2$ by less than one ton, and small reductions in various air toxic emissions.[21]

TABLE 1—NATIONWIDE ANNUAL EMISSIONS EFFECTS

| | Emissions effects from use of TDP instead of ULSD in older LM engines (short tons) | Emission effects from avoided transport of TDP (short tons) | Net emissions effects of the transmix flexibility (short tons) | ULSD programs emissions effects (short tons) | Transmix flexibility emissions effects as percentage of emission effects of ULSD programs |
|---|---|---|---|---|---|
| $NO_X$ | 0 | − 194 | − 194 | − 4,023,162 | − 0.005 |
| VOC | 0 | − 19 | − 19 | − 160,350 | − 0.012 |
| CO | 0 | − 58 | − 58 | − 1,912,706 | − 0.003 |
| PM | + 26 | − 7 | + 19 | − 264,492 | + 0.007 |
| $SO_2$ | + 321 | − 0.35 | + 321 | − 516,269 | + 0.062 |
| Benzene | 0 | − 0.19 | − 0.19 | − 2,330 | − 0.008 |
| Formaldehyde | 0 | − 1.45 | − 1.45 | − 16,816 | − 0.009 |
| Acetaldehyde | 0 | − 0.53 | − 0.53 | − 6,887 | − 0.008 |
| 1,3-Butadiene | 0 | − 0.11 | − 0.11 | − 882 | − 0.012 |
| Acrolein | 0 | − 0.06 | − 0.06 | − 200 | − 0.030 |

As can be seen from Table 1, the diesel transmix provisions being finalized today provide on balance small reductions in emissions of $NO_X$, VOC, CO, and toxics and small net increases in PM and $SO_2$. These emission effects will decline over time as the potential market for 500 ppm LM diminishes and eventually disappears. Since this final rule is taking an action to allow the ULSD program to be feasibly implemented, the emissions effects of this action must be viewed in the context of the overall ULSD regulations that this FRM is part of. As further shown in Table 1, the net emission impacts of all pollutants of this action is very small and we believe will have a very small impact in comparison to the benefits of the entire ULSD program that is enabled by today's action. The annual emissions reductions achieved by EPA's ULSD regulations are enormous compared to the effects of this rulemaking. Thus, the clean diesel programs will be providing very large emissions benefits which are little affected by the transmix flexibility. This transmix flexibility was judged to be a necessary component of the clean diesel program when it was finalized. Therefore, it is appropriate that the transmix flexibility be reinstated and expanded to the NEMA area. The use of 500 ppm LM from transmix would be limited to older technology engines that do not possess sulfur-sensitive emissions control technology. We believe that the 500 ppm LM segregation and other associated requirements would prevent misfueling of sulfur-sensitive engines.

*D. Compliance Assurance Provisions*

Industry stakeholders suggested alternative enforcement mechanisms to support the extended flexibility which would not necessitate reinstating and expanding the designate-and-track and fuel marker provisions that were retired by the C3 marine final rule. Reinstatement and expansion of these provisions would likely place an unacceptable burden on a large number of stakeholders, most of whom would not handle 500 ppm LM. The suggested alternative enforcement mechanism would impose minimal additional reporting and recordkeeping burdens only on the parties that produce, handle, and use 500 ppm LM. We believe that this alternative enforcement approach (which we proposed in the NPRM) will meet the Agency's goals of ensuring that the pool of 500 ppm LM is limited to transmix distillate and that 500 ppm LM is not used in sulfur-sensitive emissions control equipment.[22]

The compliance assurance provisions that we are finalizing to support the extension of the diesel transmix flexibility outside the NEMA area and Alaska beyond 2014 and the expansion of the flexibility to within the NEMA area are similar to those that were used to support the small refiner flexibilities in Alaska during the phase-in of EPA's diesel sulfur program.[23] In addition to

[21] The deferred additional truck transport would also avoid the production of 47,380 tons of $CO_2$ emissions. An additional 4,220 thousand gallons of diesel fuel would be consumed to support the increased truck transport with an associated increase in diesel fuel costs of 17 million dollars.

[22] See Section IV in today's notice for the summary and analysis of comments.

[23] *See* 40 CFR 80.554(a)(4).

registering as a refiner and certifying that each batch of fuel complies with the fuel quality requirements for 500 ppm LM diesel fuel, producers of 500 ppm transmix distillate product would be required to submit a compliance plan for approval by EPA. This compliance plan would provide details on how the 500 ppm LM would be segregated through to the ultimate consumer and its use limited to the legacy LM fleet. The plan would be required to identify the entities that would handle the fuel and the means of segregation. We believe that it is appropriate to limit the number of entities that would be allowed to handle the fuel between the producer and the ultimate consumer in order to facilitate EPA's compliance assurance activities.[24] Based on conversations with transmix processors, we believe that specifying that no more than 4 separate entities handle the fuel between the producer and the ultimate consumer would not hinder the ability to distribute the fuel.[25] The plan would need to identify the ultimate consumers and include information on how the product would be prevented from being used in sulfur-sensitive equipment.

We understand that some transmix processors currently rely on shipment by pipeline to reach the 500 ppm locomotive diesel market.[26] As a result, the regulations allow 500 ppm LM to be shipped by pipeline provided that it does not come into contact with distillate products that have a sulfur content greater than 15 ppm. The compliance plan would need to include information from the pipeline operator regarding how this segregation would be maintained. Discussions with transmix processors indicate that this requirement would not limit their ability to ship 500 ppm LM by pipeline. If 500 ppm LM was shipped by pipeline abutting 15 ppm diesel, the volume of 500 ppm LM delivered would likely be slightly greater than that which was introduced into the pipeline as a consequence of cutting the pipeline interface between the two fuel batches into the 500 ppm LM batch. This small increase in 500 ppm LM volume would be acceptable.

To provide an additional safeguard to ensure that volume of 500 ppm LM diesel fuel does not swell inappropriately, the volume increase during any single pipeline shipment must be limited to 2 volume percent or less. This limitation on volume swell to 2 volume percent or less is consistent with the limitation in 40 CFR 80.599 (b)(5) regarding the allowed swell in volume during the shipment of highway diesel fuel for the purposes of the determination of compliance with the now expired volume balance requirements under 40 CFR 80.598(b)(9)(vii)(B). Industry did not object to this requirement, and therefore, we believe that limiting the volume swell of 500 ppm LM diesel fuel during shipment by pipeline to 2 volume percent or less should provide sufficient flexibility.

Product transfer documents (PTDs) for 500 ppm LM diesel are required to indicate that the fuel must be distributed in compliance with the approved compliance assurance plan. Entities in the distribution chain for 500 ppm LM diesel fuel are required to keep records on the volumes of the 500 ppm that they receive from and deliver to each other entity. Based on input from fuel distributors, keeping these records will be a minimal additional burden, as discussed in section IV. Such entities are also required to keep records on how the fuel was transported and segregated. We would typically expect that the volumes of 500 ppm LM delivered would be equal to or less than those received unless shipment by pipeline occurred. Some minimal increase in 500 ppm LM volume would be acceptable due to differences in temperature between when the shipped and received volumes were measured and interface cuts during shipment by pipeline. Entities that handle 500 ppm LM are required to calculate a balance of 500 ppm LM received versus delivered/used on an annual basis. If the volume of fuel delivered/dispensed is greater than that received, EPA would expect that the records would indicate the cause. If an entity's evaluation of their receipts and deliveries of 500 ppm LM fuel indicated noncompliance with the product segregation requirements, the custodian would be required to notify EPA. All entities in the 500 ppm LM distribution chain are required to maintain the specified records for 5 years and provide them to EPA upon request.

## IV. Summary and Analysis of Comments

*Need for the Proposed Flexibility*

Comments from transmix processors and pipeline operators support allowing 500 ppm diesel fuel to be produced from transmix for use in older LM engines outside of the NEMA area and Alaska after 2014, and the expansion of this flexibility to within the NEMA area. These commenters stated that access to the 500 ppm LM market is critical due to the limited alternative markets for transmix distillate product and the need for such a market to maintain the flow of products through pipelines. Some transmix processors stated that the C3 marine market is not a viable outlet for their distillate product due to the long shipping distances and limited ability of many C3 terminals to receive shipments by tank truck. Transmix processors and pipeline operators stated that there would be significant negative consequences if they were not allowed additional time to produce 500 ppm LM diesel fuel. Some transmix processors stated that their only alternative may be to shut down. In such a case, transmix would need to be trucked long distance to refineries for reprocessing. They also stated that pipelines could be in jeopardy of shutting down if transmix could not be cleared in a timely manner from storage facilities in the system. They noted that this could result in disruptions to the fuel supply. One pipeline operator and transmix processor stated that lack of access to the 500 ppm LM market for transmix distillate product could create barriers to the continued shipment of jet fuel (with sulfur content as high as 3000 ppm) by pipeline. This is because jet fuel is the only high sulfur product shipped by the pipeline operator, and if the operator bars jet fuel from its system the pipeline's transmix processors may be able to produce distillate product that meets a 15 ppm sulfur specification. If the pipeline operator were able to produce a 15 ppm sulfur transmix distillate product, the pipeline's transmix processing facilities would no longer need to use the 500-ppm LM transmix flexibility, since the fuel could readily be sold into the highway and NRLM markets. The commenter stated, however, that eliminating jet fuel transportation by pipeline would increase transport-related emissions, costs, and safety risks of alternative transportation of jet fuel.

Response

We agree with comments that transmix processors, pipelines, and the fuel distribution system as a whole need

[24] An entity is defined as any company that takes custody of 500 ppm LM diesel fuel.

[25] In most cases, fewer entities would take custody of the product. In many cases, only a single entity (a tank truck operator) would be in the distribution chain between the transmix processor and the ultimate consumer. However, we understand that as many as 4 separate entities may handle the product between the producer and ultimate consumer if it is shipped by pipeline: the tank truck operator to ship the product from the producer to the pipeline, the pipeline operator, the product terminal that receives the fuel from the pipeline, and another tank truck operator to ship the product to the ultimate consumer from the terminal.

[26] 500 ppm LM diesel fuel is shipped by a short dedicated pipeline from a product terminal to a locomotive refueling facility.

additional time to produce 500 ppm LM diesel fuel from transmix. Providing additional time will help avoid potential fuel supply disruptions and reduce the overall burden of EPA's diesel sulfur program as transmix processors and pipeline operators adjust to the continued reduction in outlets for >15ppm diesel fuel.

The 500-ppm LM transmix flexibility that was originally included in the diesel program was necessary to allow the ULSD program to be feasibly implemented and enable the large national emissions reductions that it provided. The C3 final rule discontinued the 500-ppm LM flexibility because the information available to us at the time indicated that this would not have a significant negative impact on the handling of transmix in the distribution system. We also believed at the time that continuing the flexibility after 2014 would unacceptably increase compliance burdens given the introduction of C3 marine fuel. Since that time, we received input from transmix processors and pipeline operators that discontinuing this flexibility could have substantial negative impacts on their operations and the fuel distribution system as a whole. We have also been able to develop an alternative enforcement mechanism contained in this final rule which can effectively control the production and distribution of 500 ppm LM from transmix while resulting in a minimal compliance burden. Had we had this information when the C3 rule was finalized, we would not have discontinued the 500-ppm transmix flexibility in the C3 marine final rule.

*Expansion of the Proposed Flexibility to Within the NEMA Area*

Commenters who support expanding the transmix flexibility to the NEMA area stated that the ability to market transmix distillate product as heating oil is being progressively reduced by the adoption by states of a 15 ppm sulfur standard for heating oil. They claim that not allowing the use of 500 ppm LM in the NEMA area creates significant costs and transportation overhead, and complexity, as well as increased transportation-related emissions, to move the fuel outside the area. One pipeline stated that some of the largest volume processors are located in the NEMA area.

Response

When we finalized the original transmix flexibility, we concluded that the heating oil market would provide a sufficient outlet for transmix distillate product within the NEMA area. This allowed us to not extend the 500ppm LM transmix flexibility to within the NEMA area at the time, which allowed us to avoid imposing the marker provisions in the NEMA. Since that time, several states in the NEMA area have begun implementing a 15 ppm sulfur standard for heating oil, which is substantially limiting the ability to market transmix distillate product as heating oil. Given this development and the availability of an appropriate enforcement mechanism for use in the NEMA area, the same rationale that supports the need for reinstating the transmix flexibility inside the NEMA areas applies for expanding it outside of the NEMA area. Not only is it costly and inefficient to ship transmix outside of the NEMA area, but if no suitable market can be found the distribution of fuel to the NEMA area could be severely constrained. This would be particularly a concern during times when the market is already experiencing disruptions (*e.g.,* following hurricanes).

*Duration of the Flexibility*

Commenters that supported the proposed flexibility stated that EPA should not set an expiration date for the flexibility at this time. However, the Engine Manufacturers Association (EMA) stated that EPA should commit to review whether to sunset the 500-ppm provisions as part of any future rulemaking associated with either heating oil or the C3 marine sulfur requirements.

Response

We acknowledge that it is unclear when turnover of the LM fleet to equipment that requires 15 ppm fuel will render the 500-ppm LM transmix flexibility no longer useful. We agree that EPA should consider removing the flexibility when it appears that it no longer serves a purpose. However, we do not believe that it is appropriate or necessary to commit to a specific timeline when such a review will take place. LM equipment lasts for many years, and the location of such older equipment in relation to the transmix facilities will have to factor into any consideration of whether the provision remains to be useful. EPA will continue to monitor fleet turn over and stakeholder perceptions regarding when it would be appropriate to retire the 500-ppm LM transmix flexibility.

*Compliance Assurance*

Commenters that supported the proposal stated that the same enforcement mechanisms proposed for use outside the NEMA area and Alaska could be applied within the NEMA area.

EMA stated that although they did not object to the adoption of the envisioned transmix flexibility, they have concerns about its implementation. EMA stated that it was concerned that its members could experience increased in-use emissions compliance liability associated with misfueling equipment which requires the use of 15 ppm sulfur diesel fuel. EMA stated that EPA should shield engine manufacturers, vehicles, and equipment that require 15 ppm diesel from potential liability resulting from defect reporting, emissions warranty obligations, and emission-recall requirements arising from, or in connection with misfueling with 500 ppm diesel.

EMA stated that sufficient infrastructure must be in place to segregate 500 ppm from 15 ppm and sufficient training of parties that handle 500 ppm must be conducted. EMA further stated that if the required infrastructure and training are not in place, then only 15 ppm diesel fuel should be allowed. EMA stated that 500 ppm LM must be identified and tracked to help ensure that it is only used only in engines that do not require 15 ppm diesel fuel. EMA also stated that the SY–124 marker should be used to identify 500 ppm LM diesel to help prevent misfueling. EMA stated that EPA should eliminate the incentive to misfuel by eliminating the accessibility and/or potential financial benefit of using higher sulfur fuels.

EMA stated that EPA should ensure adequate review and approval of transmix fuel distribution compliance plans to assure the availability of 15 ppm diesel fuel for those engines that need it. EMA states that compliance plan approval documents should include information regarding enforcement penalties associated with misfueling.

Response

We believe that the enforcement mechanisms we are finalizing will provide an appropriate level of assurance that 500 ppm LM will not infiltrate the 15 ppm diesel fuel distribution system and not be used to misfuel engines which require the use of 15 ppm fuel. The compliance plan required to be submitted by producers of 500 ppm LM will provide details on how 500 ppm LM will be segregated through to the ultimate consumer and that its use is limited to the legacy LM fleet. The compliance plan must demonstrate that the end users of 500 ppm LM will also have access to 15 ppm diesel fuel for use in those engines

that require the use of 15 ppm diesel fuel.

The compliance plan is required to identify the entities that will handle the fuel and the means of segregation. The product transfer documents for 500 ppm LM that are required to be retained by all parties in the fuel distribution system will provide information on the use restrictions for the fuel. EPA approvals of compliance plans will include information regarding the enforcement penalties associated with misfueling. Given the rather limited and contained nature of the refueling infrastructure for LM applications in comparison to other highway and nonroad diesel applications, we believe these provisions will be entirely feasible and sufficient.

We do not believe that requiring the use of the SY 124 maker in 500 ppm LM after 2014 would be useful in helping to prevent the misfueling of engines that require the use of 15 ppm diesel fuel. The SY124 marker is not visible in itself. Hence, its presence would not serve as a visible warning to help deter misfueling. In any event, parties do not typically see the fuel as it is being dispensed into a fuel tank. Given that an analytical test would be required to detect the marker, it is more appropriate to test the sulfur content of the fuel. The SY 124 marker requirements for 500 ppm LM diesel fuel that were effective from June 1, 2010 through May 31, 2012, were put in place to help ensure that 500 ppm LM from larger refiners did not inappropriately shift into the limited 500 ppm NR diesel fuel pool from small refiners, credit users, and transmix processors. These marker requirements were discontinued because 500 ppm LM could no longer be produced by larger refiners after May 31, 2012. The marker requirements for 500 ppm LM were never intended to help prevent the misfueling of LM equipment that requires the use of 15 ppm diesel fuel with 500 ppm LM.

We disagree with EMA's comments that EPA should take additional actions to shield engine manufacturers, vehicles, and equipment that require 15 ppm diesel from potential liability resulting from defect reporting, emissions warranty obligations, and emission-recall requirements arising from, or in connection with misfueling with 500 ppm diesel. EPA has a long history of including flexibilities in its diesel program to allow the limited use of higher sulfur fuels in older vehicles and equipment that are not sulfur sensitive. The mechanisms designed to assign culpability and the consequences for misfueling are long established and are functioning adequately. Hence, we believe that providing such a blanket waiver of liability is neither necessary nor appropriate.

*Emission Impacts*

Transmix processors stated that EPA significantly underestimated the potential increase in emissions from additional truck transport of transmix distillate product if the envisioned flexibility is not finalized. One transmix processor in the NEMA area stated that they are currently shipping their transmix distillate product over 800 miles to find a market, greatly exceeding the 150 miles assumed by EPA in its analysis. They also noted the sulfur content for transmix distillate product is often in the range of 100 to 200 ppm, which is substantially lower that the assumed average sulfur content in EPA's emissions analysis. They stated that EPA underestimated the environmental benefits of implementation the proposed transmix flexibility by at least 40%.

A comment from a private individual was opposed to extending the date beyond which 500 ppm LM diesel fuel could be sold. This commenter stated that although the envisioned transmix flexibility might be environmentally beneficial on a national basis, the emissions would shift from one locale to another, affecting different people. The commenter stated that extending the use of 500 ppm LM would have substantial adverse health effects. The commenter stated that five minute exposures to sulfur dioxide, which is produced from sulfur in diesel when it is combusted, can trigger asthma attacks, which can be fatal. In addition, the commenter stated that relatively short term exposures to $PM_{2.5}$, which is also produced from combustion of diesel, can have adverse health impacts including death.

Response

The Agency is very concerned about the localized impacts of emissions. However, we do not believe that there are potential localized impacts from the transmix flexibility that warrant not finalizing this action. In addition, not finalizing this action would subject the fuel distribution system to the disruption and burden resulting from the absence of sufficient flexibility for disposal of diesel transmix. The commenter states that the transmix flexibility will result in a shift of emissions from one area to another. Under the scenario we evaluated, we note that $NO_X$, VOC, PM, $SO_2$, CO, and toxics emissions will be avoided on our roadways by avoiding the need to transport transmix distillate product by truck to distant markets or transmix to refinery processing facilities, while at the same time sulfate PM and $SO_2$ emissions may be increased slightly from the locomotive and marine applications along our rail lines and waterways where the transmix distillate is burned.[27] In the case of both the small emissions increases and decreases, these emissions impacts will be distributed over the broad areas where such equipment operates. The small changes in emission levels are expected to have very minimal effect on pollutant concentrations in any particular area. The increased concentrations resulting from these changes are likely to be overwhelmingly offset by the significant decreases in pollutant emissions (as a result of the ULSD program) in areas dominated by diesel engine sources, such as locations downwind of marine ports and rail lines. Studies in those locations report peak $SO_2$ concentrations below the National Ambient Air Quality Standard for $SO_2$ and well below the level at which respiratory symptoms are observed in some individuals with asthma.[28, 29] Furthermore, the diesel transmix flexibility, as in the original Nonroad, Locomotive, and Marine diesel final rulemaking was necessary to allow the distribution system to function while providing ULSD product. Without it the emission benefits of the ULSD program could not be achieved. When the diesel transmix provisions are viewed in light of the broader ULSD regulations of which they are a part, EPA is confident that any small increase in local $SO_2$ or PM emissions from the burning of transmix will be more than offset by the overall emissions reductions resulting from EPA's ULSD program.[30] Thus, even in areas where this transmix distillate product will be burned, the clean diesel program will be providing very large emission benefits. As the locomotive and marine engines fleet progressively turns over to engines that require the use of 15 ppm diesel fuel, the use of 500 ppm LM will gradually diminish and eventually disappear. EPA intends to evaluate in a later action

[27] See Section III.C in today's rule for a discussion of the emissions effects of the transmix flexibility.

[28] Ault, A.P.; Gaston, C.J.; Wang, Y.; Dominguez, G.; Thiemens, M.H.; Prather, K.A. (2010) Characterization of the single particle mixing state of individual ship plume events measured at the Port of Los Angeles. Environ Sci Technol 44: 1954–1961.

[29] Vutukuru, S.; Dabdub, D. (2008) Modeling the effects of ship emissions on coastal air quality: A case study of southern California. Atmos Environ 42: 3751–3764.

[30] See Section III.C. of today's notice for a discussion of the small emissions effects of the transmix flexibility in comparison to the emissions benefits from the ULSD program.

when the 500 ppm LM flexibility is no longer useful and should be retired.

The generation of transmix is a necessary consequence of the transportation of the cleaner fuel required by those regulations within the current fuel transportation system, and allowing it to be utilized in nearby locomotive and marine diesel applications is preferable to subjecting the market to supply disruptions or at a minimum requiring further transportation of fuel through methods that would increase transportation-related emissions.

*Due Process*

A private individual stated that although extending the date beyond which 500 ppm LM diesel fuel could be sold may be environmentally beneficial on a national basis, the shift of emissions from one locale to another associated with the flexibility means that the pollution will affect different people. The commenter stated that such a shift in emissions is unconstitutional, claiming it violates both substantive and procedural due process. The commenter stated that procedural due process requires more notice than a direct final rule in the **Federal Register**, which the commenter states almost no one reads. Moreover, the commenter states that substantive due process does not allow the federal government to authorize the killing of U.S. citizens for the ''convenience'' of a small group of corporations that own transmix processing facilities.

Response

We disagree with the comment that EPA's action is not constitutional by violating substantive due process. The commenter makes no attempt to justify the statement that EPA is violating substantive due process, and provides no legal support for such a statement. EPA is acting well within its authority under Title II of the Clean Air Act to develop and implement a diesel fuel program. Obviously, EPA is not authorizing the killing of U.S. citizens, and, as discussed above, the clean diesel program, which this final rule supports, actually reduces harmful emissions from diesel engines.

We further disagree that EPA has not provided sufficient procedural due process. EPA published a proposed rule in parallel with the direct final rule that was withdrawn due to a negative comment. EPA's publication of proposed rules in the **Federal Register** follows the procedure laid out in the Clean Air Act and provides adequate legal notice under the Federal Register Act. Publication of proposed EPA rules in the **Federal Register** has been the normal method of providing notice for decades, and those wishing to know of EPA proposals are best served if EPA continues to use this approach consistently. EPA is taking this final action based on our consideration of the comments received on that proposed rule.

*Effect of Rule on Analyses Under Other Laws*

A private individual stated that the proposed regulatory change would adversely impact many analyses under the National Environmental Policy Act (NEPA), State NEPAs, the Endangered Species Act, the National Historic Preservation Act, and various State laws which have assumed the use of 15 ppm sulfur LM diesel fuel. The comment claims that many of these analyses assume that 15 ppm sulfur will be used in locomotives and marine engines outside of NEMA and that the analyses will be incorrect. As an example, the commenter states that the Environmental Report for the proposed Amber Energy coal transferring facility at Port Morrow, Oregon, assumes that the locomotives and tugs will use 15 ppm sulfur diesel fuel. The commenter states that if EPA approves this rule, that analysis will be wrong.

Another commenter representing transmix facilities, responding to the previous commenter, stated that the previous comment was general and unsupported and pointed to no specific analysis where 15 ppm sulfur is assumed, nor did it quantify any net reductions in air pollution that would occur. The commenter also stated that the previous commenter did not reference analytical assumptions or whether any analysis is based on use of 15 ppm sulfur in engines not otherwise required to use such fuel. The commenter notes that CAA rulemakings are exempt from NEPA and states that the previous commenter does not identify a specific nexus between the regulatory action and the Endangered Species Act or the National Historic Preservation Act. The commenter also states that in the specific example provided in the earlier comment, the facility mentioned is currently at the proposal stage and a decision has been made to conduct an Environmental Assessment for the facility under NEPA. The commenter stated that they believe that no final regulatory analysis has been completed that is dependent on the use of 15 ppm sulfur diesel.

Response

EPA believes it is unlikely that the use of limited volumes of 500 ppm diesel fuel produced from transmix would have a substantial effect on NEPA or other analyses, or that it would even be possible to predict what volumes of such fuel would be used in a specific local area, for the purposes of such an analysis. As discussed in section III.C., EPA's analysis of the potential emission impacts nationwide shows no significant impacts. Given the relatively small volume of diesel fuel produced by transmix compared to the total volume of diesel fuel used in locomotives or marine engines, it is unlikely that any single NEPA analysis would reach different conclusions. However, EPA notes that both NEPA and the Endangered Species Act, at a minimum, provide for reconsideration of significant new information where appropriate. To the extent that any analysis may have assumed the use of 15 ppm sulfur LM diesel fuel, it may be appropriate to review the analysis to determine whether any effect resulting from potential use of limited volumes of 500 ppm diesel fuel produced from transmix should be considered. As the second commenter notes, it is not clear that any final regulatory analysis has depended on use of 15 ppm LM diesel fuel and would be affected by this final rule. The use of such fuel may occur for reasons unrelated to this rule, such as an agreement that newer locomotives would be used in connection with the project.

EPA also agrees with the second commenter that actions under the CAA are not subject to NEPA and that the initial commenter has provided no context or support for his allegations regarding any nexus between this action and analysis under the NEPA, the Endangered Species Act, the National Historic Preservation Act, or the ''various State laws'' referred to without citation by that commenter. In any case, as EPA notes above, the factual circumstances for this rule do not indicate any significant effect on any air pollution concentrations, and the commenter provides no information regarding the effect of this rule on interests affected by the other statutes.

*Regulations Related to the Production of 500 ppm From Transmix by Pipeline Operators*

A pipeline operator stated that the current rulemaking does not provide certainty that pipelines can produce 500 ppm LM diesel and distribute that fuel to their customers without requiring the transmix to be moved to or through transmix processor facilities.

Response

Pipeline processors produce 500 ppm LM from the interface mixture between batches of ULSD and higher sulfur distillates (*i.e.* jet fuel and heating oil). The production of such 500 ppm fuel by pipeline operators does not require the use of a distillation tower used by transmix processors to separate gasoline from distillate fuel.

We agree that the regulations should be amended to provide clarity that pipeline operators as well as transmix processors can produce 500 ppm LM from transmix. This was EPA's intent when the original 500 ppm LM transmix flexibility was finalized in the nonroad diesel rulemaking and has been EPA's policy since. However, the regulatory text was primarily focused on the production of 500 ppm LM by transmix processors.

## V. 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 action is not a ''significant regulatory action.'' Accordingly, the Office of Management and Budget (OMB) waived review of this action under Executive Orders 12866 and 13563 (76 FR 3821 (January 21, 2011)).

### *B. Paperwork Reduction Act*

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The reporting requirements apply to transmix processors and pipeline operators who produce diesel fuel from transmix (all of whom are refiners) and other parties (such as carriers or distributors) in the distribution chain who handle diesel fuel produced from transmix. The collected data will permit EPA to: (1) Process compliance plans from producers of diesel fuel from transmix; and (2) Ensure that diesel fuel made from transmix meets the standards required under the regulations at 40 CFR Part 80, and that the associated benefits to human health and the environment are realized. We estimate that 25 producers of diesel fuel from transmix and 150 other parties may be subject to the proposed information collection. We estimate an annual reporting burden of 28 hours per producer of diesel fuel from transmix (respondent) and 8 hours per other party (respondent); considering all respondents (producers of diesel fuel from transmix and other parties) who would be subject to the proposed information collection, the annual reporting burden, per respondent, would be 11 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review the instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transit or otherwise disclose the information. Burden is as defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

### *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 rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action 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 new requirements on small entities. The amendments to the diesel transmix provisions would lessen the regulatory burden on all affected transmix processors and provide a source of lower cost locomotive and marine diesel fuel to consumers.

### *D. Unfunded Mandates Reform Act*

This 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. We have determined that this action will not result in expenditures of $100 million or more for the above parties and thus, this rule is not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Reform Act (UMRA).

This 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. It only applies to diesel fuel producers, distributors, and marketers and makes relatively minor modifications to the diesel sulfur regulations.

### *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 only applies to diesel fuel producers, distributors, and marketers and makes relatively minor modifications to the diesel sulfur regulations. Thus, Executive Order 13132 does not apply to this action.

### *F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)*

This rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249 (November 9, 2000)). It applies to diesel fuel producers, distributors, and marketers. This action makes relatively minor modifications to the diesel sulfur regulations, and does not impose any

enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

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

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

This action is not subject to 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 will be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve 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 (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 final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. In the case of both the small emissions increases and decreases, these emissions impacts will be distributed over the broad areas where such equipment operates. The small changes in emission levels are expected to have very minimal effect on pollutant concentrations in any particular area.

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

## VI. Statutory Provisions and Legal Authority

Statutory authority for the rule finalized today can be found in Section 211 of the Clean Air Act, 42 U.S.C. 7545. Additional support for the procedural and compliance related aspects of today's rule, including the recordkeeping requirements, come from sections 114, 208, and 301(a) of the Clean Air Act, 42 U.S.C. 7414, 7542, and 7601(a).

## List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Diesel Fuel, Transmix, Energy, Labeling, Motor vehicle pollution, Penalties, Petroleum, Reporting and recordkeeping requirements.

Dated: December 14, 2012.

**Lisa P. Jackson,**

*Administrator.*

For the reasons set forth in the preamble, 40 CFR part 80 is amended as follows:

## PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 is revised to read as follows:

**Authority:** 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

## Subpart I—Motor Vehicle Diesel Fuel; Nonroad, Locomotive, and Marine Diesel Fuel; and ECA Marine Fuel

■ 2. Section 80.511 is amended by revising paragraph (b)(4) to read as follows:

### § 80.511 What are the per-gallon and marker requirements that apply to NRLM diesel fuel, ECA marine fuel, and heating oil downstream of the refiner or importer?

* * * * *

(b) * * *

(4) Except as provided in paragraphs (b)(5) through (8) of this section, the per-gallon sulfur standard of § 80.510(c) shall apply to all NRLM diesel fuel beginning August 1, 2014 for all downstream locations other than retail outlets or wholesale purchaser-consumer facilities, shall apply to all NRLM diesel fuel beginning October 1, 2014 for retail outlets and wholesale purchaser-consumer facilities, and shall apply to all NRLM diesel fuel beginning December 1, 2014 for all locations. This paragraph (b)(4) does not apply to LM diesel fuel produced from transmix that is sold or intended for sale in areas other than in the area listed in § 80.510(g)(2) (*i.e.* Alaska), as provided by § 80.513(f).

* * * * *

■ 3. Section 80.513 is amended as follows:

■ a. By revising the section heading.

■ b. By revising the introductory text.

■ c. By revising paragraphs (d) and (e).

■ d. By adding new paragraphs (f), (g), and (h).

### § 80.513 What provisions apply to transmix processing facilities and pipelines that produce diesel fuel from pipeline interface?

For purposes of this section, transmix means a mixture of finished fuels, such as pipeline interface, that no longer meets the specifications for a fuel that can be used or sold without further processing or handling. For the purposes of this section, pipeline interface means the mixture between different fuels that abut each other during shipment by pipeline. This section applies to refineries (or other facilities) that produce diesel fuel from transmix by distillation or other refining processes but do not produce diesel fuel by processing crude oil and to pipelines that produce diesel fuel from transmix.

This section only applies to the volume of diesel fuel produced from transmix by a transmix processor using these processes, and to the diesel fuel volume produced by a pipeline operator from transmix. This section does not apply to any diesel fuel volume produced by the blending of blendstocks.

* * * * *

(d) From June 1, 2010 through May 31, 2014, NRLM diesel fuel produced by a transmix processor or a pipeline facility that produces diesel fuel from transmix is subject to the standards under § 80.510(a). This paragraph (d) does not apply to NRLM diesel fuel that is sold or intended for sale in the areas listed in § 80.510(g)(1) or (g)(2).

(e) From June 1, 2014 and beyond, NRLM diesel fuel produced by a transmix processor and a pipeline facility that produces diesel fuel from transmix is subject to the standards of § 80.510(c).

(f) From February 25, 2013 through May 31, 2014, LM diesel fuel produced by a transmix processor or a pipeline facility that produces diesel fuel from transmix that is sold or intended for sale in the area listed in § 80.510(g)(1) is subject to the standards of § 80.510(a) provided that the conditions in paragraph (h) of this section are satisfied. Diesel fuel produced from transmix that does not meet the conditions in paragraph (h) of this section is subject to the sulfur standard in § 80.510(c).

(g) Beginning June 1, 2014, LM diesel fuel produced by a transmix processor or a pipeline facility that produces diesel fuel from transmix is subject to the sulfur standard of § 80.510(a), provided that the conditions in paragraph (h) of this section are satisfied. Diesel fuel produced from transmix that does not meet the conditions in paragraph (h) of this section is subject to the sulfur standard in § 80.510(c).

(h) The following conditions must be satisfied to allow the production of 500 ppm LM under paragraphs (f) and (g) of this section.

(1) The fuel must be produced from transmix.

(2) The fuel must not be sold or intended for sale in the area listed in § 80.510(g)(2) (*i.e.,* Alaska).

(3) A facility producing 500 ppm LM diesel fuel must obtain approval from the Administrator for a compliance plan. The compliance plan must detail how the facility will segregate any 500 ppm LM diesel fuel produced subject to the standards under § 80.510(a) from the producer through to the ultimate consumer from fuel having other designations. The compliance plan must demonstrate that the end users of 500 ppm LM will also have access to 15 ppm diesel fuel for use in those engines that require the use of 15 ppm diesel fuel. The compliance plan must identify the entities that handle the 500 ppm LM through to the ultimate consumer. No more than 4 separate entities shall handle the 500 ppm LM between the producer and the ultimate consumer. The compliance plan must also identify all ultimate consumers to whom the refiner supplies the 500 ppm LM diesel fuel. The compliance plan must detail how misfueling of 500 ppm LM into vehicles or equipment that require the use of 15 ppm diesel fuel will be prevented.

(i) Producers of 500 ppm LM diesel fuel must be registered with EPA under § 80.597 prior to the distribution of any 500 ppm LM diesel fuel.

(ii) Producers of 500 ppm LM must initiate a PTD that meets the requirements in paragraph (h)(3)(iii) of this section.

(iii) All transfers of 500 ppm LM diesel fuel must be accompanied by a PTD that clearly and accurately states the fuel designation; the PTD must also meet all other requirements of § 80.590.

(iv) Batches of 500 ppm LM may be shipped by pipeline provided that such batches do not come into physical contact in the pipeline with batches of other distillate fuel products that have a sulfur content greater than 15 ppm.

(v) The volume of 500 ppm LM shipped via pipeline under paragraph (h)(3)(iv) of this section may swell by no more than 2% upon delivery to the next party. Such a volume increase may only be due to volume swell due to temperature differences when the volume was measured or due to normal pipeline interface cutting practices notwithstanding the requirement under paragraph (h)(3)(iv) of this section.

(vi) Entities that handle 500 ppm LM must calculate the balance of 500 ppm LM received versus the volume delivered and used on an annual basis.

(vii) The records required in this section must be maintained for five years, by each entity that handles 500 ppm LM and be made available to EPA upon request.

(4) All parties that take custody of 500 ppm LM must segregate the product from other fuels and observe the other requirements in the compliance plan approved by EPA pursuant to paragraph (h)(3) of this section.

■ 4. Section 80.572 is amended by revising the section heading and paragraph (d) to read as follows:

**§ 80.572 What labeling requirements apply to retailers and wholesale purchaser-consumers of Motor Vehicle, NR, LM and NRLM diesel fuel and heating oil beginning June 1, 2010?**

* * * * *

(d) From June 1, 2010 through September 30, 2012 and from February 25, 2013 and thereafter, for pumps dispensing LM diesel fuel subject to the 500 ppm sulfur standard of § 80.510(a):

LOW SULFUR LOCOMOTIVE AND MARINE DIESEL FUEL (500 ppm Sulfur Maximum)

WARNING

Federal law *prohibits* use in nonroad engines or in highway vehicles or engines.

* * * * *

■ 5. Section 80.597 is amended by adding paragraph (d)(3)(ii) to read as follows:

**§ 80.597 What are the registration requirements?**

* * * * *

(d) * * *

(3) * * *

(ii) Fuel designated as 500 ppm LM diesel fuel.

* * * * *

[FR Doc. 2012–30960 Filed 12–21–12; 4:15 pm]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 42 CFR Part 70

**[Docket No. CDC–2012–0016]**

**RIN 0920–AA22**

## Control of Communicable Diseases: Interstate; Scope and Definitions

**AGENCY:** Centers for Disease Control and Prevention (HHS/CDC), Department of Health and Human Services (HHS).

**ACTION:** Direct Final Rule and request for comments.

**SUMMARY:** In this Direct Final Rule, the Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) is proposing to update the definitions for interstate quarantine regulations to reflect modern terminology and plain language used by private industry and public health partners. These updates will not affect current practices. As part of the update, we are updating two existing definitions and adding eight new definitions to clarify existing provisions, as well as updating regulations to reflect the most recent Executive Order addressing quarantinable communicable diseases.

**DATES:** The DFR is effective on February 25, 2013 unless significant adverse comment is received by January 25, 2013. If we receive no significant adverse comments within the specified comment period, we intend to publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on this DFR ends. If we receive any timely significant adverse comment, we will withdraw this DFR in part or in whole by publication of a document in the **Federal Register** within 30 days after the comment period ends.

**ADDRESSES:** You may submit comments, identified by ''RIN 0920–AA22'' by any of the following methods:

- *Internet:* Access the Federal e-rulemaking portal at *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–03, Atlanta, Georgia 30333, ATTN: Part 70 DFR.

*Instructions:* All submissions received must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking. All relevant comments will be posted without change to *http://regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, please go to *http://www.regulations.gov.* Comments will be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m., Eastern Time, at 1600 Clifton Road NE., Atlanta, Georgia 30333. Please call ahead to 1–866–694–4867 and ask for a representative in the Division of Global Migration and Quarantine (DGMQ) to schedule your visit. To download an electronic version of the rule, access *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** For questions concerning this direct final rule: Ashley A. Marrone, JD, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop E–03, Atlanta, Georgia 30333; telephone 404–498–1600.

**SUPPLEMENTARY INFORMATION** HHS/CDC is publishing a DFR because it does not expect to receive any significant adverse comments and believes that updating definitions to add clarity to the regulations is non-controversial. However, in this **Federal Register**, HHS/CDC is simultaneously publishing a companion notice of proposed rulemaking (NPRM) that proposes identical modifications. If HHS/CDC does not receive any significant adverse comments on this DFR within the specified comment period, we will publish a document in the **Federal Register** confirming the effective date of this final rule within 30 days after the comment period on the DFR ends and withdraw the NPRM. If HHS/CDC receives any timely significant adverse comment, we will withdraw the DFR in part or in whole by publication of a document in the **Federal Register** within 30 days after the comment period ends. HHS/CDC will carefully consider all public comments received before proceeding with any subsequent final rule based on the NPRM. A significant adverse comment is one that explains: (1) Why the DFR is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the DFR will be ineffective or unacceptable without a change.

This preamble is organized as follows:

I. Public Participation
II. Authority for These Regulations
III. Rationale for DFR
IV. Updates to Section 70.1
  A. Definitions Updated Under Section 70.1
  B. Definitions Added to Section 70.1
V. Rationale for Updates Under Section 70.6
VI. Alternatives Considered
VII. Required Regulatory Analyses
  A. Required Regulatory Analyses Under Executive Orders 12866 and 13563
  B. Regulatory Flexibility Act
  C. Small Business Regulatory Enforcement Fairness Act of 1996
  D. The Paperwork Reduction Act of 1995
  E. National Environmental Policy Act (NEPA)
  F. Civil Justice Reform (Executive Order 12988)
  G. Executive Order 13132 (Federalism)
  H. Plain Language Act of 2010

## I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written views, opinions, recommendations, and data. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you do not wish to be disclosed publicly. Comments are invited on any topic related to this DFR.

## II. Authority for These Regulations

The primary authority supporting this rulemaking is section 361 of the Public Health Service Act (42 U.S.C. 264). Section 361 authorizes the Secretary of HHS to make and enforce regulations as in the Secretary's judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the states or possessions of the United States and from one state or possession into any other state or possession. Regulations that implement federal quarantine authority are currently promulgated in 42 CFR Parts 70 and 71. Part 71 contains regulations to prevent the introduction, transmission, and spread of communicable diseases into the states and possessions of the United States, while Part 70 contains regulations to prevent the introduction, transmission, or spread of communicable diseases from one state into another. The Secretary has delegated to the Director of the Centers for Disease Control and Prevention the authority for implementing these regulations.

Authority for carrying out most of these functions has been delegated to HHS/CDC's Division of Global Migration and Quarantine (DGMQ). The Secretary's authority to apprehend, examine, detain, and conditionally release individuals is limited to those quarantinable communicable diseases published in an Executive Order of the President. This list currently includes cholera, diphtheria, infectious tuberculosis (TB), plague, smallpox, yellow fever, and viral hemorrhagic fevers, such as Marburg, Ebola, and Crimean-Congo hemorrhagic fever (CCHF), Severe Acute Respiratory Syndrome (SARS), and influenza caused by novel or re-emergent influenza viruses that are causing or have the potential to cause a pandemic (see Executive Order 13295, as amended by Executive Order 13375 on April 1, 2005).

## III. Rationale for DFR

Through this DFR, HHS/CDC is updating definitions to Part 70 to reflect modern science and current practices. HHS/CDC has chosen to publish a DFR because we view this as a non-controversial action and anticipate no significant adverse comment. This DFR does not create any additional requirements or burden upon the regulated community, nor does it affect the current practices of HHS/CDC. A significant adverse comment is one that explains: (1) Why the DFR is inappropriate, including challenges to

the rule's underlying premise or approach; or (2) why the DFR will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of the DFR, HHS/CDC will consider whether it warrants a substantive response in a notice and comment process. If we receive significant adverse comment on this DFR, we will publish a timely withdrawal in the **Federal Register** informing the public that the amendment in this rule will not take effect. If this DFR is withdrawn, we will carefully consider all public comments before proceeding with any subsequent final rule based on the NPRM which is being published simultaneously in the **Federal Register**.

## IV. Updates to Section 70.1

Regulations that implement federal authority for interstate quarantine are currently promulgated in 42 CFR part 70. The Secretary of HHS has delegated to the Director of the Centers for Disease Control and Prevention the authority for implementing 42 CFR part 70.

Through this DFR, HHS/CDC proposes to update the Definitions for 42 CFR part 70, under section 70.1, to reflect modern terminology and plain language commonly used by private sector industry and public health partners, as well as clarify the intent of the provisions that follow. Specifically, we are updating two existing definitions and adding eight new definitions to clarify existing provisions, as well as updating 70.6 to reflect the language of the most recent Executive Order concerning quarantinable communicable diseases.

Section 70.1(b) contains the definitions used in this DFR. The DFR proposes new or updated definitions to be consistent with modern quarantine concepts and current medical and public health principles and practice. Table 1 lists the current definitions found in 42 CFR part 70 and the definitions proposed in this DFR.

TABLE 1—DEFINITIONS AND CORRESPONDING CHANGES IN DEFINITIONS IN THE FINAL RULE

| Existing definitions in 42 CFR part 70 | Corresponding, new or updated definition in DFR |
|---|---|
| | CDC. |
| Communicable diseases | No Change. |
| Communicable period | No Change. |
| | Conditional release. |
| Conveyance | No Change, |
| | Director. |
| Incubation period | No Change. |
| Interstate traffic | No Change. |
| | Isolation. |
| | Master or Operator. |
| Possession | Updated. |
| | Quarantine. |
| | Quarantinable communicable disease. |
| State | Updated. |
| | U.S Territory. |
| Vessel | No Change. |

### *A. Definitions Updated Under Section 70.1*

*Possession.* To best add clarity to part 70, we have updated the term ''possession'' to mean ''U.S. Territory'' and defined U.S. Territory to include American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Currently, only Puerto Rico and the Virgin Islands are explicitly listed in the definition. Thus, CDC is updating this provision to explicitly list the other U.S. jurisdictions to which this part applies.

*State.* To best add clarity to the regulations of part 70, specifically where roles and responsibilities are outlined, we have included a definition of ''state'' to mean any of the 50 states within the United States, plus the District of Columbia.

### *B. Definitions Added to Section 70.1*

*CDC.* We have defined ''CDC'' to mean the Centers for Disease Control and Prevention within the Department of Health and Human Services to clarify the provisions under part 70.

*Conditional release.* We have defined ''conditional release'' to have the same meaning as ''surveillance,'' as that term is defined in 42 CFR Part 71. We have included this definition to best add clarity to the provisions and practices under part 70, specifically section 70.6, as well as to ensure that conditional release and surveillance are both used consistently in both parts 70 and 71.

*Director.* To clarify the provisions under part 70, we have defined ''Director'' to mean the Director, Centers for Disease Control and Prevention, Department of Health and Human Services, or another authorized representative as approved by the CDC Director or the Secretary of HHS.

*Isolation.* In this DFR, ''isolation'' is defined as the separation of an individual or group reasonably believed to be infected with a quarantinable communicable disease from those who are healthy to prevent the spread of the quarantinable communicable disease. This DFR clarifies the distinction between quarantine and isolation by separately defining ''quarantine'' and ''isolation'' to distinguish these common public health measures. Isolation, as currently used in 42 CFR 71.1, applies to both persons and groups of persons. Thus, CDC is changing the definition in part 70 so that the term is used consistently in both part 70 and 71. Applying isolation measures to groups of individuals is consistent with CDC's current practice and does not constitute a substantive change.

*Master* or *Operator.* This DFR defines ''Master'' or ''Operator'' as the aircrew or sea crew member with responsibility respectively for aircraft or vessel operation and navigation or a similar individual with responsibility for a conveyance. We have included this definition to better identify and assign responsibilities under this subpart (according to current practices).

*Quarantine.* This DFR defines ''quarantine'' as the separation of an individual or group reasonably believed to have been exposed to a quarantinable communicable disease, but not yet ill,

from others who have not been so exposed, to prevent the possible spread of the quarantinable communicable disease. In this DFR, HHS/CDC is separately defining quarantine and isolation to distinguish these common public health measures. Applying quarantine measures to groups of individuals is consistent with HHS/CDC's current practice and does not constitute a substantive change.

*Quarantinable communicable disease.* Under this DFR, ''quarantinable communicable disease'' means any of the communicable diseases listed in an Executive Order, as provided under section 361 of the Public Health Service Act (42 U.S.C. 264). Executive Order 13295, of April 4, 2003, as amended by Executive Order 13375 of April 1, 2005, contains the current revised list of quarantinable communicable diseases, and may be found at *http://www.cdc.gov/quarantine* and in the docket as supplemental documents. If this Executive Order is amended, HHS/CDC will enforce the amended order immediately and update its Web site. The definition for ''quarantinable communicable disease'' is being added to Part 70 through this DFR to reflect the most recent Executive Order regarding quarantinable communicable disease. This addition does not reflect a substantive change from current practice.

*U.S. Territory.* Under this DFR, ''U.S. Territory'' means any territory (also known as possessions) of the United States including American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. The Department of the Interior's Office of Insular Affairs, the federal government's cognizant agency for U.S. territories, no longer uses the term ''possession'' to refer to these jurisdictions. Consequently, HHS/CDC is adding a new definition for U.S. territory consistent with current federal usage.

## V. Updates to Section 70.6

Section 70.6, *Apprehension and detention of persons with specific diseases,* contains the general authority for the Director to take measures with respect to persons to protect the public's health against the spread of communicable diseases ''listed in an Executive Order setting out a list of quarantinable communicable diseases, as provided under section 361(b) of the Public Health Service Act.'' The current section 71.32(a) lists Executive Order 13295, of April 4, 2003. The subpart states that ''If this Order is amended, HHS will enforce that amended order.'' On April 1, 2005, this Executive Order was amended by Executive Order 13375. Therefore, as part of the non-controversial changes in this DFR, we are also updating section 70.6 to reflect the most recent amendment to the Executive Order which lists the ''quarantinable communicable disease'', which we have also defined. These changes are not substantive and will not affect current practices.

## VI. Alternatives Considered

Under Executive Order 13563 agencies are asked to consider all feasible alternatives to current practice and the rule as proposed. HHS/CDC notes that the main impact of this proposed rule is to update current definitions and clarify language in the current regulation to reflect modern terminology and plain language commonly used by global private sector industry and public health partners. The intent of these updates is to clarify the provisions of the existing regulation to help the regulated community comply with current regulation and protect public health. HHS/CDC believes that this rulemaking complies with the spirit of the Executive Order; updating current definitions, clarifying language, and updating the referenced Executive Order provides good alternatives to the current regulation.

## VII. Required Regulatory Analyses

### *A. Required Regulatory Analyses Under Executive Orders 12866 and 13563*

Under Executive Order 12866 (EO 12866), Regulatory Planning and Review (58 FR 51735, October 4, 1993) HHS/CDC is required to determine whether this regulatory action would be ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Orders. This order defines ''significant regulatory action'' as any regulatory action that is likely to result in a rule that may:

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or,
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Executive Order 13563 (E.O. 13563), Improving Regulation and Regulatory Review, (76 FR 3821, January 21, 2011), updates some of the provisions of E.O. 12866 in order to promote more streamlined regulatory actions. This E.O. charges, in part, that, while protecting ''public health, welfare, safety, and our environment'' that regulations must also ''promote predictability and reduce uncertainty'' in order to promote economic growth. Further, regulations must be written in common language and be easy to understand. In the spirit of E.O. 13563, this DFR enhances definitions related to the control of communicable diseases and add more current medical terminology where appropriate.

HHS/CDC has determined that this DFR is simply an update and clarification of definitions and terms used in the current regulation. As such, the DFR complies with the spirit of E.O. 13563. Further, HHS/CDC has determined that this DFR is not a significant regulatory action as defined in E.O. 12866 because the DFR is definitional and does not change the baseline costs for any of the primary stakeholders.

### *B. Regulatory Flexibility Act*

We have examined the impacts of the rule under the Regulatory Flexibility Act (5 U.S.C. 601–612). Unless we certify that the rule is not expected to have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. We certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

### *C. Small Business Regulatory Enforcement Fairness Act of 1996*

This DFR is not a major rule as defined by Sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

*D. The Paperwork Reduction Act of 1995*

HHS/CDC has already determined that the Paperwork Reduction Act applies to the data collection and record keeping requirements of 42 CFR part 70 and has obtained approval by the Office of Management and Budget (OMB) to collect data and require record keeping under OMB Control No. 0920–0488, expiration 03/31/2013. The changes in this rule do not impact the data collection or record keeping requirements and do not require revision to the approval from OMB.

*E. National Environmental Policy Act (NEPA)*

Pursuant to 48 FR 9374 (list of HHS/CDC program actions that are categorically excluded from the NEPA environmental review process), HHS/CDC has determined that this action does not qualify for a categorical exclusion. In the absence of an applicable categorical exclusion, the Director, CDC, has determined that provisions amending 42 CFR part 70 will not have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

*F. Civil Justice Reform (Executive Order 12988)*

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

*G. Executive Order 13132 (Federalism)*

HHS/CDC has reviewed this rule in accordance with Executive Order 13132 regarding Federalism, and has determined that it does not have ''federalism implications.'' The rule does 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.''

*H. Plain Language Act of 2010*

Under Public Law 111–274 (October 13, 2010), executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal Government administers or enforces. HHS/CDC has attempted to use plain language in promulgating this rule consistent with the Federal Plain Writing Act and requests public comment on this effort.

**List of Subjects in Part 70**

Communicable diseases, Isolation, Public health, Quarantine, Quarantinable communicable disease.

**Amended Text**

For the reasons discussed in the preamble, the Centers for Disease Control and Prevention amends 42 CFR part 70 as follows:

## PART 70—INTERSTATE QUARANTINE

■ 1. The authority citation for part 70 continues to read as follows:

**Authority:** Secs. 215 and 311 of the Public Health Service (PHS) Act, as amended (42 U.S.C. 216, 243); section 361–369, PHS Act, as amended (42 U.S.C. 264–272); 31 U.S.C. 9701.

■ 2. Amend § 70.1 as follows:

■ a. Remove paragraph designations (a), (b), (c), (d), (e), (f), and (g).

■ b. Add in alphabetical order definitions of CDC, Conditional release, Director, Isolation, Master or Operator, Quarantine, Quarantinable communicable disease, and U.S. Territory.

■ c. Revise the definitions of Possession and State. The revisions and additions read as follows:

### § 70.1 General definitions.

* * * * *

*CDC* means the Centers for Disease Control and Prevention, Department of Health and Human Services.

* * * * *

*Conditional release* means ''surveillance'' as that term is defined in 42 CFR 71.1.

* * * * *

*Director* means the Director, Centers for Disease Control and Prevention, Department of Health and Human Services, or another authorized representative as approved by the CDC Director or the Secretary of HHS.

* * * * *

*Isolation* means the separation of an individual or group reasonably believed to be infected with a quarantinable communicable disease from those who are healthy to prevent the spread of the quarantinable communicable disease.

*Master* or *Operator* means the aircrew or sea crew member with responsibility respectively for aircraft or vessel operation and navigation, or a similar individual with responsibility for a conveyance.

*Possession* means U.S. Territory.

*Quarantine* means the separation of an individual or group reasonably believed to have been exposed to a quarantinable communicable disease, but who are not yet ill, from others who have not been so exposed, to prevent the possible spread of the quarantinable communicable disease.

*Quarantinable communicable disease* means any of the communicable diseases listed in an Executive Order, as provided under section 361 of the Public Health Service Act. Executive Order 13295, of April 4, 2003, as amended by Executive Order 13375 of April 1, 2005, contains the current revised list of quarantinable communicable diseases, and may be obtained at *http://www.cdc.gov* and *http://www.archives.gov/federal_register.* If this Order is amended, HHS will enforce that amended order immediately and update that Web site.

*State* means any of the 50 states, plus the District of Columbia.

*U.S. Territory* means any territory (also known as possessions) of the United States, including American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

* * * * *

■ 3. Revise § 70.6 to read as follows:

### § 70.6 Apprehension and detention of persons with specific diseases.

Regulations prescribed in this part authorize the detention, isolation, quarantine, or conditional release of individuals, for the purpose of preventing the introduction, transmission, and spread of the communicable diseases listed in an Executive Order setting out a list of quarantinable communicable diseases, as provided under section 361(b) of the Public Health Service Act. Executive Order 13295, of April 4, 2003, as amended by Executive Order 13375 of April 1, 2005, contains the current revised list of quarantinable communicable diseases, and may be obtained at *http://www.cdc.gov/quarantine* and *http://www.archives.gov/federal_register.* If this Order is amended, HHS will enforce that amended order immediately and update its Web site.

Dated: December 13, 2012.

**Kathleen Sebelius**

*Secretary, Department of Health and Human Services.*

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BILLING CODE 4163–18–P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**42 CFR Part 71**

**[Docket No. CDC–2012–0017]**

**RIN 0920–AA12**

## Control of Communicable Diseases: Foreign; Scope and Definitions

**AGENCY:** Centers for Disease Control and Prevention (HHS/CDC), Department of Health and Human Services (HHS).

**ACTION:** Direct Final Rule and request for comments.

**SUMMARY:** Through this Direct Final Rule, the Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) is updating and reorganizing the Scope and Definitions for foreign quarantine regulations and add a new section to contain definitions for *Importations.* This Direct Final Rule (DFR) will update the scope and definitions to reflect modern terminology and plain language used globally by industry and public health partners. As part of the update, we are updating five existing definitions; adding thirteen new definitions to help clarify existing provisions; creating a new scope and definitions section for *Importations* under a new section by reorganizing existing definitions into this new section; and updating regulations to reflect the language used by the most recent Executive Order regarding quarantinable communicable diseases.

**DATES:** The direct final rule is effective on February 25, 2013 unless significant adverse comment is received by January 25, 2013. If we receive no significant adverse comments within the specified comment period, we intend to publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on this DFR ends. If we receive any timely significant adverse comment, we will withdraw this final rule in part or in whole by publication of a document in the **Federal Register** within 30 days after the comment period ends.

**ADDRESSES:** You may submit comments, identified by ''RIN 0920–AA12'': by any of the following methods:

- *Internet:* Access the Federal e-Rulemaking Portal at *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–03, Atlanta, Georgia 30333, ATTN: Part 71 DFR.

*Instructions:* All submissions received must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking. All relevant comments will be posted without change to *http://regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, please go to *http://www.regulations.gov.* Comments will also be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m., Eastern Standard Time, at 1600 Clifton Road NE., Atlanta, Georgia 30333. Please call ahead to 1–866–694–4867 and ask for a representative in the Division of Global Migration and Quarantine (DGMQ) to schedule your visit. To download an electronic version of the rule, access *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** For questions concerning this direct final rule: Ashley A. Marrone, JD, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop E–03, Atlanta, Georgia 30333; telephone 404–498–1600.

**SUPPLEMENTARY INFORMATION:** HHS/CDC is publishing a direct final rule (DFR) because it does not expect to receive any significant adverse comments and believes that updating scope and definitions to add clarity to the regulations is non-controversial. However, in this **Federal Register,** HHS/CDC is simultaneously publishing a companion notice of proposed rulemaking (NPRM) that proposes identical updates. If HHS/CDC does not receive any significant adverse comments on this DFR within the specified comment period, we will publish a document in the **Federal Register** confirming the effective date of this final rule within 30 days after the comment period on the DFR ends and withdraw the NPRM. If HHS/CDC receives any timely significant adverse comment, we will withdraw the DFR in part or in whole by publication of a document in the **Federal Register** within 30 days after the public comment period ends. If the DFR is withdrawn, we will carefully consider all public comments before proceeding with any subsequent final rule based on the NPRM. A significant adverse comment is one that explains: (1) Why the DFR is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the DFR will be ineffective or unacceptable without a change.

This preamble is organized as follows:

I. Public Participation
II. Authority for These Regulations
III. Rationale for Direct Final Rule
IV. Updates to 42 CFR 71.1, 71.32(a) and 71.50
V. Scope and Definitions for Section 71.1
  A. Definitions Updated under Section 71.1
  B. Definitions Added to Section 71.1
VI. Update of Section 71.32(a)
VII. Scope and Definitions for Section 71.5
  A. Definitions Added to Section 71.50
VIII. Alternatives Considered
IX. Required Regulatory Analysis
  A. Required Regulatory Analyses under Executive Orders 12866 and 13563
  B. Regulatory Flexibility Act
  C. Small Business Regulatory Enforcement Fairness Act of 1996
  D. The Paperwork Reduction Act of 1995
  E. National Environmental Policy Act (NEPA)
  F. Civil Justice Reform (Executive Order 12988)
  G. Executive Order 13132 (Federalism)
  H. Plain Language Act of 2010

### I. Public Participation.

Interested persons are invited to participate in this rulemaking by submitting written views, opinions, recommendations, and data. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you do not wish to be disclosed publicly. Comments are invited on any topic related to this DFR.

### II. Authority for These Regulations.

The primary authority supporting this rulemaking is section 361 of the Public Health Service Act (42 U.S.C. 264). Section 361 authorizes the Secretary of HHS to make and enforce regulations as in the Secretary's judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the states or possessions of the United States and from one state or possession into any other state or possession. Regulations that implement federal quarantine authority are currently promulgated in 42 CFR Parts 70 and 71. Part 71 contains regulations to prevent the introduction, transmission, and spread of communicable diseases into the states and possessions of the United States, while Part 70 contains regulations to

prevent the introduction, transmission, or spread of communicable diseases from one state into another. CDC is updating the term ''possession'' to ''territory.'' The U.S. Department of the Interior's Office of Insular Affairs, the lead federal agency on issues involving the territories, no longer uses the term ''possession'' to refer to the insular areas. Therefore, CDC is adopting the predominant term ''territory'' consistent with how other federal agencies use this term. The Secretary has delegated to the Director of the Centers for Disease Control and Prevention the authority for implementing these regulations.

Authority for carrying out most of these functions has been delegated to HHS/CDC's Division of Global Migration and Quarantine (DGMQ). The Secretary's authority to apprehend, examine, detain, and conditionally release individuals is limited to those quarantinable communicable diseases published in an Executive Order of the President. This list currently includes cholera, diphtheria, infectious tuberculosis (TB), plague, smallpox, yellow fever, and viral hemorrhagic fevers, such as Marburg, Ebola, and Crimean-Congo hemorrhagic fever (CCHF), Severe Acute Respiratory Syndrome (SARS), and influenza caused by novel or re-emergent influenza viruses that are causing or have the potential to cause a pandemic (see Executive Order 13295, as amended by Executive Order 13375 on April 1, 2005).

## III. Rationale for Direct Final Rule

Through this Direct Final Rule (DFR), HHS/CDC is updating the scope and definitions to part 71 to reflect modern science and current practices. HHS/CDC has chosen to publish a DFR because we view this as a non-controversial action and anticipate no significant adverse comment. This DFR does not create any additional requirements or burden upon the regulated community nor does it alter current HHS/CDC practices.

A significant adverse comment is one that explains: (1) Why the DFR is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the DFR will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this DFR, HHS/CDC will consider whether it warrants a substantive response through a notice and comment process. If we receive significant adverse comment on this DFR, we will publish a timely withdrawal in the **Federal Register** informing the public that the amendments in this rule will not take effect. If this DFR is withdrawn, we will carefully consider all public comments before proceeding with any subsequent final rule based on the NPRM which is being published simultaneously in the **Federal Register**.

## IV. Updates to 42 CFR 71.1, 71.32(a) and 71.50

Through this DFR, HHS/CDC is updating the Scope and Definitions for 42 CFR Part 71 under section 71.1 and adding a new section 71.50, to reflect modern terminology and plain language commonly used by global private sector industry and public health partners. Specifically, we are updating five existing definitions, adding thirteen new definitions to help clarify existing provisions, and creating a new scope and definitions section within Part 71, under subpart F for Importations, by reorganizing certain existing definitions. In updating the definitions in Part 71, it became evident to us that certain definitions pertain more directly to *Importations* under subpart F than to Part 71 in general; therefore, we decided to reorganize the existing definitions by creating a new section 71.50 for this subpart to better clarify these terms for importers. We are also adding new definitions that have been crafted for section 71.50 to help clarify the intent of certain provisions under subpart F.

Finally, as part of the changes to definitions, we are also updating section 71.32(a) to incorporate the most recent listing of quarantinable communicable diseases under Executive Order 13295, of April 4, 2003, as amended by Executive Order 13375 of April 1, 2005. These changes are not substantive and will not affect current practices.

## V. Scope and Definitions for Part 71.1

Section 71.1(a) has been updated to include the current interstate quarantine regulations administered by HHS/CDC found at ''42 CFR part 70'' to the existing cross-reference citing ''21 CFR parts 1240 and 1250.''

On August 16, 2000, the Secretary transferred certain authority for interstate control of communicable disease, including the authority to apprehend, examine, detain, and conditionally release individuals moving from one state into another from HHS/Food and Drug Administration (FDA) to CDC, which became 42 CFR Part 70. As part of this transfer, FDA retained regulatory authority over animals and other products that may transmit or spread communicable disease. These other regulations may be found at 21 CFR parts 1240 and 1250. This rule has no effect upon FDA's regulatory authority. Accordingly, the new scope will read: ''The provisions of this part contain the regulations to prevent the introduction, transmission, and spread of communicable disease from foreign countries into the States or territories (also known as possessions) of the United States. Regulations pertaining to preventing the interstate spread of communicable diseases are contained in 21 CFR parts 1240 and 1250 and *42 CFR part 70.''*

Current section 71.1 (b) *Definitions* contains definitions used in the current CFR. This DFR adds new definitions and updates certain definitions for clarification and to be consistent with current industry and public health principles and practice.

Table 1 list the definitions found in the current 42 CFR part 71, subpart A, and compares them with the updated definitions in this DFR.

TABLE 1—SUBPART A—FOREIGN QUARANTINE DEFINITIONS AND CORRESPONDING CHANGES IN DEFINITIONS IN THE DFR

| Existing definitions in 42 CFR 71.1 | Corresponding, new or updated definition in DFR |
|---|---|
| Carrier | No Change. |
| | Commander. |
| Communicable disease | No Change. |
| Contamination | No Change. |
| Controlled Free Pratique | No Change. |
| Deratting Certificate | No Change. |
| Deratting Exemption Certificate | No Change. |
| Detention | No Change. |
| Director | No Change. |
| Disinfection | No Change. |

TABLE 1—SUBPART A—FOREIGN QUARANTINE—Continued
DEFINITIONS AND CORRESPONDING CHANGES IN DEFINITIONS IN THE DFR

| Existing definitions in 42 CFR 71.1 | Corresponding, new or updated definition in DFR |
|---|---|
| Disinfestation | No Change. |
| Disinsection | No Change. |
| Educational Purpose | Moved to new 71.50. |
| Exhibition Purpose | Moved to new 71.50. |
| Ill person | No Change. |
| International Health Regulations | Updated. |
| International voyage | No Change. |
| Isolation | Updated. |
| Military Services | No Change. |
| | Quarantine. |
| | Quarantinable Communicable disease. |
| | Possession. |
| Scientific Purpose | Moved to new 71.50. |
| Surveillance | Updated. |
| U.S. port | No Change. |
| | U.S. Territory. |
| United States | Updated. |
| Vector | Updated. |

*A. Definitions Updated Under Section 71.1*

*International Health Regulations or IHR.* This DFR defines International Health Regulations or IHR as the International Health Regulations of the World Health Organization (WHO), adopted by the 58th World Health Assembly in 2005, as may be further amended, and subject to the United States' reservation and understandings. The DFR updates the current CFR's definition to reflect that the 1969 IHR, as amended in 1973 and 1981 by the World Health Assembly, has been superseded by the 2005 IHR currently in place. This definition also reflects that the United States accepted the IHR with the reservation that it will implement them in line with U.S. principles of federalism. In addition, the United States submitted three understandings, setting forth its views that: (1) Incidents that involve the natural, accidental or deliberate release of chemical, biological or radiological materials are notifiable under the IHR; (2) countries that accept the IHR are obligated to report potential public health emergencies that occur outside their borders to the extent possible; and (3) the IHR do not create any separate private right to legal action against the federal government.

*Isolation.* The DFR defines the term ''isolation'' as the separation of an individual or group of individuals who are reasonably believed to be infected with a quarantinable communicable disease from others who are healthy in such a manner as to prevent the spread of the quarantinable communicable disease. The current definition of ''isolation,'' when applied to an individual or group of individuals, is stated as ''the separation of that person or group of persons from other persons, except the health staff on duty, in such a manner as to prevent the spread of infection.'' Not only does the updated definition help to clarify the distinction between quarantine and isolation, but it removes the current reference to ''health staff on duty'' to which the separation does not apply. HHS/CDC believes that the reference to ''health staff on duty'' is unnecessary and outmoded because, in practice, a patient may have his or her needs attended to by a variety of individuals. The new definition focuses on the measures used to prevent the spread of infection and not on the types of individuals who may attend to the patient. This is not a substantive change from current practice.

*Surveillance.* Under this DFR, ''surveillance'' is defined as the temporary supervision by a public health official (or designee) of an individual or group, who may have been exposed to a quarantinable communicable disease, to determine the risk of disease spread. We have updated the term ''surveillance'' to more accurately reflect current practice and to clarify that, just as with quarantine and isolation, this public health measure is applicable to individuals and groups of individuals.

*United States.* We have updated the definition of ''United States'' to mean the 50 States, the District of Columbia, and the territories (also known as possessions) of the United States, including American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. We have taken this action to better clarify the authority of provisions within Part 71. The current definition includes the Trust Territory of the Pacific Islands, which have not been administered by the United States since 1986.

*Vector.* We have updated the term ''vector'' to be defined as any animals (vertebrate or invertebrate) including arthropods or any noninfectious self-replicating system (e.g., plasmids or other molecular vector) or animal products that are known to transfer, or are capable of transferring, an infectious biological agent to a human. To provide further clarity, we have defined the term ''animal products'' in subpart F. This revision more adequately reflects modern science and current practice which are focused on protecting public health.

*B. Definitions Added to Section 71.1*

*Commander.* Consistent with current industry practice, this DFR defines ''commander'' as the aircrew member with responsibility for the aircraft's operations and navigation.

*Quarantine.* ''Quarantine'' is defined as the separation of an individual or group of individuals who are reasonably believed to have been exposed to a quarantinable communicable disease, but who are not yet ill, from others who have not been so exposed, in such a manner as to prevent the possible spread of the quarantinable communicable disease. HHS/CDC is separately defining quarantine, isolation, and surveillance, and is using these terms in a manner that is consistent with public health practice. In current practice, quarantine, isolation, and surveillance may apply either to individuals or groups of individuals. Indeed, the current definition of Isolation in 42 CFR 71.1

applies to ''a person or group of persons.'' HHS/CDC is clarifying that quarantine and surveillance are public health practices that may also be applied to groups of individuals. This is not a substantive change, but rather consistent with CDC's current practice.

*Quarantinable communicable disease.* ''Quarantinable communicable disease'' is defined as any of the communicable diseases listed in an Executive Order, as provided under section 361 of the Public Health Service Act (42 U.S.C. 264). Executive Order 13295, of April 4, 2003, as amended by Executive Order 13375 of April 1, 2005, contains the current revised list of quarantinable communicable diseases, and may be obtained at *http://www.cdc.gov* and *http://www.archives.gov/federal_register.* If this Order is amended, HHS will enforce that amended order immediately and update the appropriate Web site. A new definition for ''quarantinable communicable disease'' is being added to part 71 through this DFR to incorporate the most recent Executive Order. The addition of this new definition will also be reflected in section 71.32(a), *Persons, carriers and things.*

*Possession.* To best add clarity to part 71 and to align this part with 42 CFR part 70, we have updated the term ''possession'' to mean ''U.S. territory'' and defined U.S. territory to include American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Currently, only Puerto Rico and the Virgin Islands are explicitly listed in the definition. Thus, CDC is updating this provision to explicitly list the other U.S. jurisdictions to which this part applies.

*U.S. territory.* Under this DFR, ''U.S. territory'' means any territory (also known as possessions) of the United States including American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. The Department of the Interior's Office of Insular Affairs, the federal government's lead agency for U.S. territories, no longer uses the term ''possession'' to refer to these jurisdictions. Consequently, HHS/CDC is adding a new definition for U.S. territory consistent with current federal usage.

## VI. Update of Section 71.32(a)

In 2003, in response to the emergence of Severe Acute Respiratory Syndrome (SARS), HHS amended 42 CFR 70.6 and 71.32 to incorporate by reference the Executive Order listing the quarantinable communicable diseases subject to detention, isolation, quarantine, or conditional release, thereby eliminating the administrative delay involved in separately publishing the list of diseases through rulemaking.

Section 71.32(a), *Persons, carriers, and things,* contains the general authority for the Director to take measures to protect public health against ''any of the communicable diseases listed in an Executive Order, as provided under section 361(b) of the Public Health Service Act.'' The current § 71.32(a) lists Executive Order (E.O.) 13295, of April 4, 2003. The subpart states that ''If this Order is amended, HHS will enforce that amended order.''

On April 1, 2005, the existing Executive Order was amended by Executive Order 13375. Therefore, as part of the non-controversial changes in this DFR, we are also updating section 71.32(a) to reflect the most recent Executive Order that lists the ''Quarantinable Communicable Diseases,'' which we have also defined. These changes are not substantive and will not affect current practices.

## VII. Scope and Definitions for Section 71.50

This DFR moves certain definitions from section 71.1 to new section 71.50, because these definitions only apply to the regulations found in subpart F, *Importations.* Subpart F, *Importations,* contains the restrictions on importations of nonhuman primates; certain kinds of animals; etiological agents, hosts, and vectors; and dead bodies. The addition of § 71.50 Scope and Definitions is not a substantive change. To clarify the regulations for the reader, the terms used only in subpart A through subpart G are found in § 71.1, while the terms used only in subpart F, have been moved to new § 71.50. We have also separated definitions for quarantine and isolation to reflect current practices as they apply to individuals (§ 71.1) and animals (§ 71.50).

Section 71.50(a) *Scope* under subpart F—*Importations,* clarifies that HHS/CDC also has the statutory authority to prevent the introduction, transmission, and spread of communicable human diseases resulting from importations of various animal hosts, product, vectors, or other etiological agents that pose a threat to human health.

Section 71.50(b) *Definitions* contains updated definitions used in the current CFR. The DFR promulgates new and updated definitions to be consistent with current medical and public health principles and practice.

Table 2 lists the definitions found in the 42 CFR part 71, subpart A, prior to the DFR and the definitions retained in this final rule.

TABLE 2—SUBPART F—*Importations*
DEFINITIONS AND CORRESPONDING CHANGES IN DEFINITIONS IN THE DFR

| Existing definitions in 42 CFR 71.1 | Corresponding, new and modified definition in DFR § 71.50 |
|---|---|
| | Animal product or Product. |
| Educational purpose | No Change. |
| Exhibition purpose | No Change. |
| | In transit. |
| | Isolation, when applied to animals. |
| | Licensed Veterinarian. |
| | Person. |
| | Quarantine, when applied to animals. |
| | Rendered Noninfectious. |
| Scientific purpose | No Change. |
| | You or Your. |

*A. Definitions Added to Section 71.50*

*Animal Product or Product.* We have defined the term ''animal product'' or ''product'' to describe those items that are known to transfer, or are capable of transferring, an infectious biological agent to a human and that are prohibited from entering the United States unless accompanied by a permit

or rendered noninfectious. For the purposes of this DFR, ''animal product'' or ''product'' means the hide, hair, skull, teeth, bones, claws, blood, tissue, or other biological samples from an animal, including trophies, mounts, rugs, or other display items. We have added this definition, which is used in subpart F, to best describe the current prohibition on animal products that are known to transfer, or are capable of transferring, an infectious biological agent to a human and that as a condition of entry into the United States must be accompanied by a permit or rendered noninfectious.

*In transit.* In this DFR, we have defined ''in transit'' as animals that are located within the United States, including animals whose presence is anticipated, scheduled, or otherwise, as part of the movement of those animals between a foreign country of departure and foreign country of final destination without clearing customs and officially entering the United States. As part of modern global trade and travel practices, animals commonly pass through the United States without being formally admitted into this country. These animals pose a potential risk to U.S. public health where the improper handling of these shipments during exchange of cargo could introduce zoonotic diseases into the United States. We note that the term ''in-transit'' is currently only found in section 71.51 relating to the importation of dogs and cats and we believe it is useful to add clarity to this section by defining what is meant by this term.

*Isolation, when applied to animals.* To distinguish the concept of isolation for individuals from isolation of animals, we have defined ''isolation'' under this subpart to mean the separation of an ill animal or ill group of animals from individuals, other animals, or vectors of disease in such a manner as to prevent the spread of infection.

*Licensed Veterinarian.* We have defined ''licensed veterinarian'' to mean an individual who has obtained both an advanced degree and a valid license to practice animal medicine. This new definition best describes the intent of provisions of this subpart.

*Person.* We have defined ''person'' to mean any individual or partnership, firm, company, corporation, association, organization, or similar legal entity, including those that are not-for-profit. With the exception of 42 C.F.R. section 71.55, which refers to the imported remains of a natural person, this definition is intended to clarify the relevant import prohibitions applicable to individuals and organizations under this subpart.

*Quarantine, when applied to animals.* We have defined ''quarantine'' as it applies to animals as the practice of separating live animals that are reasonably believed to have been exposed to a communicable disease, but are not yet ill, in a setting where the animal can be observed for evidence of disease, and where measures are in place to prevent transmission of infection to humans or animals. This new definition best clarifies the current public health measure of quarantining animals, and it distinguishes it from public health practice of isolation when applied to animals.

*Render Noninfectious.* For purposes of this DFR, to ''render noninfectious'' means ''treating an animal product (e.g., by boiling, irradiating, soaking, formalin fixation, or salting) in such a manner that renders the product incapable of transferring an infectious biological agent to a human.''

Acceptable methods of rendering a product noninfectious typically include the following:

(1) Boiling in water to ensure that any matter other than bone, horns, hooves, claws, antlers, or teeth is removed,

(2) Irradiating with gamma irradiation at a dose of at least 20 kilogray at room temperature (20° C or higher),

(3) Soaking, with agitation, in a 4 percent (weight/volume) solution of washing soda (sodium carbonate, $Na_2CO_3$) maintained at pH 11.5 or above for at least 48 hours,

(4) Soaking, with agitation, in a formic acid solution (100 kg salt [sodium chloride, NaCl] and 12 kg formic acid per 1,000 liters water) maintained at below pH 3.0 for at least 48 hours; wetting and dressing agents may be added.

(5) In the case of raw hides, salting for at least 28 days with sea salt containing 2 percent washing soda (sodium carbonate, $Na_2CO_3$).

(6) Formalin fixation.

(7) Another method approved by HHS/CDC.

Through this definition within the DFR, HHS/CDC is better clarifying and explaining existing practices that limit the importation of animal products that are known to transfer, or are capable of transferring, an infectious biological agent to a human. Such products must be accompanied by an HHS/CDC import permit or rendered noninfectious as a condition of entry into the United States. Items that have been rendered noninfectious, as described in this subpart, may be imported without an HHS/CDC permit.

*You* or *your.* To best identify and assign responsibilities under this subpart, we have defined the terms ''you'' or ''your'' to mean an importer, owner, or an applicant.

## VIII. Alternatives Considered

Under Executive Order 13563 agencies are asked to consider all feasible alternatives to current practice and the rulemaking. HHS/CDC notes that the main impact of the DFR is to clarify the current practices and intent of HHS/CDC by updating and defining terms used in the existing 42 CFR Part 71. As explained in Section III. ''Rationale for Updates to 42 CFR 71.1, 71.32(a) and 71.50,'' through this DFR, HHS/CDC is also updating the Scope and Definitions for 42 CFR Part 71 under sections 71.1 and add new section 71.50, to reflect modern terminology and plain language commonly used by global private sector industry and public health partners. By clarifying and explaining the provisions within part 71, HHS/CDC hopes to assist the regulated community in complying with the provisions to best protect public health. HHS/CDC believes that this rulemaking complies with the spirit of the Executive Order; updating definition and clarifying language provides good alternatives to the current regulation.

## IX. Required Regulatory Analyses

### *A. Required Regulatory Analyses under Executive Orders 12866 and 13563*

Under Executive Order 12866 (EO 12866), Regulatory Planning and Review (58 FR 51735, October 4, 1993) CDC is required to determine whether this regulatory action would be ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Orders. This order defines ''significant regulatory action'' as any regulatory action that is likely to result in a rule that may:

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or,
- Raise novel legal or policy issues arising out of legal mandates, the

President's priorities, or the principles set forth in EO 12866.

Executive Order 13563 (EO 13563), Improving Regulation and Regulatory Review, (76 FR 3821, January 21, 2011), updates some of the provisions of EO 12866 in order to promote more streamlined regulatory actions. This EO charges, in part, that, while protecting ''public health, welfare, safety, and our environment'' that regulations must also ''promote predictability and reduce uncertainty'' in order to promote economic growth. Further, regulations must be written in common language and be easy to understand. In the spirit of EO 13563, this DFR enhances definitions related to control of communicable diseases and adds more recent medical information where appropriate. CDC has determined that this DFR is an update of definitions and compliant with the spirit of EO 13563. Further, CDC has determined that this DFR is not a significant regulatory action as defined in EO 12866 because the DFR is definitional and does not change the baseline costs for any of the primary stakeholders.

*B. Regulatory Flexibility Act*

We have examined the impacts of the rule under the Regulatory Flexibility Act (5 U.S.C. 601–612). Unless we certify that the rule is not expected to have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. We certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

*C. Small Business Regulatory Enforcement Fairness Act of 1996*

This regulatory action is not a major rule as defined by Sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

*D. The Paperwork Reduction Act of 1995*

HHS/CDC has determined that the Paperwork Reduction Act does apply to the date collection and record keeping requirements of 42 CFR Part 71 and has obtained approval by the Office of Management and Budget (OMB) under OMB Control No. 0920–0134, expiration 07/31/2015. The updates in this rule do not impact the data collection and record keeping requirements already approved by OMB.

*E. National Environmental Policy Act (NEPA)*

Pursuant to 48 FR 9374 (list of HHS/CDC program actions that are categorically excluded from the NEPA environmental review process), HHS/CDC has determined that this action does not qualify for a categorical exclusion. In the absence of an applicable categorical exclusion, the Director, HHS/CDC, has determined that provisions amending 42 CFR Part 71 will not have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

*F. Civil Justice Reform (Executive Order 12988)*

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

*G. Executive Order 13132 (Federalism)*

HHS/CDC has reviewed this rule in accordance with Executive Order 13132 regarding Federalism, and has determined that it does not have ''federalism implications.'' The rule does 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.''

*H. Plain Language Act of 2010*

Under Public Law 111–274 (October 13, 2010), executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal Government administers or enforces. HHS/CDC has attempted to use plain language in promulgating this rule consistent with the Federal Plain Writing Act and requests public comment on this effort.

**List of Subjects in 42 CFR Part 71**

Communicable diseases, Isolation, In transit, Public health, Quarantine, Quarantinable communicable disease, Render noninfectious.

**Amended Text**

For the reasons discussed in the preamble, the Centers for Disease Control and Prevention amends 42 CFR part 71 as follows:

## PART 71—FOREIGN QUARANTINE

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

**Authority:** Secs. 215 and 311 of Public Health Service (PHS) Act, as amended (42 U.S.C. 216, 243); secs. 361–369, PHS Act, as amended (42 U.S.C. 264–272).

■ 2. Amend § 71.1 as follows:

■ a. Revise paragraph (a).

■ b. In paragraph (b), add in alphabetical order definitions of Commander, Quarantine, Quarantinable communicable disease, and U.S. territory.

■ c. In paragraph (b), revise definitions of International Health Regulations, Isolation, Surveillance, United States, and Vector.

The revisions and additions read as follows:

### § 71.1 Scope and definitions.

* * * * *

(a) The provisions of this part contain the regulations to prevent the introduction, transmission, and spread of communicable disease from foreign countries into the States or territories (also known as possessions) of the United States. Regulations pertaining to preventing the interstate spread of communicable diseases are contained in 21 CFR parts 1240 and 1250 and 42 CFR part 70.

(b) * * *

* * * * *

*Commander* means the aircrew member with responsibility for the aircraft's operations and navigation.

* * * * *

*International Health Regulations* or *IHR* means the International Health Regulations of the World Health Organization, adopted by the Fifty-Eighth World Health Assembly in 2005, as may be further amended, and subject to the United States' reservation and understandings.

* * * * *

*Isolation* means the separation of an individual or group who is reasonably believed to be infected with a quarantinable communicable disease

from those who are healthy to prevent the spread of the quarantinable communicable disease.

* * * * *

*Possession* means U.S. territory.

*Quarantine* means the separation of an individual or group reasonably believed to have been exposed to a quarantinable communicable disease, but who is not yet ill, from others who have not been so exposed, to prevent the possible spread of the quarantinable communicable disease.

*Quarantinable communicable disease* means any of the communicable diseases listed in an Executive Order, as provided under § 361 of the Public Health Service Act (42 U.S.C. § 264). Executive Order 13295, of April 4, 2003, as amended by Executive Order 13375 of April 1, 2005, contains the current revised list of quarantinable communicable diseases, and may be obtained at *http://www.cdc.gov* and *http://www.archives.gov/federal_register.* If this Order is amended, HHS will enforce that amended order immediately and update that Web site.

*Surveillance* means the temporary supervision by a public health official (or designee) of an individual or group, who may have been exposed to a quarantinable communicable disease, to determine the risk of disease spread.

* * * * *

*U.S. territory* means any territory (also known as possessions) of the United States, including American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

*United States* means the 50 States, District of Columbia, and the territories (also known as possessions) of the United States, including American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

*Vector* means any animals (vertebrate or invertebrate) including arthropods or any noninfectious self-replicating system (e.g., plasmids or other molecular vector) or animal products that are known to transfer, or are capable of transferring, an infectious biological agent to a human.

■ 3. Revise § 71.32(a) to read as follows:

**§ 71.32 Persons, carriers, and things.**

(a) Whenever the Director has reason to believe that any arriving person is infected with or has been exposed to any of the communicable diseases listed in an Executive Order, as provided under section 361(b) of the Public Health Service Act, he/she may isolate, quarantine, or place the person under surveillance and may order disinfection or disinfestation, fumigation, as he/she considers necessary to prevent the introduction, transmission or spread of the listed communicable diseases. Executive Order 13295, of April 4, 2003, as provided under section 361 of the Public Health Service Act (42 U.S.C. 264), and as amended by Executive Order 13375 of April 1, 2005, contains the current revised list of quarantinable communicable diseases, and may be obtained at *http://www.cdc.gov* and *http://www.archives.gov/federal-register.* If this Order is amended, HHS will enforce that amended order immediately and update this reference.

* * * * *

■ 4. Add § 71.50 to subpart F to read as follows:

**§ 71.50—Scope and definitions.**

(a) The purpose of this subpart is to prevent the introduction, transmission, and spread of communicable human disease resulting from importations of various animal hosts or vectors or other etiological agents from foreign countries into the United States.

(b) In addition to terms in § 71.1, the terms below, as used in this subpart, shall have the following meanings:

*Animal product* or *Product* means the hide, hair, skull, teeth, bones, claws, blood, tissue, or other biological samples from an animal, including trophies, mounts, rugs, or other display items.

*Educational purpose* means use in the teaching of a defined educational program at the university level or equivalent.

*Exhibition purpose* means use as part of a display in a facility comparable to a zoological park or in a trained animal act. The animal display must be open to the general public at routinely scheduled hours on 5 or more days of each week. The trained animal act must be routinely schedule for multiple performances each week and open to the general public except for reasonable vacation and retraining periods.

*In transit* means animals that are located within the United States, whether their presence is anticipated, scheduled, or not, as part of the movement of those animals between a foreign country of departure and foreign country of final destination without clearing customs and officially entering the United States.

*Isolation when applied to animals* means the separation of an ill animal or ill group of animals from individuals, or other animals, or vectors of disease in such a manner as to prevent the spread of infection.

*Licensed veterinarian* means an individual who has obtained both an advanced degree and valid license to practice animal medicine.

*Person* means any individual or partnership, firm, company, corporation, association, organization, or similar legal entity, including those that are not-for-profit.

*Quarantine when applied to animals* means the practice of separating live animals that are reasonably believed to have been exposed to a communicable disease, but are not yet ill, in a setting where the animal can be observed for evidence of disease, and where measures are in place to prevent transmission of infection to humans or animals.

*Render noninfectious* means treating an animal product (e.g., by boiling, irradiating, soaking, formalin fixation, or salting) in such a manner that renders the product incapable of transferring an infectious biological agent to a human.

*Scientific purpose* means use for scientific research following a defined protocol and other standards for research projects as normally conducted at the university level. The term also includes the use for safety testing, potency testing, and other activities related to the production of medical products.

*You* or *your* means an importer, owner, or an applicant.

Dated: December 13, 2012.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2012–30723 Filed 12–21–12; 4:15 pm]

BILLING CODE 4163–18–P

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 64

**[Docket ID FEMA–2012–0003; Internal Agency Docket No. FEMA–8261]**

## Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain

management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

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

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

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

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

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

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

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

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

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

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

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

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

Accordingly, 44 CFR Part 64 is amended as follows:

## PART 64—[AMENDED]

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

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

### § 64.6 [Amended]

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

| State and location | Community No. | Effective date authorization/Cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| **Region III** | | | | |
| West Virginia: | | | | |
| Ceredo, Town of, Wayne County ..... | 540232 | September 25, 1975, Emerg; May 17, 1989, Reg; January 2, 2013, Susp. | January 2, 2013 | January 2, 2013 |
| Fort Gay, Town of, Wayne County ..... | 540202 | April 29, 1975, Emerg; January 3, 1979, Reg; January 2, 2013, Susp. | .....do* ..... | Do. |

| State and location | Community No. | Effective date authorization/Cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| Kenova, City of, Wayne County | 540221 | April 9, 1975, Emerg; May 17, 1989, Reg; January 2, 2013, Susp. | .....do | Do. |
| Wayne County, Unincorporated Areas | 540200 | October 31, 1975, Emerg; September 18, 1987, Reg; January 2, 2013, Susp. | .....do | Do. |
| **Region IV** | | | | |
| Kentucky: | | | | |
| Magoffin County, Unincorporated Areas | 210158 | December 18, 1978, Emerg; March 4, 1986, Reg; January 2, 2013, Susp. | .....do | Do. |
| Salyersville, City of, Magoffin County | 210159 | July 8, 1975, Emerg; October 15, 1985, Reg; January 2, 2013, Susp. | .....do | Do. |
| **Region VI** | | | | |
| Oklahoma: | | | | |
| Hobart, City of, Kiowa County | 400084 | November 14, 1975, Emerg; June 29, 1982, Reg; January 2, 2013, Susp. | .....do | Do. |
| Kiowa County, Unincorporated Areas | 400543 | September 20, 1994, Emerg; N/A, Reg; January 2, 2013, Susp. | .....do | Do. |
| Lone Wolf, Town of, Kiowa County | 400085 | November 16, 1976, Emerg; June 29, 1982, Reg; January 2, 2013, Susp. | .....do | Do. |
| Mountain Park, Town of, Kiowa County | 400086 | November 3, 1976, Emerg; August 3, 1982, Reg; January 2, 2013, Susp. | .....do | Do. |
| Mountain View, Town of, Kiowa County | 400087 | October 30, 1975, Emerg; December 12, 1978, Reg; January 2, 2013, Susp. | .....do | Do. |
| Roosevelt, Town of, Kiowa County | 400088 | November 12, 1976, Emerg; March 23, 1982, Reg; January 2, 2013, Susp. | .....do | Do. |
| Snyder, City of, Kiowa County | 400089 | March 18, 1975, Emerg; April 15, 1980, Reg; January 2, 2013, Susp. | .....do | Do. |
| Texas: | | | | |
| Lubbock, City of, Lubbock County | 480452 | May 24, 1973, Emerg; September 2, 1982, Reg; January 2, 2013, Susp. | .....do | Do. |
| Lubbock County, Unincorporated Areas | 480915 | April 16, 2002, Emerg; October 11, 2002, Reg; January 2, 2013, Susp. | .....do | Do. |
| Wolfforth, City of, Lubbock County | 480918 | N/A, Emerg; October 25, 2002, Reg; January 2, 2013, Susp. | .....do | Do. |
| **Region VII** | | | | |
| Missouri: | | | | |
| Baldwin Park, Village of, Cass County | 290880 | July 19, 1979, Emerg; August 5, 1985, Reg; January 2, 2013, Susp. | .....do | Do. |
| Belton, City of, Cass County | 290062 | September 3, 1974, Emerg; September 5, 1979, Reg; January 2, 2013, Susp. | .....do | Do. |
| Cass County, Unincorporated Areas | 290783 | April 21, 1975, Emerg; April 15, 1982, Reg; January 2, 2013, Susp. | .....do | Do. |
| Creighton, City of, Cass County | 290063 | August 3, 1979, Emerg; June 30, 1980, Reg; January 2, 2013, Susp. | .....do | Do. |
| Drexel, City of, Cass County | 290064 | June 23, 1975, Emerg; April 8, 1977, Reg; January 2, 2013, Susp. | .....do | Do. |
| Lake Annette, City of, Cass County | 290953 | N/A, Emerg; June 25, 2004, Reg; January 2, 2013, Susp. | .....do | Do. |
| Peculiar, City of, Cass County | 290878 | April 19, 1979, Emerg; September 10, 1984, Reg; January 2, 2013, Susp. | .....do | Do. |
| Pleasant Hill, City of, Cass County | 295269 | April 30, 1971, Emerg; September 15, 1972, Reg; January 2, 2013, Susp. | .....do | Do. |
| Raymore, City of, Cass County | 290070 | February 4, 1976, Emerg; May 15, 1986, Reg; January 2, 2013, Susp. | .....do | Do. |
| Riverview Estates, Village of, Cass County. | 290957 | N/A, Emerg; October 22, 2008, Reg; January 2, 2013, Susp. | .....do | Do. |

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

Dated: December 7, 2012.

**David L. Miller,**

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

[FR Doc. 2012–31106 Filed 12–21–12; 4:15 pm]

**BILLING CODE 9110–12–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

**[CG Docket No. 03–123; WC Docket No. 05–196; WC Docket No. 10–191; FCC 12–139]**

## Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) reconsiders and clarifies certain aspects of the *iTRS Toll Free Order* in response to a petition for reconsideration and clarification filed by Sorenson Communications, Inc. (Sorenson). The Commission grants Sorenson's Petition and clarifies certain aspects of the user notification requirements and denies the remainder of the Petition relating to the database mapping requirements and establishing a one-year end date for the customer notification requirements.

**DATES:** Effective January 25, 2013.

**FOR FURTHER INFORMATION CONTACT:** Heather Hendrickson, Wireline Competition Bureau, (202) 418–7295.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order on Reconsideration in CG Docket No. 03–123, WC Docket Nos. 05–196, 10–191, FCC 12–139, released on November 16, 2012. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554. It is also available on the Commission's Web site at *http://www.fcc.gov*.

### I. Introduction

1. In this Order, we grant in part a petition for reconsideration and clarification of the Commission's *iTRS Toll Free Order,* 76 FR 59551, September 27, 2011 filed by Sorenson Communications, Inc. (Sorenson). In that *Order,* the Commission adopted rules to improve assignment of telephone numbers associated with Internet-based Telecommunications Relay Service (iTRS). For the reasons set forth below, the Commission grants Sorenson's Petition with respect to certain user notification requirements and denies the remainder of the Petition.

### II. Background

2. Prior to 2008, there was no uniform numbering system for iTRS services; some iTRS users were reached via an IP address, while others were reached via toll free numbers. Because iTRS providers did not share their databases, the lack of standardized numbering hindered calls between people using different iTRS services. The widespread use of toll free numbers created additional competitive concerns because the users could not take their telephone numbers with them if they switched providers.

3. To address these concerns, beginning in 2008 the Commission adopted a series of orders that discouraged iTRS providers from issuing toll free numbers to their users. Ultimately, in the *iTRS Toll Free Order,* the Commission prohibited iTRS providers from issuing toll free numbers, requiring them instead to issue only geographically appropriate, ten-digit, North American Numbering Plan (NANP) telephone numbers. The Commission took this action because, in addition to the competitive concerns described above, the routine issuance of toll free numbers confused iTRS users, undermined the Commission's number conservation policy, increased costs to the TRS Fund, and potentially hindered responses to 911 calls.

4. Historically, when an iTRS user had a toll free number, the iTRS provider was the subscriber of record for that number; the user did not have a direct relationship with the toll free service provider. Under the rules the Commission adopted in the *iTRS Toll Free Order,* however, the iTRS user must be the toll free service provider's subscriber of record and must pay for the toll free subscription. The *Order* requires iTRS providers to facilitate this transition in various ways, notably by ensuring that iTRS users' toll free numbers are properly mapped in the TRS Numbering Directory (the numbering database used for iTRS services) and by explaining to users how they may keep or acquire a toll free number. The *Order* established a one-year transition period for iTRS providers to implement the new rules; the transition period ends on November 21, 2012.

5. In October 2011, Sorenson filed a petition seeking reconsideration and clarification of specific aspects of the *iTRS Toll Free Order.* Sorenson challenges aspects of the database mapping requirement and the customer notification requirement. No party opposed Sorenson's Petition, and one party—Hamilton Relay—filed in support.

### III. Discussion

#### *A. Database Mapping*

6. The *iTRS Toll Free Order* requires iTRS providers to ensure that when an iTRS subscriber obtains a toll free number, that toll free number is properly mapped to that subscriber's NANP geographic number in the TRS Numbering Directory. The user's toll free number must be associated with the same Uniform Resource Identifier (URI) as that user's geographically appropriate NANP number in the TRS Numbering Directory.

7. Sorenson asks the Commission to reconsider this requirement, arguing that iTRS providers should not be required to map an iTRS user's toll free number to the user's URI in the TRS Numbering Directory. Sorenson claims that, because iTRS providers will no longer provision toll free numbers under the new rules, they will be unable to ensure that the information they receive about a number is accurate. Sorenson also claims that it will be unable to identify potential mistakes or changes when mapping a toll free number to the user's URI, such as if a user chooses to disconnect a toll free number and does not notify the iTRS provider. Sorenson further claims that mistakes in mapping will result in call failures due to database errors, and that the rules may enable fraud and spoofing by iTRS users. Sorenson argues that the Commission should consider alternative approaches. Specifically, Sorenson proposes that the Commission either (1) sever any connection between an iTRS user's toll free number and the TRS Numbering Directory, or (2) require another entity (not the iTRS provider) to verify that the toll free numbers and mappings are valid.

8. We deny Sorenson's Petition in this respect and decline to reconsider the database mapping requirements in the *iTRS Toll Free Order.* We do not find that Sorenson's concerns about linking a toll free number to an iTRS user's URI in the TRS Numbering Directory warrant a change to the current rules; nor do we find that Sorenson's proposed alternatives constitute a better approach.

9. As an initial matter, we note that the Commission addressed Sorenson's

concerns about database accuracy in the *iTRS Toll Free Order.* Sorenson raised the issue in its comments on the *iTRS Toll Free Notice,* 75 FR 67333, November 2, 2010, and the Commission responded in the *Order,* saying, ''If Sorenson expects such errors to occur, it—and all other iTRS providers—may notify the iTRS user of the potential mistake and make several verifications of the toll free number to ensure correctness.'' Sorenson argues in its Petition that, notwithstanding the language in the *Order,* Sorenson will have no way to verify whether the information it receives from its users about toll free numbers is accurate. We continue to believe, however, that iTRS providers do have ways to verify that toll free numbers have been mapped accurately, including by simply calling a toll free number to ensure that the call is delivered to the user. We do not believe that verifying database accuracy will be an overly burdensome task for providers because we expect that the number of iTRS users who choose to maintain or obtain toll free numbers under the new rules will be small. Most iTRS users will choose to relinquish their toll free numbers rather than pay for them. Thus, we expect that only a small number of iTRS users will require their iTRS provider to input a toll free number into the TRS Numbering Directory.

10. Second, the mapping requirement is essential in order to ensure that deaf and hard-of-hearing users' access to and use of toll free numbers are functionally equivalent to hearing users' access to and use of toll free numbers. Sorenson's suggestion that the Commission eliminate the requirement entirely and keep toll free numbers out of the TRS Numbering Directory would undermine this goal. Information in the TRS Numbering Directory is used to route NANP-dialed calls both between deaf and hearing persons via a relay service and also directly between two deaf persons without the intervention of a relay service (point-to-point calls). As Sorenson acknowledges, its proposed approach would make point-to-point video calls to toll free numbers impossible, so that a deaf person could not call another deaf person's toll free number directly. The Commission has previously emphasized the importance of point-to-point video calling to iTRS users, and we decline to restrict that functionality in this manner.

11. Third, the responsibility for ensuring accurate database mapping should lie with the iTRS provider because it serves as the registered service provider to its customers, and thus is already responsible for entering its customers' information into the TRS Numbering Directory. Shifting the responsibility to another party, as Sorenson proposes, is undesirable because under both the Commission's rules and the directory access parameters set up by the database administrator, only iTRS providers may enter and change directory records, and only an individual's default provider may enter and change information for that individual. Moreover, shifting responsibility to a third party with no access to the TRS Numbering Directory and no relationship with the user would likely increase, not decrease, the chance of database errors.

12. Finally, we find that Sorenson's concerns about fraud and spoofing are overstated. As noted above, we expect the number of iTRS users who choose to retain, and pay for, toll free numbers to be small. Furthermore, the nature of iTRS services makes them poor vehicles for fraud and spoofing. Any iTRS user who tried to spoof a toll free number would necessarily have it linked to both his ten-digit number and his IP address, making it relatively traceable (unlike conventional PSTN spoofing scenarios), and thus an unlikely choice for perpetrating fraud. VRS is particularly well-protected: If a VRS user dialed a spoofed toll free number that had made its way into the TRS Numbering Directory, the VRS provider would identify the call as a point-to-point call between two deaf users, and the caller would end up face to face with the perpetrator. We therefore believe that the rules are unlikely to facilitate or lead to widespread fraud and spoofing schemes by iTRS users. Our decision here rests on two predictive judgments: That verifying the accuracy of the iTRS Directory with respect to toll free numbers will not be unduly burdensome on iTRS providers and that fraud and spoofing will not become major problems. We note that if either of our predictive judgments turn out incorrect, we remain free to consider alternative solutions to address these issues while ensuring the continuing integrity of point-to-point calls between iTRS users.

13. For these reasons, the Commission denies Sorenson's request for reconsideration of the database mapping requirements. We also deny Sorenson's request for ''clarification that the Commission is aware of the problems that may result from the approach reflected in the Order and will not hold iTRS providers responsible for such problems over which they have no control.'' As we have explained, we disagree that providers have ''no control'' over the information about toll free numbers in the TRS Numbering Directory, and the Commission has rejected claims that iTRS providers lack the ability to verify the accuracy of toll free numbers. Thus, we reiterate that iTRS providers must take reasonable measures to ensure the completeness and accuracy of their users' records in the TRS Numbering Directory.

*B. Customer Notification*

14. The *iTRS Toll Free Order* requires iTRS providers to include, in any promotional materials addressing numbering or E911 services, information about (1) the process by which an iTRS user may acquire a toll free number or transfer control of a toll free number from a VRS or IP Relay provider to the user; and (2) the process by which a user may request that the toll free number be linked to his or her ten-digit telephone number in the TRS Numbering Directory (by their iTRS provider). The information provided must include contact information for toll free service providers.

15. Sorenson requests reconsideration or clarification of the customer notification requirements in three respects. First, Sorenson argues that the notification requirements are unnecessarily burdensome, and that the volume of information that they would have to provide under the rule would fill more than 100,000 additional pages of printed materials annually and would overwhelm users. Sorenson proposes instead that it provide detailed information on its Web site and simply provide a link to that information in any promotional materials. Second, Sorenson asks the Commission to clarify that iTRS providers may satisfy the toll free service provider contact information requirement by linking to the Commission's Web site. Finally, Sorenson asks the Commission to limit the customer notification requirements to the one-year transition period. We clarify the *iTRS Toll Free Order* in response to Sorenson's first and second requests, and we deny Sorenson's third request.

16. We find that a streamlined approach to the customer notification requirements is consistent both with the purposes of the *iTRS Toll Free Order* and with the Commission's general preference for minimizing the burdens of disclosure requirements where possible. We therefore clarify that an iTRS provider may comply with § 64.611(g)(1)(v) and (vi) of the Commission's rules by including on its Web site a clear description of how a user may acquire a toll free number or transfer control of a toll free number from a VRS or IP Relay provider to the

user and the process by which a user may request that the toll free number be linked to his or her ten-digit telephone number in the TRS Numbering Directory. In its promotional materials, the provider may simply provide a link to this information on the provider's Web site. This approach will ensure that deaf and hard-of-hearing users who want to acquire or retain a toll free number can easily find the information they need to do so, while at the same time alleviating Sorenson's concern about the burden on providers.

17. We also clarify the *iTRS Toll Free Order* with respect to toll free service provider contact information. An iTRS provider may satisfy the requirement that it provide contact information by linking to the list of toll free service providers maintained on the 800 Service Management System (SMS/800) Web site. The Commission's Consumer and Governmental Affairs Bureau has produced an American Sign Language video explaining the *iTRS Toll Free Order,* and the accompanying text directs iTRS users to the SMS/800 Web site's list of toll free service providers, which provides the most up-to-date information. Given that the Commission itself directs deaf and hard-of-hearing consumers to the SMS/800 Web site for toll free service provider information, we find that it is reasonable to allow iTRS providers to do the same.

18. Finally, we deny Sorenson's request to establish a one-year end date for the customer notification requirements. At the end of the one-year transition period established in the *Order,* iTRS users will still be able to subscribe to toll free numbers and have them entered into the TRS Numbering Directory. Moreover, with the modified requirements set forth herein, we have significantly reduced the burden of providing such notice.

## IV. Procedural Matters

### *A. Paperwork Reduction Act*

19. This Order on Reconsideration does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

### *B. Congressional Review Act*

20. The rules previously adopted in the *iTRS Toll Free Order* were submitted to Congress and the Government Accountability Office pursuant to the Congressional Review Act and remain unchanged by this Order on Reconsideration.

## V. Ordering Clauses

21. Accordingly, *it is ordered,* pursuant to the authority contained in sections 1, 4(i), 225, 251(e), 255, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 225, 251(e), 255, 405, and §§ 1.1 and 1.429 of the Commission's rules, 47 CFR 1.1, 1.429, that this Order on Reconsideration IS *adopted*, effective thirty (30) days after publication of the text or summary thereof in the **Federal Register**.

22. *It is further ordered,* pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and § 1.429 of the Commission's rules, 47 CFR 1.429, that the Petition for Reconsideration and Clarification filed by Sorenson Communications, Inc. on October 27, 2011 *is granted* to the extent described herein and is otherwise *denied.*

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2012–31098 Filed 12–21–12; 4:15 pm]

**BILLING CODE 6712–01–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### 49 CFR Part 219

**[Docket No. FRA–2001–11213, Notice No. 16]**

### Alcohol and Drug Testing: Determination of Minimum Random Testing Rates for 2013

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Notice of determination.

According to data from FRA's Management Information System, the rail industry's random drug testing positive rate has remained below 1.0 percent for the last two years. The Federal Railroad Administrator (Administrator) has therefore determined that the minimum annual random drug testing rate for the period January 1, 2013, through December 31, 2013, will remain at 25 percent of covered railroad employees. In addition, because the industry-wide random alcohol testing violation rate has remained below 0.5 percent for the last two years, the Administrator has determined that the minimum random alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2013, through December 31, 2013. Railroads remain free, as always, to conduct random testing at higher rates.

**DATES:** This notice of determination is effective December 26, 2012.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Gross, Trial Attorney, Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, (telephone 202–493–1342); or Kathy Schnakenberg, FRA Alcohol/Drug Program Specialist, (telephone 719–633–8955).

Issued in Washington, DC on December 18, 2012.

**Karen J. Hedlund,**

*Deputy Administrator.*

[FR Doc. 2012–30999 Filed 12–21–12; 4:15 pm]

**BILLING CODE 4910–06–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 635

**[Docket No. 120706221–2705–02]**

**RIN 0648–XC106**

### Atlantic Highly Migratory Species; 2013 Atlantic Shark Commercial Fishing Season

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

**ACTION:** Final rule; fishing season notification.

**SUMMARY:** This final rule establishes the opening dates and quotas for the 2013 fishing season for the Atlantic commercial shark fisheries (sandbar sharks, non-sandbar large coastal sharks, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks), non-blacknose small coastal sharks, or blacknose sharks). Baseline quotas are adjusted as required based on any over- and/or underharvests experienced during the 2011 and 2012 Atlantic commercial shark fishing seasons. We used previously-implemented regulatory criteria that contain adaptive management measures to determine the opening dates. We also plan to use these measures throughout the fishing year for inseason adjustments to the shark retention limits, as appropriate, to provide, to the extent practicable,

fishing opportunities for commercial shark fishermen in all regions and areas. These actions are expected to provide fishing opportunities for commercial shark fishermen in the northwestern Atlantic, including the Gulf of Mexico and Caribbean. In addition, we are keeping the porbeagle shark quota closed in 2013 due to overharvests from 2011 and 2012 that resulted in no quota availability for 2013.

**DATES:** This rule is effective on January 1, 2013. The 2013 Atlantic commercial shark fishing season opening dates and quotas are provided in Table 1 under **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Guý DuBeck or Karyl Brewster-Geisz at 301–427–8503 or (fax) 301–713–1917.

**SUPPLEMENTARY INFORMATION:**

## Background

The Atlantic commercial shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments under the Magnuson-Stevens Act are implemented by regulations at 50 CFR part 635.

On October 10, 2012, we published a rule (77 FR 61562) proposing the 2013 opening dates for the Atlantic commercial shark fisheries, and quotas based on shark landings information as of August 22, 2012. The proposed rule also considered using adaptive management measures such as flexible opening dates for the fishing seasons (50 CFR 635.27(b)(1)(i)) and inseason adjustments to shark trip limits (50 CFR 635.24(a)(8)) to provide flexibility in managing the furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas. This rule is the first time NMFS anticipates using the inseason adjustments. The October 2012 proposed rule contains details regarding the proposal and how the quotas were calculated that are not repeated here.

The comment period on the proposed rule ended on October 28, 2012. During that time, we received 12 written and oral comments on the proposed rule. Those comments, along with the Agency's responses, are summarized below. As detailed more fully in the Response to Comments section, the fishing seasons for all the shark species/complexes will open on January 1, 2013, as proposed in the October 10, 2012 proposed rule. Also, some of the quotas have changed since the proposed rule based on updated landings information received as of November 26, 2012.

This final rule serves as notification of the 2013 opening dates of the Atlantic commercial shark fisheries and 2013 quotas, based on shark landings updates as of November 26, 2012, pursuant to 50 CFR 635.27(b)(1)(i) through (b)(1)(vi). This action does not change the annual base commercial quotas established under Amendments 2 and 3 to the 2006 Consolidated HMS FMP for sandbar sharks, non-sandbar large coastal sharks, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks), non-blacknose small coastal sharks, or blacknose sharks. Any such changes would be performed through a separate action. Rather, this action adjusts the annual base commercial quotas based on over- and/or underharvests that occurred in 2011 and 2012, consistent with existing regulations.

## Response to Comments

We received comments from 12 fishermen, dealers, and other interested parties on the proposed rule. All written comments can be found at *http://www.regulations.gov/* and by searching for RIN 0648–XC106.

### *A. Non-Sandbar Large Coastal Shark Comments*

*Comment 1:* Commenters noted that non-sandbar large coastal shark meat is easier to sell in the Gulf of Mexico during the religious period of Lent (February 13 to March 30, 2013) and preferred an opening date of February 6, 2013.

*Response:* In the proposed rule, we considered a season opening date of January 1, 2013, to further equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all parts of the Gulf of Mexico region. This opening date is consistent with all the criteria listed in § 635.27(b)(1)(ii), but particularly with the requirement that we consider the length of the season for the different species/complexes in the previous years and whether fishermen were able to participate in the fishery in those years (§ 635.27(b)(1)(ii)(C)). Taking into consideration these criteria, we have determined that keeping the proposed opening date of January 1, 2013, for the non-sandbar large coastal shark fishery in the Gulf of Mexico region promotes equitable fishing opportunities throughout this region. Such an opening date would not prevent fishermen and dealers from fishing for and selling sharks during the religious period of Lent unless the quota was fully harvested by that time and the fishery closed.

As an example of how we considered the criteria, we note that the State of Louisiana closes its state waters from April 1 through June 30 for their shark pupping season. Therefore, if we opened the shark fishing season in February, Louisiana fishermen might not have the same opportunity as fishermen elsewhere in the Gulf of Mexico to harvest the available quota because state waters would close shortly after the season opened. This type of situation occurred in both 2011 and 2012, when fishermen from the State of Louisiana had only about a month to fish before the state closed their state waters to shark fishing. As such, we are not changing the proposed opening date of the non-sandbar large coastal shark fishery in order to ensure, to the extent practicable, that fishermen throughout the Gulf of Mexico have equitable fishing opportunities.

*Comment 2:* We received opposing comments regarding the proposed opening date for the Atlantic non-sandbar large coastal shark fishery. Fishermen from the southern portion of the Atlantic region supported the proposed opening date of January 1, as they feel that the opening date will provide them an opportunity to participate in a winter fishery. Fishermen from the northern portion of the Atlantic region did not want a January 1 opening date since they are concerned that they will not have an opportunity to harvest the quota.

*Response:* In recent years, in recognition that fishermen in the southern portion of the region could harvest the entire quota before the sharks have migrated north where they could be harvested by fishermen in the northern region, we have opened the non-sandbar large coastal shark fishing season in July. Such an opening date allows fishermen in both areas of the region an opportunity to fully harvest the quota, and was successful in providing fishing opportunities.

However, in 2013, we plan to open the non-sandbar large coastal shark fishery in the Atlantic region on January 1, 2013. As described in the proposed rule for that action, we plan to implement the adaptive management measures from the 2011 shark season rule (75 FR 76302; December 8, 2010) to adjust via inseason actions the retention limit for non-sandbar large coastal sharks. Specifically, if the quota is being harvested quickly and we calculate that the northern fishermen have not yet had an opportunity to fish for non-sandbar large coastal shark because the sharks

have not migrated, we can reduce the trip limits to slow fishing (e.g., change the trip limit from 36 sharks to 15 sharks or even 0 sharks) and then increase them again when we estimate that the sharks have migrated north. This process should ensure equitable fishing opportunities for fishermen along the Atlantic coast while accommodating fishermen's requests from both the southern and northern portions of the Atlantic region. We had not used these measures previously because of concern about our ability to monitor the quota on a real-time basis. However, with the implementation of the HMS electronic reporting system (77 FR 47303; August 8, 2012) on January 1, 2013, we should be able to monitor the quota on a real-time basis and respond quickly as needed. This ability, along with the inseason trip limit adjustment, should allow us the additional flexibility to further opportunities for all fishermen in all regions, to the extent practicable, while also ensuring that quotas are not exceeded.

*Comment 3:* Many commenters agreed with the effective ''increase'' in the non-sandbar large coastal shark quotas and retention limits in 2013 and asked for the reasoning behind this increase.

*Response:* In Amendment 2 to the 2006 Consolidated HMS FMP, we established a 5-year quota reduction to account for overharvest of the non-sandbar large coastal shark and sandbar shark fisheries that occurred in 2007. This 5-year quota reduction ends on December 31, 2012. Therefore, quotas and retention limits for large coastal sharks revert back to base levels in 2013, consistent with Amendment 2 to the 2006 Consolidated HMS FMP.

*Comment 4:* We received a request to investigate the geographical distribution of non-sandbar large coastal shark landings in the Atlantic throughout the season.

*Response:* This issue is beyond the scope of this rulemaking, which adjusts the quotas and establishes opening dates. We have reviewed this type of information in past rules, including in Amendment 1 to the 2006 Consolidated HMS FMP on Essential Fish Habitat (EFH) (74 FR 28018; June 12, 2009), Amendment 2 to the 2006 Consolidated HMS FMP on shark management (73 FR 35778, June 24, 2008; corrected at 73 FR 40658, July 15, 2008), and the 2011 shark season rule (75 FR 76302; December 8, 2010). In Amendment 1 to the 2006 Consolidated HMS FMP on EFH, we reviewed the geographical range of all HMS and analyzed the fishing impacts on the EFH for these species. We plan to review EFH in the future and such review necessarily would include the species' geographical range and other relevant analyses, such as species distribution through time. Thus, while re-investigating the geographical distribution for the large coastal shark fishery is beyond the scope of this rulemaking, we may review the issue in future rulemakings.

*Comment 5:* NMFS should consider increasing the quotas of more dangerous shark species like tiger sharks.

*Response:* We do not manage sharks or establish shark quotas based on how dangerous a species may be. Rather, we manage sharks based on the best available science for a particular species and legal requirements, which include maintaining or conserving the stock and its yield. Tiger sharks are included as part of the non-sandbar large coastal shark complex for various reasons, including the lack of a stock specific assessment, the fact that tiger sharks are often caught on the same type of gear as other non-sandbar large coastal sharks, and because tiger sharks are not a major species in the commercial fishery. The quota for non-sandbar large coastal sharks was established in Amendment 2 to the 2006 Consolidated HMS FMP based on the best available science and legal requirements. We would consider establishing a species-specific commercial quota for tiger sharks in a future rulemaking if the scientific advice indicated such action was supportable and warranted.

*B. Porbeagle Shark Comments*

*Comment 6:* We received several comments regarding the proposal not to open the porbeagle shark quota in 2013. Several commenters supported NMFS' decision not to allow porbeagle shark landings because of the small amount of quota that we thought would be available at the proposed rulemaking stage. Other commenters indicated that not allowing porbeagle shark landings would result in a lot of dead discards, since porbeagle sharks are caught incidentally in other fisheries in the north Atlantic area.

*Response:* We proposed not to open the porbeagle shark quota in 2013 due to the small adjusted quota (0.5 mt dw) available once overharvests from 2011 and 2012 were accounted for, and due to difficulties in accurately monitoring such a small quota. Since the publication of the proposed rule, updated landings data indicate additional porbeagle shark landings, which resulted in a combined overharvest from 2011 and 2012 that exceeds the 2013 base commercial quota. Specifically, in 2011, updated landings data indicate an additional 0.8 mt dw (1,781 lb dw) of landings. In the proposed rule, we accounted for 0.1 mt dw (227 lb dw) of 2011 porbeagle shark landings that were reported after the 2012 shark season rule was published. Additionally, as of November 26, 2012, a total of 1.9 mt dw was reported landed in 2012, which is 1.2 mt dw (2,614 lb dw) higher than the 2012 porbeagle shark quota. In total, the actual combined overharvest from 2011 and 2012 is 2.1 mt dw (4,622 lb dw). This combined overharvest exceeds the base 2013 commercial landings quota of 1.7 mt dw (3,748 lb dw) by 0.4 mt dw (874 lb dw). Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(1)(i)(A), the overharvested amount must be deducted from future years' fishing quotas. After the appropriate deductions, no quota is available for commercial porbeagle shark landings in 2013, and we are planning to reduce the 2014 fishing quota to account for the remaining overharvest.

We understand that not allowing porbeagle shark landings means that any porbeagle sharks that are caught incidentally during other fishing must be discarded, either alive or dead. However, while we account for dead discards in establishing the total allowable catch for the species, dead discards are not part of the commercial porbeagle shark quota. In Amendment 2 to the 2006 Consolidated HMS FMP, we established a rebuilding plan for porbeagle sharks that set the total allowable catch at 11.3 mt dw. This total allowable catch caps fishing mortality, which encompasses commercial landings, recreational landings, and commercial dead discards. The commercial porbeagle quota was established at 1.7 mt dw, while the recreational catch, including landings in tournaments, was 0.1 mt dw and commercial discards were 9.5 mt dw. Any dead discards that occur will be accounted for and used in future stock assessments and any adjustments that result from those assessments.

*Comment 7:* NMFS needs to address the large number of porbeagle sharks that are caught in the recreational fishery and add porbeagle sharks to the prohibited species list.

*Response:* This comment is beyond the scope of this rulemaking. This rulemaking focuses on adjusting the commercial shark quotas based on over- and underharvests from previous years and establishing opening dates for the 2013 commercial shark season. Restricting the catches of porbeagle sharks in the recreational fishery and any consideration of adding them to the prohibited species list could be

addressed in a future rulemaking if deemed appropriate at that time.

*C. General Comments*

*Comment 8:* NMFS should stop all shark fishing.

*Response:* This comment is outside the scope of this rulemaking. The purpose of this rulemaking is to adjust quotas based on over- and underharvests from the previous year and opening dates for the 2013 shark season. Management of the Atlantic shark fisheries is based on the best available science to maintain or rebuild overfished shark stocks. The final rule does not reanalyze the overall management measures for sharks, which were analyzed in Amendments 2 and Amendment 3 to the 2006 Consolidated HMS FMP, and are being reviewed again for some shark species in response to new stock assessments through draft Amendment 5 to the 2006 Consolidated HMS FMP.

*Comment 9:* A commenter was happy that NMFS did not change the regulations for the small coastal shark fisheries, including the non-blacknose and blacknose shark fisheries, in 2013.

*Response:* As noted in Response to Comment 8, the 2013 shark season rule establishes commercial quotas based on over- and underharvest in 2012, and sets the opening dates for the non-blacknose small coastal shark and blacknose shark fishing seasons. Since the non-blacknose small coastal shark fishery is not overfished with no overfishing occurring, any underharvests for the non-blacknose small coastal sharks therefore could be applied to the 2013 quotas, pursuant to 50 CFR 635.27(b)(i)(B). However, blacknose sharks are overfished with overfishing occurring, so the 2013 final quotas are the base annual quotas for blacknose sharks. Since both fisheries remained open for the entire year, we decided to open the fishery again on January 1. Any other changes to the fisheries beyond the opening dates and adjusting the quotas are outside the scope of this rulemaking.

*Comment 10:* We received a comment on how NMFS determines if a species is ''underharvested.'' The commenter noted that annual landings less than the available quotas could indicate that stock populations have declined over time due to overfishing.

*Response:* A species is underharvested if the annual quota was not fully landed. In 2011, the Gulf of Mexico and Atlantic non-sandbar large coastal sharks, shark research, non-blacknose small coastal sharks, blacknose sharks, blue sharks, and pelagic sharks (other than porbeagle and blue sharks) quotas were all underharvested, since the landings did not reach the annual quotas. Even though many of the fishing quotas were underharvested, this does not necessarily indicate a decline in the stock populations. There are many factors that can impact the amount of shark fishing every year. Factors like weather, shark migratory patterns, and market prices would affect fishing effort and catch rates of shark fishermen. In addition, annual fishing quotas were established to end overfishing and to ensure that the stock can withstand the current fishing effort and continue to rebuild in the future. We assess stocks on a regular basis to ensure that stocks are rebuilding, if appropriate, and their status is being maintained or improved.

*Comment 11:* We received a question on how NMFS accounts for illegal landings or information withheld about commercial catches, and how they are factored into the final quotas.

*Response:* We use dealer landings and fishermen logbook data to establish the annual landings. To the extent that illegal landings are included in this data, they are considered in establishing annual landings and used for quota monitoring purposes. Some illegal landings are not reported in logbooks or dealer reports (e.g., sharks harvested by Mexican lanchas in the Gulf of Mexico) and are not used for quota monitoring purposes. However, when NMFS has estimates of illegal landings, NMFS uses that data to establish annual quotas, as appropriate, and in stock assessments, which in turn helps determine the annual baseline quotas. For the 2013 shark season rule, we used reported landings data from October 31 to December 31, 2011, and 2012 fishing year landings data as of November 26, 2012, to determine if any shark species or complex was overharvested. Any reported landings beyond November 26, 2012, will be accounted for the 2014 annual quotas. Management likely would not have access to landings information beyond November 26, 2012, until January 1, 2013. Therefore, we used the most recent available information to allow us to properly analyze the fishery and open the fishery in January.

*Comment 12:* We received a comment asking how the Agency defines the term ''equitable fishing opportunities.''

*Response:* We define equitable fishing opportunities as fair distribution of the annual quota to fishermen located throughout a region across states consistent with legal requirements including National Standard 4 of the Magnuson-Stevens Act. The adaptive management measures allowing inseason adjustments to trip limits, in combination with the implementation of the HMS electronic dealer reporting system, which allows for more real-time reporting by dealers, should provide us a greater ability to ensure equitable fishing opportunities for fishermen located in the Atlantic or in the Gulf of Mexico regions. Inseason adjustment of the trip limit will provide us additional control over how slowly or quickly the quota is being taken and provide quota for fishermen throughout a region.

*Comment 13:* NMFS should give the increased sandbar shark research quota to the normal commercial fishery since the research fishery has harvested less than half of the 2012 sandbar shark quota.

*Response:* This comment is beyond the scope of this rulemaking. In part due to the small amount of sandbar shark quota available, in Amendment 2 to the 2006 Consolidated HMS FMP, we established a shark research fishery to maintain time series data for stock assessments and to meet our research objectives. The shark research fishery also allows selected commercial fishermen the opportunity to land and sell sandbar sharks. Only the commercial shark fishermen selected to participate in the shark research fishery are authorized to land sandbar sharks subject to the sandbar quota available each year. Changes to this part of the fishery are outside the scope of this rulemaking. This issue could be analyzed in future rulemakings if deemed appropriate.

**Changes From the Proposed Rule**

We made several changes to the proposed rule as described below.

1. We changed the final non-blacknose small coastal and porbeagle shark quotas based on landings updates through November 26, 2012. In the proposed rule, which was based on data available through August 22, 2012, the 2013 adjusted annual quota for the non-blacknose small coastal shark was 332.4 mt dw (732,808 lb dw). Based on updated landings data through November 26, 2012, the non-blacknose small coastal shark fishery was underharvested by 107.6 mt dw. Therefore, the 2013 adjusted annual quota for non-blacknose small coastal shark is 329.2 mt dw (725,645 lb dw) (221.6 mt dw annual base quota + 107.6 mt dw 2012 underharvest = 329.2 mt dw 2013 adjusted annual quota). Landings information beyond November 26, 2012, will not become available to us until January 1, 2013. This final rule used the most recent available information to allow us to properly analyze the fishery and open the fishery in January.

Since overharvests of the porbeagle quota occurred between October 31, 2011, and December 31, 2011, and during the 2012 fishing year, the available 2013 annual quota for porbeagle sharks at the proposed rule stage was thought to be 0.5 mt dw based on the August 22, 2012, shark landings data. Since the proposed rule published, updated landings data for 2011 indicate an additional 0.8 mt dw (1,781 lb dw) landings in excess of the 0.1 mt dw (227 lb dw) of porbeagle sharks that were accounted for as overharvested in the proposed rule. Additionally, as of November 26, 2012, a total of 1.9 mt dw was reported landed in 2012, which is 1.2 mt dw (2,614 lb dw) higher than the 2012 porbeagle shark quota. In total, the combined overharvest from 2011 and 2012 is 2.1 mt dw (4,622 lb dw). As such, the 2013 adjusted annual commercial porbeagle quota was exceeded by 0.4 mt dw (874 lb dw) (1.7 mt dw annual base quota − 0.1 mt dw 2011 additional overharvest − 0.8 mt dw 2011 updated landings − 1.2 mt dw 2012 overharvest = −0.4 mt dw 2013 adjusted annual quota). Thus, we will not allow commercial porbeagle shark landings in 2013, and are planning to reduce the 2014 fishing quota to account for the rest of the overharvest. Details of the resulting changes to the quota can be found in Table 1 and below.

2. We changed the reason for not opening the porbeagle shark quota in 2013. As noted above, in the proposed rule, we stated we would not allow porbeagle shark landings due to the small quota and difficulties in accurately monitoring such a small quota. However, as we state above, since the combined overharvest from 2011 and 2012 is 2.1 mt dw (4,622 lb dw), we are deducting the overharvested amount from the 2013 fishing quota, will not allow porbeagle shark landings in 2013, and will reduce the 2014 annual quota to account for this overharvest.

*2013 Annual Quotas*

This final rule adjusts the commercial quotas due to over- and/or underharvests in 2011 and 2012 using information up to November 26, 2012. The 2013 annual quotas by species and species group are summarized in Table 1. All dealer reports that are received by us after November 26, 2012, will be used to adjust the 2014 quotas, if necessary. A description of the quota calculations is provided in the proposed rule and is not repeated here. Any changes are described above in the ''Changes from the Proposed Rule'' section.

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Table 1. 2013 Annual Quotas and Opening Dates for the Atlantic Shark Fisheries. All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise.

| Species Group | Region | 2012 Annual Quota (A) | Preliminary 2012 Landings[1] (B) | Overharvest/ Underharvest (C) | 2013 Base Annual Quota (D) | 2013 Final Annual Quota (D+C) | Season Opening Dates |
|---|---|---|---|---|---|---|---|
| Non-Sandbar Large Coastal Sharks | Gulf of Mexico | 392.8 (866,063 lb dw) | 392.0 (864,173 lb dw) | - | 439.5 (968,922 lb dw) | 439.5 (968,922 lb dw) | January 1, 2013 |
| | Atlantic | 183.2 (403,889 lb dw) | 123.3 (271,806 lb dw) | - | 188.3 (415,126 lb dw) | 188.3 (415,126 lb dw) | |
| Non-Sandbar Large Coastal Shark Research Quota | No regional quotas | 37.5 (82,673 lb dw) | 13.1 (28,909 lb dw) | - | 50.0 (110,230 lb dw) | 50.0 (110,230 lb dw) | |
| Sandbar Research Quota | | 87.9 (193,784 lb dw) | 33.2 (73,244 lb dw) | - | 116.6 (257,056 lb dw) | 116.6 (257,056 lb dw) | |
| Non-Blacknose Small Coastal Sharks | | 332.4 (732,808 lb dw) | 224.8 (495,702 lb dw) | 107.6 [2] (237,106 lb dw) | 221.6 (488,539 lb dw) | 329.2 (725,645 lb dw) | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Blacknose Sharks | | 19.9 (43,872 lb dw) | 14.7 (32,336 lb dw) | - | 19.9 (43,872 lb dw) | 19.9 (43,872 lb dw) | |
| Blue Sharks | | 273.0 (601,856 lb dw) | 8.9 (19,627 lb dw) | - | 273.0 (601,856 lb dw) | 273.0 (601,856 lb dw) | |
| Porbeagle Sharks | | 0.7 (1,585 lb dw) | 1.9 (4,199 lb dw) | -2.1 [3] (4,622 lb dw) | 1.7 (3,748 lb dw) | -0.4 (-874 lb dw) | Closed for 2013 |
| Pelagic Sharks Other Than Porbeagle or Blue | | 488 (1,075,856 lb dw) | 127.4 (280,899 lb dw) | - | 488.0 (1,075,856 lb dw) | 488.0 (1,075,856 lb dw) | January 1, 2013 |

[1] Landings are from January 1, 2012, until November 26, 2012, and are subject to change.

[2] This adjustment accounts for the underharvest in 2012. The total underharvest is 107.6 mt dw (237,106 lb dw).

[3] This adjustment accounts for overharvest in 2011 and 2012. After the final rule establishing the 2012 quotas, the porbeagle shark quota was overharvested by an additional 0.1 mt dw (227 lb dw). Also, updated landings data for 2011 indicate an additional 0.8 mt dw (1,781 lb dw). As of November 26, 2012, 1.2 mt dw (2,614 lb dw) was harvested in excess of the 2012 porbeagle shark quota. The combined overharvest from 2011 and 2012 is 2.1 mt dw (4,622 lb dw).

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*Fishing Season Notification for the 2013 Atlantic Commercial Shark Fishing Season*

Based on the seven ''Opening Fishing Season'' criteria listed in 50 CFR 635.27(b)(1)(ii), the 2013 Atlantic commercial shark fishing season for the non-sandbar large coastal sharks fishery in the Gulf of Mexico and Atlantic, shark research, non-blacknose small coastal sharks, blacknose sharks, blue sharks, and pelagic sharks (other than porbeagle and blue sharks) fisheries in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open on January 1, 2013. The porbeagle shark quota will not open in 2013 due to overharvesting in 2011 and 2012.

Except for porbeagle sharks, all of the shark fisheries will remain open until December 31, 2013, unless we determine that the fishing season landings for sandbar shark, non-sandbar large coastal sharks, blacknose, non-blacknose small coastal sharks, blue sharks, or pelagic sharks (other than porbeagle or blue sharks) have reached, or are projected to reach, 80 percent of the available quota. At that time, consistent with § 635.27(b)(1), we will file for publication with the Office of the Federal Register a closure action for that shark species group and/or region that will be effective no fewer than 5 days from the date of filing. From the effective date and time of the closure until we announce that additional quota, if any, is available, the fishery for the shark species group and for the appropriate non-sandbar large coastal shark region will remain closed, even across fishing years, consistent with § 635.28(b)(2). As a reminder, the blacknose and non-blacknose small coastal shark fisheries will close together when landings reach 80 percent of either quota.

**Classification**

The NMFS Assistant Administrator has determined that the final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the MSA, and other applicable law. Pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator (AA) for Fisheries for NMFS has determined that there is good cause to waive the 30-day delay in effective date for the quotas and opening dates for the pelagic shark, shark research, blacknose shark, non-blacknose small coastal shark, and non-sandbar large coastal shark fisheries in the Atlantic and Gulf of Mexico regions, because such a delay is contrary to the public interest. The porbeagle shark quota is not subject to this waiver, because this quota will not open in 2013.

This final rule could not be completed sooner due to late-arriving information that was essential to formulating the action and informing the Agency decision-making process. A delay in effectiveness of this rule would cause negative economic impacts on fishermen and diminish the opportunity for the collection of scientific data, which is critical to properly managing the fisheries because needed information would not be available for stock assessments, resulting in negative ecological impacts on the fishery resource itself.

The final shark specifications are established based on dealer landings data that were received as of November 26, 2012. Dealers currently submit bi-weekly landings reports to the Southeast Fisheries Science Center, and late reporting is a common problem that we have taken affirmative steps to address with the implementation of electronic dealer reporting. Any landings received by a dealer between November 15 and 30, 2012, must be reported by December 10, 2012. However, management likely will not have access to that landings information until January 1, 2013, under the existing system (i.e., before implementation of the HMS electronic real-time dealer reporting system). Normal quality control procedures had to be applied to all shark landings data before the amount of over- or under-harvest could be calculated and applied to the 2013 quotas, making a later publication date for this action impracticable.

We have used the most recent available information to allow us to properly analyze the fishery and open the fishery in January. Any necessary adjustments to the landings report between November 27 and December 31 will be used in 2014. A delay in the effectiveness of the quotas in this rule will close the pelagic shark fishery from January 1, 2013, until a date 30 days after the publication date of this rule. Most pelagic shark species are captured incidentally in swordfish and tuna pelagic longline fisheries that will be open in early January. If the quotas in this rule are not made effective as close to January 1, 2013, as possible, fishermen will have to discard, dead or alive, any pelagic sharks that are caught. When the fishery is closed, bycatch and dead discards are likely to increase although the impacts on the resource are difficult to quantify. The rate of discards or bycatch fluctuates based of a variety of factors: Number of sharks captured; number of sharks that can be released alive; number of more profitable swordfish or tuna species caught; space in the fish hold for these species; and duration of the fishing trip. The opening of the shark fishery allows fishermen to keep sharks that may otherwise have to be discarded dead.

Regarding the shark research fishery, we select a small number of fishermen to participate in the shark research fishery each year for the purpose of providing us biological and catch data to better manage the Atlantic shark fisheries. All the trips and catches in this fishery are monitored with 100 percent observer coverage. Delaying the opening of the shark research fishery would prevent us from maintaining the monthly time-series of wintertime abundance for shark species or collecting vital biological and regional data during this time of year. Not conducting the necessary research trips could prevent us from having information necessary for stock assessments, thereby limiting our ability to properly manage the shark fisheries to the benefit of the fishermen and the shark species, and contrary to the public interest.

Regarding the blacknose shark and non-blacknose small coastal shark fisheries, these fisheries have both a directed component, where fishermen target small coastal sharks, and an incidental component, where the fish are caught and, when the fishery is open, landed by fishermen targeting other species such as Spanish mackerel and bluefish. The incidental fishery catches small coastal shark throughout the year. Delaying this action for 30-days would force all fishermen to discard, dead or alive, any small coastal shark that are caught before this rule becomes effective. Opening the fishery as close to January 1, 2013, as possible ensures that any mortality associated with landings is counted against the commercial quota in real-time. Additionally, a month-long delay in opening the small coastal shark fishery would occur during the time period when fishermen typically target small coastal shark species. Therefore, fishermen would experience negative economic impacts that would continue until the small coastal shark fisheries were opened. Thus, delaying the opening of the small coastal shark fisheries would undermine the intent of the rule and is contrary to the public interest.

Regarding the non-sandbar large coastal shark fishery in the Atlantic and Gulf of Mexico region, we received comments from fishermen and dealers recommending an opening date in January or early February. This change

would allow south Atlantic fishermen to have a winter fishery, and to potentially get a better price per pound. However, delaying the opening of the non-sandbar large coastal shark fishery in the Atlantic and Gulf of Mexico region for an additional 30 days would have negative economic impacts on fishermen because they would not be able to fish for that period. Additionally, many of the primary species targeted in the non-sandbar large coastal shark fisheries are locally available in the southern portion of the Atlantic region in January and a 30-day delay would cause fishermen to miss out entirely on fishing opportunities, and the associated revenue. Therefore, delaying this action for 30 days is contrary to the public interest.

For the reasons described above, the AA finds good cause to waive the 30-day delay in effectiveness of the quotas and opening dates for the pelagic shark, shark research, blacknose shark, non-blacknose small coastal shark, and non-sandbar large coastal shark fisheries in the Atlantic and Gulf of Mexico regions.

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

In compliance with section 604 of the Regulatory Flexibility Act (RFA), NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule, which analyzed the adjustments to the non-blacknose small coastal shark and porbeagle quotas based on over- and/or underharvests from the previous fishing season. The FRFA analyzes the anticipated economic impacts of the final actions and any significant economic impacts on small entities. The FRFA is below.

In compliance with section 604(a)(1) of the Regulatory Flexibility Act, the purpose of this final rulemaking is, consistent with the Magnuson-Stevens Act, to adjust the 2013 annual quotas for non-sandbar large coastal sharks, sandbar sharks, non- blacknose small coastal sharks, blacknose sharks, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) based on over- and/or underharvests from the previous fishing year, where allowable. These adjustments are being implemented according to the regulations implemented for the 2006 Consolidated HMS FMP and its amendments.

In this rulemaking, we expect few, if any, economic impacts to fishermen other than those already analyzed in the 2006 Consolidated HMS FMP and its amendments. While there may be some direct negative economic impacts associated with the opening dates for fishermen in certain areas, there could also be positive effects for other fishermen in the region. The opening dates were chosen to allow for an equitable distribution of the available quotas among all fishermen across regions and states, to the extent practicable.

Section 604(a)(2) of the Regulatory Flexibility Act requires NMFS to summarize significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of NMFS' assessment of such issues, and a statement of any changes made as a result of the comments. The IRFA was done as part of the proposed rule for the 2013 Atlantic Commercial Shark Season Specifications. We did not receive any comments specific to the IRFA. However, we received comments related to the overall economic impacts of the proposed rule (see Comments 1, 2, 3, 4, and 6 above). As described in the response to those comments relating to the season opening dates and consistent with § 635.27(b)(1)(ii), the opening date for the non-sandbar large coastal shark in the Atlantic and Gulf of Mexico regions will be implemented as proposed.

Section 604(a)(3) requires NMFS to provide an estimate of the number of small entities to which the rule would apply. We consider all HMS permit holders to be small entities because they either had average annual receipts less than $4.0 million for fish-harvesting, average annual receipts less than $6.5 million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. These are the Small Business Administration (SBA) size standards for defining a ''small'' versus ''large'' business entity in this industry.

The commercial shark fisheries are comprised of fishermen who hold shark directed or incidental limited access permits and the related industries, including processors, bait houses, and equipment suppliers, all of which we consider to be small entities according to the size standards set by the SBA. As of October 2012, there were a total of approximately 215 directed commercial shark permit holders, 271 incidental commercial shark permit holders, and 92 commercial shark dealers.

Section 604(a)(4) of the Regulatory Flexibility Act requires NMFS to describe the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which would be subject to the requirements of the report or record. None of the actions in this final rule would result in additional reporting, recordkeeping, or compliance requirements beyond those already analyzed in Amendments 2 and 3 to the consolidated HMS FMP.

Section 604(a)(5) of the Regulatory Flexibility Act requires NMFS to describe the steps taken to minimize the economic impact on small entities consistent with the stated objectives of applicable statutes. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603(c)(1)–(4)) lists four general categories of ''significant'' alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule for small entities.

In order to meet the objectives of this rule consistent with the Magnuson-Stevens Act, we cannot exempt small entities or change the reporting requirements only for small entities. This rulemaking does not establish management measures to be implemented, but rather implements previously adopted and analyzed measures as adjustments, as specified in Amendment 2 and Amendment 3 to the 2006 Consolidated HMS FMP and the EA for the 2011 quota specifications rule. Thus, in this rulemaking, we adjust quotas established and analyzed in Amendment 2 and Amendment 3 to the 2006 Consolidated HMS FMP by subtracting the underharvest or adding the overharvest as allowable, as specified and allowable in existing regulations. The management measures implemented in this rule are within a range previously analyzed in the EA with the 2011 quota specifications rule. Thus, we have limited flexibility to exercise in carrying out the measures and quotas in this rule.

Based on the 2011 ex-vessel price ($0.53/large coastal shark lb, $0.75/small coastal shark lb, $1.35/pelagic lb, and $11.90/lb for shark fins), the 2013 Atlantic shark commercial baseline quotas could result in revenues of $5,956,783. The adjustment due to the overharvests in 2011 and 2012 would result in a $7,290 loss to the fleet in revenues in the porbeagle shark quota. Additional total fleet revenue losses of $1,700 would occur in 2014. The adjustment due to the underharvests in 2012 would result in a $318,908 gain in revenues in the non-blacknose small coastal shark fishery. These revenues

are similar to the gross revenues analyzed in Amendment 2 and Amendment 3 to the 2006 Consolidated HMS FMP. The FRFAs for those amendments concluded that the economic impacts on these small entities, resulting from rules such as this one that delay the season openings and adjust the trip limits inseason via proposed and final rulemaking, were expected to be minimal. Amendment 2 and Amendment 3 to the 2006 Consolidated HMS FMP and the EA for the 2011 quota specifications rule assumed we would be preparing annual rulemakings and considered the FRFAs in the economic and other analyses at the time.

For this final rule, we reviewed the criteria at § 635.27(b)(1)(ii)(A) through (b)(1)(ii)(E), as in the proposed rule, to determine when opening each fishery will provide equitable opportunities for fishermen while also considering the ecological needs of the different species. Over- and/or underharvests of 2011 and 2012 quotas were examined for the different species/complexes to determine the effects of the 2013 final quotas on fishermen across regional fishing area. The potential season length and previous catch rates were examined to ensure that equitable fishing opportunities would be provided to fishermen. Lastly, we examined the seasonal variation of the different species/complex and the effects on fishing opportunities. In addition to these criteria, we also considered other relevant factors, such as public comments to and potential management measures in Amendment 5 to the 2006 Consolidated HMS FMP before arriving at the final opening dates for the 2013 Atlantic shark fisheries. For the 2013 fishing season, we are opening the fisheries for non-sandbar large coastal sharks in the Gulf of Mexico and Atlantic, shark research, non-blacknose small coastal sharks, blacknose sharks, blue sharks, and pelagic sharks (other than porbeagle and blue sharks) on January 1, 2013. The direct and indirect economic impacts will be neutral on a short- and long-term basis, because we do not change the opening dates of these fisheries from the status quo.

We will not be allowing landings of porbeagle shark in 2013. Not allowing porbeagle shark landings could result in short-term direct, minor, adverse economic impacts, as fishermen would have to fish in other fisheries to make up for lost porbeagle shark revenues during the 2013 fishing season. The combined overharvest (2.1 mt dw; 4,622 lb dw) from 2011 and 2012 exceeded the 2013 annual commercial porbeagle quota by 0.4 mt dw (874 lb dw). We will adjust the 2014 annual quota by 0.4 mt dw to account for this overharvest.

The long-term direct and indirect impacts could continue if the porbeagle shark quota is overharvested in future years.

**Authority:** 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

Dated: December 19, 2012.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 2012–30961 Filed 12–21–12; 8:45 am]

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# Proposed Rules

Federal Register

Vol. 77, No. 247

Wednesday, December 26, 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 TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2012–1311; Directorate Identifier 2011–NM–204–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier, Inc. Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–102, –103, and –106 airplanes, and Model DHC–8–200, –300, and –400 series airplanes. This proposed AD was prompted by reports of excessive wear found in the clevis (bolt) hole where the rod assembly attaches to the rudder/brake pedal bellcrank, due to prolonged fretting. This proposed AD would require measuring the bellcrank clevis holes, inspecting for cracking of the bellcrank, and re-working the clevis holes with steel bushings, or replacing the bellcrank. We are proposing this AD to detect and correct a worn or cracked clevis hole, which could cause failure of the bellcrank on one side, with subsequent asymmetric braking and consequent runway excursion.

**DATES:** We must receive comments on this proposed AD by February 11, 2013.

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

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

For service information identified in this proposed AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Luke Walker, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7363; fax (516) 794–5531.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–1311; Directorate Identifier 2011–NM–204–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

### Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2011–32, dated August 15, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> There have been several in-service reports of excessive wear found in the bolt [clevis] hole where the rod assembly, Part Numbers (P/N) 82710795–001 or 82710024–003, is attached to the rudder/brake pedal bellcrank. An investigation revealed that the wear was attributed to prolonged fretting.
>
> Failure of the bellcrank on one side could lead to asymmetric braking and may lead to runway excursion.
>
> This directive mandates [measuring clevis holes for length, and for certain bellcranks doing a liquid penetrant inspection for cracking, and] the re-work [by installing steel bushings] or replacement of each bellcrank, P/N 82710022–001/–002, 82710029–001/–002, 82710813–001/–002 and 82710814–001/–002, found with a worn [or cracked] bolt hole.

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

### Relevant Service Information

Bombardier, Inc. has issued Service Bulletins 8–27–111 and 84–27–55, both dated June 15, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

### FAA's Determination and Requirements of This Proposed AD

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

### Costs of Compliance

Based on the service information, we estimate that this proposed AD would

affect about 178 products of U.S. registry. We also estimate that it would take about 5 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $75,650, or $425 per product.

In addition, we estimate that any necessary follow-on actions would take about 16 work-hours and require parts costing up to $2,532, for a cost of $3,892 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. We have no way of determining the number of products that may need these actions.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Bombardier, Inc.:** Docket No. FAA–2012–1311; Directorate Identifier 2011–NM–204–AD.

**(a) Comments Due Date**

We must receive comments by February 11, 2013.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Bombardier, Inc. airplanes, certificated in any category, as specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes: Serial numbers 003 through 672 inclusive.

(2) Model DHC–8–400, –401 and –402 airplanes: Serial numbers 4003 through 4372 inclusive.

**(d) Subject**

Air Transport Association (ATA) of America Code 27: Flight controls.

**(e) Reason**

This AD was prompted by reports of excessive wear found in the clevis (bolt) hole where the rod assembly attaches to the rudder/brake pedal bellcrank, due to prolonged fretting. We are issuing this AD to detect and correct a worn or cracked clevis hole, which could cause failure of the bellcrank on one side, with subsequent asymmetric braking and consequent runway excursion.

**(f) Compliance**

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

**(g) Actions for Model DHC–8–100, –200, and –300 Series Airplanes**

For Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes: Within 6,000 flight hours or 24 months after the effective date of this AD, whichever occurs first, measure the edge-to-edge length of the clevis holes of each bellcrank; and, if the length is less than or equal to 0.218 inch, inspect for cracking of each bellcrank using liquid penetrant; in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–27–111, dated June 15, 2011.

(1) If no cracking is found: Before further flight, rework the bellcrank, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–27–111, dated June 15, 2011.

(2) If any clevis hole is greater than 0.218 inch, or if any cracking is found: Before further flight, replace the bellcrank with a new bellcrank, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–27–111, dated June 15, 2011.

**(h) Actions for Certain Model DHC–8–400 Series Airplanes**

For Model DHC–8–400, –401, and –402 airplanes that have accumulated less than or equal to 15,000 total flight hours as of the effective date of this AD: Within 6,000 flight hours after the effective date of this AD, but not to exceed 15,600 total flight hours, measure the edge-to-edge length of the clevis holes of each bellcrank, and inspect for cracking of each bellcrank using liquid penetrant; in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–55, dated June 15, 2011.

(1) If no cracking is found, and the edge-to-edge length of all clevis holes is less than or equal to 0.218 inch: Within 6,000 flight hours after the effective date of this AD, but not to exceed 15,600 total flight hours, rework or replace the bellcrank, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–55, dated June 15, 2011.

(2) If no cracking is found, and any clevis hole edge-to-edge length is greater than 0.218 inch but less than or equal to 0.248 inch: Within 6,000 flight hours after the effective date of this AD, replace the bellcrank with a new bellcrank, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–55, dated June 15, 2011.

(3) If no cracking is found, and any clevis hole edge-to-edge length is greater than 0.248 inch but less than or equal to 0.278 inch: Within 1,200 flight hours after doing the measurement/inspection required by paragraph (h) of this AD, replace the bellcrank with a new bellcrank, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–55, dated June 15, 2011.

(4) If any cracking is found, or if any clevis hole edge-to-edge length exceeds 0.278 inch: Before further flight, replace the bellcrank

with a new bellcrank, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–55, dated June 15, 2011.

**(i) Actions for Certain Other Model DHC–8–400 Series Airplanes**

For Model DHC–8–400, –401, and –402 airplanes that have accumulated more than 15,000 total flight hours as of the effective date of this AD: Within 600 flight hours after the effective date of this AD, measure the edge-to-edge length of the clevis holes of each bellcrank, and inspect for cracking of each bellcrank using liquid penetrant; in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–55, dated June 15, 2011.

(1) If no cracking is found, and the edge-to-edge length of all clevis holes is less than or equal to 0.218 inch: At the later of the compliance times specified in paragraphs (i)(1)(i) and (i)(1)(ii) of this AD, rework or replace the bellcrank, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–55, dated June 15, 2011.

(i) Within 6,000 flight hours after the effective date of this AD, but not to exceed 15,600 total flight hours.

(ii) Within 1,200 flight hours after the effective date of this AD.

(2) If no cracking is found, and any clevis hole edge-to-edge length is greater than 0.218 inch but less than or equal to 0.248 inch: Within 6,000 flight hours after the effective date of this AD, replace the bellcrank with a new bellcrank, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–55, dated June 15, 2011.

(3) If no cracking is found, and any clevis hole edge-to-edge length is greater than 0.248 inch but less than or equal to 0.278 inch: Within 1,200 flight hours after the effective date of this AD, replace the bellcrank with a new bellcrank, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–55, dated June 15, 2011.

(4) If any cracking is found, or any clevis hole edge-to-edge length exceeds 0.278 inch: Before further flight, replace the bellcrank with a new bellcrank, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–55, dated June 15, 2011.

**(j) Other FAA AD Provisions**

The following provisions also apply to this AD:

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

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

**(k) Related Information**

(1) Refer to MCAI Canadian Airworthiness Directive CF–2011–32, dated August 15, 2011, and the service bulletins specified in paragraphs (k)(1) (i) and (k)(1)(ii) of this AD, for related information.

(i) Bombardier Service Bulletin 8–27–111, dated June 15, 2011.

(ii) Bombardier Service Bulletin 84–27–55, dated June 15, 2011.

(2) For service information identified in this AD, contact Bombardier, Inc., Q–Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on December 17, 2012.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2012–30925 Filed 12–21–12; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2012–1313; Directorate Identifier 2012–NM–080–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Gulfstream Aerospace Corporation

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all Gulfstream Aerospace Corporation Model GV and GV–SP airplanes. This proposed AD was prompted by reports of two failures of the fuel boost pump and over-heat damage found on the internal components and external housing. This proposed AD would require doing an inspection to determine if fuel boost pumps having a certain part number are installed, replacing the fuel boost pumps having a certain part number, and revising the airplane maintenance program to include revised instructions for continued airworthiness. We are proposing this AD to prevent fuel leakage into the dry cavity of the boost pump and outside of the fuel pump, and to prevent capacitor clearance issues in the dry cavity, which together could result in an uncontrolled fire in the wheel well.

**DATES:** We must receive comments on this proposed AD by February 11, 2013.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For Gulfstream, Triumph Aerostructures, and GE Aviation service information identified in this proposed AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; fax 912–965–3520; email *pubs@gulfstream.com;* Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

**Examining the AD Docket**

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

**FOR FURTHER INFORMATION CONTACT:** Darby Mirocha, Aerospace Engineer, Propulsion and Services Branch, ACE–118A, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, GA 30337; telephone (404) 474–5573; fax (404) 474–5606; email: *darby.mirocha@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–1313; Directorate Identifier 2012–NM–080–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

## Discussion

We have received a report of failure of the fuel boost pump and over-heat damage found on the internal components and external housing. A subsequent investigation identified inadequate clearance between the internal capacitor and a printed circuit board as the root cause of the failure. Additionally, on other components, a damaged o-ring between the ''wet'' and ''dry'' cavities of the boost pump resulted in fuel ingress into the ''dry'' cavity. Product improvements have been incorporated into the boost pumps to modify the capacitor installation to prevent external shorting and incorporate an inspection port to allow for inspection of the ''dry'' cavity. This condition, if not corrected, could cause fuel leakage into the dry cavity of the boost pump and outside of the fuel pump, and capacitor clearance issues in the dry cavity, which together could result in an uncontrolled fire in the wheel well.

## Relevant Service Information

We reviewed Gulfstream V Service Bulletin 197 (for Model GV airplanes), and Gulfstream G550 Service Bulletin 122 (for Model GV–SP airplanes), both dated April 11, 2012, both including the following service information:

- Triumph Service Bulletin SB–TAGV/GVSP–28–JG0162, dated August 30, 2011.
- GE Service Bulletin 31760–28–100, dated February 15, 2011.

This service information describes procedures for doing an inspection to determine if fuel boost pumps having a certain part number are installed, and replacing the fuel boost pumps having a certain part number.

We have also reviewed Gulfstream Document GV–GER–0003, Instructions for Continued Airworthiness, Fuel Boost Pump with Leak Check Port, dated November 24, 2010. This service information describes procedures for fuel leak checks of the fuel boost pump.

## FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

## Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.''

## Differences Between the Proposed AD and the Service Information

Gulfstream V Service Bulletin 197 (for Model GV airplanes) and Gulfstream G550 Service Bulletin 122 (for Model GV–SP airplanes), both dated April 11, 2012, specify a compliance time of 42 months after the release of those service bulletins for accomplishing the actions in those service bulletins. This proposed AD requires a compliance time of 36 months after the effective date of this proposed AD. In developing the compliance time, we considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's recommendation for an appropriate compliance time, the availability of required parts, and the practical aspect of doing the actions within an interval of time that corresponds to the typical scheduled maintenance for the majority of affected operators. This difference has been coordinated with Gulfstream.

## Costs of Compliance

We estimate that this proposed AD affects 357 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspection to determine if a certain part number is installed. | 1 work-hour X $85 per hour = $85 | $0 | $85 | $30,345 |
| Maintenance program revision | 1 work-hour X $85 per hour = $85 | $0 | $85 | $30,345 |

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

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Replacement | 24 work-hours X $85 per hour = $2,040 | $7,600 | $9,640 |

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Gulfstream Aerospace Corporation:** Docket No. FAA–2012–1313; Directorate Identifier 2012–NM–080–AD.

**(a) Comments Due Date**

We must receive comments by February 11, 2013.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all Gulfstream Aerospace Corporation Model GV and GV–SP airplanes, certificated in any category.

**(d) Subject**

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 2822, Fuel boost pump.

**(e) Unsafe Condition**

This AD was prompted reports of two failures of the fuel boost pump and over-heat damage found on the internal components and external housing. We are issuing this AD to prevent fuel leakage into the dry cavity of the boost pump and outside of the fuel pump, and to prevent capacitor clearance issues in the dry cavity, which together could result in an uncontrolled fire in the wheel well.

**(f) Compliance**

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

**(g) Inspection to Determine the Part Number (P/N)**

Within 36 months after the effective date of this AD, inspect the fuel boost pumps to determine whether P/N 1159SCP500–5 is installed, in accordance with the Accomplishment Instructions of Gulfstream V Service Bulletin 197, dated April 11, 2012 (for Model GV airplanes); or Gulfstream G550 Service Bulletin 122, dated April 11, 2012 (for Model GV–SP airplanes); including the service information specified in paragraphs (g)(1) and (g)(2) of this AD. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the fuel boost pumps can be conclusively determined from that review.

(1) Triumph Service Bulletin SB–TAGV/ GVSP–28–JG0162, dated August 30, 2011.

(2) GE Service Bulletin 31760–28–100, dated February 15, 2011.

**(h) Replacement**

If the inspection required by paragraph (g) of this AD reveals a fuel boost pump with P/ N 1159SCP500–5: Before further flight, replace the fuel boost pump with a serviceable pump having P/N 1159SCP500–7, in accordance with Gulfstream V Service Bulletin 197, dated April 11, 2012 (for Model GV airplanes); or Gulfstream G550 Service Bulletin 122, dated April 11, 2012 (for Model GV–SP airplanes); including the service information specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) Triumph Service Bulletin SB–TAGV/ GVSP–28–JG0162, dated August 30, 2011.

(2) GE Service Bulletin 31760–28–100, dated February 15, 2011.

**(i) Maintenance Program Revision**

Within 500 flight hours after the effective date of this AD, revise the airplane maintenance program to include Gulfstream Document GV–GER–0003, Instructions for Continued Airworthiness, Fuel Boost Pump with Leak Check Port, dated November 24, 2010.

(1) For airplanes on which fuel boost pump P/N 1159SCP500–5 has been replaced in accordance with paragraph (h) of this AD: The initial compliance time for the inspection is within 500 flight hours after doing the replacement specified in paragraph (h) of this AD.

(2) For airplanes on which the inspection required by paragraph (g) of this AD reveals that a fuel boost pump with P/N 1159SCP500–7 has been installed: After revising the airplane maintenance program, as required by paragraph (i) of this AD, the initial inspection is required before further flight after doing the inspection required by paragraph (g) of this AD.

**(j) No Alternative Actions or Intervals**

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

**(k) Parts Installation Prohibition**

As of the effective date of this AD, no person may install a fuel boost pump having P/N 1159SCP500–5 on any airplane.

**(l) Alternative Methods of Compliance (AMOCs)**

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

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

**(m) Related Information**

(1) For more information about this AD, contact Darby Mirocha, Aerospace Engineer, Propulsion and Services Branch, ACE–118A, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, GA 30337; telephone (404) 474–5573; fax (404) 474–5606; email: *darby.mirocha@faa.gov*.

(2) For Gulfstream, Triumph Aerostructures, and GE Aviation service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah,

GA 31402–2206; telephone 800–810–4853; fax 912–965–3520; email *pubs@gulfstream.com;* Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on December 17, 2012.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2012–31036 Filed 12–21–12; 4:15 pm]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2012–1230; Directorate Identifier 2011–NM–107–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Embraer S.A. Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede an existing airworthiness directive (AD) that applies to certain Embraer S.A. Model ERJ 170 and ERJ 190 airplanes. The existing AD currently requires, for certain airplanes, repetitively replacing the low-stage check valve and associated seals of the right hand (RH) engine's engine bleed system with a new check valve and new seals, replacing the low pressure check valves (LPCV), and revising the maintenance program. For certain other airplanes, the existing AD requires replacing a certain low-stage check valve with an improved low-stage check valve. Since we issued that AD, we have received reports of uncommanded engine shutdowns on both Model ERJ 170 and ERJ 190 airplanes due to excessive wear and failure of LPCVs having certain part numbers. This proposed AD would also, for certain airplanes, require replacing certain LPCVs of the left-hand (LH) and RH engines, which would be an option for other airplanes. We are proposing this AD to prevent the possibility of a dual engine in-flight shutdown due to LPCV failure.

**DATES:** We must receive comments on this proposed AD by February 11, 2013.

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

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

For service information identified in this proposed AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2768; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–1230; Directorate Identifier 2011–NM–107–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

### Discussion

On June 23, 2010, we issued AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010). That AD required actions intended to address an unsafe condition on Embraer S.A. Model ERJ 170 and ERJ 190 airplanes.

Since we issued AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010), there have been occurrences of uncommanded engine shutdowns on both Model ERJ 170 and Model ERJ 190 airplanes due to excessive wear and failure of LPCVs having part number 1001447–3 and 1001447–4. Both engines of the airplanes have the same valves, which leads to the possibility of a dual engine in-flight shutdown due to LPCV failure. The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directives 2005–09–03R3 and 2006–11–01R6, both effective May 30, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI for Embraer S.A. Model ERJ 170 airplanes states:

> It has been found the occurrence of an engine in-flight shutdown * * * caused by the LPCV [low pressure check valves] failure P/N [part number] 1001447–3 with 3,900 Flight Hours (FH) installed on ERJ–170. This valve failed [to] open due [to] excessive wear. [I]t was found the occurrence of an engine shutdown on-ground, caused by the LPCV failure P/N 1001447–4 with 1,802 FH installed on ERJ–190 failed due [to] low cycle fatigue. Since the behavior of a valve P/N 1001447–4 removed from ERJ–190 is unknown on ERJ–170 and the P/N 1001447–4 is common between ERJ–170 and ERJ–190 airplane fleet, an action is necessary to prevent the installation, in ERJ–170 airplanes, of LPCVs P/N 1001447–4 previously installed in ERJ–190 airplanes.
> * * * * *

The MCAI for Embraer S.A. Model ERJ 190 airplanes states:

> It has been found the occurrence of an engine in-flight shutdown * * * caused by the LPCV failure P/N [part number] 1001447–3 with 3,900 Flight Hours (FH) installed on ERJ–170. This valve failed [to] open due [to] excessive wear. [I]t was found the occurrence of an engine shutdown on-ground, caused by

the LPCV failure P/N 1001447–4 with 1,802 FH installed on ERJ–190 failed due [to] low cycle fatigue. Since the behavior of a valve P/N 1001447–4 removed from ERJ–170 is unknown on ERJ–190 and the P/N 1001447–4 is common between ERJ–170 and ERJ–190 airplane fleet, an action is necessary to prevent the installation, in ERJ–190 airplanes, of LPCVs P/N 1001447–4 previously installed in ERJ–170 airplanes.

* * * * *

The unsafe condition is the possibility of a dual engine in-flight shutdown due to LPCV failure. The required actions include retaining the actions required by AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010), and include, for certain airplanes, replacing the LPCVs of LH and RH engines, which would be an option for certain other airplanes. You may obtain further information by examining the MCAI in the AD docket.

**Relevant Service Information**

EMBRAER has issued the following service information, which is intended to correct the unsafe condition identified in the MCAI.

- EMBRAER 170 Maintenance Review Board Report, MRB–1621, Revision 7, dated November 11, 2010.
- EMBRAER Service Bulletin 190LIN–36–0004, dated December 23, 2009.

**Changes to AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010)**

Paragraphs (j)(11) through (j)(14) of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010), have been redesignated as paragraphs (o)(1) through (o)(4) of this proposed AD.

**FAA's Determination and Requirements of This Proposed AD**

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

**Costs of Compliance**

We estimate that this proposed AD affects 253 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Cost per product | Number of U.S.-registered airplanes | Cost on U.S. operators |
|---|---|---|---|---|
| Replacement of RH check valves on Model ERJ 170-100 LR, -100 STD, -100 SE, and -100 SU airplanes (retained actions from existing AD 2010–14–14 (75 FR 42585, July 22, 2010)). | 3 work-hours × $85 per hour = $255 per replacement cycle. | $255 per replacement cycle. | 55 | $14,025 per replacement cycle. |
| Replacement of LH check valves on Model ERJ 170-100 LR, -100 STD, -100 SE, -100 SU, -200 LR, -200 STD, and -200 SU airplanes (retained actions from existing AD 2010–14–14 (75 FR 42585, July 22, 2010)). | 3 work-hours × $85 per hour = $255 per replacement cycle. | $255 per replacement cycle. | 75 | $19,125 per replacement cycle. |
| Replacement of LPCVs with P/N 1001447–6 (new proposed action). | 2 work-hours × $85 per hour = $170. | $170 | 253 | $43,010. |
| Revision of maintenance program (new proposed action). | 1 work-hour × $85 per hour = $85. | $85 | 253 | $21,505. |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2010–14–14, Amendment 39–16359 (75

FR 42585, July 22, 2010), and adding the following new AD:

**Embraer S.A.:** Docket No. FAA–2012–1230; Directorate Identifier 2011–NM–107–AD.

**(a) Comments Due Date**

We must receive comments by February 11, 2013.

**(b) Affected ADs**

This AD supersedes AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010), which superseded AD 2007–16–09, Amendment 39–15148 (72 FR 44734, August 9, 2007). AD 2007–16–09 superseded AD 2005–23–14, Amendment 39–14372 (70 FR 69075, November 14, 2005).

**(c) Applicability**

This AD applies to Embraer S.A. Model ERJ 170–100 LR, –100 STD, –100 SE., and –100 SU airplanes; Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes; Model ERJ 190–100 STD, –100 LR, –100 ECJ, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes; certificated in any category; having Hamilton Sundstrand low pressure check valve (LPCV) part number (P/N) 1001447–3 or 1001447–4.

**(d) Subject**

Air Transport Association (ATA) of America Code 36, Pneumatic.

**(e) Reason**

This AD was prompted by reports of uncommanded engine shutdowns on both Model ERJ 170 and ERJ 190 airplanes due to excessive wear and failure of LPCVs having certain part numbers. We are issuing this AD to prevent the possibility of a dual engine in-flight shutdown due to LPCV failure.

**(f) Compliance**

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

**(g) Retained Replacement for Right-Hand (RH) Engine on Model ERJ 170–100 LR, –100 STD, –100 SE., and –100 SU Airplanes**

This paragraph restates the requirements of paragraph (f) of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010). For Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes equipped with LPCVs having P/N 1001447–3: Within 100 flight hours after November 29, 2005 (the effective date of AD 2005–23–14, Amendment 39–14372 (70 FR 69075, November 14, 2005)), or prior to the accumulation of 3,000 total flight hours, whichever occurs later, replace the low-stage check valve and associated seals of the RH engine's engine bleed system with a new check valve and new seals, in accordance with the Accomplishment Instructions of EMBRAER Alert Service Bulletin 170–36–A004, dated September 28, 2005; or paragraph 3.C. of the Accomplishment Instructions of EMBRAER Service Bulletin 170–36–0004, dated November 18, 2005, or Revision 01, dated March 10, 2008. As of August 26, 2010 (the effective date of AD 2010–14–14), only use EMBRAER Service Bulletin 170–36–0004, Revision 01, dated March 10, 2008, for the actions required by this paragraph. Repeat the replacement thereafter at intervals not to exceed 3,000 flight hours.

**(h) Retained Provision for Removed Check Valves**

This paragraph restates the provision specified in paragraph (g) of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010). Although EMBRAER Alert Service Bulletin 170–36–A004, dated September 28, 2005, specifies to send removed check valves to the manufacturer, this AD does not include that requirement.

**(i) Retained Replacement for Left-Hand (LH) Engine on All Model ERJ 170 Airplanes**

This paragraph restates requirements of paragraph (h) of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010). For Model ERJ 170–100 LR, –100 STD, –100 SE., –100 SU, –200 LR, –200 STD, and –200 SU airplanes equipped with LPCVs having P/N 1001447–3: Within 300 flight hours after September 13, 2007 (the effective date of AD 2007–16–09, Amendment 39–15148 (72 FR 44734, August 9, 2007)), or prior to the accumulation of 3,000 total flight hours, whichever occurs later, replace the low-stage check valve and associated seals of the LH engine's engine bleed system with a new check valve and new seals, in accordance with paragraph 3.B. of the Accomplishment Instructions of EMBRAER Service Bulletin 170–36–0004, dated November 18, 2005; or Revision 01, dated March 10, 2008. As of August 26, 2010 (the effective date of AD 2010–14–14), only use EMBRAER Service Bulletin 170–36–0004, Revision 01, dated March 10, 2008. Repeat the replacement thereafter at intervals not to exceed 3,000 flight hours.

**(j) Retained Provision for Removed Check Valves in Accordance With Other Service Bulletin**

This paragraph restates the provision specified in paragraph (i) of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010). Although EMBRAER Service Bulletin 170–36–0004, dated November 18, 2005, specifies to send removed check valves to the manufacturer, this AD does not include that requirement.

**(k) Retained Actions and Compliance With Revised Service Information**

This paragraph restates the requirements of paragraph (j) of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010), with revised service information for paragraphs (k)(3), (k)(7), and (k)(8) of this AD. Unless already done, do the following actions.

(1) For Model ERJ 170–200 LR, –200 STD, and –200 SU airplanes equipped with LPCV having P/N 1001447–3: Within 100 flight hours after August 26, 2010 (the effective date of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010)), or prior to the accumulation of 3,000 total flight hours, whichever occurs later, replace the low-stage check valve and associated seals of the RH engine's engine bleed system with a new check valve and new seals, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 170–36–0004, Revision 01, dated March 10, 2008. Repeat the replacement thereafter at intervals not to exceed 3,000 flight hours.

(2) For Model ERJ 170–100 LR, –100 STD, –100 SE., –100 SU, –200 LR, –200 STD, and –200 SU airplanes equipped with LPCV having P/N 1001447–3: Replacing the LPCV having P/N 1001447–3 with a new one having P/N 1001447–4, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 170–36–0011, Revision 02, dated July 19, 2007, terminates the repetitive replacements required by paragraphs (g), (i), and (k)(1) of this AD.

(3) For Model ERJ 170–100 LR, –100 STD, –100 SE., –100 SU, –200 LR, –200 STD, and –200 SU airplanes equipped with LPCV having P/N 1001447–3, at the earlier of the times specified in paragraphs (k)(3)(i) and (k)(3)(ii) of this AD, revise the maintenance program to include maintenance Task 36–11–02–002 (Low Stage Bleed Check Valve), specified in Section 1 of the EMBRAER 170 Maintenance Review Board Report (MRBR), MRB–1621, Revision 6, dated January 14, 2010; or Revision 7, dated November 11, 2010. Thereafter, except as provided by paragraph (q) of this AD, no alternative inspection intervals may be approved for the task.

(i) Within 180 days after accomplishing paragraph (k)(2) of this AD.

(ii) Before any LPCV having P/N 1001447–4 accumulates 3,000 total flight hours, or within 300 flight hours after August 26, 2010 (the effective date of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010)), whichever occurs later.

(4) For Model ERJ 170–100 LR, –100 STD, –100 SE., –100 SU, –200 LR, –200 STD, and –200 SU airplanes equipped with LPCV having P/N 1001447–3: As of August 26, 2010 (the effective date of the effective date of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010)), no person may install any LPCV identified in paragraph (k)(4)(i) or (k)(4)(ii) of this AD on any airplane.

(i) Any LPCV having P/N 1001447–3, installed on Model ERJ–170 airplanes, that has accumulated more than 3,000 total flight hours.

(ii) Any LPCV having P/N 1001447–3, installed on Model ERJ–170 and ERJ–190 airplanes, that has accumulated 3,000 or more total flight hours. To calculate the equivalent number of flight hours for a LPCV having P/N 1001447–3 that was installed on a Model ERJ–190 airplane to be installed on a Model ERJ–170 airplane, the flight hours accumulated in operation on ERJ–190 models must be multiplied by a factor of 2 (100 percent).

(5) For Model ERJ 190–100 ECJ, –100 LR, –100 IGW, –100 STD, –200 STD, –200 LR, and –200 IGW airplanes: Within 100 flight hours after August 26, 2010 (the effective date of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010)), replace all LPCVs having P/N 1001447–3 that have accumulated 1,500 total flight hours or more as of August 26, 2010 (the effective date of AD 2010–14–14), with a new or serviceable LPCV having P/N 1001447–4 that has accumulated less than 2,000 total flight hours since new or since overhaul, in accordance

with the Accomplishment Instructions of EMBRAER Service Bulletin 190–36–0006, Revision 01, dated July 19, 2007.

(6) For Model ERJ 190–100 ECJ, –100 LR, –100 IGW, –100 STD, –200 STD, –200 LR, and –200 IGW airplanes: Replace all LPCVs having P/N 1001447–3 that have accumulated less than 1,500 total flight hours as of August 26, 2010 (the effective date of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010)), before the LPCV accumulates 1,500 total flight hours or within 100 flight hours after August 26, 2010 (the effective date of AD 2010–14–14), whichever occurs later. Replace that LPCV with a new or serviceable LPCV having P/N 1001447–4 that has accumulated less than 2,000 total flight hours since new or since overhaul, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 190–36–0006, Revision 01, dated July 19, 2007.

(7) For Model ERJ 190–100 ECJ, –100 LR, –100 IGW, –100 STD, –200 STD, –200 LR, and –200 IGW airplanes: Within 200 flight hours after August 26, 2010 (the effective date of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010)), or before any LPCV having P/N 1001447–4 installed on the right engine accumulates 2,000 total flight hours since new or since overhaul, whichever occurs later, replace the valve with a new or serviceable LPCV having P/N 1001447–4 that has accumulated less than 2,000 total flight hours since new or since overhaul, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 190–36–0014, Revision 01, dated January 14, 2009; or EMBRAER Service Bulletin 190LIN–36–0004, dated December 23, 2009 (for Model 190–100 ECJ airplanes). Repeat the replacement on the right engine at intervals not to exceed 2,000 total flight hours on the LPCV since new or last overhaul.

(8) For Model ERJ 190–100 ECJ, –100 LR, –100 IGW, –100 STD, –200 STD, –200 LR, and –200 IGW airplanes: Within 200 flight hours after August 26, 2010 (the effective date of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010)), or before any LPCV having P/N 1001447–4 installed on the left engine accumulates 2,000 total flight hours since new or last overhaul, whichever occurs later, replace the valve with a new or serviceable LPCV having P/N 1001447–4 that has accumulated less than 2,000 total flight hours since new or since overhaul, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 190–36–0014, Revision 01, dated January 14, 2009; or EMBRAER Service Bulletin 190LIN–36–0004, dated December 23, 2009 (for Model 190–100 ECJ airplanes). Repeat the replacement on the left engine at intervals not to exceed 2,000 total flight hours on the LPCV since new or last overhaul.

(9) For Model ERJ 190–100 ECJ, –100 LR, –100 IGW, –100 STD, –200 STD, –200 LR, and –200 IGW airplanes: As of August 26, 2010 (the effective date of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010)), installation on the left and right engines with a LPCV having P/N 1001447–4 is allowed only if the valve has accumulated less than 2,000 total flight hours since new or last overhaul prior to installation.

(10) For Model ERJ 190–100 ECJ, –100 LR, –100 IGW, –100 STD, –200 STD, –200 LR, and –200 IGW airplanes: As of August 26, 2010 (the effective date of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010)), no LPCV having P/N 1001447–3 may be installed on any airplane. Any LPCV having P/N 1001447–3 already installed on an airplane may remain in service until reaching the flight-hour limit defined in paragraphs (k)(5) and (k)(6) of this AD.

**(l) New Terminating Action**

For Model ERJ 190–100 STD, –100 LR, –100 ECJ, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes: Except as provided by paragraph (m) of this AD, within 10 months after the effective date of this AD, install a new LPCV having P/N 1001447–6, using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or Agência Nacional de Aviação Civil (ANAC) (or its delegated agent). Installation of P/N 1001447–6 terminates the requirement for installation and repetitive replacement of the LPCV having P/N 1001447–3 or 1001447–4 required by paragraph (k) of this AD.

**(m) New Exception**

For Model ERJ 190–100 STD, –100 LR, –100 ECJ, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes; that have an LPCV, P/N 1001447–4, that has been installed before the compliance time specified in paragraph (l) of this AD: Prior to the accumulation of 2,000 flight hours on the part since new or overhauled, install a new LPCV having P/N 1001447–6, using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or ANAC (or its delegated agent).

**(n) New Optional Terminating Action**

For Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes: Installation of a new LPCV having P/N 1001447–6 terminates the requirement for installation and repetitive replacement of the LPCV having P/N 1001447–3 or 1001447–4 required by paragraph (k) of this AD.

**(o) Credit for Previous Actions**

(1) This paragraph provides credit for the actions specified in paragraph (k)(2) of this AD, if those actions were performed before August 26, 2010 (the effective date of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010)), using EMBRAER Service Bulletin 170–36–0011, dated January 9, 2007; or EMBRAER Service Bulletin 170–36–0011, Revision 01, dated May 28, 2007; which are not incorporated by reference in this AD.

(2) This paragraph provides credit for the actions specified in paragraphs (k)(5) and (k)(6) of this AD, if those actions were performed before August 26, 2010 (the effective date of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010)), using EMBRAER Service Bulletin 190–36–0006, dated April 9, 2007, which is not incorporated by reference in this AD.

(3) This paragraph provides credit for the actions specified in paragraph (k)(1) of this AD, if those actions were performed before August 26, 2010 (the effective date of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010)), using EMBRAER Service Bulletin 170–36–0004, dated November 18, 2005, which is not incorporated by reference in this AD.

(4) This paragraph provides credit for the actions specified in paragraph (k)(3) of this AD, if those actions were done before August 26, 2010 (the effective date of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010)), using Task 36–11–02–002 (Low Stage Bleed Check Valve) specified in Section 1 of the EMBRAER 170 Maintenance Review Board Report (MRBR), MRB–1621, Revision 5, dated November 5, 2008, which is not incorporated by reference in this AD.

**(p) New Parts Installation Limitations**

(1) For Model ERJ 170–100 LR, –100 STD, –100 SE., and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes: As of the effective date of this AD, no person may install an LPCV having P/N 1001447–4 that was previously installed on any Model ERJ–190 airplane, on any airplane, unless the valve has been overhauled.

(2) For Model ERJ 190–100 STD, –100 LR, –100 ECJ, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes: As of the effective date of this AD, and until the effective date specified in paragraph (p)(3) of this AD, no person may install an LPCV having P/N 1001447–4 that was previously installed on any Model ERJ–170 airplane, on any airplane, unless the valve has been overhauled.

(3) For Model ERJ 190–100 STD, –100 LR, –100 ECJ, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes: As of 10 months after the effective date of this AD, no person may install any LPCV having P/N 1001447–4, on any airplane.

**(q) Other FAA AD Provisions**

The following provisions also apply to this AD:

*(1) Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2768; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/

certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

*(3)* AMOCs approved previously in accordance with AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010), are not approved as AMOCs with this AD.

**(r) Related Information**

(1) Refer to MCAI Brazilian Airworthiness Directive 2005–09–03R3, effective May 30, 2011; Brazilian Airworthiness Directive 2006–11–01R6, effective May 30, 2011; and the following service information; for related information.

(i) EMBRAER Service Bulletin 170–36–A004, dated September 28, 2005.

(ii) EMBRAER Service Bulletin 170–36–0004, dated November 18, 2005.

(iii) EMBRAER Service Bulletin 170–36–0004, Revision 01, dated March 10, 2008.

(iv) EMBRAER Service Bulletin 170–36–0011, Revision 02, dated July 19, 2007.

(v) EMBRAER Service Bulletin 190–36–0006, Revision 01, dated July 19, 2007.

(vi) EMBRAER Service Bulletin 190–36–0014, Revision 01, dated January 14, 2009.

(vii) EMBRAER Service Bulletin 190LIN–36–0004, dated December 23, 2009.

(viii) Task 36–11–02–002 (Low Stage Bleed Check Valve) specified in Section 1 of the EMBRAER 170 MRBR MRB–1621, Revision 6, dated January 14, 2010.

(ix) Task 36–11–02–002 (Low Stage Bleed Check Valve) specified in Section 1 of the EMBRAER 170 MRBR, MRB–1621, Revision 7, dated November 11, 2010.

(2) For service information identified in this AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—Brasil; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on December 12, 2012.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2012–30916 Filed 12–21–12; 8:45 am]

BILLING CODE 4910–13–P

## SUSQUEHANNA RIVER BASIN COMMISSION

## 18 CFR Part 806

## Review and Approval of Projects

**AGENCY:** Susquehanna River Basin Commission.

**ACTION:** Notice of proposed rulemaking and public hearing.

**SUMMARY:** This document contains proposed rules that would amend the project review regulations of the Susquehanna River Basin Commission (Commission) to include special requirements for withdrawals from surface water and groundwater sources which, from the point of taking or point of impact respectively, have a drainage area of equal to or less than ten square miles (headwater area); and to modify provisions relating to the issuance of emergency certificates by the Executive Director.

**DATES:** Comments on these proposed rules may be submitted to the Commission on or before February 25, 2013. The Commission has scheduled a public hearing on the proposed rulemaking, to be held February 14, 2013, in Harrisburg, Pennsylvania. The location of the public hearing is listed in the addresses section of this notice.

**ADDRESSES:** Comments may be mailed to: Mr. Richard A. Cairo, Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102–2391, or by email to *rcairo@srbc.net.*

The public hearing will be held on February 14, 2013, at 3:00 p.m., at the Pennsylvania State Capitol, Room 8E–B, East Wing, Commonwealth Avenue, Harrisburg, Pa. 17101. Those wishing to testify are asked to notify the Commission in advance, if possible, at the regular or electronic addresses given below.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Cairo, General Counsel, telephone: 717–238–0423, ext. 306; fax: 717–238–2436; email: *rcairo@srbc.net.* Also, for further information on the proposed rulemaking, visit the Commission's Web site at *www.srbc.net.*

**SUPPLEMENTARY INFORMATION:**

### Background and Purpose of Amendments

The basic purpose of the regulatory amendments set forth in this proposed rulemaking is to make further modifications to the Commission's project review regulations relating to surface and groundwater withdrawal limitations in headwater areas, and also relating to the issuance of emergency certificates by the Executive Director.

The Commission adopted a Low Flow Protection Policy (LFPP) on December 14, 2012. The purpose of the LFPP is to provide implementation guidance to the Commission staff, project sponsors and the public on the criteria, methodology, and process used to evaluate withdrawal applications to ensure that any flow alteration related to such withdrawals does not cause significant adverse impacts to the water resources of the basin.

When first released in draft form for public review in March 2012, the LFPP included certain restrictions on water withdrawals in headwater areas. Those provisions were removed from the policy upon final adoption, and instead are being proposed for inclusion in the Commission's project review regulations, given that they would establish a binding norm more appropriately contained in regulation.

The addition of a new section, 18 CFR 806.6—Project limitations, provides that projects proposing to withdraw water in drainage areas equal to or less than ten square miles shall not be approved unless, in the case of a surface water withdrawal, the use associated with the project would occur on the tract of land that is riparian or littoral to the surface water source from which the water is withdrawn, or would be used to provide source water to a public water supply system. Likewise, a groundwater withdrawal that impacts a surface water source which, from the point of impact is in a headwater area, would not be approved unless the water use associated with the project would occur on the tract of land from which the water is withdrawn, or would be used to provide source water to a public water supply system. Language is also included that provides that withdrawals by public water supply systems shall be limited for use within the system's service area, and not for bulk sale outside such area.

It is generally recognized that the smaller the drainage area, the less the amount of water that can be removed from it sustainably. On the whole, headwater areas of ten square miles or less have very limited yields, resulting in very limited water availability. The Commission believes it is appropriate, as a matter of sound public policy, to prioritize how that limited resource should be utilized by restricting its withdrawal for only uses within those areas or otherwise for public water supply.

So as not to prejudice administratively complete applications currently undergoing review as of the date of this Notice of Proposed Rulemaking, the Commission intends to

exempt such applications from the scope of this new rule if and when finally adopted.

In addition, the Commission finds it desirable to clarify the provisions of 18 CFR 806.34 relating to the issuance of emergency certificates by the Executive Director. Amendatory language is proposed in paragraph (a) of § 806.34 providing further criteria to apply in the exercise of this authority; namely, that consideration should be given to actions deemed necessary to sustain human life, health and safety, the life, health or safety of livestock, or the maintenance of electric system reliability, along with such other priorities established by the Commission relating to drought emergencies.

Language is also proposed to 18 CFR 806.34(b) and (b)(2)(iii) clarifying that the authority is applicable to both unapproved projects and those operating under an existing Commission approval.

**List of Subjects in 18 CFR Part 806**

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission proposes to amend 18 CFR part 806 as follows:

## PART 806—REVIEW AND APPROVAL OF PROJECTS

### Subpart A—General Provisions

1. The authority citation for Part 806 continues to read as follows:

**Authority:** Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91–575, 84 Stat. 1509 et seq.

2. In Part 806, revise the Table of Contents for Subpart A to read as follows:

### Subpart A—General Provisions

Sec.
806.1 Scope.
806.2 Purposes.
806.3 Definitions.
806.4 Projects requiring review and approval.
806.5 Projects that may require review and approval.
806.6 Project limitations.
806.7 Transfer of approvals.
806.8 Concurrent project review by member jurisdictions.
806.9 Waiver/modification.

* * * * *

3. In § 806.4, revise paragraph (a) to read as follows:

**§ 806.4 Projects requiring review and approval.**

(a) Except for activities relating to site evaluation or those authorized under § 806.34, and subject to the limitations set forth in § 806.6, no person shall undertake any of the following projects without prior review and approval by the Commission. The project sponsor shall submit an application in accordance with subpart B and shall be subject to the applicable standards in subpart C.

* * * * *

**§§ 806.6 through 806.8 [Redesignated as §§ 806.7 through 806.9]**

4. Redesignate §§ 806.6 through 806.8 as §§ 806.7 through 806.9, and add new § 806.6 to read as follows:

**§ 806.6 Project limitations.**

Except for existing projects undergoing approval, modification or renewal, any project requiring review and approval under this section and involving a withdrawal from a surface water source which, from the point of taking, has a drainage area of equal to or less than ten square miles, or any groundwater withdrawal that may impact a surface water source which, from the point of impact, has a drainage area of equal to or less than ten square miles, shall not be approved unless:

(a) In the case of a surface water withdrawal, the water use associated with the project will occur on the tract of land that is riparian or littoral to the surface water source from which the water is withdrawn, or will be used to provide source water to a public water supply system, as that term is defined in § 806.3 or by statute or regulation of the host member state, for use within the system's service area and not for bulk sale outside such area.

(b) In the case of a groundwater withdrawal, the water use associated with the project will occur on the tract of land from which the water is withdrawn, or will be used to provide source water to a public water supply system, as that term is defined in § 806.3 or by statute or regulation of the host member state, for use within the system's service area and not for bulk sale outside such area.

5. In § 806.34, revise paragraphs (a), (b), (b)(2), and (b)(2)(iii) to read as follows:

**§ 806.34 Emergencies.**

(a) *Emergency certificates.* The other requirements of these regulations notwithstanding, in the event of an emergency requiring immediate action to protect the public health, safety and welfare or to avoid substantial and irreparable injury to any person, property, or water resources when circumstances do not permit a review and determination in the regular course of the regulations in this part, the Executive Director, with the concurrence of the chairperson of the Commission and the commissioner from the affected member state, may issue an emergency certificate authorizing a project sponsor to take such action as the Executive Director may deem necessary and proper in the circumstances, pending review and determination by the Commission as otherwise required by this part. In the exercise of such authority, consideration should be given to actions deemed necessary to sustain human life, health and safety, or that of livestock, or the maintenance of electric system reliability to serve such needs, or any other such priorities that the Commission may establish from time to time utilizing its authority under Section 11.4 of the Compact related to drought emergencies.

(b) *Notification and application.* A project sponsor shall notify the Commission, prior to commencement of the project, that an emergency certificate is needed. In the case of a project operating under an existing Commission approval seeking emergency approval to modify, waive or partially waive one or more conditions of such approval, notice shall be provide to the Commission prior to initiating the operational changes associated with the request. If immediate action, as defined by this section, is required by a project sponsor and prior notice to the Commission is not possible, then the project sponsor must contact the Commission within one (1) business day of the action. Notification may be by certified mail, facsimile, telegram, mailgram, electronic mail or other form of written communication. This notification must be followed within one (1) business day by submission of the following:

* * * * *

(2) At a minimum, the application shall contain:

* * * * *

(iii) Location map and schematic of proposed project, or in the case of a project operating under an existing Commission approval, the project approval reference and a description of the operational changes requested.

* * * * *

Dated: December 17, 2012.

**Thomas W. Beauduy,**

*Deputy Executive Director.*

[FR Doc. 2012–30764 Filed 12–21–12; 8:45 am]

BILLING CODE 7040–01–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

**[Docket No. USCG–2009–1021]**

**RIN 1625–AA09**

## Drawbridge Operation Regulation; New Haven Harbor, Quinnipiac and Mill Rivers, CT

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking; Reopening comment period.

**SUMMARY:** The Coast Guard is reopening the comment period to solicit comments on its Notice of Proposed Rulemaking published January 13, 2010, regarding the Ferry Street Bridge, mile 0.7, across the Quinnipiac River, the Grand Avenue Bridge, mile 1.3, across the Quinnipiac River, and the Chapel Street Bridge, mile 0.4, across the Mill River, at New Haven, Connecticut. This notice of proposed rulemaking is expected to relieve the bridge owner from the burden of crewing the bridges during time periods when the bridges seldom receive requests to open.

**DATES:** Comments and related material must be received by January 15, 2013.

**ADDRESSES:** You may submit comments identified by docket number USCG–2009–1021 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rulemaking, call or email Ms Judy Leung-Yee; Bridge Administration Branch, First Coast Guard District; telephone 212–668–7165, email *judy.k.leung-yee@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change to *http://www.regulations.gov* and will include any personal information you have provided.

*1. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–1021), indicate the specific section of this document or the notice of proposed rulemaking to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type ''USCG–2009–1021'' in the ''Search'' box and press the ENTER key, locate the entry for the notice of proposed rulemaking and click on the comment box next to it, and then following instructions for submitting a comment. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

*2. Viewing Comments and Documents*

To view comments or other documents in the docket, go to *http://www.regulations.gov,* in the ''Search'' box insert ''USCG–2009–1021'' and press the ENTER key. Locate the entry for the notice of proposed rulemaking and click the ''Open Docket Folder'' next to it. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

*3. Privacy Act*

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the (73 FR 3316).

*4. Public Meeting*

We do not now plan to hold a public meeting. But you may submit a request for one to the docket using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### B. Basis and Purpose

In 2009, the City of New Haven requested a change to the drawbridge operation regulations governing the Ferry Street Bridge at mile 0.7, across Quinnipiac River, the Grand Avenue Bridge at mile 1.3, across the Quinnipiac River, and the Chapel Street Bridge, mile 0.4, across the Mill River, to reduce the burden of crewing these bridges during time periods when historically there have been few requests to open the bridges.

As a result, the Coast Guard authorized a temporary test deviation (74 FR 27249) on June 9, 2009, to test the proposed changes to the drawbridge operation regulations to help determine if a permanent change to the regulations would satisfactorily accomplish the bridge owner's goal and continue to meet the reasonable needs of navigation.

The test period was in effect through October 26, 2009. Satisfactory results were received from the test. There were no adverse impacts to navigation reported during the test period.

As a result of the successful test deviation we published a notice of

proposed rulemaking (NPRM) entitled, ''Drawbridge Operation Regulation; New Haven Harbor, Quinnipiac and Mill Rivers, CT,'' in the **Federal Register** (75 FR 1738) on January 13, 2010. The comment period for the NPRM closed on February 12, 2010. We received no comments in response to our NPRM. No public meeting was requested, and none was held.

The promulgation of the final rule was delayed due to the construction of the I–95 Pearl Harbor Memorial Bridge across the Quinnipiac River, at New Haven, Connecticut, which required land traffic detours during the initial phase of the new bridge construction. The Coast Guard delayed publication of the final rule to help facilitate vehicular traffic detours.

Because several years have passed since we first solicited comments on this rulemaking we are reopening this NPRM to provide notice and opportunity for the public to comment on this rulemaking before making the proposed changes permanent.

The notice of proposed rulemaking, requested by the City of New Haven, pertains to the following bridges:

- The Ferry Street Bridge at mile 0.7, across the Quinnipiac River, which has a vertical clearance in the closed position of 25 feet at mean high water and 31 feet at mean low water.
- The Grand Avenue Bridge at mile 1.3, across the Quinnipiac River, which has a vertical clearance in the closed position of 9 feet at mean high water and 15 feet at mean low water.
- The Chapel Street Bridge at mile 0.4, across the Mill River, which has a vertical clearance of 7 feet at mean high water and 13 feet at mean low water.

The regulation governing the Tomlinson Bridge at mile 0.0, across the Quinnipiac River, will not be changed by this rulemaking.

The existing drawbridge operation regulations listed at 33 CFR 117.213, authorizes a roving crew concept that requires the draw of the Ferry Street Bridge to open on signal from October 1 through April 30, between 9 p.m. and 5 a.m., unless the draw tender is at the Grand Ave or Chapel Street bridges, in which case a delay of up to one hour in opening is permitted.

The bridge owner would like to extend the above roving crew concept to be in effect year round.

The waterway users are seasonal recreational craft, commercial fishing and construction vessels.

As noted, because of the passage of time since the notice of proposed rulemaking was published, the Coast Guard is reopening the comment period until January 15, 2013.

This notice is issued under authority of 33 U.S.C. 499 and 5 U.S.C. 552.

Dated: December 10, 2012.

**Daniel B. Abel,**

*Rear Admiral, Commander, First Coast Guard District.*

[FR Doc. 2012–30985 Filed 12–24–12; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

**RIN 2900–AO34**

### VA Health Professional Scholarship and Visual Impairment and Orientation and Mobility Professional Scholarship Programs

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its VA Health Professional Scholarship Program (HPSP) regulations. VA also proposes to establish regulations for a new program, the Visual Impairment and Orientation and Mobility Professional Scholarship Program (VIOMPSP). These proposed regulations would comply with and implement sections 302 and 603 of the Caregivers and Veterans Omnibus Health Services Act of 2010 (the 2010 Act). Section 302 of the 2010 Act established the VIOMPSP, which authorizes VA to provide financial assistance to certain students seeking a degree in visual impairment or orientation or mobility, in order to increase the supply of qualified blind rehabilitation specialists for VA and the United States. Section 603 of the 2010 Act reauthorized and modified HPSP, a program that provides scholarships for education or training in certain healthcare occupations.

**DATES:** Comments must be received by VA on or before February 25, 2013.

**ADDRESSES:** Written comments may be submitted: By mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1068, Washington, DC 20420; by fax to (202) 273–9026; or through *http://www.Regulations.gov*. Comments should indicate that they are submitted in response to ''RIN 2900–AO34–VA Health Professional Scholarship and Visual Impairment and Orientation and Mobility Professional Scholarship Programs.'' All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition during the comment period, comments may be viewed online through the Federal Docket Management System at *http://www.Regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Nicole Nedd, Healthcare Talent Management Office, Department of Veterans Affairs, 1250 Poydras Street, Suite 1000, New Orleans, LA 70113; (504) 565–4900. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Pursuant to 38 U.S.C. 7601 through 7619, 7633, 7634, and 7636, VA has promulgated regulations implementing the HPSP, codified at 38 CFR 17.600 through 17.612. As explained in current § 17.600, the purpose of this program is to award scholarships ''to students receiving education or training in a direct or indirect health-care services discipline to assist in providing an adequate supply of such personnel for VA and for the Nation.'' This rulemaking proposes to amend the HPSP regulations in response to section 603 of the 2010 Act, Public Law 111–163, which amended the statutory authority for this program.

Section 603(a) and (c) renumbered and amended 38 U.S.C. 7618 as section 7619 and added a new section 7618. Section 7619, as amended, establishes a new delimiting date of December 31, 2014, for the HPSP. The previous delimiting date for HPSP had been December 31, 1998, and, therefore, the program is no longer active. Although this new delimiting date does not by itself require revision to any of the regulations that were in place when the program was previously active, section 603(b) of the 2010 Act amended the eligibility requirements for the HPSP, codified in 38 U.S.C. 7612(b)(2), to allow a broader spectrum of candidates to qualify for the HPSP. Section 7618(a) of title 38, United States Code, as added by section 603(c) of the 2010 Act, requires VA to modify the HPSP so that it will be ''designed to fully employ Scholarship Program graduates as soon as possible, if not immediately, upon graduation and completion of necessary certifications, and to actively assist and monitor graduates to ensure certifications are obtained in a minimal amount of time.'' Paragraph (b) of 38 U.S.C. 7618 requires participants of the HPSP to ''perform clinical tours in assignments or locations determined by [VA] while the participants are enrolled in the course of education or training for

which the scholarship is provided.'' Finally, section 7618(c) requires VA to ensure that the graduates of the HPSP are assigned a mentor who is employed at the facility where the graduates will perform their obligated service. This rulemaking proposes regulatory revisions to implement these changes in statutory authority, and to make other programmatic changes that will clarify VA policy and how VA implements HPSP.

This rulemaking also proposes new regulations to implement section 302 of the 2010 Act. Section 302 of the 2010 Act established chapter 75 of 38 U.S.C., which requires VA to create a scholarship program similar to the HPSP called the Visual Impairment and Orientation and Mobility Professional Scholarship Program (VIOMPSP). The purpose of the new program ''is to increase the supply of qualified blind rehabilitation specialists for [VA] and the Nation.'' 38 U.S.C. 7501(b). The statutory authority is substantively similar (and in many ways identical) to the existing authority governing the HPSP. The statutory similarities between the programs include certain defined terms, as well as certain provisions concerning failure to meet the obligations of the HPSP or the VIOMPSP.

We propose that VA policies and regulations related to the two programs will be as similar as possible. To the maximum extent possible, we propose to utilize, amending as necessary, the existing regulations to govern the commonalities between both programs, and then to add additional regulations necessary to implement the new VIOMPSP. This will eliminate redundancies between the two programs, facilitate the administration of the program by VA, and make it easier for the public to understand the details of both programs. For example, VA and non-VA education professionals who seek or promote the use of government scholarships will be required to understand a smaller set of regulations than they would if we administered the two programs through entirely separate regulatory frameworks. In addition, promoting consistency will further the clear legislative intent that the programs be administered in a similar manner, as evidenced by the similarities between the authorizing statutes. We will discuss each proposed rule, seriatim, beginning with the amendments to the existing regulations governing the HPSP.

As noted above, the HPSP is governed by current §§ 17.600 through 17.612. All sections not specifically discussed below would not be amended by this proposed rule. We also propose to establish new §§ 17.625 through 17.636 to implement the new VIOMPSP.

**Proposed VA Health Professional Scholarship Program Regulations**

*17.600 Purpose*

Current § 17.600 sets forth the purpose of the regulations governing the HPSP, and states that it is designed to provide scholarships for education or training in ''[d]isciplines [that] include nursing, physical therapy, occupational therapy, and other specified direct or indirect health-care disciplines if needed by VA.'' 38 CFR 17.600. We propose to remove this list of disciplines from § 17.600 and refer in proposed § 17.603(b) to a list of disciplines in 38 U.S.C. 7401(1) and (3), where the list will be expanded to include additional disciplines required by changes in law. We believe that § 17.600 should be a general regulation, and the specific disciplines eligible for consideration for the HPSP should be listed in the regulation governing eligibility. We would, therefore, state in proposed § 17.600 that the individual must pursue ''a course of study leading to a degree in certain healthcare occupations [ ] listed in 38 U.S.C. 7401(1) and (3).''

We also propose to add a new second sentence to § 17.600 that would clarify the intent of the HPSP. Section 7601(b) of title 38, United States Code, states that ''[t]he purpose of [HPSP] is to assist in providing an adequate supply of trained health-care personnel for the Department [of Veterans Affairs] and the Nation.'' The proposed second sentence of 38 CFR 17.600 would state that ''[t]he HPSP allows VA to provide scholarship awards to facilitate recruitment and retention of employees in several hard-to-fill healthcare occupations.''

*17.601 Definitions*

Current § 17.601 contains definitions applicable ''[f]or the purpose of these regulations,'' and organizes the definitions in numbered paragraphs. Consistent with more modern organizational frameworks, we propose to list the definitions alphabetically. Except as described in this supplementary information, we do not propose any substantive changes to the existing definitions; this is simply a reorganization. Any term not specifically discussed in the Supplementary Information section of this rulemaking would contain the definition found in current § 17.601.

We propose to change the introductory paragraph to § 17.601 to indicate that the definitions would apply to §§ 17.600 through 17.636, because, as noted above, the HPSP and the VIOMPSP will be administered in a similar manner. Rather than repeat all the common definitions in the VIOMPSP regulations, which would be governed by §§ 17.625 through 17.636, proposed later in this rulemaking, we have chosen to make the definitions in § 17.601 applicable to both programs, except where noted.

Section 17.601(a) currently defines ''acceptable level of academic standing.'' We would define ''acceptable level of academic standing'' to mean ''the level at which a participant may continue to attend school under the standards and practices of the school at which a participant is enrolled in a course of study for which an HPSP or VIOMPSP scholarship was awarded.'' The revised definition would be consistent with the current definition and would be applicable for both the HPSP and the VIOMPSP.

We propose to delete current paragraph (b), which defines ''Act,'' because this term is not used in the current or proposed HPSP regulations and would not be used in the proposed VIOMPSP regulations.

We propose to define the term ''acceptance agreement'' as a signed legal document between VA and a participant of the HPSP or VIOMPSP. Such agreement would specify the obligations of VA and the participant, which must be consistent with §§ 17.600 through 17.612 for the HPSP or §§ 17.626 through 17.636 for the VIOMPSP. We would also state that the acceptance agreement must include a mobility agreement, an agreement to accept the payment of the scholarship, an agreement to perform the obligated service, and an agreement to maintain enrollment and attendance in the approved HPSP or VIOMPSP course, to include maintaining an acceptable level of academic standing. The terms of the ''acceptance agreement'' are stated in 38 U.S.C. 7504 and 7604, and are specified throughout these proposed regulations as the requirements of the particular programs. This proposed definition would be consistent with the statutory requirements, current regulatory requirements, and these proposed regulations. Without a mobility agreement and an agreement to perform obligated service, we cannot ensure future VA employment. Without an agreement to accept payment of the scholarship and maintain appropriate academic standings, we cannot ensure completion of the course of education.

We propose to delete current paragraph (d), which defines ''advanced clinical training,'' because this term is

not used in the current or proposed HPSP regulations. The term is used only once in the VIOMPSP regulations. Therefore, we would defer to the common dictionary meaning of the term.

Current § 17.601(c) defines the term ''affiliation agreement'' to mean ''a Memorandum of Affiliation between a Department of Veterans Affairs health care facility and a school of medicine or osteopathy.'' We propose to amend this definition to eliminate the reference to ''Memorandum of Affiliation'' and, in its place, explain what the agreement entails. The new definition provides that an affiliation agreement is ''a legal document that enables the clinical education of trainees at a VA or non-VA medical facility. An affiliation agreement is required for all education or training that involves direct patient contact, or contact with patient information, by trainees from a non-VA institution.'' We would eliminate the requirement that the school be a school of medicine or osteopathy because scholarships may be offered to applicants pursuing degrees offered in schools other than traditional schools of medicine or osteopathy.

We propose to add a definition of ''credential'' to mean ''the licensure, registration, certification, required education, relevant training and experience, and current competence necessary to meet VA's qualification standards for employment in certain healthcare occupations.'' VA's qualification standards for employment in certain healthcare occupations are found in VA Handbook 5005. We would not include these employment standards in this rulemaking because such employment standards are not regulated by statute, and are beyond the scope of this rulemaking.

Current § 17.601(h) defines ''degree'' with language specific to the administration of the HPSP. We propose to amend this definition, which would be substantially similar to the current definition, would meet the needs of both programs, and would, therefore, be applicable to both HPSP and VIOMP. We would define the term ''degree'' to mean the successful completion of the course of study for which the HPSP or the VIOMPSP was awarded. We would state that VA recognizes the following degrees for purposes of the HPSP: ''A doctor of medicine; doctor of osteopathy; doctor of dentistry; doctor of optometry; doctor of podiatry; or an associate, baccalaureate, master's, or doctorate degree in another healthcare discipline needed by VA.'' We would also state that VA recognizes a bachelor's, master's, education specialist or doctorate that meets the core curriculum and supervised practice requirements in visual impairment and blindness for purposes of the VIOMPSP.

Current § 17.601(t) defines ''degree completion date'' to mean ''the date on which a participant completes all requirements of the degree program.'' We propose to not include this term because it is not used throughout the proposed HPSP or VIOMPSP regulations.

Current § 17.601(i) defines the term ''full-time student.'' However, because each school defines a full-time student differently, we propose to simplify the definition of ''full-time student'' to now mean ''an individual who meets the requirements for full time attendance as defined by the school in which they are enrolled.''

We propose to add a definition for ''HPSP'' to mean ''the VA Health Professional Scholarship Program authorized by 38 U.S.C. 7601 through 7619.'' This proposed definition would establish a distinct acronym for the VA Health Professional Scholarship Program for ease of use throughout these regulations.

We propose to add a definition for ''mobility agreement'' to mean ''a signed legal document between VA and a participant of the HPSP or VIOMPSP, in which the participant agrees to accept assignment at a VA facility selected by VA where he or she will fulfill the obligated service requirement.'' A mobility agreement is a required component of all participants' acceptance agreements and may require relocation to another geographic location. This proposed definition would be consistent with 38 U.S.C. 7502 and 7603, and with the manner in which the term was used in previously administering the HPSP when that program was active.

We propose to define ''obligated service'' to mean ''the period of time during which the HPSP or VIOMPSP participant must be employed by VA in a full-time clinical occupation for which the degree prepared the participant as a requirement of the acceptance agreement.'' We would define ''obligated service'' because it is an essential element of the acceptance agreement.

Current § 17.601(j) defines ''other educational expenses'' to mean ''a reasonable amount of funds determined by the Secretary to cover expenses such as books, and laboratory equipment.'' This defined term is only used in § 17.606(a)(1)(ii), which states that a scholarship award will consist of ''other educational expenses, including books and laboratory equipment.'' Thus, the meaning of the term when used in the substantive regulation is clear, and a separate definition is unnecessary. We, therefore, propose to delete this term from § 17.601.

Current § 17.601(r) defines ''part-time student'' to mean ''an individual who is a Department of Veterans Affairs employee permanently assigned to a Department of Veterans Affairs health care facility who has been accepted for enrollment or enrolled for study leading to a degree on a less than full-time but not less than half-time basis.'' This definition continues to be applicable and correct for the HPSP. However, participants of the VIOMPSP are not required to be VA employees. We propose to define ''part-time student'' using the current definition in § 17.601 with minor stylistic changes. We would define part-time student for purposes of the HPSP and for purposes of the VIOMPSP. The only distinction between the two definitions would be that the HPSP part-time student would be a VA employee.

Current § 17.601(n) defines ''participant or scholarship program participant'' to mean ''an individual whose application to the Scholarship Program has been approved and whose contract has been accepted by the Secretary and who has yet to complete the period of obligated service or otherwise satisfy the obligation or financial liabilities of the Scholarship Contract.'' We propose to amend the definition to read as follows: ''[A]n individual whose application to the HPSP or VIOMPSP has been approved, whose acceptance agreement has been consummated by VA, and who has yet to complete the period of obligated service or otherwise satisfy the obligation or financial liabilities of such agreement.'' We would make this change so that the definition could apply to both the HPSP and the VIOMPSP. We also would not continue to use the term ''Scholarship Contract'' in the definition, because this is not a term used throughout the proposed HPSP or VIOMPSP regulations. We would instead use the term ''acceptance agreement,'' which we are proposing to define in this rulemaking.

Current § 17.601(k) defines the term ''required educational equipment'' to mean ''educational equipment which must be rented or purchased by all students pursuing a similar curriculum in the same school.'' We propose to delete this term because it is not used throughout the proposed HPSP or VIOMPSP regulations.

Current paragraph (m) of § 17.601 defines ''Scholarship Program or Scholarship'' to mean ''the Department

of Veterans Affairs Health Professional Scholarship Program authorized by section 216 of the Act.'' The current definition uses the section of the public law as the authority citation for the HPSP. We propose to define ''Scholarship Program'' as ''the VA Health Professional Scholarship Program (HPSP) authorized by 38 U.S.C. 7601 through 7619.'' This change is made to cite the corresponding statutes that authorize the HPSP. Citing the statutes instead of the public law is a more accurate way of stating the authority for the HPSP. We are retaining this definition because it still applies to existing HPSP regulations that are not amended by this rulemaking. However, we would not use the term ''Scholarship Program'' in the new VIOMPSP regulations.

Current paragraph (o) of § 17.601 defines the term ''school.'' We propose to amend the current definition to apply to the HPSP and the VIOMPSP. We would state that ''school means an academic institution that is accredited by a body or bodies recognized for accreditation by the U.S. Department of Education or by the Council for Higher Education Accreditation (CHEA).'' We would state that for purposes of the HPSP a school would ''offer[ ] a course of study leading to a degree in a healthcare service discipline needed by VA.'' We would also state that for purposes of the VIOMPSP a school would ''offer[ ] a course of study leading to a degree in visual impairment or orientation and mobility.'' We would move the authority citation after paragraph (o) to the end of this section to accord with current VA conventions for citing authorities.

Current § 17.601(p) defines ''school year'' to mean ''for purposes of the stipend payment, all or part of the 12-month period from September 1 through August 31 during which a participant is enrolled in the school as a full-time student.'' We propose to not include the time period ''from September 1 through August 31.'' The commencement of a school year varies from institution to institution and limiting a school year from September 1 through August 31 may disqualify otherwise eligible participants whose school year commences on other dates. We would, therefore, define the term ''school year'' to mean ''for purposes of the HPSP and its stipend payment, and the VIOMPSP, all or part of the 12-month period that starts on the date the participant begins school as a full-time student.''

We propose to add a definition for ''VA.'' We would define VA as ''the Department of Veterans Affairs.'' The current regulations were written a long time ago, and they often refer to the ''Secretary.'' However, the modern trend in our regulations is to refer to ''VA'' and not the ''Secretary.'' We would use the term ''VA'' instead of the term ''Secretary'' throughout this rulemaking for ease of use and readability, consistent with 38 U.S.C. 301. We acknowledge that regulations not affected by this rulemaking still contain the term ''Secretary.''

Current paragraph (s) of § 17.601 defines a ''Department of Veterans Affairs employee'' as ''an individual employed and permanently assigned to a VA health care facility.'' In order to include potential applicants who are VA employees, but who are not employed in a VA medical center, we propose to eliminate the reference to VA healthcare facilities. We also propose to refine our definition of VA employee to now mean ''an individual permanently employed by VA.'' A ''permanently employed'' individual does not include an individual who is employed temporarily or on a contractual basis.

Current paragraph (u) of § 17.601 defines ''VA health care facility'' to mean ''Department of Veterans Affairs medical centers, medical and regional office centers, domiciliaries, independent outpatient clinics, and outpatient clinics in regional offices.'' We propose to amend this definition to remove outdated references to VA clinics, such as outpatient clinics in regional offices that no longer exist. The updated definition would incorporate current VA medical facilities, and would define VA healthcare facility to mean ''a VA medical center, independent outpatient clinic, domiciliary, nursing home (community living center), residential treatment program and any of a variety of community based clinics (including community based outpatient clinics, outreach clinics, rural health resource centers, primary care telehealth clinics, and Vet Centers), consolidated mail outpatient pharmacies, and research centers.''

We propose to add a definition for ''VIOMPSP'' to mean ''the Visual Impairment and Orientation and Mobility Professional Scholarship Program authorized by 38 U.S.C. 7501 through 7505.'' This proposed definition would establish a distinct acronym for the Visual Impairment and Orientation and Mobility Professional Scholarship Program that would allow for ease of use throughout these regulations.

The current authority for this section is 38 U.S.C. 7633. We propose to amend this authority citation to include the authority for the newly added definitions. The authority citation would be 38 U.S.C. 301, 7501(a)(1), 7504, 7602(a), 7604(1)(B), and 7633.

There is a collection number at the end of current § 17.601. Proposed § 17.601 would list the definitions that apply to the HPSP and the VIOMPSP. A collection number is not required at the end of a definitions section. We, therefore, propose to delete such collection number and relocate it where it is appropriate, namely following §§ 17.604, 17.612, 17.629, and 17.636.

*17.602 Eligibility for the HPSP*

We propose to amend § 17.602 by changing the title of the section from ''[e]ligibility'' to ''[e]ligibility for the HPSP.'' Current paragraph (a)(1) states that a participant must ''[b]e accepted for enrollment or be enrolled as a full-time student in an accredited school located in a State''. We would state that the participant must be ''unconditionally accepted for enrollment'' to specify that the participant's enrollment is not contingent upon meeting a condition or requirement that may or may not be met by the participant at the start of the school year. This condition or requirement may prevent a participant from enrolling in a school, and as such cause the participant to be in breach of the acceptance agreement.

We would also add a new paragraph (a)(6). Proposed paragraph (a)(6) would require participants in the HPSP to perform clinical tours while they are enrolled in the course of education or training as part of their acceptance agreement. Under 38 U.S.C. 7618(b), VA must ''require participants in [the HPSP] to perform clinical tours in assignments or locations determined by the Secretary while the participants are enrolled in the course of education or training for which the scholarship is provided.'' We note that the statute authorizes VA to determine ''assignments and locations'' of the clinical tour. In practice, VA attempts to make such determinations while participants are still pursuing their degrees, to facilitate their transition to VA employment, and VA attempts to assign participants in facilities located as close as possible to the participant's educational institution, unless the participant requests a different location and VA is able to accommodate that request.

*17.603 Availability of HPSP Scholarships*

We propose to amend § 17.603 by changing the title of the section from ''[a]vailability of scholarships'' to ''[a]vailability of HPSP scholarships.'' We would also add a new paragraph (b) and the current paragraph, reworded for

clarity, would be redesignated as paragraph (a).

Proposed paragraph (b) would authorize VA to grant a scholarship in a discipline or program for participation in HPSP if VA determines that such discipline or program ''is necessary for the improvement of healthcare of veterans.'' The authority citation for this change would be 38 U.S.C. 7612(b)(2), which authorizes HPSP scholarship awards in a field of education or training leading to employment as an appointee under 38 U.S.C. 7401(1) and (3). In turn, section 7401(1) and (3) contains a long list of disciplines, as well as authority to add additional classes that meet certain strict statutory criteria and in accordance with the procedural restrictions specified by statute. Rather than restate that list in the proposed rule, we would simply refer to section 7401(1) and (3) in the regulation text.

*17.604 Application for the HPSP*

We propose to amend the title of § 17.604 from ''[a]pplication for the scholarship program'' to ''[a]pplication for the HPSP.'' We also propose to amend § 17.604 for clarity.

The current regulation states that an applicant for an HPSP scholarship ''must submit an accurate and complete application'' that includes ''a signed written contract to accept payment of a scholarship and to serve a period of obligated service.'' It does not state that a mobility agreement is required. A mobility agreement is part of the acceptance agreement in which the participant agrees to accept assignment wherever VA will assign him or her to fulfill the obligated service with VA. We would state that ''[a]n applicant for the HPSP must submit an accurate and complete application including a signed written acceptance agreement.'' This statement would be consistent with prior practice and 38 U.S.C. 7603. The period of obligated service is further explained in § 17.607.

*17.605 Selection of HPSP participants*

We propose to amend § 17.605 by changing the title of the section from ''[s]election of participants'' to ''[s]election of HPSP participants.'' On August 18, 1983, VA amended § 17.605 by adding a new paragraph (d) and redesignating the existing paragraph (d) as paragraph (e). 48 FR 37,398. However, paragraph (a) referenced the original paragraph (d) and such reference was not amended to correctly reflect the redesignated paragraph (e). However, we redesignated paragraph (e) in this rulemaking, as explained below, to proposed paragraph (f). We propose to correct paragraph (a) by amending the references to ''paragraph (d) of this section'' to correctly refer to ''paragraph (f) of this section.''

We would also amend paragraph (a) to state that if there are more applicants to the HPSP than there are available funds, VA will select the participants based on a random method of selection, considering veterans first among all equally qualified candidates. This method of selection supports VA's hiring mission to attract, recruit and hire veterans into the VA workforce while also being consistent with the training and hiring goals of the HPSP. We would make other minor stylistic changes for ease of readability.

We propose to add a new paragraph (d) that would require VA to notify in writing those individuals whose applications are approved, and would state that an individual becomes a participant of the HPSP upon receipt of VA's written approval. Although current § 17.605 does not contain a similar provision, in practice VA has always provided such notification to HPSP applicants and has considered applicants to be participants upon their receipt of such notice. We believe that including this requirement in regulation will make it easier to understand the application and approval process. We would also redesignate current paragraphs (d) and (e) as proposed paragraphs (e) and (f), respectively.

*17.607 Obligated service*

Current § 17.607(b)(1) governs the beginning date of a participant's obligated service. The second sentence of current paragraph (b)(1) states that ''[t]he Secretary shall appoint the participant to such position within 60 days after the participant's degree completion date, or the date the participant becomes licensed in a State to practice in the discipline for which the degree program prepared the participant, whichever is later.'' We propose to amend this provision to incorporate the language of 38 U.S.C. 7618(a), as amended by the 2010 Act. Section 7618(a) states that the HPSP shall be modified to require that program graduates be fully employed ''as soon as possible, if not immediately, upon graduation and completion of necessary certifications,'' and that VA shall ''actively assist and monitor graduates to ensure certifications are obtained in a minimal amount of time following graduation.'' The addition of this language is essential in maintaining VA's part of the acceptance agreement by employing HPSP participants in a timely manner. Although VA will be actively working to ensure positions are available for these participants, we believe the current allowance of 60 days does not allow a sufficient window for VA or for the participants. We propose to extend the time limit from 60 to 90 days. We will strive to make the appointment as soon as possible within those 90 days. In order to incorporate the proposed extension of the time limit, and to ensure that VA complies with the acceptance agreement, we would state in proposed paragraph (b)(1) that ''VA will appoint the participant to such position as soon as possible, but no later than 90 days after the date that the participant receives his or her degree, or the date the participant becomes licensed in a State or becomes certified, whichever is later.'' VA will actively assist and monitor graduates to ensure credentials are obtained in a minimal amount of time following graduation. We would also state: ''If a participant fails to obtain his or her degree, or fails to become licensed in a State or become certified no later than 180 days after receiving the degree, the participant is considered to be in breach of the acceptance agreement.'' This statement would alert participants of the consequences of not upholding the acceptance agreement. We would also reformat current § 17.607(b)(1) into three paragraphs for ease of readability and amend the current language for clarity.

We propose to amend the authority citation after paragraph (b) of § 17.607 to include 38 U.S.C. 7618(a), which was amended by the 2010 Act.

As required by 38 U.S.C. 7618(c), we would state in paragraph (b)(1)(iii) that ''VA will ensure that the participant is assigned a mentor who is employed at the same facility where the participant performs his or her obligated service at the commencement of such service.'' The appointment of a mentor will allow the participant an easier transition into the VA healthcare system.

We propose to amend and reorganize current paragraph (c) for ease of readability. We would organize the current rules addressing the service obligation of full-time students in a new paragraph (c)(1), which would also include the new requirement of 38 U.S.C. 7612(c)(1)(B) that HPSP participants must agree to serve as full-time clinical VA employees ''for no less than 2 years.'' The current regulation, in accordance with 38 U.S.C. 7612(c)(1)(B) (1991) prior to the 2010 Act, requires a minimum of only 1 year of obligated service.

We would address the service obligation of part-time students in proposed paragraph (c)(2). We would make no revisions to the substantive

content of current paragraph (c) governing part-time students. We would add, however, that the obligated service for a part-time student must be satisfied by full-time clinical employment with VA. We would add this statement to alert potential participants that they may not fulfill the service obligation on a part-time basis.

We propose to amend the authority citation after paragraph (c) of § 17.607 to include 38 U.S.C. 7618(c), which was amended by the 2010 Act.

Current § 17.607(d) states that the participant ''must be willing to move to another geographic location for service obligation.'' We would amend paragraph (d) to state that the participant's willingness to move is in accordance with his or her mobility agreement. As explained previously, the mobility agreement is part of the acceptance agreement between the participant and VA. By adding this statement we would make clear that the participant will have agreed to such movement as part of the application process for the program.

Current § 17.607(d) states in part that ''[a] participant who received a scholarship as a part-time student may be allowed to serve the period of obligated service at the health care facility where the individual was assigned when the scholarship was authorized.'' Because the participant may receive a degree that is not associated with the VA position in which he or she was employed at the commencement of the HPSP, VA may not be able to guarantee the obligated service in that same healthcare facility. We would, therefore, now state that the participant may ''serve the period of obligated service at the healthcare facility where the individual was assigned when the scholarship was authorized, if there is a vacant position which will satisfy the individual's mobility agreement at that facility.''

*17.611 Bankruptcy*

Current § 17.611 states that ''[a]ny payment obligation incurred may not be discharged in bankruptcy under title 11 U.S.C. until 5 years after the date on which the payment obligation is due.'' This regulatory language is derived from 38 U.S.C. 7634(c), which states: ''An obligation of a participant under the Educational Assistance Program (or an agreement thereunder) for payment of damages may not be released by a discharge in bankruptcy under title 11 before the expiration of the five-year period beginning on the first date the payment of such damages is due.'' Section 7634(c) applies to the HPSP program because that program is part of the Educational Assistance Program under chapter 76 of title 38, United States Code. We propose to add an additional sentence to clarify that the rule applies to both HPSP and VIOMPSP, pursuant to 38 U.S.C. 7505(d), which is substantively identical to 38 U.S.C. 7634(c).

Because § 17.611 would now apply to both the HPSP and VIOMPSP, we would add 38 U.S.C. 7505(d) to the authority citation in § 17.611.

*17.612 Cancellation, waiver, or suspension of obligation*

Current § 17.612 concerns cancellation, waiver, or suspension of obligations under the HPSP.

Our authority for current § 17.612(a) is 38 U.S.C. 7634(a), which states that a participant's obligations under HPSP are cancelled upon the participant's death. Our authority for the rest of current § 17.612, paragraphs (b) through (d), is 38 U.S.C. 7634(b), which allows VA to ''prescribe regulations providing for the waiver or suspension of any obligation of a participant for service or payment under [HPSP] (or an agreement under [HPSP]) whenever noncompliance by the participant is due to circumstances beyond the control of the participant or whenever [VA] determines that the waiver or suspension of compliance is in the best interest of the United States.''

Proposed § 17.612(a)(1) would make this section applicable to both HPSP and VIOMPSP. The current rules and the changes proposed by this rulemaking notice are fully consistent with our authority under chapter 75. Section 7505(c) requires VA to prescribe regulations ''providing for the waiver or suspension of any obligation of an individual for service or payment * * * whenever (1) noncompliance by the individual is due to circumstances beyond the control of the individual; or (2) the Secretary determines that the waiver or suspension of compliance is in the best interest of the United States.''

Proposed paragraph (a)(2) restates current paragraph (a), without change.

Under the current rule, we authorize a one-year waiver or suspension of service or payment obligations that may be ''renew[ed]'' based on an application ''setting forth the basis, circumstances, and causes which support the requested action.'' 38 CFR 17.612(b)(1). Waivers or suspensions may be granted whenever compliance is impossible or whenever granting the application would be in the best interests of VA. 38 CFR 17.612(b)(2). Under current paragraphs (c) and (d), we discuss the basis for a finding of such impossibility. We do not propose to revise these paragraphs, and believe that it is consistent with the authorizing statutes to make these bases applicable to both the HPSP and VIOMPSP.

We propose to amend current paragraph (b)(1) to add two new requirements for the granting of a waiver or suspension. The first requirement would be that a participant must submit a written request for a waiver or suspension of his or her service or payment obligation no later than 1 year after the date the participant is notified he or she is in breach of his or her contract. The second requirement would obligate a participant to comply with a request by VA for additional information no later than 30 days after the request was made. The addition of these two requirements would eliminate ambiguity regarding dates of submission of waiver or suspension requests, and further submission of additional evidence. This change is consistent with our authority under 38 U.S.C. 7634 to prescribe regulations on this issue.

We propose to define the terms ''waiver'' and ''suspension'' for consistency of use. We would state that ''[a] waiver is a permanent release by VA of the obligation either to repay any scholarship funds that have already been paid to or on behalf of the participant, or to fulfill any other acceptance agreement requirement. If a waiver is granted, then the waived amount of scholarship funds may be considered taxable income.'' Federal tax regulations, at 26 CFR 1.61–12(a), state: ''The discharge of indebtedness, in whole or in part, may result in the realization of income.'' IRS Publication 525 (2010), further states that ''if a debt you owe is canceled or forgiven, other than as a gift or bequest, you must include the canceled amount in your income.'' We would state that the waived amount of scholarship funds may be taxable income to alert the participant of this potential tax liability.

In regard to suspensions, we would state that VA may approve an initial request for suspension for a period of up to one year. However, while waivers are permanent releases from obligations, suspensions are only temporary and will be granted initially for one year. Participants may request extension of a suspension for one additional year. The participant will be in breach of his or her acceptance agreement once the suspension period has ended. We would also state that if VA approves a suspension, ''VA will temporarily discontinue providing any scholarship funds to or on behalf of the participant while the participant's scholarship is in a suspended status'' or ''temporarily delay the enforcement of acceptance agreement requirements.''

We propose to add a new paragraph (e) to § 17.612 that would state that ''[a]ny previous participant of any federally sponsored scholarship program who breached his or her acceptance agreement or similar agreement in such scholarship program is not eligible to apply for another scholarship. This includes participants who previously applied for, and received, a waiver under this section.'' If a participant has breached the acceptance agreement under any other federally sponsored scholarship program such participant would be at a greater risk of breaching another acceptance agreement. VA has limited funds to award scholarships and VA would benefit if such funds were expended on participants who have not breached an acceptance agreement. Section 7634 of 38 U.S.C. allows VA to prescribe regulations for the ''waiver or suspension of any obligation of a participant for service or payment under the Educational Assistance Program.'' In view of the similarities between the HPSP and VIOMPSP, we also propose to allow waivers and suspensions for the VIOMPSP, even though that program is authorized by chapter 75. We believe that our authority to regulate waivers and suspensions under 38 U.S.C. 7505(c) and 7634 includes the authority to regulate the effect that granting a waiver or suspension should have on the participant's eligibility for future scholarships. We propose to bar a participant who previously breached an HPSP or VIOMPSP acceptance agreement, including those who were granted a waiver after they had breached the agreement. A participant who is granted a suspension of benefits would not be considered to be in breach of his or her acceptance agreement because such participant is expected to resume his or her course of study or obligated service after the period of suspension has concluded. Due to the limited availability of these scholarship funds, we believe it is inappropriate to award scholarships to individuals who are at risk for noncompliance, and believe that it is rational to assume that an individual who previously breached a contract has a higher risk of doing so again over one who has not previously breached a contract. It is also more equitable to distribute funds to persons who have not previously been offered the opportunity to participate in one of these programs, rather than to persons who have been given the opportunity but who failed to complete their obligations.

We propose to add a new paragraph (f). Paragraph (f) would state that ''[d]ecisions to approve or disapprove waiver requests are final and binding determinations'' and not subject to reconsideration or appeal. This paragraph is based on current practice and would clarify the finality of decisions made under 38 U.S.C. 7505(c) and 7634(b), which allow VA to prescribe regulations that provide for the waiver or suspension of any obligation of an individual for service or payment.

Finally, as a technical matter, we will revise § 17.612 so that the authority citations for the section appear at the end of the section.

**Proposed Visual Impairment and Orientation Mobility Professional Scholarship Program Regulations**

*17.625 Purpose*

Proposed § 17.625 would parallel § 17.600, however, it would be specifically applicable to the VIOMPSP. Proposed section 17.600 would recognize that both VA and non-VA employees may be eligible for the HPSP. However, proposed § 17.625 would state that the VIOMPSP would be used primarily as a recruitment tool, and ''will be publicized throughout educational institutions in the United States, with an emphasis on disseminating information to such institutions with high numbers of Hispanic students and to historically black colleges and universities.'' The prospective participants in the VIOMPSP are not the same as the prospective participants in the HPSP. We would make this distinction clear in proposed § 17.625. These requirements would be consistent with 38 U.S.C. 7501.

*17.626 Definitions*

As stated in the preamble for proposed § 17.601, in order to eliminate redundancies in the HPSP and the VIOMPSP, the definitions in § 17.601 would apply to both of these programs. In order to alert the reader that the defined terms for the VIOMPSP are contained in § 17.601, we propose to state in § 17.626 that ''[f]or the definitions that apply to §§ 17.625 through 17.636, see § 17.601.''

*17.627 Eligibility for the VIOMPSP*

Although proposed § 17.627 would parallel the structure of current § 17.602, there would be several substantive eligibility distinctions between HPSP and the VIOMPSP.

Paragraph (a) would set forth the basic eligibility requirements for VIOMPSP. Pursuant to 38 U.S.C. 7501(a), VIOMPSP would be available to U.S. citizens who are ''accepted for enrollment or currently enrolled in a program of study leading to a degree in orientation and mobility, low vision therapy, or vision rehabilitation therapy, or a dual degree'' and who submit a VIOMPSP signed agreement. We would also include the requirement to submit an application in order to be considered for the VIOMPSP, as set forth in 38 U.S.C. 7502. We would state that the participant must be ''unconditionally accepted for enrollment'' to specify that the participant's enrollment is not contingent upon meeting a condition or requirement that may or may not be met by the participant at the start of the school year. This condition or requirement may prevent a participant from enrolling in a school, and as such cause the participant to be in breach of the acceptance agreement. A ''dual degree'' refers to a course of study that enables an individual to become dually certified in two of the three professional certifications offered by the Academy for Certification of Visual Rehabilitation and Education Professionals (ACVREP). ACVREP offers certification in orientation and mobility, low vision therapy, and vision rehabilitation therapy (formerly known as blind rehabilitation teaching). A dual degree would include the core curriculum and supervised practice in two of these three certification areas during the participant's course of study. The requirement of citizenship is consistent with the overall structure and purpose of chapter 75. Under section 7501(b), the stated purpose of the program is, in part, to increase the supply of qualified blind rehabilitation specialists for the United States, and under section 7501(c), VA is required to publicize the program throughout the U.S. After completion of their education, participants must serve as full-time clinical VA employees for a minimum of three years. These requirements could be harder to meet in the case of non-U.S. citizens whose ability to remain in this country is contingent on factors beyond VA control.

Unlike HPSP scholarship recipients who, under current § 17.602(b), may receive HPSP benefits as part-time students provided that they are current, full-time VA employees at the time that the scholarship is awarded and for the duration of the scholarship, VIOMPSP scholarship recipients are not required to maintain VA employment, so we would not include a parallel provision requiring part-time students to be and remain employed by VA in the eligibility regulation for VIOMPSP.

Proposed paragraph (b) would parallel current § 17.602(c), which would not be

revised by this rulemaking. Current § 17.602(c) bars HPSP eligibility for any applicant ''who, at the time of application, owes a service obligation to any other entity to perform service after completion of the course of study.'' This bar is consistent with 38 U.S.C. 7602(b), which states that an individual is ineligible for the HPSP or VIOMPSP ''if the individual is obligated under any other Federal program to perform service after completion of the course of education or training of such individual.'' The current rule, applicable to HPSP, bars eligibility for any individual who owes a service obligation—irrespective of whether that obligation is the result of a Federal program, because such an obligation would complicate (or render impossible) the individual's obligation to provide service to VA.

*17.628 Availability of VIOMPSP scholarships*

Proposed § 17.628 would parallel proposed § 17.603(a), clarifying that ''VA will make awards under the VIOMPSP only when VA determines it is necessary to assist in alleviating shortages or anticipated shortages of personnel in visual impairment or orientation and mobility programs.'' Also consistent with § 17.603(a), we would state that VA's determination as to the number of VIOMPSP scholarships that will be awarded in a given fiscal year, as well as the number of full- and/or part-time students who will receive such awards, is subject to the availability of appropriations. This would be consistent with 38 U.S.C. 7501(a)(1) and with the way that VA had previously administered, and proposes to continue to administer, the HPSP program.

*17.629 Application for the VIOMPSP*

Proposed § 17.629 would state the application procedure for the VIOMPSP. Proposed paragraph (a) would state the procedure for applying for the VIOMPSP. Under proposed paragraph (a), the potential participant ''must submit an accurate and complete application,'' and the application would include a signed acceptance agreement. This proposed paragraph would be in accordance with 38 U.S.C. 7502(a), and would be consistent with the administration of the HPSP.

Proposed paragraph (b) would state VA's duty to inform a potential participant prior to acceptance in the VIOMPSP of his or her rights and liabilities if accepted into the program. We would also provide to anyone applying to the program the terms and conditions of participation in the VIOMPSP and service in VA. These VA duties are substantively identical to 38 U.S.C. 7502(a)(2).

*17.630 Selection of VIOMPSP participants*

Proposed § 17.630 would parallel current § 17.605, as revised by this rulemaking. However, several paragraphs in § 17.605 do not apply to the VIOMPSP. We would not include the selection criteria for part-time students from § 17.605(c) that pertain to VA employment at the time of application because, as stated above in the discussion of § 17.627, part-time students in the VIOMPSP are not required to be full-time VA employees. We would also not include a paragraph to parallel current § 17.605(e) because VIOMPSP will not offer continuation awards.

Our authority for the selection criteria in proposed § 17.630 would be 38 U.S.C. 7504(3). The criteria, as noted, mirror the current criteria for HPSP, which, while that program was active, were easy for participants to understand and for VA to apply. The fact that Congress decided to renew the HPSP, and established a substantively similar program, the VIOMPSP, supports continuing to interpret these statutory authorities and to continue to apply the existing regulatory criteria in the same manner as we have done in the past.

Proposed paragraph (a) would state the general provisions for selecting a participant for the VIOMPSP. VA will give priority consideration to applicants entering their final year of education or training, in order to achieve our goal of recruiting new healthcare practitioners on an expedited basis through the VIOMPSP. We would state that if there are more applicants to the VIOMPSP than there are available funds, VA will select the participants based on a random method of selection, considering veterans first among all equally qualified candidates. This is consistent with the procedures for the HPSP outlined in § 17.605(a), as amended by this rulemaking. This method of selection supports VA's hiring mission to attract, recruit and hire veterans into the VA workforce.

We would state the selection criteria for participants in the VIOMPSP in proposed paragraph (b). These criteria would include academic performance, work experience, faculty and employer recommendations, or career goals. These criteria are identical to the criteria used to select HPSP participants, and VA has found through the administration of that program that they accurately identify qualified individuals and that they indicate a likelihood of successful completion of a course of study.

Proposed paragraph (c) would require VA to notify in writing those individuals whose applications are approved, and would state that an individual becomes a participant of the VIOMPSP upon receipt of VA's written approval. As previously stated in this rulemaking, current § 17.605 does not contain a similar provision. In practice, however, VA has always provided such notification to HPSP applicants and has considered applicants to be participants upon their receipt of such notice. We believe that including this requirement in regulation will make it easier to understand the application and approval process.

Proposed paragraph (d) would indicate the period of time for which VA may award a scholarship under the VIOMPSP for full-time and part-time participants. We would state that VIOMPSP scholarships are awarded for the number of years that are required to complete program of study leading to a degree in orientation and mobility, low vision therapy, or vision rehabilitation therapy, or a dual degree. We would also state that the number of years covered by an individual scholarship will be equal to the number of years that the participant has yet to complete to obtain a degree. Awards of scholarships under the VIOMPSP are subject to the availability of funds, and VA may award a full-time student a scholarship for a minimum of 1 year to a maximum of 4 years. VA may also award a part-time student a scholarship for a minimum of 1 year to a maximum of 6 years.

*17.631 Award procedures*

Proposed paragraph (a) of § 17.631 would state the maximum amount that a participant may receive while enrolled in the VIOMPSP. The amount a participant may receive per year may not exceed the total cost of tuition and fees for the academic year for the degree program in which the participant is enrolled, up to a maximum annual amount for a full-time student of $15,000.00. We would state that payments to scholarship participants are exempt from Federal taxation. We would add this clarifying language in order to eliminate any doubt that the participant may have regarding any possible Federal tax liability upon receipt of the scholarship award. We would also state that the total amount of assistance per year provided to a participant who is a part-time student shall bear the same ratio to the amount that would be paid if the participant were a full-time student as the coursework carried by the participant to

full-time coursework. The total amount of assistance a participant may receive under the VIOMPSP is $45,000.00. We would clarify that if an individual is enrolled in a program of study leading to a dual degree, the tuition and fees would not exceed the amounts necessary for the minimum number of credit hours to achieve such dual degree. We would add this clarification to alert the participants that VA would not issue payments for additional non-requisite courses that the participant may have enrolled in to complement the dual degree. VA would only provide assistance to the extent that VA's financial assistance, coupled with that obtained through other sources, does not exceed the tuition and fees for the degree for which the VIOMPSP was granted. We would also state that VA will directly issue payments on behalf of the participant to the school in which the participant is enrolled for the amount of tuition and fees. This proposed paragraph would apply 38 U.S.C. 7503, without substantive change.

Proposed paragraph (b) would state that if a participant of the VIOMPSP repeats a course, VA would not pay for the additional costs relating to the repeated course work. We believe that it is important to restrict payments in this manner to ensure that our limited VIOMPSP funds are spent only on the best and brightest students enrolled in the program. We would also state that if scholarship payments were suspended under this section, VA will resume such payments upon notification from the school that the participant has returned from the leave-of-absence or has satisfactorily completed the repeated course work and is pursuing the course of study for which the VIOMPSP was awarded. We would require the notification from the school in order to avoid erroneous scholarship payment in the event that a participant did not pass the repeated course or did not return from the leave-of-absence on the anticipated date.

We are authorized under 38 U.S.C. 7504(3) to add to the acceptance agreement ''any other terms and conditions that [VA] considers appropriate for carrying out'' the VIOMPSP. A similar provision is set forth in 38 U.S.C. 7604(5), for purposes of the HPSP, which we implemented in 38 CFR 17.606(b). We recognize that § 17.606(b) is not explicitly addressed by statute and the regulatory language is not in the acceptance agreement itself. However, the proposed definition of acceptance agreement would require consistency with regulations, and we believe that it is important to note this restriction in regulation, as we did for the HPSP, in order to provide adequate notice of the restriction.

*17.632 Obligated service*

We would state the requirements for the participant's obligated service to VA for the VIOMPSP in proposed § 17.632. Proposed paragraph (a) would state that, except as provided in paragraph (d) of this section, a participant would serve as a full-time clinical VA employee in the rehabilitation practice of the participant's discipline in an assignment or location determined by VA while participating in the VIOMPSP.

Proposed paragraph (b) would state when the participant's obligated service would begin. Such service would begin ''on the date on which the participant obtains any required applicable credentials and when appointed as a full-time clinical VA employee in a position for which the degree prepared the participant.'' Proposed paragraph (b) would be in accordance with 38 U.S.C. 7504(3). We would state that VA will appoint the participant in a full-time clinical position as soon as possible, but no later than 90 days after the date the participant receives his or her degree, or the date the participant obtains the required credentials, whichever date is later. Even though VA would like to employ the participant as soon as possible, we must allow time for the participant to obtain the required credentials. Such credentials do not have to be obtained immediately after the completion of the course. However, VA may not employ the participant in a clinical position without such credentials. The 90 days would allow the participant sufficient time to obtain the necessary credentials. We would also state that ''[i]f a participant fails to obtain his or her degree, or fails to obtain any required applicable credentials within 180 days after receiving the degree, the participant is considered to be in breach of the acceptance agreement.'' As previously stated in this rulemaking under proposed paragraph § 17.607(b), we would add this statement to alert participants of the consequences of not upholding the acceptance agreement.

Proposed paragraph (c) would state that the duration of the obligated service would be for 3 calendar years. Such obligated service must be completed no later than 6 years after completion of the educational program for which the scholarship was awarded and a degree was received. These provisions are stated in 38 U.S.C. 7504(2)(D).

Proposed paragraph (d) would state that, as part of the participant's mobility agreement, he or she must be willing to accept assignment where VA assigns the obligated service. The mobility agreement is not specifically required by 38 U.S.C. 7504; however, it is part of the other terms and conditions that VA deems appropriate to carry out this program under paragraph (3) of section 7504.

Proposed paragraph (e) would state that ''[n]o period of advanced clinical training will be credited towards satisfying the period of obligated service incurred under the VIOMPSP.'' Such clinical training may be required for completion of the required degree in blind rehabilitation or mobility, and, if so, must be completed before the participant begins the obligated service. This proposed paragraph also falls under the purview of 38 U.S.C. 7504(3).

*17.633 Deferment of Obligated Service*

The regulations that govern deferment of obligated service for the VIOMPSP are the same as those found in current § 17.608, which apply to the HPSP. Deferments of obligated service may be requested by participants in certain degree programs to allow them to complete an approved program of advanced clinical training. In an effort to simplify the HPSP and VIOMPSP regulations, we propose to provide a cross-reference to § 17.608 for the rules that govern deferment of obligated service, in proposed § 17.633.

*17.634 Failure To Comply With Terms and Conditions of Participation*

Proposed § 17.634 would parallel current § 17.610, which would not be revised by this rulemaking.

Under 38 U.S.C. 7505(a) and (b), VA is required to establish in regulation an amount that must be repaid by individuals who fail to satisfy the terms of their acceptance agreements, and that amount must be ''equal to the unearned portion'' of their scholarship. For purposes of the HPSP, such liability is established in 38 U.S.C. 7617 and codified in regulation at 38 CFR 17.610. As explained throughout this notice, we believe that Congress expected VA to administer the VIOMPSP in a similar manner as the HPSP, given the similarity between the applicable statutes and the intent behind their enactment. We recognize that, for purposes of a breach of a VIOMPSP agreement, Congress did not require us to use the same formulas established in 38 U.S.C. 7617 for the HPSP; however, Congress did allow us to do so by authorizing VA to establish regulations. Consequently, we believe that it is appropriate to establish a regulation for the VIOMPSP that parallels current § 17.610.

Proposed paragraph (a) would parallel current § 17.610(a). This proposed paragraph would state that if the participant fails to accept payment, or instructs the school to not accept payment, under the VIOMPSP award, he or she must pay the United States $1,500 in liquidated damages. This dollar amount would be in addition to any service or other obligation incurred under the agreement. We note that this liquidated damages provision applies only if the participant refuses to accept payment of the scholarship, or causes a school not to accept such payment. In these cases, we have not already invested in the applicant and therefore our costs have not been significant. Moreover, the damages (monetary and nonmonetary, such as causing VA to deny another person's application based on approval of the individual's application) caused by such refusal are similar between both programs. Therefore, it is appropriate to adopt for the VIOMPSP the same $1,500 liquidated damages amount required for the HPSP. We also recognize that the statute applicable to the VIOMPSP may not specifically contemplate liquidated damages, but we believe that it is appropriate to adopt such a provision, based on our authority to establish regulations. Liquidated damages are easier to administer, reduce administrative costs, and provide effective resolution of this matter.

Proposed paragraph (b) would be based on current § 17.610(b); however, we would provide certain clarifications. First, this paragraph would apply within one year after an individual meets a description in paragraphs (b)(1) through (4) of an individual who must pay damages under proposed paragraph (b). Second, whereas current § 17.610(b)(5) states that the damages are in lieu of ''performing any service obligation,'' we would state that these damages would otherwise fulfill the terms of the acceptance agreement. Technically, under the acceptance agreement, the individual is required to stay enrolled in school and maintain acceptable academic standing; however, once he or she has met any of the criteria in paragraphs (b)(1) through (4), three of which relate to withdrawing from school, those obligations by definition cannot be fulfilled. Moreover, we want the rule to be clear that once the damages are paid, the individual's liability is resolved. Proposed paragraph (b)(4), unlike current § 17.610(b), would state that if a participant fails to become certified in the discipline for which the degree prepared the participant, if applicable, within 180 days after such person becomes eligible to apply for certification, the participant is considered to be in breach of the acceptance agreement. The requirements for obtaining a certification under the VIOMPSP are not the same as the requirements for becoming licensed to practice a discipline for the HPSP. We believe that 180 days would provide ample time to obtain the necessary certification for the VIOMPSP.

We also note that the amount of damages would be the full amount of VIOMPSP funds paid on the individual's behalf. This is the same amount paid by an HPSP participant. The authority for this provision is 38 U.S.C. 7505(a), which authorizes VA to collect the ''unearned portion'' of VIOMPSP funds at the time of breach. All of the criteria in § 17.634(b)(1)-(4) apply prior to the time at which the participant fulfills his or her obligated service to VA, and it is through such obligated service that the participant earns his or her scholarship.

The classes of individuals subject to the repayment amount set forth in proposed paragraph (b) would be established in paragraphs (b)(1) through (4). These paragraphs would parallel current § 17.610(b)(1) through (4). We would not include a provision similar to § 17.610(b)(5) because it references part-time VA employees who fail ''to maintain employment in a permanent assignment in a VA health care facility while enrolled in the course of training being pursued.'' As we have previously stated in this rulemaking, participants in the VIOMPSP are not required to be VA employees, so those provisions of § 17.610(b)(5) would not be relevant.

Section 7505(a) of 38 U.S.C. states: ''An individual who receives educational assistance under the scholarship program under this chapter shall repay to the Secretary an amount equal to the unearned portion of such assistance if the individual fails to satisfy the requirements of the agreement entered into under section 7504 of this title, except in circumstances authorized by the Secretary.'' Proposed § 17.634(c) would include a formula to calculate the amount the United States is entitled to recover if a participant breaches his or her acceptance agreement by failing to complete the obligated service. We would state that to calculate the unearned portion of VIOMPSP funds VA would ''subtract the number of months of obligated service rendered from the total months of obligated service owed, divide the remaining months by the total obligated service, then multiply by the total amount of VIOMPSP funds paid to or on behalf of the participant.'' We would also provide a formula as a visual aid for ease of readability. The proposed formula would be ''A = P((t-s)/t),'' in which ''A'' is the amount the United States is entitled to recover; ''P'' is the amounts paid under the VIOMPSP to or on behalf of the participant; ''t'' is the total number of months in the participant's period of obligated service; and ''s'' is the number of months of obligated service rendered. Proposed paragraph § 17.634(c) would not parallel § 17.610(c) because the statute that governs the repayment of the VIOMPSP, 38 U.S.C. 7505, is not the same as the statute that governs the repayment of the HPSP, 38 U.S.C. 7617.

*17.635 Bankruptcy*

The regulations that govern bankruptcy for the VIOMPSP are the same as those found in § 17.611, which apply to the HPSP. In an effort to simplify the HPSP and VIOMPSP regulations, we propose to provide a cross-reference to § 17.611 for the rules that govern bankruptcy, in proposed § 17.635.

*17.636 Cancellation, Waiver, or Suspension of Obligation*

The regulations that govern cancellation, waiver, or suspension of obligation for the VIOMPSP are the same as those found in § 17.612, which apply to the HPSP. In an effort to simplify the HPSP and VIOMPSP regulations, we propose to provide a cross-reference to § 17.612 for the rules that govern cancellation, waiver, or suspension of obligation, in proposed § 17.636.

**Effect of Rulemaking**

The Code of Federal Regulations, as proposed to be revised by this proposed rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with this proposed rule if possible or, if not possible, such guidance would be superseded by this rulemaking.

**Paperwork Reduction Act**

This proposed rule includes collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking to OMB for review. OMB assigns a control number for each collection of information it approves. VA may not conduct or

sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The VA Health Professional Scholarship Program contained a collection control number 2900–0352, which expired on April 30, 1997. We propose to establish a new collection control number for the revised VA Health Professional Scholarship Program and for the new Visual Impairment and Orientation and Mobility Professional Scholarship Program. Proposed §§ 17.604 and 17.629 contain a collection of information. If OMB does not approve the collections of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as directed by OMB.

Comments on the collections of information contained in this proposed rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent: By mail or hand delivery to the Director, Office of Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; by fax to (202) 273–9026; or through www.Regulations.gov. Comments should indicate that they are submitted in response to ''2900–AO34–VA Health Professional Scholarship and Visual Impairment and Orientation and Mobility Professional Scholarship Programs.''

OMB is required to make a decision concerning the collections of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed rule.

VA considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of VA, including whether the information will have practical utility;
- Evaluating the accuracy of VA's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections 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.

Proposed §§ 17.604 and 17.629 contain collections of information under the Paperwork Reduction Act of 1995 for which we are requesting approval by OMB. Under proposed §§ 17.612 and 17.636, a participant of the VA Health Professional Scholarship Program or Visual Impairment and Orientation and Mobility Professional Scholarship Program may seek a waiver or suspension of obligated service or payment under either program by submitting a written request to VA. The requirement for such a written request, however, does not constitute a collection of information under the Paperwork Reduction Act of 1995 requiring OMB approval because the anticipated number of respondents within a 12-month period is less than ten. See 5 CFR 1320.3(c).

*Title:* Application for VA Health Professional Scholarship and Visual Impairment and Orientation and Mobility Professional Scholarship Programs.

*Summary of collection of information:* The information required determines the eligibility or suitability of an applicant desiring to receive an award under the provisions of 38 U.S.C. 7601 through 7619, and 38 U.S.C. 7501 through 7505. The VA Health Professional Scholarship Program awards scholarships to students receiving education or training in a direct or indirect healthcare services discipline to assist in providing an adequate supply of such personnel for VA and for the United States. The Visual Impairment and Orientation and Mobility Professional Scholarship Program awards scholarships to students pursuing a program of study leading to a degree in visual impairment or orientation and mobility in order to increase the supply of qualified blind rehabilitation specialists for VA and the Nation.

*Description of the need for information and proposed use of information:* The information is needed to apply for the VA Health Professional Scholarship Program or Visual Impairment and Orientation and Mobility Professional Scholarship Program.

*Description of likely respondents:* Potential participants of the VA Health Professional Scholarship Program or Visual Impairment and Orientation and Mobility Professional Scholarship Program.

*Estimated number of HPSP respondents per year:* 5,000.

*Estimated number of VIOMPSP respondents per year:* 1,500.

*Estimated frequency of HPSP responses per year:* once.

*Estimated frequency of VIOMPSP responses per year:* once.

*Estimated average burden per response for HPSP:* 5 hours per year.

*Estimated average burden per response for VIOMPSP:* 5 hours per year.

*Estimated total HPSP annual reporting and recordkeeping burden:* 25,000 hours per year.

*Estimated total VIOMPSP annual reporting and recordkeeping burden:* 7,500 hours per year.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601- 612. This proposed rule would not directly affect any small entities. Only applicants for scholarships could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by OMB, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious

inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

**Unfunded Mandates**

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

**Catalog of Federal Domestic Assistance**

There are no Catalog of Federal Domestic Assistance numbers and titles for this rule.

**Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on December 18, 2012, for publication.

**List of Subjects in 38 CFR Part 17**

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

Dated: December 18, 2012.

**Robert C. McFetridge,**

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

For the reasons set forth in the preamble, we propose to amend 38 CFR part 17 as follows:

## PART 17—MEDICAL

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

**Authority:** 38 U.S.C. 501, and as noted in specific sections.

2. Revise the authority citation preceding § 17.600 to read as follows:

**Authority:** 38 U.S.C. 7601–7619, 7633, 7634, and 7636.

3. Revise § 17.600 to read as follows:

### § 17.600 Purpose.

The purpose of §§ 17.600 through 17.612 is to establish the requirements for the award of scholarships under the VA Health Professional Scholarship Program (HPSP) to students pursuing a course of study leading to a degree in certain healthcare occupations, listed in 38 U.S.C. 7401(1) and (3), to assist in providing an adequate supply of such personnel for VA. The HPSP allows VA to provide scholarship awards to facilitate recruitment and retention of employees in several hard-to-fill healthcare occupations.

(Authority: 38 U.S.C. 7601(b))

4. Revise § 17.601 to read as follows:

### § 17.601 Definitions.

The following definitions apply to §§ 17.600 through 17.636:

*Acceptable level of academic standing* means the level at which a participant may continue to attend school under the standards and practices of the school at which a participant is enrolled in a course of study for which an HPSP or VIOMPSP scholarship was awarded.

*Acceptance agreement* means a signed legal document between VA and a participant of the HPSP or VIOMPSP that specifies the obligations of VA and the participant upon acceptance to the HPSP or VIOMPSP. An acceptance agreement must incorporate by reference, and cannot be inconsistent with, §§ 17.600 through 17.612 (for HPSP agreements) or §§ 17.626 through 17.636 (for VIOMPSP agreements), and must include:

(1) A mobility agreement.

(2) Agreement to accept payment of the scholarship.

(3) Agreement to perform obligated service.

(4) Agreement to maintain enrollment and attendance in the course of study for which the scholarship was awarded, and to maintain an acceptable level of academic standing.

*Affiliation agreement* means a legal document that enables the clinical education of trainees at a VA or non-VA medical facility. An affiliation agreement is required for all education or training that involves direct patient contact, or contact with patient information, by trainees from a non-VA institution.

*Credential.* Credential means the licensure, registration, certification, required education, relevant training and experience, and current competence necessary to meet VA's qualification standards for employment in certain healthcare occupations.

*Citizen of the United States* means any person born, or lawfully naturalized, in the United States, subject to its jurisdiction and protection, and owing allegiance thereto.

*Degree* represents the successful completion of the course of study for which a scholarship was awarded.

(1) *HPSP.* For the purposes of the HPSP, VA recognizes the following degrees: a doctor of medicine; doctor of osteopathy; doctor of dentistry; doctor of optometry; doctor of podiatry; or an associate, baccalaureate, master's, or doctorate degree in another healthcare discipline needed by VA.

(2) *VIOMPSP.* For the purposes of the VIOMPSP, VA recognizes a bachelor's, master's, education specialist or doctorate that meets the core curriculum and supervised practice requirements in visual impairment and blindness.

*Full-time student* means an individual who meets the requirements for full time attendance as defined by the school in which they are enrolled.

*HPSP* means the VA Health Professional Scholarship Program authorized by 38 U.S.C. 7601 through 7619.

*Mobility agreement* means a signed legal document between VA and a participant of the HPSP or VIOMPSP, in which the participant agrees to accept assignment at a VA facility selected by VA where he or she will fulfill the obligated service requirement. A mobility agreement must be included in the participant's acceptance agreement. Relocation to another geographic location may be required.

*Obligated service* means the period of time during which the HPSP or VIOMPSP participant must be employed by VA in a full-time clinical occupation for which the degree prepared the participant as a requirement of the acceptance agreement.

*Part-time student* (1) *HPSP.* For the purposes of the HPSP, part-time student

means an individual who is a VA employee, and who has been accepted for enrollment or enrolled for study leading to a degree on a less than full-time basis but no less than half-time basis.

(2) *VIOMPSP.* For the purposes of the VIOMPSP, part-time student means an individual who has been accepted for enrollment or enrolled for study leading to a degree on a less than full-time basis but no less than half-time basis.

*Participant or scholarship program participant* means an individual whose application to the HPSP or VIOMPSP has been approved, whose acceptance agreement has been consummated by VA, and who has yet to complete the period of obligated service or otherwise satisfy the obligation or financial liabilities of such agreement.

*Required fees* means those fees which are charged by the school to all students pursuing a similar curriculum in the same school.

*Scholarship Program* means the VA Health Professional Scholarship Program (HPSP) authorized by 38 U.S.C. 7601 through 7619.

*School* means an academic institution that is accredited by a body or bodies recognized for accreditation by the U.S. Department of Education or by the Council for Higher Education Accreditation (CHEA), and that meets the following requirements:

(1) For the purposes of the HPSP, offers a course of study leading to a degree in a healthcare service discipline needed by VA.

(2) For the purposes of the VIOMPSP, offers a course of study leading to a degree in visual impairment or orientation and mobility.

*School year* means for purposes of the HPSP and its stipend payment, and the VIOMPSP, all or part of the 12-month period that starts on the date the participant begins school as a full-time student.

*Secretary* means the Secretary of Veterans Affairs or designee.

*State* means one of the several States, Territories and possessions of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

*Under Secretary for Health* means the Under Secretary for Health of the Department of Veterans Affairs or designee.

*VA* means the Department of Veterans Affairs.

*VA employee* means an individual permanently employed by VA. A VA employee does not include an individual who is employed temporarily or on a contractual basis.

*VA healthcare facility* means a VA medical center, independent outpatient clinic, domiciliary, nursing home (community living center), residential treatment program and any of a variety of community based clinics (including community based outpatient clinics, rural health resource centers, primary care telehealth clinics, and Vet Centers), consolidated mail outpatient pharmacies, and research centers.

*VIOMPSP* means the Visual Impairment and Orientation and Mobility Professional Scholarship Program authorized by 38 U.S.C. 7501 through 7505.

(Authority: 38 U.S.C. 301, 7501(a)(1), 7504, 7602(a), 7604(1)(B), 7633)

5. Amend § 17.602 by:

a. Revising paragraph (a)(1).

b. Adding paragraph (a)(6).

The revision and addition read as follows:

**§ 17.602 Eligibility for the HPSP.**

(a) * * *

(1) Be unconditionally accepted for enrollment or be enrolled as a full-time student in an accredited school located in a State;

* * * * *

(6) *Clinical tours.* An applicant for a scholarship under the HPSP must agree to perform clinical tours while enrolled in the course of education or training for which the scholarship is provided. VA will determine the assignments and locations of the clinical tour.

(Authority: 38 U.S.C. 7618(b))

* * * * *

6. Revise § 17.603 to read as follows:

**§ 17.603 Availability of HPSP scholarships.**

(a) *General.* A HPSP scholarship will be awarded only when necessary to assist VA in alleviating shortages or anticipated shortages of personnel in the health professions stated in paragraph (b) of this section. VA will determine the existence of shortage of personnel in accordance with specific criteria for each healthcare profession. VA has the authority to establish the number of scholarships to be awarded in a fiscal year, and the number that will be awarded to full-time and part-time students.

(b) *Qualifying fields of education.* VA will grant HPSP scholarships in a course of study in those disciplines or programs where recruitment is necessary for the improvement of healthcare of veterans. Those disciplines or programs are listed in 38 U.S.C. 7401(1) and (3).

(Authority: 38 U.S.C. 7401(1), (3), 7612(b)(2), 7612(b)(4), and 7603(b)(1))

7. Revise § 17.604 to read as follows:

**§ 17.604 Application for the HPSP.**

An applicant for the HPSP must submit an accurate and complete application including a signed written acceptance agreement.

(Authority: 38 U.S.C. 7612(c)(1)(B))

(The Office of Management and Budget has approved the information collection requirements in this section under control number XXXX–XXXX)

8. Amend § 17.605 by:

a. Revising paragraph (a) introductory text.

b. Redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively.

c. Add new paragraph (d).

d. The revisions read as follows:

**§ 17.605 Selection of HPSP participants.**

(a) *General.* In deciding which HPSP application to approve, VA will first consider applications submitted by applicants entering their final year of education or training and applicants who previously received HPSP scholarships and who meet the conditions of paragraph (f) of this section. Except for paragraph (f) of this section, applicants will be evaluated and selected using the criteria specified in paragraph (b) of this section. If there are a larger number of equally qualified applicants than there are awards to be made, then VA will first select veterans, and then use a random method as the basis for further selection. In selecting participants to receive awards as part-time students, VA may, at VA's discretion—

* * * * *

(d) *Notification of approval.* VA will notify the individual in writing that his or her application has been accepted and approved. An individual becomes a participant in the program upon receipt of such approval by VA.

* * * * *

9. Amend § 17.607 by:

a. Revising paragraph (b)(1).

b. Revising the authority citation at the end of paragraph (b).

c. Revising paragraphs (c) and (d).

The revisions would read as follows:

**§ 17.607 Obligated service.**

* * * * *

(b) *Beginning of service.* (1)(i) *Date of employment.* Except as provided in paragraph (b)(2) of this section, a participant's obligated service will begin on the date VA appoints the participant as a full-time VA employee in a clinical occupation for which the degree prepared the participant. VA will appoint the participant to such position as soon as possible, but no later than 90 days after the date that the participant

receives his or her degree, or the date the participant becomes licensed in a State or becomes certified, whichever is later. VA will actively assist and monitor participants to ensure State licenses or certificates are obtained in a minimal amount of time following graduation. If a participant fails to obtain his or her degree, or fails to become licensed in a State or become certified no later than 180 days after receiving the degree, the participant is considered to be in breach of the acceptance agreement.

(ii) *Notification.* VA will notify the participant of the work assignment and its location no later than 60 days before the date on which the participant must begin work.

(iii) *VA mentor.* VA will ensure that the participant is assigned a mentor who is employed at the same facility where the participant performs his or her obligated service at the commencement of such service.

* * * * *

(Authority: 38 U.S.C. 7616(b), 7616(c), 7618(a))

(c) *Duration of service.* (1) *Full-time student.* A participant who attended school as a full-time student will agree to serve as a full-time clinical employee in the Veterans Health Administration for 1 calendar year for each school year or part thereof for which a scholarship was awarded, but for no less than 2 years.

(2) *Part-time student.* Obligated service to VA for a participant who attended school as a part-time student must be satisfied by full-time clinical employment. The period of obligated service will be reduced from that which a full-time student must serve under paragraph (c)(1) of this section in accordance with the proportion that the number of credit hours carried by the part-time student in any school year bears to the number of credit hours required to be carried by a full-time student who is pursuing the same degree; however, the period of obligated service will not be for less than 1 year.

(Authority: 38 U.S.C. 7612(c)(1)(B), 7612(c)(3)(A), 7618(c))

(d) *Location for service.* VA reserves the right to make final decisions on the location for service obligation. A participant who receives a scholarship as a full-time student must be willing to relocate to another geographic location to carry out his or her service obligation according to the participant's mobility agreement. A participant who received a scholarship as a part-time student may be allowed to serve the period of obligated service at the healthcare facility where the individual was assigned when the scholarship was authorized, if there is a vacant position which will satisfy the individual's mobility agreement at that facility.

(Authority: 38 U.S.C. 7616(a))

* * * * *

10. Revise § 17.611 to read as follows:

**§ 17.611 Bankruptcy.**

Any payment obligation incurred may not be discharged in bankruptcy under title 11 U.S.C. until 5 years after the date on which the payment obligation is due. This section applies to participants in the HPSP and the VIOMPSP.

(Authority: 38 U.S.C. 7505(d), 7634(c))

11. Amend § 17.612 by:

a. Redesignating paragraph (a) as new paragraph (a)(2).

b. Adding new paragraphs (a) and (a)(1).

c. Revising paragraph (b)(1).

d. Removing the authority citation at the end of paragraph (c)

e Adding new paragraphs (e) and (f).

f. Revising the authority citation at the end of the section..

The revisions and additions read as follows:

**§ 17.612 Cancellation, waiver, or suspension of obligation.**

(a) *General.* (1) This section applies to participants in the HPSP or the VIOMPSP.

(2) Any obligation of a participant for service or payment will be cancelled upon the death of the participant.

(b) *Waivers or suspensions.* (1) A participant may seek a waiver or suspension of the obligated service or payment obligation incurred under this program by submitting a written request to VA setting forth the basis, circumstances, and causes which support the requested action. Requests for waivers or suspensions must be submitted to VA no later than 1 year after the date VA notifies the participant that he or she is in breach of his or her acceptance agreement. A participant seeking a waiver or suspension must comply with requests for additional information from VA no later than 30 days after the date of any such request.

(i) *Waivers.* A waiver is a permanent release by VA of the obligation either to repay any scholarship funds that have already been paid to or on behalf of the participant, or to fulfill any other acceptance agreement requirement. If a waiver is granted, then the waived amount of scholarship funds may be considered taxable income.

(ii) *Suspensions.* VA may approve an initial request for a suspension for a period of up to 1 year. A suspension may be extended for one additional year, after which time the participant will be in breach of his or her acceptance agreement. If a suspension is approved:

(A) VA will temporarily discontinue providing any scholarship funds to or on behalf of the participant while the participant's scholarship is in a suspended status; or

(B) VA will temporarily delay the enforcement of acceptance agreement requirements.

* * * * *

(e) *Eligibility to reapply for award.* Any previous participant of any federally sponsored scholarship program who breached his or her acceptance agreement or similar agreement in such scholarship program is not eligible to apply for a HPSP or VIOMPSP. This includes participants who previously applied for, and received, a waiver under this section.

(f) *Finality of decisions.* Decisions to approve or disapprove waiver requests are final and binding determinations. Such determinations are not subject to reconsideration or appeal.

(Authority: 38 U.S.C. 7505(c), 7634(a), 7634(b))

12. Amend part 17 by adding an undesignated center heading and §§ 17.625 through 17.636 to read as follows:

**Visual Impairment and Orientation and Mobility Professional Scholarship Program**

Sec.

17.625 Purpose.
17.626 Definitions.
17.627 Eligibility for the VIOMPSP.
17.628 Availability of VIOMPSP scholarships.
17.629 Application for the VIOMPSP.
17.630 Selection of VIOMPSP participants.
17.631 Award procedures.
17.632 Obligated service.
17.633 Deferment of obligated service.
17.634 Failure to comply with terms and conditions of participation.
17.635 Bankruptcy.
17.636 Cancellation, waiver, or suspension of obligation.

**Visual Impairment and Orientation and Mobility Professional Scholarship Program**

**§ 17.625 Purpose.**

The purpose of §§ 17.625 through 17.636 is to establish the requirements for the award of scholarships under the Visual Impairment and Orientation and Mobility Professional Scholarship Program (VIOMPSP) to students pursuing a program of study leading to a degree in visual impairment or orientation and mobility. The scholarship is designed to increase the supply of qualified Blind Rehabilitation

Specialists and Blind Rehabilitation Outpatient Specialists available to VA. The scholarship will be publicized throughout educational institutions in the United States, with an emphasis on disseminating information to such institutions with high numbers of Hispanic students and to historically black colleges and universities.

**(Authority:** 38 U.S.C. 7501)

**§ 17.626 Definitions.**

For the definitions that apply to §§ 17.625 through 17.636, see § 17.601.

(Authority: 38 U.S.C. 501)

**§ 17.627 Eligibility for the VIOMPSP.**

(a) *General.* To be eligible for the VIOMPSP, an applicant must meet the following requirements:

(1) Be unconditionally accepted for enrollment or currently enrolled in a program of study leading to a degree in orientation and mobility, low vision therapy, or vision rehabilitation therapy, or a dual degree (a program in which an individual becomes certified in two of the three professional certifications offered by the Academy for Certification of Visual Rehabilitation and Education Professionals) at an accredited educational institution that is in a State;

(2) Be a citizen of the United States; and

(3) Submit an application to participate in the VIOMPSP, as described in § 17.629.

(b) *Obligated service to another entity.* Any applicant who, at the time of application, owes a service obligation to any other entity to perform service after completion of the course of study is ineligible to receive a VIOMPSP scholarship.

(Authority: 38 U.S.C. 7501(a), 7502(a), 7504(3))

**§ 17.628 Availability of VIOMPSP scholarships.**

VA will make awards under the VIOMPSP only when VA determines it is necessary to assist in alleviating shortages or anticipated shortages of personnel in visual impairment or orientation and mobility programs. VA's determination of the number of VIOMPSP scholarships to be awarded in a fiscal year, and the number that will be awarded to full-time and/or part-time students, is subject to the availability of appropriations.

**(Authority:** 38 U.S.C. 7501(a), 7503(c)(2))

**§ 17.629 Application for the VIOMPSP.**

(a) *Application-general.* Each individual desiring a VIOMPSP scholarship must submit an accurate and complete application, including a signed written acceptance agreement.

(b) *VA's duties.* VA will notify applicants prior to acceptance in the VIOMPSP of the following information:

(1) A fair summary of the rights and liabilities of an individual whose application is approved by VA and whose acceptance agreement is consummated by VA; and

(2) Full description of the terms and conditions that apply to participation in the VIOMPSP and service in VA.

**(Authority:** 38 U.S.C. 501(a), 7502(a)(2)) (Approved by the Office of Management and Budget under control number XXXX–XXXX)

**§ 17.630 Selection of VIOMPSP participants.**

(a) *General.* In deciding which VIOMPSP applications to approve, VA will first consider applications submitted by applicants entering their final year of education or training. Applicants will be evaluated and selected using the criteria specified in paragraph (b) of this section. If there are a larger number of equally qualified applicants than there are awards to be made, then VA will first select veterans, and then use a random method as the basis for further selection.

(b) *Selection criteria.* In evaluating and selecting participants, VA will take into consideration those factors determined necessary to assure effective participation in the VIOMPSP. These factors will include, but are not limited to, the following:

(1) Academic performance;

(2) Work/volunteer experience, including prior rehabilitation or healthcare employment and VA employment;

(3) Faculty and employer recommendations; or

(4) Career goals.

(c) *Notification of approval.* VA will notify the individual in writing that his or her application has been accepted and approved. An individual becomes a participant in the program upon receipt of such approval by VA.

(d) *Duration of VIOMPSP award.* VA will award a VIOMPSP scholarship for a period of time equal to the number of years required to complete a program of study leading to a degree in orientation and mobility, low vision therapy, or vision rehabilitation therapy, or a dual degree. The number of years covered by an individual scholarship award will be based on the number of school years that the participant has yet to complete his or her degree at the time the VIOMPSP scholarship is awarded. Subject to the availability of funds, VA will award the VIOMPSP as follows:

(1) *Full-time scholarship.* A full-time scholarship is awarded for a minimum of 1 school year to a maximum of 4 school years;

(2) *Part-time scholarships.* A part-time scholarship is awarded for a minimum of 1 school year to a maximum of 6 school years.

(Authority: 38 U.S.C. 7504(3))

**§ 17.631 Award procedures.**

(a) *Amount of scholarship.* (1) A VIOMPSP scholarship award will not exceed the total tuition and required fees for the program of study in which the applicant is enrolled. All such payments to scholarship participants are exempt from Federal taxation.

(2) The total amount of assistance provided under the VIOMPSP for an academic year to an individual who is a full-time student may not exceed $15,000.00.

(3) The total amount of assistance provided under the VIOMPSP for an academic year to a participant who is a part-time student shall bear the same ratio to the amount that would be paid under paragraph (a)(2) of this section if the participant were a full-time student as the coursework carried by the participant to full-time coursework.

(4) The total amount of assistance provided to an individual may not exceed $45,000.00.

(5) In the case of an individual enrolled in a program of study leading to a dual degree described in § 17.627(a)(1), such tuition and fees will not exceed the amounts necessary for the minimum number of credit hours to achieve such dual degree.

(6) Financial assistance may be provided to an individual under the VIOMPSP to supplement other educational assistance to the extent that the total amount of educational assistance received by the individual during an academic year does not exceed the total tuition and fees for such academic year.

(7) VA will make arrangements with the school in which the participant is enrolled to issue direct payment for the amount of tuition or fees on behalf of the participant.

(b) *Repeated course work.* Additional costs relating to the repeated course work will not be paid under this program. VA will resume any scholarship payments suspended under this section upon notification by the school that the participant has returned from the leave-of-absence or has satisfactorily completed the repeated course work and is pursuing the course of study for which the VIOMPSP was awarded.

(Authority: 38 U.S.C. 7503, 7504(3))

**§ 17.632 Obligated service.**

(a) *General provision.* Except as provided in paragraph (d) of this section, each participant is obligated to provide service as a full-time clinical VA employee in the rehabilitation practice of the participant's discipline in an assignment or location determined by VA.

(b) *Beginning of service.* A participant's obligated service will begin on the date on which the participant obtains any required applicable credentials and when appointed as a full-time clinical VA employee in a position for which the degree prepared the participant. VA will appoint the participant to such position as soon as possible, but no later than 90 days after the date that the participant receives his or her degree, or the date the participant obtains any required applicable credentials, whichever is later. If a participant fails to obtain his or her degree, or fails to obtain any required applicable credentials within 180 days after receiving the degree, the participant is considered to be in breach of the acceptance agreement.

(c) *Duration of service.* The participant will agree to serve as a full-time clinical VA employee for 3 calendar years which must be completed no later than 6 years after the participant has completed the program for which the scholarship was awarded and received a degree referenced in § 17.627(a)(1).

(d) *Location and assignment of obligated service.* VA reserves the right to make final decisions on the location and assignment of the obligated service. A participant who receives a scholarship must agree as part of the participant's mobility agreement that he or she is willing to accept the location and assignment where VA assigns the obligated service. Geographic relocation may be required.

(e) *Creditability of advanced clinical training.* No period of advanced clinical training will be credited towards satisfying the period of obligated service incurred under the VIOMPSP.

(Authority: 38 U.S.C. 7504(2)(D), 7504(3))

**§ 17.633 Deferment of obligated service.**

Deferment of obligated service under the VIOMPSP is treated in the same manner as deferment of obligated service under the HPSP under § 17.608.

(Authority: 38 U.S.C. 7504(3))

**§ 17.634 Failure to comply with terms and conditions of participation.**

(a) *Participant refuses to accept payment of the VIOMPSP.* If a participant, other than one described in paragraph (b) of this section, refuses to accept payment or instructs the school not to accept payment of the VIOMPSP scholarship provided by VA, the participant must, in addition to any obligation incurred under the agreement, pay to the United States the amount of $1,500 in liquidated damages. Payment of this amount must be made no later than 90 days from the date that the participant fails to accept payment of the VIOMPSP or instructs the school not to accept payment.

(b) *Participant fails to complete course of study or does not obtain certification.* A participant described in paragraphs (b)(1) through (4) of this section must, instead of otherwise fulfilling the terms of his or her acceptance agreement, pay to the United States an amount equal to all VIOMPSP funds awarded under the acceptance agreement. Payment of this amount must be made no later than 1 year after the date that the participant meets any of the criteria described in paragraphs (b)(1) through (4) of this section, unless VA determines that a longer period is necessary to avoid hardship. No interest will be charged on any part of this indebtedness. A participant will pay such amount if one of the following criteria is met:

(1) The participant fails to maintain an acceptable level of academic standing;

(2) The participant is dismissed from the school for disciplinary reasons;

(3) The participant, for any reason, voluntarily terminates the course of study or program for which the scholarship was awarded including a reduction of course load from full-time to part-time before completing the course of study or program; or

(4) The participant fails to become certified in the discipline for which the degree prepared the participant, if applicable, no later than 180 days after the date such person becomes eligible to apply for certification.

(c) *Participant fails to perform all or any part of their service obligation.* (1) Participants who breach their agreements by failing to begin or complete their service obligation, for any reason, including the loss, revocation, suspension, restriction, or limitation of required certification, and other than provided for under paragraph (b) of this section, must repay the portion of all VIOMPSP funds paid to or on behalf of the participant, adjusted for the service that they provided. To calculate the unearned portion of VIOMPSP funds, subtract the number of months of obligated service rendered from the total months of obligated service owed, divide the remaining months by the total obligated service, then multiply by the total amount of VIOMPSP funds paid to or on behalf of the participant. The following formula may be used in determining the unearned portion:

$A = P((t-s)/t)$ in which

"A" is the amount the United States is entitled to recover;

"P" is the amounts paid under the VIOMPSP, to or on behalf of the participant;

"t" is the total number of months in the participant's period of obligated service; and

"s" is the number of months of obligated service rendered.

(2) The amount that the United States is entitled to recover will be paid no later than 1 year after the date the applicant failed to begin or complete the period of obligated service, as determined by VA.

(Authority: 38 U.S.C. 7505(a), 7505(b))

**§ 17.635 Bankruptcy.**

Bankruptcy under the VIOMPSP is treated in the same manner as bankruptcy for the HPSP under § 17.611.

(Authority: 38 U.S.C. 7505(c), 7505(d))

**§ 17.636 Cancellation, waiver, or suspension of obligation.**

Cancellation, waiver, or suspension procedures under the VIOMPSP are the same as those procedures for the HPSP under § 17.612.

(Authority: 38 U.S.C. 7505(c))

[FR Doc. 2012–30811 Filed 12–21–12; 4:15 pm]

BILLING CODE 8320–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R03–OAR–2012–0369; FRL- 9764–5]

### Approval and Promulgation of Air Quality Implementation Plans; West Virginia; The 2002 Base Year Emissions Inventory for the West Virginia Portion of the Steubenville-Weirton, OH–WV Nonattainment Area for 1997 Annual Fine Particulate Matter National Ambient Air Quality Standard

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the 2002 base year emissions inventory portion of the West Virginia State Implementation Plan (SIP) revision submitted by the State of West Virginia through the West Virginia Department

of Environmental Protection (WVDEP) on June 24, 2009 for the Steubenville-Weirton, OH–WV nonattainment area (the Steubenville-Weirton Area) for the 1997 annual fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS). The emissions inventory is part of a SIP revision that was submitted to meet West Virginia's nonattainment requirements related to the Steubenville-Weirton Area. EPA is proposing to approve the 2002 base year emissions inventory for the West Virginia portion of the Steubenville-Weirton Area in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before January 25, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0369 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: mastro.donna@epa.gov.*

C. *Mail:* EPA–R03–OAR–2012–0369, Donna Mastro, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2012–0369. 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.

*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 *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

**FOR FURTHER INFORMATION CONTACT:** Emlyn Vélez-Rosa, (215) 814–2038, or by email at *velez-rosa.emlyn@epa.gov.*

**SUPPLEMENTARY INFORMATION:** This supplementary information section is arranged as follows:

I. Background
II. Summary of SIP Revision
III. Proposed Action
IV. Statutory and Executive Order Reviews

## I. Background

On July 18, 1997, EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter (μg/m³) (hereafter referred to as ''the 1997 annual $PM_{2.5}$ NAAQS''), based on a 3-year average of annual mean $PM_{2.5}$ concentrations (62 FR 38652). At that time, EPA also established a 24-hour standard of 65 μg/m³. *See* 40 CFR 50.7. The 1997 annual $PM_{2.5}$ NAAQS were based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to particulate matter.

The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the CAA. On January 5, 2005, EPA published its air quality designations and classifications for the 1997 annual $PM_{2.5}$ NAAQS based upon air quality monitoring data for calendar years 2001–2003 (70 FR 944). These designations became effective on April 5, 2005. On April 14, 2005, EPA promulgated a supplemental rule amending the initial designations (70 FR 19844), with the same effective date (April 5, 2005) at 70 FR 944. As a result of this supplemental rule, the Steubenville-Weirton Area was designated nonattainment for the 1997 annual $PM_{2.5}$ NAAQS. The Steubenville-Weirton Area is comprised of Brooke County and Hancock County in West Virginia (the West Virginia portion), and Jefferson County in Ohio. *See* 40 CFR 81.336 (Ohio) and 40 CFR 81.349 (West Virginia).

On September 14, 2011 (76 FR 56641), EPA determined that the West Virginia portion of the Steubenville-Weirton Area had attained the 1997 annual $PM_{2.5}$ NAAQS. That determination was based on complete, quality-assured, quality-controlled, and certified ambient air monitoring data for the 2007–2009 period showing that the entire Steubenville-Weirton Area had monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. EPA also evaluated preliminary quality-assured data available to date for 2010. The September 14, 2011 determination suspended the requirements for West Virginia to submit, for the West Virginia portion of the Steubenville-Weirton Area, an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIP revisions related to attainment of the standard for so long as the Steubenville-Weirton Area continues to meet the 1997 annual $PM_{2.5}$ NAAQS.

Section 172(c)(3) of the CAA requires states to submit a comprehensive, accurate, and current inventory of actual emissions for each nonattainment area. EPA's requirements for an emissions inventory for the $PM_{2.5}$ NAAQS are set forth in 40 CFR 51.1008. This proposed rulemaking action is limited to the approval of the emissions inventory included in West Virginia's June 24, 2009 submittal for the West Virginia portion of the Steubenville-Weirton Area. A separate action will be taken on the remainder of the SIP submittal.

## II. Summary of SIP Revision

The 2002 base year emission inventory submitted by WVDEP on June 24, 2009 for the West Virginia portion of the Steubenville-Weirton Area includes emissions estimates that cover the general source categories of point sources, area sources, on-road mobile

sources, and non-road mobile sources. The pollutants that comprise the inventory are $PM_{2.5}$, coarse particles ($PM_{10}$), nitrogen oxides ($NO_X$), volatile organic compounds (VOC), ammonia ($NH_3$), and sulfur dioxide ($SO_2$). EPA has reviewed the results, procedures and methodologies for the base year emissions inventory submitted by WVDEP. The year 2002 was selected by WVDEP as the base year for the emissions inventory per 40 CFR 51.1008(b). A discussion of the emissions inventory development as well as the emissions inventory for the West Virginia portion of the Steubenville-Weirton Area can be found in Appendix C of the June 24, 2009 SIP submittal. Table 1, below, provides a summary of the annual 2002 emissions of $PM_{2.5}$, $PM_{10}$, $SO_2$, $NO_X$, VOC, and $NH_3$ for the June 24, 2009 West Virginia submittal.

TABLE 1—2002 BASE YEAR INVENTORY FOR THE WEST VIRGINIA PORTION OF THE STEUBENVILLE-WEIRTON AREA, IN TONS PER YEAR (TPY)

| Source Sector | $NH_3$ | $NO_X$ | $PM_{10}$ | $PM_{2.5}$ | $SO_2$ | VOC |
|---|---|---|---|---|---|---|
| Point | 149 | 2,160 | 7,697 | 6,844 | 2,138 | 2,776 |
| Area | 822 | 1,721 | 2,497 | 561 | 718 | 1,941 |
| Nonroad | 0 | 1,499 | 71 | 66 | 76 | 497 |
| Onroad | 44 | 992 | 22 | 14 | 46 | 1,046 |
| Biogenic | N/A | 108 | N/A | N/A | N/A | 4,693 |
| Total | 1,016 | 6,480 | 10,287 | 7,485 | 2,979 | 10,952 |

The CAA section 172(c)(3) emissions inventory is developed by the incorporation of data from multiple sources. States were required to develop and submit to EPA a triennial emissions inventory according to the Consolidated Emissions Reporting Rule (CERR) for all source categories (i.e., point, area, nonroad mobile and on-road mobile). EPA's review and evaluation of the methods used for the emissions inventory submitted by West Virginia are found in the Technical Support Document dated August 12, 2010, available online at www.regulations.gov, Docket No. EPA–R03–OAR–2012–0369. EPA finds that the process used to develop this emissions inventory for the West Virginia portion of the Steubenville Weirton Area is adequate to meet the requirements of CAA section 172(c)(3), the implementing regulations, and EPA guidance for emission inventories.

## III. Proposed Action

EPA is proposing to approve the 2002 base year emissions inventory portion of the SIP revision submitted by the State of West Virginia on June 24, 2009 for the West Virginia portion of the Steubenville-Weirton Area, as it meets the requirements of section 172(c)(3) of the CAA. EPA has made the determination that this action is consistent with section 110 of the CAA. EPA is soliciting public comments on the issues discussed in this document, which will be considered before taking final action.

## IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide 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, pertaining to the 2002 base year emissions inventory for the West Virginia portion of the Steubenville-Weirton Area for the West Virginia SIP, 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 14, 2012.

**W. C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2012–31081 Filed 12–21–12; 4:15 pm]

BILLING CODE 6560–50–P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**42 CFR Part 70**

**[Docket No. CDC–2012–0016]**

**RIN 0920–AA22**

## Control of Communicable Diseases: Interstate; Scope and Definitions

**AGENCY:** Centers for Disease Control and Prevention (HHS/CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice of Proposed Rulemaking and request for comments.

**SUMMARY:** In this Notice of Proposed Rulemaking (NPRM), the Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) is proposing to update the definitions for interstate quarantine regulations to reflect modern terminology and plain language used by private industry and public health partners. These updates will not affect current practices. As part of the update, we are updating two existing definitions and adding eight new definitions to clarify existing provisions, as well as updating regulations to reflect the most recent Executive Order addressing quarantinable communicable diseases.

**DATES:** Submit written or electronic comments by January 25, 2013.

**ADDRESSES:** You may submit comments, identified by ''RIN 0920–AA22'': By any of the following methods:

- *Internet:* Access the Federal e-rulemaking portal at *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–03, Atlanta, Georgia 30333, ATTN: Part 70 NPRM.

*Instructions:* All submissions received must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking. All relevant comments will be posted without change to *http://regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, please go to *http://www.regulations.gov.* Comments will be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m., Eastern Time, at 1600 Clifton Road NE., Atlanta, Georgia 30333. Please call ahead to 1–866–694–4867 and ask for a representative in the Division of Global Migration and Quarantine (DGMQ) to schedule your visit. To download an electronic version of the rule, access *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** For questions concerning this notice of proposed rulemaking: Ashley A. Marrone, JD, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop E–03, Atlanta, Georgia 30333; telephone 404–498–1600.

**SUPPLEMENTARY INFORMATION:** HHS/CDC is simultaneously publishing a companion direct final rule (DFR) in the **Federal Register** that proposes identical updates because we believe that these requirements are non-controversial and unlikely to generate significant adverse comment. If HHS/CDC does not receive any significant adverse comments on the DFR within the specified comment period, we will publish a document in the **Federal Register** withdrawing this NPRM and confirming the effective date of the DFR within 30 days after the comment period on the DFR ends. If HHS/CDC receives any timely significant adverse comment, we will withdraw the DFR in part or in whole by publication of a document in the **Federal Register** within 30 days after the comment period. HHS/CDC will carefully consider all public comments received before proceeding with any subsequent final rule based on the NPRM. A significant adverse comment is one that explains: (1) Why the DFR is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the DFR will be ineffective or unacceptable without a change.

This preamble is organized as follows:

I. Public Participation
II. Authority for These Regulations
III. Proposed Updates to Section 70.1
  A. Definitions Updated Under Section 70.1
  B. Definitions Added to Section 70.1
IV. Proposed Update to Section 70.6
V. Alternative Considered
VI. Required Regulatory Analyses
  A. Required Regulatory Analyses Under Executive Orders 12866 and 13563
  B. Regulatory Flexibility Act
  C. Small Business Regulatory Enforcement Fairness Act of 1996
  D. The Paperwork Reduction Act of 1995
  E. National Environmental Policy Act (NEPA)
  F. Civil Justice Reform (Executive Order 12988)
  G. Executive Order 13132 (Federalism)
  H. Plain Language Act of 2010

### I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written views, opinions, recommendations, and data. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you do not wish to be disclosed publicly. Comments are invited on any topic related to this NPRM.

### II. Authority for These Regulations

The primary authority supporting this rulemaking is section 361 of the Public Health Service Act (42 U.S.C. 264). Section 361 authorizes the Secretary of HHS to make and enforce regulations as in the Secretary's judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the states or possessions of the United States and from one state or possession into any other state or possession. Regulations that implement federal quarantine authority are currently promulgated in 42 CFR Parts 70 and 71. Part 71 contains regulations to prevent the introduction, transmission, and spread of communicable diseases into the states and possessions of the United States, while Part 70 contains regulations to prevent the introduction, transmission, or spread of communicable diseases from one state into another. The Secretary has delegated to the Director of the Centers for Disease Control and Prevention the authority for implementing these regulations.

Authority for carrying out most of these functions has been delegated to HHS/CDC's Division of Global Migration and Quarantine (DGMQ). The Secretary's authority to apprehend, examine, detain, and conditionally release individuals is limited to those quarantinable communicable diseases published in an Executive Order of the President. This list currently includes cholera, diphtheria, infectious tuberculosis (TB), plague, smallpox, yellow fever, and viral hemorrhagic fevers, such as Marburg, Ebola, and Crimean-Congo hemorrhagic fever (CCHF), Severe Acute Respiratory Syndrome (SARS), and influenza caused by novel or re-emergent influenza viruses that are causing or have the potential to cause a pandemic (see Executive Order 13295, as amended by Executive Order 13375 on April 1, 2005).

## III. Proposed Updates to Section 70.1

Regulations that implement federal authority for interstate quarantine are currently promulgated in 42 CFR part 70. The Secretary of HHS has delegated to the Director of the Centers for Disease Control and Prevention the authority for implementing 42 CFR part 70.

Through this NPRM, HHS/CDC proposes to update the Definitions for 42 CFR part 70, under section 70.1, to reflect modern terminology and plain language commonly used by private sector industry and public health partners, as well as clarify the intent of the provisions that follow. Specifically, we are proposing to update two existing definitions, add eight new definitions to clarify existing provisions, and update 70.6 to reflect the language of the most recent Executive Order concerning quarantinable communicable diseases.

Section 70.1 (b) contains the definitions used in this NPRM. The NPRM proposes new or updated definitions to be consistent with modern quarantine concepts and current medical and public health principles and practice. Table 1 lists the current definitions found in the 42 CFR part 70 and the definitions proposed in this NPRM.

TABLE 1—DEFINITIONS AND CORRESPONDING CHANGES IN DEFINITIONS IN THE FINAL RULE

| Existing definitions in 42 CFR Part 70 | Corresponding, new or updated definition in NPRM |
|---|---|
| | CDC. |
| Communicable diseases. | No Change. |
| Communicable period. | No Change. |
| | Conditional release. |
| Conveyance ..... | No Change. |
| | Director. |
| Incubation period | No Change. |
| Interstate traffic .. | No Change. |
| | Isolation. |
| | Master or Operator. |
| Possession ..... | Updated. |
| | Quarantine. |
| | Quarantinable communicable disease. |
| State ..... | Updated. |
| | U.S. Territory. |
| Vessel ..... | No Change. |

### *A. Definitions Updated Under Section 70.1*

*Possession.* To best add clarity to Part 70, we propose to update the term ''possession'' to mean ''U.S. Territory'' and propose to define U.S. Territory to include American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Currently, only Puerto Rico and the Virgin Islands are explicitly listed in the definition. Thus, CDC is updating this provision to explicitly list the other U.S. jurisdictions to which this part applies.

*State.* To best add clarity to the regulations of Part 70, specifically where roles and responsibilities are outlined, we propose to include a definition of ''state'' to mean any of the 50 states within the United States, plus the District of Columbia.

### *B. Definitions Added to Part 70.1*

*CDC.* We proposed to define ''CDC'' to mean the Centers for Disease Control and Prevention within the Department of Health and Human Services to clarify the provisions under Part 70.

*Conditional release.* We propose to define ''conditional release'' to have the same meaning as ''surveillance,'' as that term is defined in the NPRM for updates to 42 CFR § 71.1. We have included this definition to best add clarity to the provisions and practices under Part 70, specifically section 70.6 as well as ensure that conditional release and surveillance are both used consistently in both Parts 70 and 71.

*Director.* To clarify the provisions under Part 70, we propose to define ''Director'' to mean the Director, Centers for Disease Control and Prevention, Department of Health and Human Services, or another authorized representative as approved by the CDC Director or the Secretary of HHS.

*Isolation.* We are proposing to separately define ''isolation'' as the separation of an individual or group reasonably believed to be infected with a quarantinable communicable disease from those who are healthy to prevent the spread of the quarantinable communicable disease. This NPRM clarifies the distinction between quarantine and isolation by separately defining ''quarantine'' and ''isolation'' to distinguish these common public health measures. Isolation as currently used in 42 CFR 71.1 applies to both persons and groups of persons. Thus, CDC is changing the definition in Part 70 so that the term is used consistently in both Part 70 and 71. Applying isolation measures to groups of individuals is consistent with CDC's current practice and does not constitute a substantive change.

*''Master'' or ''Operator''.* We are proposing to define ''Master'' or ''Operator'' as the aircrew or sea crew member with responsibility respectively for aircraft or vessel operation and navigation or a similar individual with responsibility for a conveyance. We have included this definition to better identify and assign responsibilities under this subpart (according to current practices).

*Quarantine.* We are proposing to define ''quarantine'' as the separation of an individual or group reasonably believed to have been exposed to a quarantinable communicable disease, but who is not yet ill, from others who have not been so exposed, to prevent the possible spread of the quarantinable communicable disease. In this NPRM, HHS/CDC is separately defining quarantine and isolation to distinguish these common public health measures. Applying quarantine measures to groups of individuals is consistent with HHS/CDC's current practice and does not constitute a substantive change.

*Quarantinable communicable disease.* Under the proposed definition, ''quarantinable communicable disease'' means any of the communicable diseases listed in an Executive Order, as provided under section 361 of the Public Health Service Act (42 U.S.C. 264). Executive Order 13295, of April 4, 2003, as amended by Executive Order 13375 of April 1, 2005, contains the current revised list of quarantinable communicable diseases, and may be found at *http://www.cdc.gov/quarantine* and in the docket as supplemental documents. If this Executive Order is amended, HHS/CDC will enforce the amended order immediately and update its Web site. The proposed definition for ''quarantinable communicable disease'' is being added to Part 70 through this NPRM to reflect the most recent Executive Order regarding quarantinable communicable diseases. This addition does not reflect a substantive change from current practice.

*U.S. Territory.* We are proposing to define ''U.S. Territory'' to mean any territory (also known as possessions) of the United States including American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. The Department of the Interior's Office of Insular Affairs, the federal government's cognizant agency for U.S. territories, no longer uses the term ''possession'' to refer to these jurisdictions. Consequently, HHS/CDC is adding a new definition for U.S. territory consistent with current federal usage.

## IV. Proposed Update to Section 70.6

Section 70.6, *Apprehension and detention of persons with specific diseases,* contains the general authority for the Director to take measures with respect to persons to protect the public's health against the spread of communicable diseases ''listed in an

Executive Order setting out a list of quarantinable communicable diseases, as provided under section 361(b) of the Public Health Service Act.'' The current section 71.32(a) lists Executive Order 13295, of April 4, 2003. The subpart states that ''If this Order is amended, HHS will enforce that amended order.'' On April 1, 2005, this Executive Order was amended by Executive Order 13375. Therefore, as part of the non-controversial changes in this NPRM, we are also proposing to update section 70.6 to reflect the most recent amendment to the Executive Order which lists the ''quarantinable communicable disease,'' which we have also defined. These proposed changes are not substantive and will not affect current practices.

## V. Alternatives Considered

Under Executive Order 13563 agencies are asked to consider all feasible alternatives to current practice and the rule as proposed. HHS/CDC notes that the main impact of this proposed rule is to update current definitions and clarify language in the current regulation to reflect modern terminology and plain language commonly used by global private sector industry and public health partners. The intent of these updates is to clarify the provisions of the existing regulation to help the regulated community comply with current regulation and protect public health. HHS/CDC believes that this rulemaking complies with the spirit of the Executive Order; updating current definitions, clarifying language, and updating the referenced Executive Order provides good alternatives to the current regulation.

## VI. Required Regulatory Analyses

### *A. Required Regulatory Analyses Under Executive Orders 12866 and 13563*

Under Executive Order 12866 (EO 12866), Regulatory Planning and Review (58 FR 51735, October 4, 1993) HHS/CDC is required to determine whether this regulatory action would be ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Orders. This order defines ''significant regulatory action'' as any regulatory action that is likely to result in a rule that may:

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or,
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in EO 12866.

Executive Order 13563 (EO 13563), Improving Regulation and Regulatory Review, (76 FR 3821, January 21, 2011), updates some of the provisions of EO 12866 in order to promote more streamlined regulatory actions. This EO charges, in part, that, while protecting ''public health, welfare, safety, and our environment'' that regulations must also ''promote predictability and reduce uncertainty'' in order to promote economic growth. Further, regulations must be written in common language and be easy to understand. In the spirit of EO 13563, we propose to enhance definitions related to the control of communicable diseases and add more current medical terminology where appropriate.

HHS/CDC has determined that this NPRM is simply an update and clarification of definitions and terms used in the current regulation. As such, the NPRPM complies with the spirit of EO 13563. Further, HHS/CDC has determined that this NPRM is not a significant regulatory action as defined in EO 12866 because the NPRM is definitional and does not change the baseline costs for any of the primary stakeholders.

### *B. Regulatory Flexibility Act*

We have examined the impacts of the rule under the Regulatory Flexibility Act (5 U.S.C. 601–612). Unless we certify that the rule is not expected to have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

### *C. Small Business Regulatory Enforcement Fairness Act of 1996*

This proposed rule is not a major rule as defined by Sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

### *D. The Paperwork Reduction Act of 1995*

HHS/CDC has already determined that the Paperwork Reduction Act applies to the data collection and record keeping requirements of 42 CFR Part 70 and has obtained approval by the Office of Management and Budget (OMB) to collect data and require record keeping under OMB Control No. 0920–0488, expiration 03/31/2013. The changes proposed in this rule do not impact the data collection or record keeping requirements and do not require revision to the approval from OMB.

### *E. National Environmental Policy Act (NEPA)*

Pursuant to 48 FR 9374 (list of HHS/CDC program actions that are categorically excluded from the NEPA environmental review process), HHS/CDC has determined that this action does not qualify for a categorical exclusion. In the absence of an applicable categorical exclusion, the Director, CDC, has determined that provisions proposing to amending 42 CFR Part 70 will not have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### *F. Civil Justice Reform (Executive Order 12988)*

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this rule: (1) All state and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

### *G. Executive Order 13132 (Federalism)*

HHS/CDC has reviewed this proposed rule in accordance with Executive Order 13132 regarding Federalism, and has determined that it does not have ''federalism implications.'' The proposed rule does 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.''

*H. Plain Language Act of 2010*

Under Public Law 111–274 (October 13, 2010), executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal Government administers or enforces. HHS/CDC has attempted to use plain language in promulgating this rule consistent with the Federal Plain Writing Act and requests public comment on this effort.

**List of Subjects in 42 CFR Part 70**

Communicable diseases, CDC, Isolation, Public health, Quarantine, Quarantinable Communicable Disease.

**Proposed Text**

For the reasons discussed in the preamble, the Centers for Disease Control and Prevention proposes to amend 42 CFR part 70 as follows:

## PART 70—INTERSTATE QUARANTINE

1. The authority citation for part 70 continues to read as follows:

**Authority:** Secs. 215 and 311 of the Public Health Service (PHS) Act, as amended (42 U.S.C. 216, 243); section 361–369, PHS Act, as amended (42 U.S.C. 264–272); 31 U.S.C. 9701.

2. Amend § 70.1 as follows:

a. Remove paragraph designations (a), (b), (c), (d), (e), (f), and (g).

b. Add in alphabetical order definitions of CDC, Conditional release, Director, Isolation, Master or Operator, Quarantine, Quarantinable communicable disease, and U.S. Territory.

c. Revise the definitions of Possession and State. The revisions and additions read as follows:

### § 70.1 General definitions.

* * * * *

*CDC* means the Centers for Disease Control and Prevention, Department of Health and Human Services.

* * * * *

*Conditional release* means ''surveillance'' as that term is defined in 42 CFR 71.1.

* * * * *

*Director* means the Director, Centers for Disease Control and Prevention, Department of Health and Human Services, or another authorized representative as approved by the CDC Director or the Secretary of HHS.

* * * * *

*Isolation* means the separation of an individual or group reasonably believed to be infected with a quarantinable communicable disease from those who are healthy to prevent the spread of the quarantinable communicable disease.

*Master or Operator* means the aircrew or sea crew member with responsibility respectively for aircraft or vessel operation and navigation, or a similar individual with responsibility for a conveyance.

*Possession* means U.S. Territory.

*Quarantine* means the separation of an individual or group reasonably believed to have been exposed to a quarantinable communicable disease, but who are not yet ill, from others who have not been so exposed, to prevent the possible spread of the quarantinable communicable disease.

*Quarantinable communicable disease* means any of the communicable diseases listed in an Executive Order, as provided under section 361 of the Public Health Service Act. Executive Order 13295, of April 4, 2003, as amended by Executive Order 13375 of April 1, 2005, contains the current revised list of quarantinable communicable diseases, and may be obtained at *http://www.cdc.gov* and *http://www.archives.gov/federal_register*. If this Order is amended, HHS will enforce that amended order immediately and update that Web site.

*State* means any of the 50 states, plus the District of Columbia.

*U.S. Territory* means any territory (also known as possessions) of the United States, including American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

* * * * *

3. Revise § 70.6 to read as follows:

### § 70.6 Apprehension and detention of persons with specific diseases.

Regulations prescribed in this part authorize the detention, isolation, quarantine, or conditional release of individuals, for the purpose of preventing the introduction, transmission, and spread of the communicable diseases listed in an Executive Order setting out a list of quarantinable communicable diseases, as provided under section 361(b) of the Public Health Service Act. Executive Order 13295, of April 4, 2003, as amended by Executive Order 13375 of April 1, 2005, contains the current revised list of quarantinable communicable diseases, and may be obtained at *http://www.cdc.gov/quarantine* and *http://www.archives.gov/federal_register*. If this Order is amended, HHS will enforce that amended order immediately and update its Web site.

Dated: December 13, 2012.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2012–30726 Filed 12–21–12; 4:15 pm]

**BILLING CODE 4163–18–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## 42 CFR Part 71

**[Docket No. CDC–2012–0017]**

**RIN 0920–AA12**

## Control of Communicable Diseases: Foreign; Scope and Definitions

**AGENCY:** Centers for Disease Control and Prevention (HHS/CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice of Proposed Rulemaking and request for comments.

**SUMMARY:** Through this Notice of Proposed Rulemaking (NPRM), the Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) is proposing to update and reorganize the Scope and Definitions for foreign quarantine regulations and add a new section to contain definitions for *Importations*. This NPRM proposes to update the Scope and Definitions to reflect modern terminology and plain language used globally by industry and public health partners. As part of the proposed updates, we are updating five existing definitions; adding thirteen new definitions to help clarify existing provisions; creating a new scope and definitions section for *Importations* under a new section by reorganizing existing definitions into this new section; and updating regulations to reflect the language used by the most recent Executive Order regarding quarantinable communicable diseases.

**DATES:** Submit written or electronic comments by January 25, 2013.

**ADDRESSES:** You may submit comments, identified by ''RIN 0920–AA12'': by any of the following methods:

- *Internet:* Access the Federal e-Rulemaking Portal at *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–03, Atlanta, Georgia 30333, ATTN: Part 71 NPRM.

*Instructions:* All submissions received must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking. All

relevant comments will be posted without change to *http://regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, please go to *http://www.regulations.gov*. Comments will also be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m., Eastern Standard Time, at 1600 Clifton Road NE., Atlanta, Georgia 30333. Please call ahead to 1–866–694–4867 and ask for a representative in the Division of Global Migration and Quarantine (DGMQ) to schedule your visit. To download an electronic version of the rule, access *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning this notice of proposed rulemaking: Ashley A. Marrone, JD, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop E–03, Atlanta, Georgia 30333; telephone 404–498–1600.

**SUPPLEMENTARY INFORMATION:** HHS/CDC is simultaneously publishing a companion direct final rule (DFR) in the **Federal Register** that proposes identical updates because we believe that these requirements are non-controversial and unlikely to generate significant adverse comment. If HHS/CDC does not receive any significant adverse comments on the DFR within the specified comment period, we will publish a document in the **Federal Register** withdrawing this NPRM and confirming the effective date of the DFR within 30 days after the public comment period on the DFR ends. If HHS/CDC receives any timely significant adverse comment, we will withdraw the DFR in part or in whole by publication of a document in the **Federal Register** within 30 days after the comment period ends. If the DFR is withdrawn, we will carefully consider all public comments before proceeding with any subsequent final rule based on the NPRM. A significant adverse comment is one that explains: (1) why the DFR is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the DFR will be ineffective or unacceptable without a change.

This preamble is organized as follows:

I. Public Participation
II. Authority for These Regulations
III. Proposed Updates to 42 CFR 71.1, 71.32(a) and 71.50
IV. Proposed Scope and Definitions for Section 71.1
A. Definitions Updated Under Section 71.1
B. Definitions Added to Section 71.1
V. Proposed Update of Section 71.32(a)
VI. Proposed Scope and Definitions for Section 71.50
A. Definitions Added to Section 71.50
VII. Alternatives Considered
VIII. Required Regulatory Analysis
A. Required Regulatory Analyses Under Executive Orders 12866 and 13563
B. Regulatory Flexibility Act
C. Small Business Regulatory Enforcement Fairness Act of 1996
D. The Paperwork Reduction Act of 1995
E. National Environmental Policy Act (NEPA)
F. Civil Justice Reform (Executive Order 12988)
G. Executive Order 13132 (Federalism)
H. Plain Language Act of 2010

## I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written views, opinions, recommendations, and data. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you do not wish to be disclosed publicly. Comments are invited on any topic related to this NPRM.

## II. Authority for These Regulations

The primary authority supporting this rulemaking is section 361 of the Public Health Service Act (42 U.S.C. § 264). Section 361 authorizes the Secretary of HHS to make and enforce regulations as in the Secretary's judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the states or possessions of the United States and from one state or possession into any other state or possession. Regulations that implement federal quarantine authority are currently promulgated in 42 CFR Parts 70 and 71. Part 71 contains regulations to prevent the introduction, transmission, and spread of communicable diseases into the states and possessions of the United States, while Part 70 contains regulations to prevent the introduction, transmission, or spread of communicable diseases from one state into another. CDC is proposing to update the term ''possession'' to ''territory.'' The U.S. Department of the Interior's Office of Insular Affairs, the lead federal agency on issues involving the territories, no longer uses the term ''possession'' to refer to the insular areas. Therefore, CDC is adopting the predominant term ''territory'' consistent with how other federal agencies use this term. The Secretary has delegated to the Director of the Centers for Disease Control and Prevention the authority for implementing these regulations.

Authority for carrying out most of these functions has been delegated to HHS/CDC's Division of Global Migration and Quarantine (DGMQ). The Secretary's authority to apprehend, examine, detain, and conditionally release individuals is limited to those quarantinable communicable diseases published in an Executive Order of the President. This list currently includes cholera, diphtheria, infectious tuberculosis (TB), plague, smallpox, yellow fever, and viral hemorrhagic fevers, such as Marburg, Ebola, and Crimean-Congo hemorrhagic fever (CCHF), Severe Acute Respiratory Syndrome (SARS), and influenza caused by novel or re-emergent influenza viruses that are causing or have the potential to cause a pandemic (see Executive Order 13295, as amended by Executive Order 13375 on April 1, 2005).

## III. Updates to 42 CFR 71.1, 71.32(a) and 71.50

Through this Notice of Proposed Rulemaking (NPRM), HHS/CDC proposes to update the Scope and Definitions for 42 CFR Part 71 under section 71.1 and adding a new section 71.50, to reflect modern terminology and plain language commonly used by global private sector industry and public health partners. Specifically, we are updating five existing definitions, adding thirteen new definitions to help clarify existing provisions, and creating a new scope and definitions section within Part 71, under subpart F for Importations, by reorganizing certain existing definitions. In updating the definitions in Part 71, it became evident to us that certain definitions pertain more directly to *Importations* under subpart F than to Part 71 in general; therefore, we have decided to reorganize the existing definitions by creating a new section 71.50 for this subpart to contain these definitions to better clarify the terms for importers. We are also adding new definitions for section 71.50 to clarify the intent of certain provisions under subpart F.

Finally, as part of the proposed changes to definitions, we are also updating section 71.32(a) incorporate the most recent listing of quarantinable communicable diseases under Executive Order 13295, of April 4, 2003, as amended by Executive Order 13375 of

April 1, 2005. These proposed changes are not substantive and will not affect current practices.

## IV. Proposed Scope and Definitions for Section 71.1

Proposed section 71.1(a) has been updated to include the current interstate quarantine regulations administered by HHS/CDC found at ''42 CFR part 70'' to the existing cross-reference citing ''21 CFR parts 1240 and 1250.''

On August 16, 2000, the Secretary transferred certain authority for interstate control of communicable disease, including the authority to apprehend, examine, detain, and conditionally release individuals moving from one state into another from HHS/Food and Drug Administration (FDA) to HHS/CDC, which became 42 CFR Part 70. As part of this transfer, FDA retained regulatory authority over animals and other products that may transmit or spread communicable disease. These other regulations may be found at 21 CFR parts 1240 and 1250. This rule has no effect upon FDA's regulatory authority. Accordingly, the proposed scope reads: ''The provisions of this part contain the regulations to prevent the introduction, transmission, and spread of communicable disease from foreign countries into the States or territories (also known as possessions) of the United States. Regulations pertaining to preventing the interstate spread of communicable diseases are contained in 21 CFR parts 1240 and 1250 and *42 CFR part 70*.''

Current section 71.1 (b) *Definitions* contains definitions of terms used in the current CFR. The NPRM proposes new or updated definitions for clarification and to be consistent with current industry and public health principles and practice.

Table 1 lists the definitions found in the current 42 CFR part 71, subpart A, and compares them with the updated definitions in this NPRM.

TABLE 1—SUBPART A—FOREIGN QUARANTINE DEFINITIONS AND CORRESPONDING CHANGES IN DEFINITIONS IN THE NPRM

| Existing definitions in Part 42 CFR 71.1 | Corresponding, new or updated definition in NPRM |
|---|---|
| Carrier | No Change. |
| | Commander. |
| Communicable disease | No Change. |
| Contamination | No Change. |
| Controlled Free Pratique | No Change. |
| Deratting Certificate | No Change. |
| Deratting Exemption Certificate | No Change. |
| Detention | No Change. |
| Director | No Change. |
| Disinfection | No Change. |
| Disinfestation | No Change. |
| Disinsection | No Change. |
| Educational Purpose | Moved to new 71.50. |
| Exhibition Purpose | Moved to new 71.50. |
| Ill person | No Change. |
| International Health Regulations | Updated. |
| International voyage | No Change. |
| Isolation | Updated. |
| Military Services | No Change |
| | Quarantine. |
| | Quarantinable Communicable disease. |
| | Possession. |
| Scientific Purpose | Moved to new 71.50. |
| Surveillance | Updated. |
| U.S. port | No Change. |
| | U.S. Territory. |
| United States | Updated. |
| Vector | Updated. |

### *A. Definitions Updated Under Section 71.1*

*International Health Regulations or IHR.* This NPRM defines International Health Regulations or IHR as the International Health Regulations of the World Health Organization (WHO), adopted by the 58th World Health Assembly in 2005, as may be further amended, and subject to the United States' reservation and understandings. The NPRM proposes to update the current CFR's definition to reflect that the 1969 IHR, as amended in 1973 and 1981 by the World Health Assembly, has been superseded by the 2005 IHR currently in place. This definition also reflects that the United States accepted the IHR with the reservation that it will implement them in line with U.S. principles of federalism. In addition, the United States submitted three understandings, setting forth its views that: (1) incidents that involve the natural, accidental or deliberate release of chemical, biological or radiological materials are notifiable under the IHR; (2) countries that accept the IHR are obligated to report potential public health emergencies that occur outside their borders to the extent possible; and (3) the IHR do not create any separate private right to legal action against the federal government.

*Isolation.* The NPRM proposes to update the term ''isolation'' to mean the separation of an individual or group of individuals who are reasonably believed to be infected with a quarantinable communicable disease from others who are healthy in such a manner as to prevent the spread of the quarantinable communicable disease. The current definition of ''isolation,'' when applied to an individual or group of individuals is stated as ''the separation of that person or group of persons from other persons, except the health staff on duty, in such a manner necessary as to prevent the spread of infection.'' Not only does the updated definition help to clarify the distinction between

quarantine and isolation, but it removes the current reference to ''health staff on duty'' to which the separation does not apply. HHS/CDC believes that the reference to ''health staff on duty'' is unnecessary and outmoded because, in practice, a patient may have his or her needs attended to by a variety of individuals. The new definition focuses on the measures used to prevent the spread of infection and not on the types of individuals who may attend to the patient. This is not a substantive change from current practice.

*Surveillance.* Under this NPRM, HHS/CDC is proposing to define ''surveillance'' as the temporary supervision by a public health official (or designee) of an individual or group, who may have been exposed to a quarantinable communicable disease, to determine the risk of disease spread. We are proposing to update the term ''surveillance'' to more accurately reflect current practice and to clarify that, just as with quarantine and isolation, this public health measure is applicable to individuals and groups of individuals.

*United States.* We are proposing to update the definition of ''United States'' to mean the 50 States, the District of Columbia, and the territories (also known as possessions) of the United States, including American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. We are proposing this action to better clarify the authority of provisions within Part 71. The current definition includes the Trust Territory of the Pacific Islands, which have not been administered by the United States since 1986.

*Vector.* We propose to update the term ''vector'' to be defined as any animals (vertebrate or invertebrate) including arthropods or any noninfectious self-replicating system (*e.g.,* plasmids or other molecular vector) or animal products that are known to transfer, or are capable of transferring, an infectious biological agent to a human. To provide further clarity, we have defined the term ''animal products'' in subpart F. This revision more adequately reflects modern science and current practice which are focused on protecting public health.

*B. Definitions Added to Section 71.1*

*Commander.* Consistent with current industry practice, this NPRM proposes to define ''commander'' as the aircrew member with responsibility for the aircraft's operations and navigation.

*Quarantine.* HHS/CDC is proposing to separately define ''quarantine'' as the separation of an individual or group of individuals who are reasonably believed to have been exposed to a quarantinable communicable disease, who are not ill, from others who have not been so exposed, in such a manner as to prevent the possible spread of the quarantinable communicable disease. HHS/CDC is separately defining quarantine, isolation, and surveillance, and is using these terms in a manner that is consistent with public health practice. In current practice, quarantine, isolation, and surveillance may apply either to individuals or groups of individuals. Indeed, the current definition of Isolation in 42 CFR 71.1 applies to ''a person or group of persons.'' HHS/CDC is clarifying that quarantine and surveillance are public health practices that may also be applied to groups of individuals. This is not a substantive change, but rather consistent with CDC's current practice.

*Quarantinable communicable disease.* Under the proposed definition, ''quarantinable communicable disease'' means any of the communicable diseases listed in an Executive Order, as provided under section 361 of the Public Health Service Act (42 U.S.C. 264). Executive Order 13295, of April 4, 2003, as amended by Executive Order 13375 of April 1, 2005, contains the current revised list of quarantinable communicable diseases, and may be obtained at *http://www.cdc.gov/quarantine* and *http://www.archives.gov/federal_register*. If this Order is amended, HHS/CDC will enforce that amended order immediately and update its appropriate Web site. A proposed definition for ''quarantinable communicable disease'' is being added to Part 71 through this NPRM to incorporate the most recent applicable Executive Order. The addition of this proposed definition will also be reflected in section 71.32(a), *Persons, carriers and things.*

*Possession.* To best add clarity to Part 71 and to align this Part with 42 CFR Part 70, we propose to update the term ''possession'' to mean ''U.S. territory'' and define U.S. territory to include American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Currently, only Puerto Rico and the Virgin Islands are explicitly listed in the definition. Thus, CDC is updating this provision to explicitly list the other U.S. jurisdictions to which this part applies.

*U.S. territory.* Consistent with current practice, this NPRM includes a proposed definition of ''U.S. territory'', to mean any territory (also known as possessions) of the United States including American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. The Department of the Interior's Office of Insular Affairs, the federal government's lead agency for U.S. territories, no longer uses the term ''possession'' to refer to these jurisdictions. Consequently, HHS/CDC is proposing to add a new definition for U.S. territory consistent with current federal usage.

**V. Proposed Update of Section 71.32(a)**

In 2003, in response to the emergence of Severe Acute Respiratory Syndrome (SARS), the HHS amended 42 CFR 70.6 and 71.32 to incorporate by reference the Executive Order listing the quarantinable communicable diseases subject to detention, isolation, quarantine, or conditional release, thereby eliminating the administrative delay involved in separately publishing the list of diseases through rulemaking.

Section 71.32(a), *Persons, carriers, and things,* contains the general authority for the Director to take measures to protect public health against ''any of the communicable diseases listed in an Executive Order, as provided under section 361(b) of the Public Health Service Act.'' The current § 71.32(a) lists Executive Order (E.O) 13295, of April 4, 2003. The subpart states that ''If this Order is amended, HHS will enforce that amended order.''

On April 1, 2005, the existing Executive Order was amended by Executive Order 13375. Therefore, as part of the non-controversial proposed changes to in this NPRM, we are also updating section 71.32(a) to reflect the most recent Executive Order that lists the ''Quarantinable Communicable Diseases,'' which we have also defined. These proposed changes are not substantive and will not affect current practices.

**VI. Proposed Scope and Definitions for Section 71.50**

This NPRM proposes to move certain definitions from section 71.1 to new section 71.50, because these definitions only apply to the regulations found in subpart F, *Importations.* Subpart F, *Importations,* contains the restrictions on importations of nonhuman primates; certain kinds of animals; etiological agents, hosts, and vectors; and dead bodies. The proposed addition of § 71.50 Scope and Definitions is not a substantive change. To clarify the regulations for the reader, the terms used only in subpart A through subpart G are found in § 71.1, while the terms used only in subpart F, have been moved to new § 71.50. We also propose separate definitions for quarantine and

isolation to reflect current practices as they apply to individuals (71.1) and animals (71.50).

Proposed section 71.50(a) *Scope* under subpart F—*Importations,* clarifies that HHS/CDC also has the statutory authority to prevent the introduction, transmission, and spread of communicable human diseases resulting from importations of various animal hosts, product, vectors, or other etiological agents that pose a threat to human health.

Proposed section 71.50 (b) *Definitions* contains updated definitions used in the current CFR. The NPRM promulgates new and updated definitions to be consistent with current medical and public health principles and practice.

Table 2 lists the definitions found in the current 42 CFR part 71, subpart A, and the corresponding new or updated proposed definitions in this NPRM.

TABLE 2—SUBPART F—IMPORTATIONS

Definitions and Corresponding Changes in Definitions in the NPRM

| Existing definitions in 42 CFR Part 71.1 | Corresponding, new and modified definition in proposed 42 CFR 71.50 |
|---|---|
| | Animal product or Product. |
| Educational purpose | No Change. |
| Exhibition purpose | No Change. |
| | In transit. |
| | Isolation, when applied to animals. |
| | Licensed Veterinarian. |
| | Person. |
| | Quarantine, when applied to animals. |
| | Rendered Noninfectious. |
| Scientific purpose | No Change. |
| | You or Your. |

*A. Definitions Added to Section 71.50*

*Animal product or Product.* We have defined the term ''animal product'' or ''product'' to describe those items that are known to transfer, or are capable of transferring, an infectious biological agent to a human and that are prohibited from entering the United States unless accompanied by a permit or rendered noninfectious. For the purposes of this NPRM, ''animal product'' or ''product'' means the hide, hair, skull, teeth, bones, claws, blood, tissue, or other biological samples from an animal, including trophies, mounts, rugs, or other display items. We have proposed this definition, which is used in subpart F, to best describe the current prohibition on animal products that are known to transfer, or are capable of transferring, an infectious biological agent to a human and that as a condition of entry into the United States must be accompanied by a permit or rendered noninfectious.

*In transit.* In this NPRM, we are proposing to define ''in transit'' as animals that are located within the United States, including animals whose presence is anticipated, scheduled, or otherwise, as part of the movement of those animals between a foreign country of departure and foreign country of final destination without clearing customs and officially entering the United States. As part of modern global trade and travel practices, animals commonly pass through the United States without being formally admitted into this country. These animals pose a potential risk to U.S. public health where the improper handling of these shipments during exchange of cargo could introduce zoonotic diseases into the United States. We note that the term ''in-transit'' is currently only found in section 71.51 relating to the importation of dogs and cats and we believe it is useful to add clarity to this section by defining to what is meant by this term.

*Isolation, when applied to animals.* We have proposed a definition of ''isolation'' under this subpart to mean the separation of an ill animal or ill group of animals from individuals, other animals, or vectors of disease in such a manner as to prevent the spread of infection. We have proposed a separate definition under this subpart to distinguish the concept of isolation for individuals from isolation of animals,

*Licensed Veterinarian.* We have proposed defining ''licensed veterinarian'' to mean an individual who has obtained both an advanced degree and a valid license to practice animal medicine. This new definition best describes the intent of provisions of this subpart.

*Person.* We have proposed to define ''person'' to mean any individual or partnership, firm, company, corporation, association, organization, or similar legal entity, including those that are not-for-profit. With the exception of 42 CFR section 71.55, which refers to the imported remains of a natural person, this definition is intended to clarify the relevant import prohibitions applicable to individuals and organizations under this subpart.

*Quarantine, when applied to animals.* We have proposed defining ''quarantine'' as it applies to animals as the practice of separating live animals that are reasonably believed to have been exposed to a communicable disease, but are not yet ill, in a setting where the animal can be observed for evidence of disease, and where measures are in place to prevent transmission of infection to humans or animals. This new definition best clarifies the current public health measure of quarantining animals, and it distinguishes it from public health practice of isolation when applied to animals.

*Render Noninfectious.* In this NPRM, we have proposed ''render noninfectious'' to mean treating an animal product (*e.g.,* by boiling, irradiating, soaking, formalin fixation, or salting) in such a manner renders the product incapable of transferring an infectious biological agent to a human. Acceptable methods of rendering a product noninfectious typically include the following:

(1) Boiling in water to ensure that any matter other than bone, horns, hooves, claws, antlers, or teeth is removed,

(2) Irradiating with gamma irradiation at a dose of at least 20 kilogray at room temperature (20 °C or higher),

(3) Soaking, with agitation, in a 4 percent (weight/volume) solution of washing soda (sodium carbonate, $Na_2CO_3$) maintained at pH 11.5 or above for at least 48 hours,

(4) Soaking, with agitation, in a formic acid solution (100 kg salt [sodium chloride, NaCl] and 12 kg formic acid per 1,000 liters water) maintained at below pH 3.0 for at least 48 hours;

wetting and dressing agents may be added.

(5) In the case of raw hides, salting for at least 28 days with sea salt containing 2 percent washing soda (sodium carbonate, $Na_2CO_3$).

(6) Formalin fixation.

(7) Another method approved by HHS/CDC.

Through this definition within the NPRM, HHS/CDC is proposing to better clarify and explain existing practices that limit limiting the importation of animal products that are known to transfer, or are capable of transferring, an infectious biological agent to a human. Such products must be accompanied by an HHS/CDC import permit or rendered noninfectious as a condition of entry into the United States. Items that have been rendered noninfectious, as described in this subpart, may be imported without an HHS/CDC permit.

*You* or *your.* To best identify and assign responsibilities under this subpart, we have defined the terms ''you'' or ''your'' to mean an importer, owner, or an applicant.

## VII. Alternatives Considered

Under Executive Order 13563 agencies are asked to consider all feasible alternatives to current practice and the rule as proposed. HHS/CDC notes that the main impact of the proposed rule is to clarify the current practices and intent of HHS/CDC updating and defining terms used in the existing 42 CFR Part 71. As explained in Section III. ''Rationale for Updates to 42 CFR 71.1, 71.32(a) and 71.50,'' through this NPRM, HHS/CDC proposes to update the Scope and Definitions for 42 CFR Part 71 under sections 71.1 and add new section 71.50, to reflect modern terminology and plain language commonly used by global private sector industry and public health partners. By clarifying and explaining the provisions within part 71, HHS/CDC hopes to assist the regulated community in complying with the provisions to best protect public health. HHS/CDC believes that this rulemaking complies with the spirit of the Executive Order; updating definition and clarifying language provides good alternatives to the current regulation.

## VIII. Required Regulatory Analyses

### *A. Required Regulatory Analyses Under Executive Orders 12866 and 13563*

Under Executive Order 12866 (EO 12866), Regulatory Planning and Review (58 FR 51735, October 4, 1993) HHS/CDC is required to determine whether this regulatory action would be ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Orders. This order defines ''significant regulatory action'' as any regulatory action that is likely to result in a rule that may:

Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or,
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in EO 12866.

Executive Order 13563 (EO 13563), Improving Regulation and Regulatory Review, (76 FR 3821, January 21, 2011), updates some of the provisions of EO 12866 in order to promote more streamlined regulatory actions. This EO charges, in part, that, while protecting ''public health, welfare, safety, and our environment'' that regulations must also ''promote predictability and reduce uncertainty'' in order to promote economic growth. Further, regulations must be written in common language and be easy to understand. In the spirit of EO 13563, this NPRM enhances definitions related to control of communicable diseases and adds more recent medical information where appropriate. HHS/CDC has determined that this NPRM is an update of definitions and compliant with the spirit of EO 13563. Further, HHS/CDC has determined that this NPRM is not a significant regulatory action as defined in EO 12866 because the NPRM is definitional and does not change the baseline costs for any of the primary stakeholders.

### *B. Regulatory Flexibility Act*

We have examined the impacts of the proposed rule under the Regulatory Flexibility Act (5 U.S.C. 601–612). Unless we certify that the proposed rule is not expected to have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

### *C. Small Business Regulatory Enforcement Fairness Act of 1996*

This regulatory action is not a major rule as defined by Sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

### *D. The Paperwork Reduction Act of 1995*

HHS/CDC has determined that the Paperwork Reduction Act does apply to the date collection and record keeping requirements of 42 CFR Part 71 and has obtained approval by the Office of Management and Budget (OMB) under OMB Control No. 0920–0134, expiration 07/31/2015. The updates proposed in this rule do not impact the data collection and record keeping requirements already approved by OMB.

### *E. National Environmental Policy Act (NEPA)*

Pursuant to 48 FR 9374 (list of HHS/CDC program actions that are categorically excluded from the NEPA environmental review process), HHS/CDC has determined that this action does not qualify for a categorical exclusion. In the absence of an applicable categorical exclusion, the Director, HHS/CDC, has determined that provisions amending 42 CFR Part 71 will not have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### *F. Civil Justice Reform (Executive Order 12988)*

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

*G. Executive Order 13132 (Federalism)*

HHS/CDC has reviewed this proposed rule in accordance with Executive Order 13132 regarding Federalism, and has determined that it does not have ''federalism implications.'' The rule does 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.''

*H. Plain Language Act of 2010*

Under Public Law 111–274 (October 13, 2010), executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal Government administers or enforces. HHS/CDC has attempted to use plain language in promulgating this rule consistent with the Federal Plain Writing Act and requests public comment on this effort.

**List of Subjects in 42 CFR Part 71**

Communicable diseases, Isolation, In Transit, Public health, Quarantine, Quarantinable Communicable Disease, Render Noninfectious.

**Proposed Text**

For the reasons discussed in the preamble, the Centers for Disease Control and Prevention proposes to amend 42 CFR Part 71 as follows:

## PART 71—FOREIGN QUARANTINE

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

**Authority:** Secs. 215 and 311 of Public Health Service (PHS) Act as amended (42 U.S.C. 216, 243); secs. 361–369, PHS Act, as amended (42 U.S.C. 264–272).

2. Amend § 71.1 as follows:

a. Revise paragraph (a).

b. In paragraph (b), add in alphabetical order definitions of Commander, Quarantine, Quarantinable communicable disease, and U.S. territory.

c. In paragraph (b), revise definitions of International Health Regulations, Isolation, Surveillance, United States, and Vector. The revisions and additions read as follows:

### § 71.1 Scope and definitions.

* * * * *

(a) The provisions of this part contain the regulations to prevent the introduction, transmission, and spread of communicable disease from foreign countries into the States or territories (also known as possessions) of the United States. Regulations pertaining to preventing the interstate spread of communicable diseases are contained in 21 CFR parts 1240 and 1250 and 42 CFR part 70.

(b) * * *

* * * * *

*Commander* means the aircrew member with responsibility for the aircraft's operations and navigation.

* * * * *

*International Health Regulations* or *IHR* means the International Health Regulations of the World Health Organization, adopted by the Fifty-Eighth World Health Assembly in 2005, as may be further amended, and subject to the United States' reservation and understandings.

* * * * *

*Isolation* means the separation of an individual or group who is reasonably believed to be infected with a quarantinable communicable disease from those who are healthy to prevent the spread of the quarantinable communicable disease.

* * * * *

*Possession* means U.S. territory.

*Quarantine* means the separation of an individual or group reasonably believed to have been exposed to a quarantinable communicable disease, but who is not yet ill, from others who have not been so exposed, to prevent the possible spread of the quarantinable communicable disease.

*Quarantinable communicable disease* means any of the communicable diseases listed in an Executive Order, as provided under § 361 of the Public Health Service Act (42 U.S.C. § 264). Executive Order 13295, of April 4, 2003, as amended by Executive Order 13375 of April 1, 2005, contains the current revised list of quarantinable communicable diseases, and may be obtained at *http://www.cdc.gov* and *http://www.archives.gov/federal_register*. If this Order is amended, HHS will enforce that amended order immediately and update that Web site.

*Surveillance* means the temporary supervision by a public health official (or designee) of an individual or group, who may have been exposed to a quarantinable communicable disease, to determine the risk of disease spread.

* * * * *

*U.S.territory* means any territory (also known as possessions) of the United States, including American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

*United States* means the 50 States, District of Columbia, and the territories (also known as possessions) of the United States, including American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

*Vector* means any animals (vertebrate or invertebrate) including arthropods or any noninfectious self-replicating system (*e.g.,* plasmids or other molecular vector) or animal products that are known to transfer, or are capable of transferring, an infectious biological agent to a human.

3. Revise § 71.32(a) to read as follows:

### § 71.32 Persons, carriers, and things.

(a) Whenever the Director has reason to believe that any arriving person is infected with or has been exposed to any of the communicable diseases listed in an Executive Order, as provided under section 361(b) of the Public Health Service Act, he/she may isolate, quarantine, or place the person under surveillance and may order disinfection or disinfestation, fumigation, as he/she considers necessary to prevent the introduction, transmission or spread of the listed communicable diseases. Executive Order 13295, of April 4, 2003, as provided under section 361 of the Public Health Service Act (42 U.S.C. 264), and as amended by Executive Order 13375 of April 1, 2005, contains the current revised list of quarantinable communicable diseases, and may be obtained at *http://www.cdc.gov* and *http://www.archives.gov/federal_register*. If this Order is amended, HHS will enforce that amended order immediately and update this reference.

* * * * *

4. Add § 71.50 to subpart F to read as follows:

### § 71.50 Scope and definitions.

(a) The purpose of this subpart is to prevent the introduction, transmission, and spread of communicable human disease resulting from importations of various animal hosts or vectors or other etiological agents from foreign countries into the United States.

(b) In addition to terms in § 71.1, the terms below, as used in this subpart, shall have the following meanings:

*Animal product* or *product* means the hide, hair, skull, teeth, bones, claws, blood, tissue, or other biological samples from an animal, including trophies, mounts, rugs, or other display items.

*Educational purpose* means use in the teaching of a defined educational program at the university level or equivalent.

*Exhibition purpose* means use as part of a display in a facility comparable to a zoological park or in a trained animal act. The animal display must be open to

the general public at routinely scheduled hours on 5 or more days of each week. The trained animal act must be routinely schedule for multiple performances each week and open to the general public except for reasonable vacation and retraining periods.

*In transit* means animals that are located within the United States, whether their presence is anticipated, scheduled, or not, as part of the movement of those animals between a foreign country of departure and foreign country of final destination without clearing customs and officially entering the United States.

*Isolation when applied to animals* means the separation of an ill animal or ill group of animals from individuals, or other animals, or vectors of disease in such a manner as to prevent the spread of infection.

*Licensed veterinarian* means an individual who has obtained both an advanced degree and valid license to practice animal medicine.

*Person* means any individual or partnership, firm, company, corporation, association, organization, or similar legal entity, including those that are not-for-profit.

*Quarantine when applied to animals* means the practice of separating live animals that are reasonably believed to have been exposed to a communicable disease, but are not yet ill, in a setting where the animal can be observed for evidence of disease, and where measures are in place to prevent transmission of infection to humans or animals.

*Render noninfectious* means treating an animal product (*e.g.,* by boiling, irradiating, soaking, formalin fixation, or salting) in such a manner that renders the product incapable of transferring an infectious biological agent to a human.

*Scientific purpose* means use for scientific research following a defined protocol and other standards for research projects as normally conducted at the university level. The term also includes the use for safety testing, potency testing, and other activities related to the production of medical products.

*You* or *your* means an importer, owner, or an applicant.

Dated: December 13, 2012.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2012–30725 Filed 12–21–12; 4:15 pm]

**BILLING CODE 4150–28–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MB Docket No. 12–352; RM–11686; DA 12–2002].**

### Radio Broadcasting Services; Dove Creek, CO

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document sets forth a proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules. The Commission requests comment on a petition filed by Cochise Media Licenses, LLC, proposing to amend the Table of Allotments by allotting FM Channel 229C3 as a first local service at Dove Creek, Colorado. Channel 229C3 can be allotted at Dove Creek, Colorado, in compliance with the Commission's minimum distance separation requirements, at the proposed reference coordinates: 37–48–05 North Latitude and 108–59–33 West Longitude. *See* **SUPPLEMENTARY INFORMATION** *infra.*

**DATES:** The deadline for filing comments is February 4, 2013. Reply comments must be filed on or before February 21, 2013.

**ADDRESSES:** Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Susan A. Marshall, Esq., Anne Goodwin Crump, Esq., Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209.

**FOR FURTHER INFORMATION CONTACT:** Deborah A. Dupont, Media Bureau (202) 418–7072.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 12–352, adopted December 10, 2012, and released December 11, 2012. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *www.bcpiweb.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4).

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

Federal Communications Commission.

**Nazifa Sawez,**

*Assistant Chief, Audio Division, Media Bureau.*

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336 and 339

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Dove Creek, Channel 229C3.

[FR Doc. 2012–30971 Filed 12–21–12; 4:15 pm]

**BILLING CODE 6712–01–P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**[Docket No. FWS–R4–ES–2011–0020; 92220–1113–0000–C6]**

**RIN 1018–AX60**

# Endangered and Threatened Wildlife and Plants; Reclassification of the Continental U.S. Breeding Population of the Wood Stork From Endangered to Threatened

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule and notice of petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service or USFWS), propose to reclassify the continental United States (U.S.) breeding population of wood stork from endangered to threatened under the Endangered Species Act of 1973, as amended (Act). We find that the best available scientific and commercial data indicate that the endangered designation no longer correctly reflects the current status of the continental U.S. breeding population of the wood stork due to a substantial improvement in the species' overall status. This proposed rule also constitutes our 12-month finding on the petition to reclassify the species.

**DATES:** We will accept comments on this proposed rule received or postmarked on or before February 25, 2013. We must receive requests for a public hearing, in writing at the address shown in the **FOR FURTHER INFORMATION CONTACT** section, by February 11, 2013.

**ADDRESSES:** You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2011–0020.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R4–ES–2011–0020; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Field Supervisor, North Florida Ecological Services Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256; telephone 904–731–3336; facsimile 904–731–3045. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339, 24 hours a day, 7 days a week.

**SUPPLEMENTARY INFORMATION:**

## Executive Summary

*Why We Need To Publish a Rule*

- In September 2007, we completed a 5-year status review, which included a recommendation to reclassify the continental U.S. breeding population of the wood stork from endangered to threatened.
- In May 2009, we received a petition to reclassify the continental U.S. breeding population of wood stork; the petition incorporated the Service's 5-year review as its sole supporting information.
- On September 21, 2010, we published a 90-day finding that the petition presented substantial information indicating that reclassifying the wood stork may be warranted (75 FR 57426).
- This proposed rule, in accordance with section 4(b)(3)(B) of the Endangered Species Act (Act), constitutes our 12-month finding on the petition we received.

*Summary of the Major Provisions of This Proposed Rule*

- We propose to reclassify the continental U.S. breeding population of wood stork from endangered to threatened.
- This proposed rule constitutes our 12-month petition finding.
- We determine that the continental U.S. breeding population of wood stork meets the criteria of a distinct population segment (DPS) under our 1996 DPS policy (61 FR 4722).
- We propose to amend the List of Endangered and Threatened Wildlife (50 CFR 17.11(h)) to reflect that the U.S. wood stork DPS is found in the States of Florida, Georgia, South Carolina, North Carolina, Alabama, and Mississippi.

*The Basis for Our Action*

- The continental U.S. breeding population of wood stork was listed under the Act in 1984, prior to publication of the joint policy of the National Marine Fisheries Service and U.S. Fish and Wildlife Service (Services) regarding the recognition of distinct vertebrate population segments (61 FR 4722). We find that the continental U.S. breeding population of wood stork meets the discreteness and significance elements of the Services' DPS policy and is a valid DPS.
- When the continental U.S. breeding population of wood stork was listed in 1984, the population was known to occur only in Florida, Georgia, South Carolina, and Alabama. Based on new information about where the population is found and where nesting is occurring, the population is now known to occur in North Carolina and Mississippi in addition to Florida, Georgia, South Carolina, and Alabama.
- The best available scientific and commercial data indicate that since the continental U.S. breeding population of wood stork was listed as endangered in 1984, the population has been increasing and its breeding range has expanded significantly.
- Downlisting criteria from the recovery plan have been met or exceeded. We have had 3-year population averages of total nesting pairs of wood storks higher than 6,000 nesting pairs since 2003. However, the 5-year average number of nesting pairs is still below the benchmark of 10,000 nesting pairs identified in the recovery plan for delisting. In addition, productivity, even though variable, is sufficient to support a growing population.
- As a result of continued loss, fragmentation, and modification of wetland habitats in parts of the wood stork's range, we find that the continental U.S. wood stork DPS meets the definition of a threatened species under section 3 of the Act.

## Public Comments

We intend that any final action resulting from this proposed rule will be as accurate and as effective as possible. Therefore, we are requesting comments from other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek information and comments concerning:

(1) The historical and current status and distribution of the wood stork, its biology and ecology, and ongoing conservation measures for the species and its habitat.

(2) Wood stork nesting colony location data (latitude/longitude in decimal degrees to confirm or improve our location accuracy); nest census counts and survey dates; years when a colony was active or not; years and dates when a colony was abandoned (fully or partially); and annual productivity rates (per total nest starts and per successful nests) and average chicks per nest estimates from continental U.S. colonies.

(3) Current or planned activities within the geographic range of the

continental U.S. breeding population of the wood stork that may impact or benefit the species, including any acquisition of large tracts of wetlands, wetland restoration projects, planned developments, roads, or expansion of agricultural or mining enterprises, especially those near nesting colonies and surrounding suitable foraging habitats.

Prior to issuing a final rule on this proposed action, we will take into consideration all comments and additional information we receive. Such information may lead to a final rule that differs from this proposal. All comments and recommendations, including names and addresses, will become part of the administrative record for the final rule.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. If you submit a comment via *http://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the Web site. Please note that comments submitted to this Web site are not immediately viewable. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission. If you mail or hand deliver hard copy comments that include personal identifying information, you may request at the top of your documents that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. To ensure that the electronic docket for this rulemaking is complete and all comments we receive are publicly available, we will post all hard copy comments on *http://www.regulations.gov.*

## Public Hearing

The Act (16 U.S.C. 1531 *et seq.*) provides for one or more public hearings on this proposal, if requested. We must receive your request for a public hearing within 45 days after the date of this **Federal Register** publication (see **DATES**). Such requests must be made in writing and addressed to the Field Supervisor (see **FOR FURTHER INFORMATION CONTACT** section above).

## Background

Much of the basic biological information presented in this section is based upon existing literature published on the continental U.S. breeding population of the wood stork. This section summarizes information found in a large body of published literature and reports, including the revised recovery plan for the continental U.S. breeding population of the wood stork (USFWS 1997), The Birds of North America Online species account for wood stork (Coulter *et al.* 1999), and the South Florida Multi-Species Recovery Plan (USFWS 1999).

### *Taxonomy and Species Description*

The wood stork (*Mycteria americana*) is one of 19 species of storks that make up the family Ciconiidae (Coulter *et al.* 1999, p. 3). It is one of three species of storks found in the western hemisphere (Coulter *et al.* 1999, p. 3) and the only stork that breeds north of Mexico (Ogden 1990, p. B–3). The wood stork shows no obvious morphological differentiation across its range, and no subspecies have been proposed.

The wood stork is a large, long-legged wading bird, with a head-to-tail length of 85–115 centimeters (cm) (33–45 inches (in)) and a wingspread of 150–165 cm (59–65 in- or roughly 5 to 5.5 feet). The plumage is white, except for iridescent black primary and secondary wing feathers and a short black tail. Storks fly with their necks and legs extended. On adults, the rough, scaly skin of the head and neck is unfeathered and blackish in color, the legs are dark, and the feet are dull pink. The bill color is also blackish. Immature storks, up to the age of about 3 years, differ from adults in that their bills are yellowish or straw-colored and there are varying amounts of dusky feathers on the head and neck. During courtship and early nesting season, adults have pale salmon coloring under the wings, fluffy coverts (feathers under the base of a bird's tail) that are longer than the tail, and toes that brighten to a vivid pink.

### *Life Span*

Wood storks are considered a long-lived species with delayed breeding, with first breeding generally occurring for 3- to 4-year old birds. The greatest recorded longevities are 17+ years for a wild adult wood stork caught and fitted with a satellite tag and leg bands in 1998, and recently documented at the Harris Neck nesting colony in 2011 (Larry Bryan, SREL, pers. comm., 2011), and 27.5 years for a captive bird (Brouwer *et al.* 1992, p. 132).

### *Feeding*

The specialized feeding behavior of the wood stork involves tactilocation, also called grope feeding, where the stork uses its bill to find small fish. Wood storks feed primarily on fish between 2 and 25 cm (1 and 10 in) in length (Kahl 1964, pp. 107–108; Ogden *et al.* 1976, pp. 325–327). Wood storks also occasionally consume crustaceans, amphibians, reptiles, mammals, birds, and arthropods (Coulter *et al.* 1999, p. 7). Wood storks forage in a variety of shallow wetlands, wherever prey concentrations reach high enough densities, in water that is shallow and open enough for the birds to be successful in their hunting efforts (Ogden *et al.* 1978, pp. 15–17; Browder 1984, p. 94; Coulter and Bryan 1993, p. 59). Fish populations reach high numbers during the wet season, but become concentrated in increasingly restricted habitats as drying occurs. Typical foraging sites include freshwater marshes, swales, ponds, hardwood and cypress swamps, narrow tidal creeks or shallow tidal pools, and artificial wetlands (such as stock ponds; shallow, seasonally flooded, roadside or agricultural ditches; and impoundments) (Coulter and Bryan 1993, p. 59; Coulter *et al.* 1999, p. 5). The wetland foraging areas near a nesting colony play a vital role during the nesting season (Cox *et al.* 1994, p. 135). Nesting wood storks generally use foraging sites that are located within a 30- to 50-kilometer (km) (18- to 31-mile (mi)) flight range of the colony; successful colonies are those that have options to feed during a variety of rainfall and surface water conditions (Coulter 1987, p. 22; Bryan and Coulter 1987, p. 157; Coulter *et al.* 1999, pp. 17–18; Herring 2007, p. 60; Bryan and Stephens 2007, p. 6; Meyers 2010, p. 5; Lauritsen *et al.* 2010, p. 3; Tomlinson 2009, p. 30). Early in the nesting season, the short-hydroperiod wetlands supply most of the forage, whereas later, the long-hydroperiod wetlands supply the prey needed to successfully fledge the offspring (Fleming *et al.* 1994, p. 754).

### *Mating and Reproduction*

Wood storks are seasonally monogamous, probably forming a new pair bond every season. There is documented first breeding at 3 and 4 years old. Nest initiation varies geographically. Wood storks lay eggs as early as October and as late as June in Florida (Rodgers 1990, pp. 48–51). Wood storks in north Florida, Georgia, and South Carolina initiate nesting on a seasonal basis regardless of environmental conditions (USFWS 1997, p. 6). They lay eggs from March to late May, with fledging occurring in July and August. Historically, nest initiation in south Florida was in December and January; however, in response to the altered habitat conditions (wetland drainage, hydroperiod alteration) in south Florida, wood storks nesting in Everglades National Park and in the Big Cypress

region of Florida have delayed initiation of nesting to February or March in most years since the 1970s. Colonies that start after January in south Florida risk having young in the nests when May–June rains flood marshes and disperse fish, which can cause nest abandonment.

Females generally lay a single clutch of two to five eggs per breeding season, but the average is three eggs. Females sometimes lay a second clutch if nest failure occurs early in the season (Coulter *et al.* 1999, p. 11). Average clutch size may increase during years of favorable water levels and food resources. Incubation requires about 30 days and begins after the female lays the first one or two eggs. Nestlings require about 9 weeks for fledging, but the young return to the nest for an additional 3 to 4 weeks to be fed. Actual colony production measurements are difficult to determine because of the prolonged fledging period, during which time the young return daily to the colony to be fed.

Wood storks experience considerable variation in production among colonies, regions, and years in response to local and regional habitat conditions and food availability (Kahl 1964, p. 115; Ogden *et al.* 1978, pp. 10–14; Clark 1978, p. 183; Rodgers and Schwikert 1997, pp. 84–85). Several recent studies documented production rates to be similar to rates published between the 1970s and 1990s. Rodgers *et al.* (2008, p. 25) reported a combined production rate for 21 north- and central-Florida colonies from 2003 to 2005 of 1.19 ± 0.09 fledglings per nest attempt (n = 4,855 nests). Rodgers *et al.* (2009, p. 3) also reported the St. Johns River basin production rate of 1.49 ± 1.21 fledglings per nest attempt (n = 3,058 nests) and for successful nests an average fledgling rate of 2.26 ± 0.73 fledglings per nest attempt (n = 2,105 nests) from 2004 to 2008. Bryan and Robinette (2008, p. 20) reported rates of 2.3 and 1.6 fledged young per nesting attempt in 2004 and 2005, respectively, for South Carolina and Georgia. Murphy and Coker (2008, p. 5) reported that since the wood stork was listed in 1984, South Carolina colonies averaged 2.08 young per successful nest with a range of 1.72 to 2.73. The Palm Beach County (PBC) Solid Waste Authority colony (M. Morrison, PBC, pers. comm., 2011) was documented with 0.75 fledgling per nesting attempt in 2010, with annual rates ranging from 0.11 to 1.49 (2003 to 2010). The Corkscrew Sanctuary colony in Naples, Florida (J. Lauritsen, Audubon, pers. comm., 2011), documented no nesting in 2010, but an average of 2.29 fledglings per nesting attempt in 2009, with average annual rates ranging from 0.00 (abandonment) to 2.55 (2001–2010).

*Habitat*

Wood storks use a wide variety of freshwater and estuarine wetlands for nesting, feeding, and roosting throughout their range and thus are dependent upon a mosaic of wetlands for breeding and foraging. For nesting, wood storks generally select patches of medium to tall trees as nesting sites, which are located either in standing water such as swamps, or on islands surrounded by relatively broad expanses of open water (Ogden 1991, p. 43). Colony sites located in standing water must remain inundated throughout the nesting cycle to protect against predation and nest abandonment. A wood stork tends to use the same colony site over many years, as long as the site remains undisturbed, and sufficient feeding habitat remains in the surrounding wetlands. Wood storks may abandon traditional wetland sites if changes in water management result in water loss from beneath the colony trees.

Typical foraging sites include a mosaic of shallow water wetlands. Several factors affect the suitability of potential foraging habitat for wood storks. Foraging habitats must provide both a sufficient density and biomass of forage fish and other prey and have vegetation characteristics that allow storks to locate and capture prey. Calm water, about 5 to 40 cm (2 to 16 in) in depth, and free of dense aquatic vegetation, is preferred (Coulter and Bryan 1993, p. 61). During nesting, these areas must also be sufficiently close to the colony to allow storks to deliver prey to nestlings efficiently. Hydrologic and environmental characteristics have strong effects on fish density, and these factors may be some of the most significant in determining foraging habitat suitability.

Alterations in the quality and amount of foraging habitats in the Florida Everglades and extensive drainage and land conversions throughout south Florida led to the initial decline of the wood stork nesting population. Since listing under the Act, wood stork nesting and winter counts appear to be increasing slightly in south Florida and the Everglades (Newman 2009, p. 51; Alvarado and Bass 2009, p. 40), but the timing and location of nesting has changed in response to alterations in hydrology and habitat (Ogden 1994, p. 566). The overall distribution of the breeding population of wood storks is also in transition. The wood stork appears to have adapted to changes in habitat in south Florida in part by nesting later, nesting in colonies in the interior Everglades system (Ogden 1994, p. 566), and by expanding its breeding range north into Georgia, South Carolina, and North Carolina (Brooks and Dean 2008, p. 58).

*Distribution*

The wood stork occurs in South America from northern Argentina, eastern Peru, and western Ecuador, north into Central America, Mexico, Cuba, Hispaniola, and the southern United States. The breeding range includes the southeastern United States in North America, Cuba and Hispaniola in the Caribbean, and southern Mexico through Central America (Figure 1). In South America, the breeding range is west of the Andes south from Colombia to western Ecuador, east of the Andes from Colombia south through the Amazonas in Brazil to eastern Peru, northern Bolivia and northern Argentina east to the Atlantic coast through Paraguay, Uruguay, and north to the Guianas (Figure 1; Coulter *et al.* 1999, p. 2). The winter range in Central and South America is not well studied, but wood storks are known to occur year-round as a resident throughout the breeding range.

At the time of listing in 1984, the range of the continental U.S. breeding population of wood storks was Florida, Georgia, South Carolina, and Alabama. Breeding was restricted primarily to peninsular Florida (22 colonies in 1983), with only four colonies occurring in Georgia and South Carolina. The current breeding range includes peninsular Florida (48 colonies in 2010), the coastal plain and large river systems of Georgia (21 colonies) and South Carolina (13 colonies), and southern North Carolina (1 colony). The breeding range also extends west to south-central Georgia and the panhandle of Florida to the Ochlockonee River system. The nonbreeding season range includes all of Florida; the coastal plains and large river systems of Alabama, Georgia, South Carolina; and southern North Carolina and eastern Mississippi.

Wood storks are not true migrants, but some individuals do undergo lengthy inter-regional travel in response to resource availability (Coulter *et al.* 1999, p. 3; Bryan *et al.* 2008, p. 39). Generally, wood storks disperse following breeding.

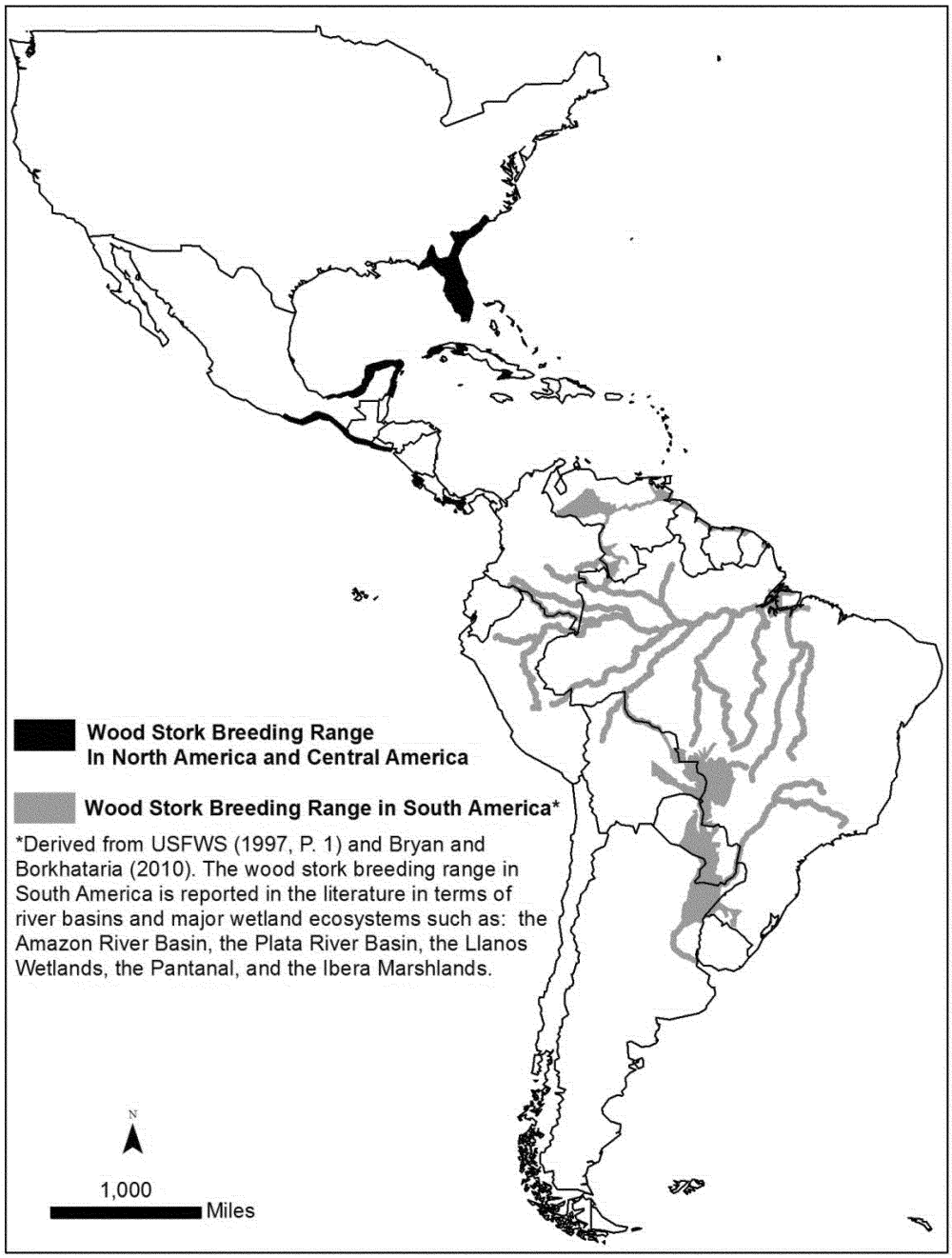


Figure 1. Breeding range of the wood stork in North, Central, and South America (USFWS 1997, p.1; Coulter *et al.* 1999, p.1; Bryan and Borkhataria 2010).

As the rainy season begins in May in south Florida and the Everglades, post-breeding wood storks, fledglings, and juveniles disperse throughout peninsular Florida and many move northward along the coastlines and coastal plain of Georgia, South Carolina, North Carolina and westward along large river basins in Alabama and eastern Mississippi. Individuals from northern Florida, Georgia, and South Carolina colonies also disperse across the coastal plain and coastal marshes in the southeast United States in July to August after the breeding season. Most wood storks in this population winter in south and central Florida and along the coast of peninsular Florida, Georgia, and South Carolina. These inter-regional movements have been documented through color marking, banding, radio-telemetry and satellite-telemetry studies (Comer *et al.* 1987, p. 165; Ogden 1996, p. 34; Coulter *et al.* 1999, p. 4; Savage *et al.* 1999, p. 65; Bryan *et al.* 2008, pp. 39–41). Wood storks are seasonal visitors in Texas, Louisiana, the lower Mississippi Valley, and California. These are post breeders and juveniles from Central America (Rechnitzer 1956, p. 431; Coulter *et al.* 1999, pp. 4–5). Bryan *et al.* (2008, pp. 39–40) suggest that wood storks observed in western Mississippi and Louisiana originate from Central America, and wood storks found in eastern Mississippi originate

from the continental U.S. population. Behaviorally, wood storks are not predisposed to travel across the open waters like the Gulf of Mexico, as they use thermals for soaring flight for long-distance movements. The lack of thermals over open water restricts movements back and forth across the Gulf of Mexico from Florida to Central and South America or the Caribbean.

*Rangewide Status and Demographics*

At the global level, the International Union for Conservation of Nature (IUCN) classifies the wood stork as a species of ''least concern.'' This is due to the apparent demographic stability documented in its large range that encompasses portions of North, Central, and South America (IUCN 2010, p. 1). Bryan and Borkhataria (2010, p. 2) compiled and summarized the conservation status for wood storks in Central and South America and provide the following description with regard to the rangewide status of the wood stork:

The IUCN Red List/BirdLife International listing classifies the wood stork as a species of ''least concern'' for its entire range (BirdLife International 2008, 2009). This classification is based on breeding/resident range size, population trends, population size. This classification is due in part to an extremely large global breeding range (estimated at 14,000,000 km$^2$) and a moderately small to large population estimate (38,000–130,000 birds). Although the species' global population trend is thought to be decreasing, the decline is not thought to be sufficiently rapid to reach critical thresholds to threaten the species (BirdLife 2009: A ''vulnerable'' population exhibits a >30% decline over 10 years or three generations). Population size estimates for South America range from 50,000–100,000 wood storks (Byers *et al.* 1995) and approximately 48,000–70,000 wood storks in Central and North America (Kushlan *et al.* 2002).

The continental U.S. wood stork population decline between 1930 and 1978 is attributed to reduction in the food base necessary to support breeding colonies, which is thought to have been related to loss of wetland habitats and changes in hydroperiods (Ogden and Nesbitt 1979, p. 521; Ogden and Patty 1981, p. 97; USFWS 1997, p. 10; Coulter *et al.* 1999, p. 18). The continental U.S. breeding population is considered regionally endangered by IUCN due to habitat degradation (IUCN 2011). Ogden (1978, p. 143) concluded the continental U.S. wood stork breeding population in the 1930s was probably less than 100,000 individuals, or between 15,000 and 20,000 pairs. The estimated continental U.S. population of breeding wood storks throughout the southeastern United States declined from 15,000–20,000, to about 10,000 pairs in 1960, to a low of 2,700–5,700 pairs between 1977 and 1980 (Ogden *et al.* 1987, p. 752). The low of 2,700 nesting pairs was documented in 1978, during the severe drought when many wood storks likely did not breed. In the initial 26-year period of listing under the Act (1984 to 2010), 17 surveys of all known nesting colonies of the wood stork in the continental U.S. population's breeding range (Florida, Georgia, South Carolina, and North Carolina) were completed. Eleven of those resulted in counts exceeding 6,000 pairs. Seven of those higher counts occurred during the past 10 years (2002, 2003, 2004, 2006, 2008, 2009, and 2010, Table 1, Service 2010). Two counts of over 10,000 pairs have occurred during the past 5 years, and the count of 12,720 pairs in 2009 is the highest on record since the early 1960s. This population estimate along with a conservative estimate of 4,000 pre-breeding age birds suggest 30,000 storks were inhabiting the United States in 2009 (Bryan and Borkhataria 2010, p. 2). From 2009 to 2011 there was a decline in observed wood storks likely due to drought. It should be noted that the wood stork is a long-lived species that demonstrates considerable variation in nesting population numbers in response to changing hydrological conditions. This long reproductive lifespan allows wood storks to tolerate reproductive failure in some years, and naturally occurring events have undoubtedly always affected the breeding success of this species, causing breeding failures and variability in annual nesting (USFWS 1997, p. 11) and productivity.

TABLE 1—WOOD STORK NESTING DATA IN THE SOUTHEASTERN UNITED STATES (SERVICE 2011).

| YEAR | TOTAL | | FLORIDA | | GEORGIA | | SOUTH CAROLINA | | NORTH CAROLINA | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Nesting Pairs | Colonies | Nesting Pairs | Colonies | Nesting Pairs | Colonies | Nesting Pairs | Colonies | Nesting Pairs | Colonies |
| 1975 | 9,752 | 27 | 9,610 | 24 | 142 | 3 | ..... | ..... | ..... | ..... |
| 1976 | 5,310 | 17 | 5,294 | 16 | 16 | 1 | ..... | ..... | ..... | ..... |
| 1977 | 5,263 | 25 | 5,125 | 21 | 138 | 4 | ..... | ..... | ..... | ..... |
| 1978 | 2,695 | 18 | 2,595 | 16 | 100 | 2 | ..... | ..... | ..... | ..... |
| 1979 | 4,648 | 24 | 3,800 | 22 | 55 | 2 | ..... | ..... | ..... | ..... |
| 1980 | 5,063 | 25 | 4,766 | 20 | 297 | 5 | ..... | ..... | ..... | ..... |
| 1981 | 4,442 | 22 | 4,156 | 19 | 275 | 2 | 11 | 1 | ..... | ..... |
| 1982 | 3,575 | 22 | 3,420 | 18 | 135 | 2 | 20 | 1 | ..... | ..... |
| 1983 | 5,983 | 25 | 5,600 | 22 | 363 | 2 | 20 | 1 | ..... | ..... |
| 1984 | 6,245 | 29 | 5,647 | 25 | 576 | 3 | 22 | 1 | ..... | ..... |
| 1985 | 5,193 | 23 | 4,562 | 30 | 557 | 5 | 74 | 1 | ..... | ..... |
| 1986 | ..... | ..... | ** | ..... | 648 | 4 | 120 | 3 | ..... | ..... |
| 1987 | ..... | ..... | ** | ..... | 506 | 5 | 194 | 3 | ..... | ..... |
| 1988 | ..... | ..... | ** | ..... | 311 | 4 | 179 | 3 | ..... | ..... |
| 1989 | ..... | ..... | ** | ..... | 543 | 6 | 376 | 3 | ..... | ..... |
| 1990 | ..... | ..... | ** | ..... | 709 | 10 | 536 | 6 | ..... | ..... |
| 1991 | 4,073 | 37 | 2,440 | 25 | 969 | 9 | 664 | 3 | ..... | ..... |
| 1992 | ..... | ..... | ** | ..... | 1,091 | 9 | 475 | 3 | ..... | ..... |
| 1993 | 6,729 | 43 | 4,262 | 29 | 1,661 | 11 | 806 | 3 | ..... | ..... |
| 1994 | 5,768 | 47 | 3,588 | 26 | 1,468 | 14 | 712 | 7 | ..... | ..... |
| 1995 | 7,853 | 54 | 5,523 | 31 | 1,501 | 17 | 829 | 6 | ..... | ..... |
| 1996 | ..... | ..... | ** | ..... | 1,480 | 18 | 953 | 7 | ..... | ..... |
| 1997 | ..... | ..... | ** | ..... | 1,379 | 15 | 917 | 8 | ..... | ..... |
| 1998 | ..... | ..... | ** | ..... | 1,665 | 15 | 1,093 | 10 | ..... | ..... |
| 1999 | 7,768 | 71 | 6,109 | 51 | 1,139 | 13 | 520 | 8 | ..... | ..... |
| 2000 | ..... | ..... | ** | ..... | 566 | 7 | 1,236 | 11 | ..... | ..... |
| 2001 | 5,582 | 44 | 3,246 | 23 | 1,162 | 12 | 1,174 | 9 | ..... | ..... |

TABLE 1—WOOD STORK NESTING DATA IN THE SOUTHEASTERN UNITED STATES (SERVICE 2011).—Continued

| YEAR | TOTAL | | FLORIDA | | GEORGIA | | SOUTH CAROLINA | | NORTH CAROLINA | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Nesting Pairs | Colonies | Nesting Pairs | Colonies | Nesting Pairs | Colonies | Nesting Pairs | Colonies | Nesting Pairs | Colonies |
| 2002 ..... | 7,855 | 70 | 5,463 | 46 | 1,256 | 14 | 1,136 | 10 | ..... | ..... |
| 2003 ..... | 8,813 | 78 | 5,804 | 49 | 1,653 | 18 | 1,356 | 11 | ..... | ..... |
| 2004 ..... | 8,379 | 93 | 4,726 | 63 | 1,596 | 17 | 2,057 | 13 | ..... | ..... |
| 2005 ..... | 5,572 | 73 | 2,304 | 40 | 1,817 | 19 | 1,419 | 13 | 32 | 1 |
| 2006 ..... | 11,279 | 82 | 7,216 | 48 | 1,928 | 21 | 2,010 | 13 | 125 | 1 |
| 2007 ..... | 4,406 | 55 | 1,553 | 25 | 1,054 | 15 | 1,607 | 14 | 192 | 1 |
| 2008 ..... | 6,118 | 73 | 1,838 | 31 | 2,292 | 25 | 1,839 | 16 | 149 | 1 |
| 2009 ..... | 12,720 | 86 | 9,428 | 54 | 1,676 | 19 | 1,482 | 12 | 134 | 1 |
| 2010 ..... | 8,149 | 94 | 3,828 | 51 | 2,708 | 28 | 1,393 | 14 | 220 | 1 |
| 2011 ..... | 9,579 | 88 | 5,292 | 45 | 2,160 | 19 | 2,031 | 23 | 96 | 1 |

** No survey data available for North and Central Florida.

**Previous Federal Action**

On February 28, 1984, the Service published a final rule listing the continental U.S. breeding population of the wood stork as endangered under the Act, due primarily to the loss of suitable feeding habitat, particularly in south Florida, and a declining population (49 FR 7332). The endangered status covers wood storks in the States of Alabama, Florida, Georgia, and South Carolina (the known range of the continental U.S. breeding population at the time of listing). We developed a recovery plan in 1986 for the continental U.S. breeding population of the wood stork. The recovery plan was revised on January 27, 1997, and addressed existing and new threats and species needs.

We published a notice in the **Federal Register** on November 6, 1991 (56 FR 56882) that we were conducting a 5-year review for all endangered and threatened species listed before January 1, 1991, including the wood stork. The notice indicated that if significant data were available warranting a change in a species' classification, we would propose a rule to modify the species' status. We did not recommend a change in the wood stork's listing classification under the Act at that time. On September 27, 2006 (71 FR 56545), we published a notice in the **Federal Register** that we were initiating another 5-year status review for the wood stork. We solicited information from the public concerning the status of the species, including the status and trends of threats to the species under section 4(a)(1) of the Act. We completed the 5-year status review on September 27, 2007. Completed in accordance with section 4(c)(2) of the Act, the 5-year status review contains a detailed description of the species' natural history and status, including information on distribution and movements, behavior, population status and trends, and factors contributing to the status of the continental U.S. breeding population. It also presents a detailed analysis of the five factors that are the basis for determination of a species' status under section 4(a)(1) of the Act. A copy of the 5-year status review is available on our Web site (*http://www.fws.gov/ecos/ajax/docs/five_year_review/doc1115.pdf*) and includes a recommendation to reclassify the continental U.S. breeding population of the wood stork from endangered to threatened.

We received a petition to reclassify the continental U.S. breeding population of the wood stork as threatened on May 28, 2009, from the Pacific Legal Foundation on behalf of the Florida Homebuilders Association. The petition presented the Service's 2007 5-year status review as its sole supporting information. The petition incorporated the status review by reference, including a summary of the five-factor analysis contained in the status review, which included a recommendation to reclassify the species. We found that the petition presented substantial information indicating that reclassifying the continental U.S. breeding population of the wood stork to threatened may be warranted. We published a notice announcing our 90-day finding and initiation of the species' status review in the **Federal Register** on September 21, 2010 (75 FR 57426).

**Current Federal Action**

Section 4(b)(3)(B) of the Act requires that for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants (Lists) that presents substantial information, we must make a finding within 12 months of the date of the receipt of the petition, on whether the requested action is (a) Not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority and expeditious progress is being made to add qualified species to the Lists. This proposed rule constitutes our 12-month finding that the action sought by the May 28, 2009, petition is warranted.

*Distinct Vertebrate Population Segment Analysis*

On February 7, 1996, we published in the **Federal Register** our ''Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act'' (DPS Policy) (61 FR 4722). For a population to be listed under the Act as a distinct vertebrate population segment, three elements are considered: (1) The discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing, (*i.e.,* is the population segment, when treated as if it were a species, endangered or threatened). The Act defines ''species'' to include ''* * * any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature'' (16 U.S.C. 1532(16)). The best available scientific information supports recognition of the continental U.S. breeding population of the wood stork as a distinct vertebrate population segment. We discuss the discreteness and significance of the population segment within this section; the remainder of the document discusses the status of the continental U.S. wood stork DPS.

Discreteness

The DPS policy states that a population segment of a vertebrate species may be considered discrete if it

satisfies either one of the following conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation; or

(2) It is delimited by international governmental boundaries between which significant differences exist in control of exploitation, management of habitat, conservation status, or regulatory mechanisms that are significant in light of section 4(a)(1)(D) of the Act.

Globally, wood storks occur only in the Western Hemisphere and are comprised of a mosaic of breeding populations in North, Central, and South America, and the Caribbean, each with unique nesting sites, foraging areas, and seasonal movement patterns in response to regional environmental factors. Historically, wood storks nested in all Atlantic and Gulf coastal United States from Texas to South Carolina (Bent 1926; Cone and Hall 1970; Dusi and Dusi 1968; Howell 1932; Oberholser 1938; Oberholser and Kincaid 1974; Wayne 1910), although the colonies outside Florida formed irregularly and contained few birds (Ogden and Nesbitt 1979, p. 512).

Currently, the continental U.S. breeding population of wood storks is documented only in Mississippi, Alabama, Florida, Georgia, South Carolina, and North Carolina. The continental U.S. wood stork population represents the northernmost extent of the wood stork's range and the only population breeding in the continental United States (USFWS 1997, p. 1; Coulter *et al.* 1999, pp. 2–3) The continental U.S. population's breeding range is separated by the Strait of Florida from the nearest nesting population, which is located in Cuba, 151 km (94 mi); it is approximately 965 km (600 mi) over the Gulf of Mexico from the nearest North American nesting colony, which breeds in southern Mexico. However, wood storks are not behaviorally predisposed to travel across the open ocean. Wood storks use thermals for soaring flight for long-distance movements. The lack of thermals over water may restrict movements from Florida to the Caribbean or to Mexico and Central and South America (Coulter *et al.* 1999, p. 4). The available evidence does not suggest that wood storks have crossed the Florida Straits between the Caribbean islands and the United States or crossed the Gulf of Mexico to or from Central and South America.

Lengthy inter- and intra-regional movements, related to food availability, to the wetlands of the Mississippi River Basin and adjacent coastal plain river basins have been documented from both the continental U.S. population and Central American wood storks (Coulter *et al.* 1999, p. 5; Bryan *et al.* 2008, pp. 40–41). These studies suggest post-breeding dispersal occurs along the coastal plain, not across the Gulf of Mexico, and that wood storks observed in eastern Mississippi originate from the southeast United States, and those observed in western Mississippi and Louisiana originate from Central America. A small percentage of wood storks from both the United States and Central America apparently overlap during this post-breeding season dispersal within Mississippi. There may be some small but unknown level of mixing between continental U.S. and Central American breeding populations in Mississippi (Bryan *et al.* 2008, pp. 40–41; R. Borkhataria, University of Florida, pers. comm., 2010). However, based upon satellite-telemetry studies (*e.g.,* Hylton 2004; Hylton *et al.* 2006; Bryan *et al.* 2008; Borkahatria 2009; Lauritsen 2010) and other marking studies, mixing appears negligible. Based on the above information, if the continental U.S. population were extirpated, it is our assessment that repopulation from the Central American wood storks would not be sufficient to replenish the depleted population in the foreseeable future.

Genetic data support the conclusion that wood storks occurring in the southeastern United States function as one population. Stangle *et al.* (1990, p. 15) employed starch gel electrophoretic techniques to examine genetic variation in Florida wood stork colonies. The study did not indicate significant allozyme differences within or between colonies. Van Den Bussche *et al.* (1999, p. 1083) used a combination of DNA or allozyme approaches and found low levels of genetic variability and allelic diversity within Georgia and Florida colonies, suggesting one population of wood storks in the southeastern United States. A genetic comparison using mtDNA between continental U.S. and Brazilian wood storks (the north and south ends of the geographic range) reveals that either a demographic decline or a recent evolutionary bottleneck reduced the levels of mitochondrial DNA (mtDNA) variability of the continental U.S. population (Lopes *et al.* 2011, p. 1911). The genetic structuring assessment revealed nonsignificant differentiation between the continental U.S. and Brazilian wood storks, indicating that either the populations were only recently separated or that gene flow continues to occur at low levels, and the haplotype network analysis indicated low levels of gene flow between populations that were closely related in the past (Lopes *et al.* 2011, p. 1911). Genetic studies indicate that there are nonsignificant differences between continental U.S. and Brazilian wood storks. However, satellite tracked movements of U.S. and Central American wood storks indicate that U.S. and Brazilian birds likely do not interbreed (Hylton 2004; Hylton *et al.* 2006; Bryan *et al.* 2008; Borkahatria 2009; Lauritsen 2010). Based on the genetic information, we conclude that a past demographic decline has led to the reduced levels of genetic variability in all populations of wood stork that were studied, that continental U.S. and other populations were only recently separated, that the southeastern U.S. populations act as a single population, and there is negligible or very low gene flow between populations in the United States and Brazil.

Consequently, we conclude based on the best available information that the continental U.S. breeding population of the wood stork is markedly separated from wood stork populations in the Caribbean, Mexico, Central America, and South America based on physical separation and wood stork dispersal behavior.

Significance

The DPS policy states that populations that are found to be discrete will then be examined for their biological or ecological significance to the taxon to which they belong. This consideration may include evidence that the loss of the population would create a significant gap in the range of the taxon. The continental U.S. breeding population of the wood stork represents the northernmost portion of the species' range in the world (Coulter *et al.* 1999, p. 2) and the only population breeding in the United States. Loss of this population would result in a significant gap in the extent of the species' range. Because the nearest populations in the Caribbean and North America would not likely be able to naturally repopulate the continental U.S. breeding population if it were extirpated, wood storks would no longer breed in the Everglades and in the salt and fresh water wetlands of Florida, Georgia, South Carolina, and North Carolina. Maintaining a species throughout its historical and current range helps ensure the species' population viability and reduce impacts to species as a whole due to localized stochastic

events. Therefore, we find that loss of continental U.S. breeding population of the wood stork, whose range has expanded to include Mississippi and North Carolina (USFWS 2007, p. 11), would constitute a significant gap in the range of the species as a whole.

Summary

Based on the above analysis, we conclude that the continental U.S. breeding population of wood storks meets both the discreteness and significance elements of the 1996 DPS policy. Therefore, we recognize this population as a valid DPS.

**Recovery Actions**

We published the original recovery plan for the continental U.S. breeding population of wood stork on September 9, 1986, and revised it on January 27, 1997 (Service 1997). The recovery plan identifies four primary recovery actions for the continental U.S. breeding population of the wood stork. Species-focused recovery tasks include: (1) Protect currently occupied habitat, (2) restore and enhance habitat, (3) conduct applied research necessary to accomplish recovery goals, and (4) increase public awareness. These primary recovery actions have been initiated. Many of the actions listed under these categories are of high priority to implement and are ongoing.

*Recovery Task (1): Protect currently occupied habitat.* At a minimum, for continued survival of the continental U.S. breeding population, currently occupied nesting, roosting, and foraging habitat must be protected from further loss or degradation. Watersheds supporting natural nesting habitat should remain unaltered, or be restored to function as a natural system if previously altered. Recovery actions under this recovery task include: (1.1) Locate important habitat, (1.2) prioritize habitat, (1.3) work with private landowners to protect habitat, (1.4) acquire land, (1.5) protect sites from disturbance, and (1.6) use existing regulatory mechanisms to protect habitat.

Recent habitat models (*e.g.,* Gawlik 2002; Herring 2007; Borkhataria 2009; Rodgers *et al.* 2010); ongoing annual monitoring of nesting colonies (*e.g.,* Cook and Korboza 2010; Brooks and Dean 2008; Murphy and Coker 2008; Winn *et al.* 2008; Frederick and Meyer 2008); surveys of nesting colony core foraging areas in Florida, Georgia, and South Carolina (*e.g.,* Herring 2007; Bryan and Stephens 2007; Lauritsen 2010; Tomlinson 2009; Meyer 2010); and satellite-telemetry studies (*e.g.,* Hylton 2004; Hylton *et al.* 2006; Bryan *et al.* 2008; Borkahatria 2009; Lauritsen 2010) are helping to update conservation information and tools that are used to identify, prioritize, protect, restore, and acquire important wood stork habitats. Core foraging areas near large colonies on protected lands, like Corkscrew Swamp Sanctuary in Florida, Harris Neck National Wildlife Refuge in Georgia, and Washo Plantation in South Carolina, have been identified. However, alteration and loss of foraging habitat continues as a threat to recovery, as such habitat continues to be lost today through the continual expansion of the human environment, resulting in new development and associated roads and other infrastructure. The Service has developed a brochure, Wood Stork Conservation and Management for Land Owners, to assist public and private land managers in protecting and restoring wood stork habitat (Service 2001). The wood stork habitat management guidelines are also being updated (Bryan 2006) and are an important conservation tool to provide guidance on protecting wood storks and their habitats. In an effort to minimize loss of wetland habitats important to wood stork recovery, like those within the core foraging area of a nesting colony, the Service's South and North Florida Ecological Services Field Offices have also developed a ''May Affect'' key to assist regulators with review of wetland dredge and fill permit applications.

*Recovery Task (2): Restore and enhance habitat.* A prerequisite for recovery of the wood stork in the southeastern United States is the restoration and enhancement of suitable habitat throughout the mosaic of habitat types used by this species. Recovery actions include: (2.1) Restore the Everglades and Big Cypress system, (2.2) enhance nesting and roosting sites throughout the range, and (2.3) enhance foraging habitat by modifying hydrologic regimes in existing artificial impoundments to maximize use by wood storks.

Wood storks depend upon a mosaic of wetlands throughout the coastal plain of the southeastern United States for breeding and foraging. Ecosystems and wetlands are being restored throughout the southeastern United States through programs such as the Comprehensive Everglades Restoration Program (CERP) (RECOVER 2009); Kissimmee River Restoration Project, which includes a goal to restore over 40 square miles of river and floodplain ecosystem including 43 miles of meandering river channel and 27,000 acres of wetlands (USACE 2011); and Upper St. Johns Basin Restoration Project, which has enhanced and restored 150,000 acres of marsh (SJRWMD 2011). These and other large-scale wetland restoration projects are significantly contributing to wood stork recovery by reducing the threat of habitat loss. Management plans such as State wildlife action plans (*http://www.wildlifeactionplans.org/*) help to identify important habitats on which to focus conservation efforts. Other management plans such as the North American Waterfowl Management Plan (USFWS 2011) also help to identify focus areas for conservation. By highlighting important habitats or areas, such as the ACE Basin and Winyah Bay in South Carolina, funds and conservation initiatives are directed towards restoring these important habitat areas and contribute to recovery by reducing the threat due to loss of habitat. Thousands of acres are being protected, enhanced, restored, and brought under conservation easements to assist in wildlife conservation through programs such as the Wetland Reserve Program (WRP) and the Farm Bill, including 70,000 acres of wetlands in Alabama, Florida, Georgia, Mississippi, North Carolina, and South Carolina in 2010 (NRCS 2011). The WRP is a voluntary program offering landowners the opportunity to protect, restore, and enhance wetlands on their property. The U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) provides technical and financial support to help landowners with their wetland restoration efforts. The goal of the NRCS is to achieve the greatest wetland functions and values, along with optimum wildlife habitat, on every acre enrolled in the program. This program offers landowners an opportunity to establish long-term conservation and wildlife practices and protection, and therefore provides some benefits to wood stork recovery. In Florida, the WRP program has restored over 200,000 acres of wetlands (Simpkins, Service, pers. comm., 2011) and over 115,000 acres in Alabama, Georgia, and South Carolina. A majority of the Florida WRP-restored acres have been within the Everglades and Big Cypress systems. A 2006 WRP restoration of 200 acres of farmland in Camilla, Georgia, now supports the newest Georgia wood stork colony, with over 100 nesting pairs annually. This task will be complete once viable nesting occurs throughout the range of this DPS. The most significant wetland restoration goal for wood storks is to recover viable nesting subpopulations in the traditional Everglades and Big Cypress nesting areas as outlined by CERP. Overall,

future wetland restoration efforts in the Southeast U.S. will be beneficial to wood stork recovery.

*Recovery Task (3): Conduct applied research necessary to accomplish recovery goals.* Recovery efforts for the wood stork will be more effective with a better understanding of population biology, movement patterns of continental U.S. and neighboring populations of wood storks, foraging ecology and behavior, the importance of roost sites, and the possible impacts of contaminants. Recovery actions include: (3.1) Determine movement patterns of continental U.S. and neighboring populations of wood storks, (3.2) determine population genetics, (3.3) monitor productivity of stork populations, (3.4) monitor survivorship of stork populations, (3.5) determine extent of competition/cooperation between wood storks and other wading birds in mixed nesting colonies, (3.6) determine foraging ecology and behavior, (3.7) determine the importance of roost sites, and (3.8) determine the impacts of contaminants on wood stork populations. The following is a summary of several recent monitoring and research findings.

The South Florida Wading Bird Report (1996–2010) annually reports on habitat monitoring and research with respect to the CERP and foraging and nest monitoring projects for wood storks and wading birds utilizing the Everglades and Big Cypress systems. This report provides an annual assessment on the Restoration Coordination and Verification Program (RECOVER), the system-wide science arm of the CERP. Per Recovery Action 3.1 and 3.6, satellite-telemetry studies are providing new insight into movement patterns (*e.g.,* Hylton 2004; Bryan *et al.* 2008; Borkhataria 2009; Lauritsen 2010). Surveys to determine foraging distances from nesting colonies and satellite-telemetry research are helping to update our understanding of wood stork foraging ecology and of core foraging areas (*e.g.,* Herring 2007; Bryan and Stephens 2007; Borkhataria 2009; Meyers 2010; Lauritsen 2010; Tomlinson 2009). Satellite-telemetry data and banding studies are helping to refine survival estimates (Borkhataria 2009, pp. 63–64) for population modeling (Borkhataria 2009) as identified under Recovery Action 3.4. Ongoing systematic reconnaissance flights of the Everglades, Kissimmee River, water conservation areas, Big Cypress National Preserve, and Upper St. Johns River are monitoring wood stork abundance and distribution in south Florida (Cheek 2010, pp. 22–26; Alvarado and Bass 2010, pp. 30–39; Nelson 2010, p. 40; D. Hall, SJRWMD, pers. comm., 2008). Annual nesting colony surveys help to monitor the status of the breeding population. Per Recovery Action 3.3, recent productivity research and monitoring efforts have documented productivity rates to be similar to rates documented between the 1970s and 1990s (Rodgers *et al.* 2008; Bryan and Robinette 2008), and Rodgers *et al.* (2008, p. 25) suggest the need to develop an unbiased estimator of productivity that takes into consideration the lack of nesting during some years to more accurately estimate wood stork productivity at the regional level. A genetic structuring and haplotype network analysis comparison indicates that either a demographic decline or a recent evolutionary bottleneck reduced the levels of genetic variability in the continental U.S. population (Lopes *et al.* 2011, p. 1911) is research addressing Recovery action 3.2. The genetic structuring assessment revealed nonsignificant differentiation, indicating that continental U.S. and Brazilian wood stork populations were only recently separated or that gene flow between these populations continues to occur at low levels. The haplotype network analysis indicated low current levels of gene flow between populations that were closely related in the past (Lopes *et al.* 2011, p. 1911).

*Recovery Task (4): Increase public awareness.* Wood storks utilize a wide variety of wetland habitats. They are visually unique and generate interest from the public. These factors have made the wood stork the subject of many environmental education materials and programs. There are many brochures, videos, and educational packets available. Recovery actions include: (4.1) Increase awareness and appreciation through educational materials, and (4.2) provide opportunities for the public to view wood storks in captivity.

Examples of such wood stork educational efforts to increase public awareness can be found on our Web site (*http://www.fws.gov/northflorida/WoodStorks/wood-storks.htm*) and the Web sites of many of our recovery partners, including the Everglades National Park (*http://www.nps.gov/ever/naturescience/woodstork.htm*), Florida Fish and Wildlife Conservation Commission (*http://myfwc.com/research/wildlife/birds/wood-storks/*), Georgia Department of Natural Resources (*http://www.georgiawildlife.com/sites/default/files/uploads/wildlife/nongame/pdf/accounts/birds/mycteria_americana.pdf*), South Carolina Department of Natural Resources (*http://www.dnr.sc.gov/cwcs/pdf/Woodstork.pdf*), University of Florida (*http://www.wec.ufl.edu/faculty/frederickp/woodstork/*), Audubon Society (*http://birds.audubon.org/species/woosto*), Corkscrew Sanctuary Swamp (*http://www.corkscrewsanctuary.org/Wildlife/Birds/profiles/wost.pdf*), and others.

Opportunities for the public to view wood storks in the wild include almost all National Wildlife Refuges (NWR) and National Parks and Preserves in Florida and coastal Georgia and South Carolina, including the Everglades National Park, Ten Thousand Island NWR, J.N. Ding Darling NWR, Loxahatchee NWR, Pelican Island NWR, Merritt Island NWR, Harris Neck NWR, and ACE Basin NWR. Several wood stork nesting colonies can also be seen at public observation areas that do not disturb the colony, such as Audubon's Corkscrew Swamp Sanctuary, Parotis Pond in Everglades National Park, Pelican Island NWR, St. Augustine Alligator Farm, Jacksonville Zoo and Gardens, and Harris Neck NWR.

**Recovery Achieved**

The recovery criteria for the continental U.S. breeding population DPS of wood storks state that reclassification from endangered to threatened could be considered when there are 6,000 nesting pairs and annual average regional productivity is greater than 1.5 chicks per nest per year (both calculated over a 3-year average). Although variable, productivity appears to be sufficient to support continued population growth as evidenced by the increasing nesting population and range expansion.

*1. Nesting pairs.* The continental U.S. breeding population of the wood stork has been increasing since it was listed in 1984 (Brooks and Dean 2008, p. 58; Borkhataria 2009, p. 34). Regional nesting surveys to census wood stork colonies have been continuous in south Florida and Georgia since 1976, and in South Carolina since 1981. Nest censuses of the entire breeding range were conducted in 1975–1986, 1991, 1993–1995, 1997, 1999, and 2001–2010 (Table 1). The 3-year average for nesting pairs has exceeded the reclassification criterion of 6,000 every year since 2003 (Table 2). However, the nesting pair average is well below the 5-year average of 10,000 nesting pairs (a benchmark for delisting), and the 5-year averages for nesting in the Everglades and Big Cypress Systems are below 2,500 nesting pairs (another benchmark for delisting), as nesting in south Florida remains variable (Table 2).

TABLE 2—WOOD STORK NESTING DATA IN THE SOUTHEASTERN UNITED STATES AND 3-YEAR AVERAGES (SERVICE 2011).

| Year | Total | | South FL | | Central/North FL | | GA | | SC | | NC | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Nesting pairs | 3yr Avg | Nesting pairs | 3yr Avg | Nesting pairs | 3yr Avg | Nesting pairs | 3yr Avg | Nesting Pairs | 3yr Avg | Nesting pairs | 3yr Avg |
| 1981 | 4,442 | ..... | 2,428 | ..... | 1,728 | ..... | 275 | ..... | 11 | ..... | ..... | ..... |
| 1982 | 3,575 | ..... | 1,237 | ..... | 2,183 | ..... | 135 | ..... | 20 | ..... | ..... | ..... |
| 1983 | 5,983 | 4,667 | 2,858 | 2,174 | 2,742 | 2,218 | 363 | 258 | 20 | 17 | ..... | ..... |
| 1984 | 6,245 | 5,268 | 1,245 | 1,780 | 4,402 | 3,109 | 576 | 358 | 22 | 21 | ..... | ..... |
| 1985 | 5,193 | 5,807 | 798 | 1,634 | 3,764 | 3,636 | 557 | 499 | 74 | 39 | ..... | ..... |
| 1986 | ..... | ..... | 643 | 895 | ..... | ..... | 648 | 584 | 120 | 72 | ..... | ..... |
| 1987 | ..... | ..... | 100 | 514 | ..... | ..... | 506 | 570 | 194 | 129 | ..... | ..... |
| 1988 | ..... | ..... | 755 | 499 | ..... | ..... | 311 | 488 | 179 | 164 | ..... | ..... |
| 1989 | ..... | ..... | 515 | 457 | ..... | ..... | 543 | 453 | 376 | 250 | ..... | ..... |
| 1990 | ..... | ..... | 475 | 582 | ..... | ..... | 709 | 521 | 536 | 364 | ..... | ..... |
| 1991 | 4,073 | ..... | 550 | 513 | 1,890 | ..... | 969 | 740 | 664 | 525 | ..... | ..... |
| 1992 | ..... | ..... | 1,917 | 981 | ..... | ..... | 1,091 | 923 | 475 | 558 | ..... | ..... |
| 1993 | 6,729 | ..... | 587 | 1,018 | 3,675 | ..... | 1,661 | 1,240 | 806 | 648 | ..... | ..... |
| 1994 | 5,768 | ..... | 741 | 1,082 | 2,847 | ..... | 1,468 | 1,407 | 712 | 664 | ..... | ..... |
| 1995 | 7,853 | 6,783 | 1140 | 823 | 4,383 | 3,635 | 1,501 | 1,543 | 829 | 782 | ..... | ..... |
| 1996 | ..... | ..... | 1215 | 1,032 | ..... | ..... | 1,480 | 1,483 | 953 | 831 | ..... | ..... |
| 1997 | ..... | ..... | 445 | 933 | ..... | ..... | 1,379 | 1,453 | 917 | 900 | ..... | ..... |
| 1998 | ..... | ..... | 478 | 713 | ..... | ..... | 1,665 | 1,508 | 1,093 | 988 | ..... | ..... |
| 1999 | ..... | ..... | 2,674 | 1,190 | ..... | ..... | 1,139 | 1,394 | 520 | 843 | ..... | ..... |
| 2000 | ..... | ..... | 3,996 | 2,383 | ..... | ..... | 566 | 1,123 | 1,236 | 950 | ..... | ..... |
| 2001 | 5,582 | ..... | 2,888 | 3,186 | 358 | ..... | 1,162 | 956 | 1,174 | 977 | ..... | ..... |
| 2002 | 7,855 | ..... | 3,463 | 3,449 | 2,000 | ..... | 1,256 | 995 | 1,136 | 1,182 | ..... | ..... |
| 2003 | 8,813 | 7,417 | 1,747 | 2,699 | 4,057 | 2,138 | 1,653 | 1,357 | 1,356 | 1,222 | ..... | ..... |
| 2004 | 8,379 | 8,349 | 1,485 | 2,232 | 3,241 | 3,099 | 1,596 | 1,502 | 2,057 | 1,516 | ..... | ..... |
| 2005 | 5,572 | 7,588 | 591 | 1,274 | 1,713 | 3,004 | 1,817 | 1,689 | 1,419 | 1,611 | 32 | ..... |
| 2006 | 11,279 | 8,410 | 2,648 | 1,575 | 4,568 | 3,174 | 1,928 | 1,780 | 2,010 | 1,829 | 125 | ..... |
| 2007 | 4,406 | 7,086 | 696 | 1,312 | 857 | 2,379 | 1,054 | 1,600 | 1,607 | 1,679 | 192 | 116 |
| 2008 | 6,118 | 7,268 | 344 | 1,229 | 1,494 | 2,306 | 2,292 | 1,758 | 1,839 | 1,819 | 149 | 155 |
| 2009 | 12,720 | 7,748 | 5,816 | 2,285 | 3,612 | 1,988 | 1,676 | 1,674 | 1,482 | 1,643 | 134 | 158 |
| 2010 | 8,141 | 8,993 | 1,220 | 2,460 | 2,600 | 2,571 | 2,708 | 2,225 | 1,393 | 1,571 | 220 | 168 |
| 2011 | 9,579 | 10,147 | 2,131 | 3,056 | 3,161 | 3,124 | 2,160 | 2,181 | 2,031 | 1,635 | 96 | 141 |

*2. Productivity.* There is also a need to systematically determine reproductive success (number of fledged young per nest and number of fledged young per successful nest) for a majority of the colonies in the same year(s) to better estimate productivity of the breeding population (USFWS 1997, p. 24). The Service acknowledges that the productivity dataset is incomplete, with less than 25 percent of the colonies surveyed for productivity during the past 4 years and 50 percent surveyed between 2003 and 2007. Brooks and Dean (2008, p. 56) indicate the average productivity rate for all colonies monitored in the southeastern United States was 1.5 chick/nest attempt between 2004 and 2006; 1.2 chick/nest attempt between 2003 and 2005; and 1.5 chick/nest attempt between 2003 and 2006 (Brooks and Dean 2008, p. 56). Rodgers *et al.* (2008, p. 25) found that colonies farther north in Florida exhibited greater productivity, and that colonies in northeastern and northwestern Florida had greater fledging rates than colonies farther south in central Florida. Bryan and Robinette (2008, p. 20) found Georgia and South Carolina rates similar to North Florida rates. Due to funding and manpower constraints, rangewide, Statewide, and regional monitoring of wood stork productivity only has occurred episodically (e.g., early 1980s and 2000s). As there are now over 80 wood stork colonies, Rodgers *et al.* (2008, p. 32) identifies the need to develop a long-term program of monitoring that relies on monitoring of fewer colonies.

Based upon the nesting population criteria in the recovery plan, we can consider the continental U.S. breeding population of the wood stork for reclassification to threatened status at this time because wood storks and their habitat would continue to receive the protections of the Act, and management efforts continue to maintain, enhance, and restore the amount and quality of available habitat to support a growing population. For the following reasons, we believe that the continental U.S. breeding population of the wood stork has surpassed the recovery criteria outlined as necessary for reclassification. As shown in Table 2 of this document, the nesting population is increasing and well above the reclassification benchmark (Brooks and Dean 2008, p. 58; Table 2). The total number of nesting colonies has remained stable in south Florida and the number of colonies in central and north Florida, Georgia, South Carolina, and North Carolina continue to increase (Ogden *et al.* 1987, p. 754; Brooks and Dean 2008, p. 54; Table 1). The nesting range continues to expand with new colonies documented in North Carolina and western Georgia. Although variable (particularly in south Florida) and not yet well documented, productivity appears to be sufficient to support continued population growth, as evidenced by the increasing population and range expansion described above. Population trends suggest that the overall population may approach the delisting benchmark of 10,000 nesting pairs during the next 15 to 20 years. Nesting numbers suggest a stable or increasing population, however, data are not available to evaluate the productivity criterion of 1.5 chicks per nest per year.

**Summary of Factors Affecting the Species**

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing, reclassifying, or removing a species from, the Federal Lists of Endangered

and Threatened Wildlife and Plants. Under section 3 of the Act, a species is ''endangered'' if it is in danger of extinction throughout all or a ''significant portion of its range'' and is ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a ''significant portion of its range.'' The word ''range'' refers to the range in which the species currently exists, and the word ''significant'' refers to the value of that portion of the range being considered to the conservation of the species. The ''foreseeable future'' is the period of time over which events or effects reasonably can or should be anticipated, or trends extrapolated. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

The following analysis examines all five factors currently affecting or that are likely to affect the wood stork within the foreseeable future:

*A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

Throughout its range in the southeastern United States, wood storks are dependent upon wetlands for breeding and foraging. Preventing loss of wood stork nesting habitat and foraging wetlands within a colony's core foraging area is of the highest priority. In addition, winter foraging habitat is important to recovery, as it may determine the carrying capacity of the continental U.S. wood stork DPS. While the immediacy and the magnitude of this factor are substantially reduced when compared to when this species was originally listed, the destruction, fragmentation, and modification of its wetland habitats continues to occur and could accelerate in the absence of the protections of the Act.

Hefner *et al.* (1994, p. 21) estimated that 1.3 million acres of wetlands lost in the southeastern United States between the mid 1970s and mid 1980s were located in the Gulf-Atlantic Lower Coastal Plain, an area upon which wood storks are dependent. Ceilley and Bartone (2000, p. 70) suggest that short hydroperiod wetlands provide a more important pre-nesting food source and provide for a greater early nestling survivorship for wood storks than previously known. Wetlands that wood storks use for foraging are being lost through permitted activities where mitigation is provided. However, it is not known if wood stork foraging wetlands are being replaced with like-quality foraging wetlands within the core foraging area of an impacted colony. Lauritsen (2010, pp. 4–5) suggests that today's mitigation practices lead to a disproportionate loss of short hydroperiod wetlands. The impacts of the loss of short hydroperiod (isolated) wetlands, which supply most of the food energy for initiating reproduction (Fleming *et al.* 1994, p. 754), may result in abandonment of nest colonies by wood storks (*e.g.,* Corkscrew Swamp Sanctuary). Frederick and Meyer (2008, p. 15) suggest that the decline in colony size in Florida reflects the increasingly fragmented nature of Florida's wetlands resulting from development.

The decline of south Florida's Everglades and Big Cypress ecosystems is well-documented (*e.g.,* Davis and Ogden 1994). Prior to 1970, a majority (70 percent) of the wood stork population nested south of Lake Okeechobee and declined from 8,500 nesting pairs in the early 1960s to around 500 pairs in the late 1980s and early 1990s (Service 1997). The primary cause of this decline was the loss of wetland function of these south Florida ecosystems that resulted in reduced prey availability or loss of wetland habitats (Service 1997, p. 10).

Wood storks use manmade wetlands for foraging and breeding purposes. Manmade wetlands include, but are not limited to, storm water treatment areas and ponds, golf course ponds, borrow pits, reservoirs, roadside ditches, agricultural ditches, drainages, flow-ways, mining and mine reclamation areas, and dredge spoil sites. The impacts can be positive in certain scenarios as these wetlands can provide protected foraging and nesting habitat, and may offset some losses of natural wetlands caused by development. A significant number of wood stork colonies are located where water management practices can impact the nesting habitat negatively. Colonies that are perpetually flooded will have no tree regeneration. Draining surface waters of a colony's wetland or pond will prevent wood storks from nesting, and lowered water levels after nest initiation facilitate raccoon predation. Lowering surface water or water table may occur through water control structures, manipulating adjacent wetlands, or water withdrawals from the local aquifer and can prevent wood storks from nesting or cause colony failure.

While habitat loss, fragmentation, and degradation continue to occur throughout the range of the continental U.S. population of wood stork, there are also protection, acquisition, and restoration efforts in progress. Natural wetlands are being targeted for acquisition to be protected through the management of public lands for wildlife and water conservation (NRCS 2006, p. 1). In Florida, the Wetlands Reserve Program has restored over 200,000 acres of wetlands and over 115,000 acres in Alabama, Georgia, and South Carolina during the past 18 years. Thousands of acres of wetlands are also being protected on private lands to assist in habitat and wildlife protection through restoration in conjunction with establishing conservation easements (Dahl 2006, p. 16). Wetland losses are being avoided, minimized, and mitigated through the regulatory process (Votteler and Muir 2002, pp. 1–2). Large-scale restoration projects like the CERP, Kissimmee River Restoration Project, and St. Johns River Headwaters Restoration Project are significant conservation efforts that greatly benefit wood stork recovery.

Additionally, the species' response to the threat of habitat loss and degradation indicates its ability to adapt and seek out new nesting and foraging areas. Since 1980, wood storks have expanded their breeding range north into Georgia, South Carolina, and North Carolina, and the total number of breeding adults is now approaching the delisting criterion set out in the species' recovery plan. Seventy percent of the population now breeds north of Lake Okeechobee and the Everglades (Brooks and Dean 2008, p. 53). These positive indicators throughout the range suggest that the viability of the continental U.S. wood stork DPS may no longer be as closely tied to the health of the Everglades for reproduction.

With regard to important wood stork habitats, a number of the nesting colonies occur on Federal conservation lands and are consequently afforded protection from development and large-scale habitat disturbance. Wood stork colonies also occur on a variety of State-owned properties, and existing State and Federal regulations provide protection on these sites. However, approximately half of known wood stork colonies occur on private lands. Through conservation partnerships, colonies can be protected through the owners' stewardship. In an effort to minimize potential loss of colony sites, partnerships have been developed through conservation easements,

wetland restoration projects, and other conservation means. Also, the wetland areas near nesting colonies play a vital role in the success of a nesting colony. Due to the regulatory status of wetlands, conservation of wetlands shown to be important to wood storks can be largely achieved through the application of existing wetland laws, such as the Clean Water Act (33 U.S.C. 1251 *et seq.*) and the interagency cooperation provisions of the Act.

In summary, loss, fragmentation, and modification of wetland habitats continue as threats to wood storks. Changes in local habitat conditions are known to impact wood storks. Based on the best available scientific information, it is our assessment that the species is showing the ability to respond to these threats through expansion of its range, adjusting reproductive timing, and utilizing a variety of wetlands for foraging, roosting, and breeding, including manmade wetlands. Historically, the core of the wood stork breeding population was located in the Everglades and Big Cypress systems of south Florida. Populations there had diminished because of deterioration of the habitat. In recognition of the importance of the Everglades and Big Cypress systems to wood stork recovery, the recovery plan stated that, as a prerequisite for full recovery, these ecosystems should once again provide the food resources that are necessary to support traditional wood stork nesting patterns at historical nesting areas. However, current data show that the breeding range has now almost doubled in area and shifted northward along the Atlantic coast as far as southeastern North Carolina. As a result of their range expansion, dependence of wood storks on any specific wetland complex has been reduced. Even though habitat destruction and modification are still a threat to recovery, the improved wood stork population statistics suggest that wetland habitat is not yet limiting the population, at least at the landscape level (USFWS 2007, p. 16). Habitat loss, fragmentation, and modification of wetland habitats continue around nesting colonies and core foraging areas, and are a significant factor affecting the viability of the continental U.S. wood stork DPS.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

Monitoring of and research on wood storks over the past 20 years has increased. A small number of scientific research permits with potential to harm individual wood storks have been issued. This level of take/harm is not expected to adversely impact wood stork recovery or present a threat to the species.

Wading birds and other waterbird species, including wood storks, can impact production at fish farms. A Georgia catfish farmer located approximately 25 miles west of the Chewmill and Birdsville colonies in Jenkins County, Georgia, has documented hundreds of woods storks aggregating and foraging on the littoral edges of the ponds during the late summer in recent years. U.S. Department of Agriculture, Wildlife Services Division (Wildlife Services) has documented hundreds of wood storks, and in one case 1,000 wood storks, roosting on fish pond dikes in the eastern Mississippi, west-central Alabama area (J. Taylor, U.S. Department of Agriculture, pers. comm., 2007). Wildlife Services found that the wood storks were generally loafing, and if they were feeding, they were taking diseased and oxygen-deprived fish and not impacting production. Nonetheless, operators of fish farms often respond to such activities by taking wood storks. Unpermitted wood stork take has been documented at a Mississippi catfish farm and a Florida tropical fish farm. Each of these incidents ended in prosecution for shooting wood storks. However, wood stork take at aquaculture facilities likely still occurs. To what extent this type of take occurs is unknown. Migratory Bird Treaty Act (MBTA; 16 U.S.C. 701 *et seq.*) depredation permits assist in minimizing unauthorized take. Depredation permits are issued to allow the take of migratory birds that are causing serious damage to public or private property, pose a health or safety hazard, or are damaging agricultural crops or wildlife. Wildlife Services provides expert technical advice and information regarding hazing and harassment techniques.

Research permits are issued to eliminate or minimize impacts to wood storks from scientific research. Overutilization was not identified as a threat at the time of listing in 1984, and we conclude that overutilization for commercial, recreational, scientific, or educational purposes is not a threat to the continental U.S. wood stork DPS now or in the foreseeable future.

*C. Disease or Predation*

There is limited information regarding potential impacts from disease or parasites. Hematozoa (blood parasites) have been documented to a limited extent in wood storks in Florida and Georgia (Forrester *et al.* 1977, p. 1273; Fedynich *et al.* 1998, p. 166). Avian malaria has recently been documented in continental U.S. wood storks, but the available information does not indicate that avian malaria is a significant factor affecting the DPS.

Adequate water levels under nesting trees or surrounding nesting islands deter raccoon predation of wood stork colonies. Water level manipulation that keeps levels too low can facilitate raccoon predation of wood stork nests. In many cases, colonies also have a population of alligators nearby that deter raccoon predation (Coulter and Bryan 1995, p. 242), and removal of alligators from a nesting colony site could lead to increased raccoon predation. Human disturbance may cause adults to leave nests, exposing the eggs and downy nestlings to predators (*e.g.,* fish crows), sun, and rain. Great horned owls have been documented nesting in and near colonies and likely impact the colony to some degree.

A breeding population of Burmese pythons has been documented in the Florida Everglades, and a recent study documented that pythons had preyed upon wood storks (Dove *et al.* 2011, p. 128). If these snakes or other species of nonnative reptiles become established in additional areas within the south Florida ecosystem, they could pose a threat to nesting wood storks and other species of colonial-nesting water birds but at the present time pythons do not pose a significant factor affecting the continental U.S. breeding population of wood stork.

As summarized above, we have a few documented instances of disease and predation within range of the continental U.S. wood stork DPS. However, this information does not indicate that disease or predation occur at a level that would threaten the continental U.S. wood stork DPS, now or in the foreseeable future. We will continue to work closely with our State and Federal wildlife agency partners, those who monitor wildlife diseases in the wild, and those conducting research of wood storks in order to monitor these potential threats.

*D. The Inadequacy of Existing Regulatory Mechanisms*

In addition to the Act, the MBTA provides Federal protection to the continental U.S. wood stork DPS. Florida, Georgia, South Carolina, North Carolina, Alabama, and Mississippi wildlife laws also list and protect wood storks. These Federal and State laws prohibit the taking of a wood stork, their nests, or their eggs, except as authorized through permitted activities such as scientific research and depredation permits. However, the MBTA and State

laws do not prohibit clearing, alteration, or conversion of wetland foraging habitats or nesting colony sites during the non-nesting season.

The Clean Water Act (CWA) regulates dredge and fill activities that would adversely affect wetlands, which constitute wood stork habitat. Section 404 of the CWA regulates the discharge of dredged or fill materials into wetlands. Discharges of dredged or fill materials are commonly associated with projects to create dry land for development sites, water-control projects, and land clearing. The U.S. Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA) share the responsibility for implementing the permitting program under section 404 of the CWA. These federal actions must not jeopardize the continued existence of any species protected under the Act.

When impacts to wetlands cannot be avoided or minimized, wetland mitigation is often employed to replace an existing wetland or its functions by creating a new wetland, restoring a former wetland, or enhancing or preserving an existing wetland. This is done to compensate for the authorized destruction of the existing wetland. As discussed earlier, it is not known if wood stork foraging wetlands are being replaced with like-quality foraging wetlands within the core foraging areas of impacted colonies.

There is currently little protection for isolated wetland habitats under section 404 of the CWA. A 2001 U.S. Supreme Court opinion (*Solid Waste Agency of Northern Cook County* (SWANCC) v. *US Army Corps of Engineers,* 531 U.S. 159 (2001)) substantially reduced the jurisdiction of the Federal Government in regulating isolated wetlands. While many States in the southeastern United States regulate those activities affecting wetlands that are not protected by section 404 of the CWA, Florida is the only State known to regulate isolated wetlands. In South Carolina, Georgia, Alabama, and North Carolina, there are no State laws that protect isolated wetlands. The EPA and the Corps have developed draft guidance for determining whether a waterway, water body, or wetland is protected by the CWA (76 FR 24479, May 2, 2011). If implemented, the guidance will increase the extent of waters over which the agencies assert jurisdiction under the CWA and thus would provide protection to additional wood stork foraging wetlands that are currently unprotected from modification or elimination.

The Service recommends, through its Wood Stork Habitat Management Guidelines (Ogden 1990), that active colony sites be protected from local hydrologic changes and from human activities (e.g. timber harvesting, vegetation removal, construction, and other habitat-altering activities) which are likely to be detrimental to the colony (Service 1997, p. 18). The Service also recommends that feeding sites be protected to the maximum extent possible. The Service's South Florida and Jacksonville Ecological Services Field Offices have developed ''May Affect'' keys to assist regulators with review of wetland dredge and fill permit applications and in an effort to minimize loss of wetland habitats important to wood stork recovery, like those within the core foraging area of a nesting colony.

In summary, there are a number of regulatory mechanisms implemented by Federal and State agencies to protect wood storks and conserve their habitat. Take of wood storks is illegal under both the Act and MBTA. The CWA minimizes impacts on jurisdictional wetlands that are important to Wood Storks, however the CWA alone is not sufficient to eliminate all impacts, as discussed in Factor A. Whether existing habitat protections and conservation mechanisms are inadequate can only be assessed by monitoring the status of the wood stork population. Recent trends indicate that the range is expanding and the breeding population has increased, suggesting that the combination of the CWA, the Act, MBTA, and state regulations are adequate to protect jurisdictional wetlands to allow population growth. However, non-jurisdictional wetlands continue to be lost to development due to lack of existing regulatory mechanisms, and therefore, loss of these wetlands continues as a threat to this species.

### *E. Other Natural or Manmade Factors Affecting Its Continued Existence*

#### Climate Change

The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). ''Climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

The IPCC concluded that evidence of warming of the climate system is unequivocal (IPCC 2007a, p. 30). Numerous long-term changes have been observed, including changes in arctic temperatures and ice, widespread changes in precipitation amounts, ocean salinity, wind patterns, and aspects of extreme weather, including droughts, heavy precipitation, heat waves, and the intensity of tropical cyclones (IPCC 2007b, p. 7). While continued change is certain, the magnitude and rate of change is unknown in many cases. Species that are dependent on specialized habitat types, are limited in distribution, or are located in the extreme periphery of their range will be most susceptible to the impacts of climate change. Such species would currently be found at high elevations or in extreme northern/southern latitudes, or are dependent on delicate ecological interactions or sensitive to nonnative competitors. Wood storks nest in a wide variety of natural and human made habitats (e.g., fresh water wetlands to estuarine environs, cypress strands to mangrove islands, lake edges to river edges, impoundments to borrow pits); they are not dependent upon specialized habitat. They nest in trees and shrubby vegetation (native to exotic) where water is surrounding (island) or water is underneath the nesting vegetation and where there is suitable foraging habitat nearby (shallow water wetlands). The marshes and wetlands they use may be impacted by climate change depending on their location but wood storks have been shown to find other habitat if existing locations become unavailable.

Information on the subject of climate change in our files is not specific to the wood stork. While predictions of increased drought frequency, intensity, and duration suggest that nestling survival could be a limiting factor for the wood stork due to increased predation or possible loss or shift in the location of coastal colonies due to sea level rise, the species possesses other biological traits, like adaptability to

changing habitat conditions that provide resilience to this threat. Wood storks are already responding to habitat changes by altering their nest locations. This has been seen in the recent expansion from Everglades colony locations in Florida to other areas in the southeastern United States (Brooks and Dean 2008). These expansions are in response to annual cycles; nest locations depend upon availability. Abandonment of old colonies and formation of new ones is a typical and fairly rapid process in wood storks (Frederick and Meyer 2008 p.12). Most wood stork colonies in the Southeast U.S. have relatively short survival histories and only a handful of colonies have survived more than 20 years and the large numbers of short-lived colonies indicate that wood stork colony abandonment and novel colony initiation seems to be typical of the species (Tsai *et al.* 2011, p. 2). The wood storks' ability to seek out new locations for nesting would seem to indicate that they will respond in a similar fashion to changes in habitat availability that result from sea level rise.

Although many species already listed as endangered or threatened may be particularly vulnerable to negative effects related to changes in climate, we also recognize that, for some listed species, the likely effects may be positive or neutral. At this time, we have no evidence that climate changes observed to date have had any adverse effect on the wood stork or its habitat; this long-lived species is expected to adapt to future changes in habitat availability that may result from climate change.

Contamination Events

Contamination events can be triggered by restoration or natural events, such as hurricanes or flooding, that can expose concentrations of contaminants. For example, from November 1998 through early April 1999, a bird mortality event occurred on the north shore of Lake Apopka, Florida, on former farmlands that had been purchased by the St. Johns River Water Management District and NRCS. An estimated 676 birds died on-site, mostly white pelicans (*Pelecanus erythrorhynchos*) and various species of wading birds, including the wood stork. Of the estimated 1,991 wood storks present in the area, 43 died on-site (Rauschenberger 2007, p. 16). The cause of death was attributed to organochlorine pesticide (OCP) toxicosis (Rauschenberger 2007, p. 16). The birds were exposed to OCPs by eating OCP-contaminated fish, which became easy prey as fish moved from ditches into the flooded fields, located in the eastern part of the restoration area (Rauschenberger 2007, p. 16).

Mercury, heavy metals, and other contaminants that may impair reproduction and cause other health issues are being studied in wood storks and many other wading bird species (Bryan *et al.* 2012; Gallaher *et al.* 2011; Martin 2010; Frederick and Jayasena 2010; Brant *et al.* 2002; Bryan *et al.* 2001; Gariboldi *et al.* 2001). Also, exposure to contaminants by foraging in manmade wetlands may pose a potential risk to wood stork health and reproduction. On the other hand, pesticide contamination has not generally been considered to adversely affect wood stork reproduction (Ohlendorf *et al.* 1978, p. 616).

Algal Blooms (Red Tide Events)

Harmful algal blooms, specifically red tide events, have become more prevalent along Florida's coast. Brevitoxicosis was documented in 2005 as the cause of death of a wood stork (Spalding 2006). Wood storks can be exposed to harmful microalgae and their toxins through a variety of mechanisms, including aerosolized transport (*i.e.,* respiratory irritation in mammals, turtles, birds); bioaccumulation through consumption of prey containing toxins or toxic cells (crustaceans, gastropods, fish, birds, turtles, mammals); and mechanical damage by spines, setae, or other anatomical features of the cells (FWC 2007, p. 1). In addition to dead fish, large numbers of aquatic birds, particularly double-crested cormorants *(Phalacrocorax auritus),* red-breasted mergansers *(Mergus merganser),* and lesser scaup *(Aythya affinis),* were found moribund or dead in red tide areas during the Florida west coast *Karenia brevis* red tide of October 1973 to May 1974 (FWC 2007).

Electrocution

Electrocution mortalities of wood storks from power lines have been documented and reported to us by power companies and by State and Federal wildlife law enforcement. In most cases, when a problem location is identified, it is retrofitted using standard avian protection guidelines to prevent electrocutions. The guidelines recommend using heavily insulated wire, spreading the wires apart to prevent grounding as body parts touch the wires, or burying the wires underground. The Service's Wood Stork Habitat Management Guidelines (Ogden 1990) include recommendations that new transmission lines be at least 1 mile away from colony sites and tall transmission towers no closer than 3 miles from active colonies. The Service also recommends similar guidance for cell phone towers and wind turbines.

Other Threats

The following is a list of threats that have also been documented to occur, but we have concluded that due to low incident numbers and minimal documentation, the impacts at this time are very low and do not impede recovery.

Human disturbance is known to have a detrimental effect on wood stork nesting (Service 1997, pp. 10, 12). Wood storks have been documented to desert nests when disturbed by humans, thus exposing eggs and young birds to the elements and to predation by gulls and fish crows (Coulter *et al.* 1999, p. 19).

Documentation of road kill mortalities of wood storks has increased (B. Brooks, USFWS, pers. comm., 2010). This may be due to better reporting or more storks using roadside ponds, ditches, swales, and flow-ways as foraging habitat.

Stochastic events, such as severe thunderstorms and hurricanes, pose a potential risk. Loss of nesting trees due to hurricanes can have a negative impact on nesting habitat. Severe local storm events have impacted individual colonies, causing chick mortality and even blowing nests out of trees.

The invasion of exotic plants into natural wetland areas can prevent wood storks from foraging due to high density and canopy cover of the plants (USFWS 2010, p. 127). Invasion into natural nesting habitats by exotic species, including Brazilian pepper (*Schinus terebinthifolius*), melaleuca (*Melaleuca quinquenervia*), and Australian pine (*Casuarina equisetifolia*), may present a problem; however, wood storks are using exotic species for nesting habitat at many manmade wetland colony sites, such as borrow pits. Even though wetlands overgrown with exotics may preclude wood storks from foraging within, they do have a conservation benefit as they flood during the wet season and provide a prey source to adjacent wetlands. Wood storks are also documented utilizing Brazilian pepper as nesting substrate (USFWS 1999, p. 4–396).

A small number of sacred ibis (*Threskiornis aethiopicus*) escaped from a south Florida zoo and established a small breeding population in south Florida. They may compete with wood storks for nesting space within south Florida colonies.

Summary of Factor E

In summary, other natural or manmade factors affecting the wood stork's continued existence, such as contaminants, harmful algal blooms,

electrocution, road kill, invasion of exotic plants and animals, human disturbance, and stochastic events, are all documented at minimal levels to affect wood storks. The wood stork utilizes a wide variety of habitats throughout its range in the southeastern United States; this ability to use alternative habitats (as evidenced by the wood storks expansion from the Everglades of Florida into marshes and tidal areas throughout the southeastern United States (Brooks and Dean 2008)), helps to buffer this species from some of the impacts to its habitat through natural or manmade threats. We conclude that other natural or manmade factors are not a significant factor affecting the continental U.S. wood stork DPS, now or in the foreseeable future.

**Conclusion**

Whether a species is currently on the brink of extinction in the wild depends on the life history and ecology of the species, the nature of the threats, and the species' response to those threats. Loss, fragmentation, and modification of wetland habitats continue as threats to continental U.S. wood storks. Based on the best available scientific information, it is our assessment that the species is showing the ability to respond to these threats through expanding its range, adjusting its reproductive timing, and utilizing a variety of wetlands, including manmade wetlands, to forage, roost, and breed. Current data show that the breeding range has now almost doubled in extent and shifted northward along the Atlantic coast as far as southeastern North Carolina. As a result, dependence of wood storks on any specific wetland complex has been reduced. Even though habitat destruction and modification are still a threat to recovery, the improved wood stork population statistics also suggest that wetland habitat is not yet limiting the population, at least at the landscape level.

A number of regulatory mechanisms are being implemented by Federal and State agencies to protect wood storks and conserve their habitat. Take of wood storks is illegal under both the Act and MBTA. Whether habitat protection and conservation mechanisms are inadequate must be assessed in terms of the wood stork population. Recent trends indicate that the range of the continental U.S. wood stork DPS is expanding and that the breeding population has increased, suggesting that existing regulatory mechanisms are adequate to allow population growth. However, we remain concerned that the status of this species would be expected to deteriorate should the Act's requirements to consult on all federal actions affecting the species' habitat or the prohibition on take (including significant habitat modification) be removed.

Other threats such as overutilization of the species for commercial, recreational, scientific, or educational purposes; disease and predation; and other natural or manmade factors (*e.g.,* contaminants, harmful algal blooms, electrocution, road kill, invasion of exotic plants and animals, human disturbance, and stochastic events) are known to occur but are not significant.

While there continue to be ongoing threats, the continental U.S. wood stork DPS is increasing and expanding its overall range. Population criteria for reclassification have been exceeded with 3-year population averages higher than 6,000 nesting pairs since 2003 (range of 7,086 to 8,996 nesting pairs). Delisting criteria of 10,000 nesting pairs (5-year average) has not been achieved. The wood stork population has exceeded 10,000 nesting pairs twice during the past 5 years (2006 and 2009), and the 2009 count of 12,720 nesting pairs represents the highest count since the early 1960s. Productivity, though variable, is sufficient to support a growing population. Based on the analysis presented above and the fact that downlisting criteria have been met, we believe the continental U.S. wood stork DPS is not presently in danger of extinction throughout its range. However, because loss, fragmentation, and modification of wetland habitats continue around nesting colonies and core foraging areas, and because delisting criteria have not been met, we conclude that the continental U.S. wood stork DPS is likely to become endangered within the foreseeable future and therefore should be reclassified as threatened under the Act.

**Significant Portion of the Range Analysis**

Having determined that the continental U.S. wood stork DPS meets the definition of threatened, we must next consider whether there is a significant portion of the range where the wood stork is in danger of extinction. The phrase ''significant portion of its range'' (SPR) is not defined by the statute, and we have never addressed in our regulations: (1) The consequences of a determination that a species is either endangered or likely to become so throughout a significant portion of its range, but not throughout all of its range; or (2) what qualifies a portion of a range as ''significant.''

Two recent district court decisions have addressed whether the SPR language allows the Service to list or protect less than all members of a defined ''species'': *Defenders of Wildlife* v. *Salazar,* 729 F. Supp. 2d 1207 (D. Mont. 2010), concerning the Service's delisting of the Northern Rocky Mountain gray wolf (74 FR 15123, April 2, 2009); and *WildEarth Guardians* v. *Salazar,* 2010 U.S. Dist. LEXIS 105253 (D. Ariz. Sept. 30, 2010), concerning the Service's 2008 finding on a petition to list the Gunnison's prairie dog (73 FR 6660, February 5, 2008). The Service had asserted in both of these determinations that it had authority, in effect, to protect only some members of a ''species,'' as defined by the Act (i.e., species, subspecies, or DPS), under the Act. Both courts ruled that the determinations were arbitrary and capricious on the grounds that this approach violated the plain and unambiguous language of the Act. The courts concluded that reading the SPR language to allow protecting only a portion of a species' range is inconsistent with the Act's definition of ''species.'' The courts concluded that once a determination is made that a species (i.e., species, subspecies, or DPS) meets the definition of ''endangered species'' or ''threatened species,'' it must be placed on the list in its entirety and the Act's protections applied consistently to all members of that species (subject to modification of protections through special rules under sections 4(d) and 10(j) of the Act).

Consistent with that interpretation, and for the purposes of this proposed rule and finding, we interpret the phrase ''significant portion of its range'' in the Act's definitions of ''endangered species'' and ''threatened species'' to provide an independent basis for listing a species in its entirety; thus there are two situations (or factual bases) under which a species would qualify for listing: A species may be endangered or threatened throughout all of its range; or a species may be endangered or threatened in only a significant portion of its range. If a species is in danger of extinction throughout an SPR, it, the species, is an ''endangered species.'' The same analysis applies to ''threatened species.'' Therefore, the consequence of finding that a species is endangered or threatened in only a significant portion of its range is that the entire species will be listed as endangered or threatened, respectively, and the Act's protections will be applied across the species' entire range.

We conclude, for the purposes of this proposed rule and finding, that interpreting the SPR phrase as providing

an independent basis for listing is the best interpretation of the Act because it is consistent with the purposes and the plain meaning of the key definitions of the Act; it does not conflict with established past agency practice (i.e., prior to the 2007 Solicitor's Opinion), as no consistent, long-term agency practice has been established; and it is consistent with the judicial opinions that have most closely examined this issue. Having concluded that the phrase ''significant portion of its range'' provides an independent basis for listing and protecting the entire species, we next turn to the meaning of ''significant'' to determine the threshold for when such an independent basis for listing exists.

Although there are potentially many ways to determine whether a portion of a species' range is ''significant,'' we conclude, for the purposes of this proposed rule and finding, that the significance of the portion of the range should be determined based on its biological contribution to the conservation of the species. For this reason, we describe the threshold for ''significant'' in terms of an increase in the risk of extinction for the species. We conclude that a biologically based definition of ''significant'' best conforms to the purposes of the Act, is consistent with judicial interpretations, and best ensures species' conservation. Thus, for the purposes of this proposed rule and finding, a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that, without that portion, the species would be in danger of extinction.

We evaluate biological significance based on the principles of conservation biology using the concepts of redundancy, resiliency, and representation. *Resiliency* describes the characteristics of a species that allow it to recover from periodic disturbance. *Redundancy* (having multiple populations distributed across the landscape) may be needed to provide a margin of safety for the species to withstand catastrophic events. *Representation* (the range of variation found in a species) ensures that the species' adaptive capabilities are conserved. Redundancy, resiliency, and representation are not independent of each other, and some characteristic of a species or area may contribute to all three. For example, distribution across a wide variety of habitats is an indicator of representation, but it may also indicate a broad geographic distribution contributing to redundancy (decreasing the chance that any one event affects the entire species), and the likelihood that some habitat types are less susceptible to certain threats, contributing to resiliency (the ability of the species to recover from disturbance). None of these concepts is intended to be mutually exclusive, and a portion of a species' range may be determined to be ''significant'' due to its contributions under any one of these concepts.

For the purposes of this proposed rule and finding, we determine if a portion's biological contribution is so important that the portion qualifies as ''significant'' by asking whether, *without that portion,* the representation, redundancy, or resiliency of the species would be so impaired that the species would have an increased vulnerability to threats to the point that the overall species would be in danger of extinction (i.e., would be ''endangered''). Conversely, we would not consider the portion of the range at issue to be ''significant'' if there is sufficient resiliency, redundancy, and representation elsewhere in the species' range that the species would not be in danger of extinction throughout its range if the population in that portion of the range in question became extirpated (extinct locally).

We recognize that this definition of ''significant'' establishes a threshold that is relatively high. On the one hand, given that the consequences of finding a species to be endangered or threatened in an SPR would be listing the species throughout its entire range, it is important to use a threshold for ''significant'' that is robust. It would not be meaningful or appropriate to establish a very low threshold whereby a portion of the range can be considered ''significant'' even if only a negligible increase in extinction risk would result from its loss. Because nearly any portion of a species' range can be said to contribute some increment to a species' viability, use of such a low threshold would require us to impose restrictions and expend conservation resources disproportionately to conservation benefit: Listing would be rangewide, even if only a portion of the range of minor conservation importance to the species is imperiled. On the other hand, it would be inappropriate to establish a threshold for ''significant'' that is too high. This would be the case if the standard were, for example, that a portion of the range can be considered ''significant'' only if threats in that portion result in the entire species' being currently endangered or threatened. Such a high bar would not give the SPR phrase independent meaning, as the Ninth Circuit held in *Defenders of Wildlife* v. *Norton,* 258 F.3d 1136 (9th Cir. 2001).

The definition of ''significant'' used in this proposed rule and finding carefully balances these concerns. By setting a relatively high threshold, we minimize the degree to which restrictions would be imposed or resources expended that do not contribute substantially to species conservation. But we have not set the threshold so high that the phrase ''in a significant portion of its range'' loses independent meaning. Specifically, we have not set the threshold as high as it was under the interpretation presented by the Service in the *Defenders* litigation. Under that interpretation, the portion of the range would have to be so important that current imperilment there would mean that the species would be *currently* imperiled everywhere. Under the definition of ''significant'' used in this proposed rule and finding, the portion of the range need not rise to such an exceptionally high level of biological significance. (We recognize that if the species is imperiled in a portion that rises to that level of biological significance, then we should conclude that the species is in fact imperiled throughout all of its range, and that we would not need to rely on the SPR language for such a listing.) Rather, under this interpretation we ask whether the species would be endangered everywhere without that portion, *i.e.,* if that portion were completely extirpated. In other words, the portion of the range need not be so important that even being in danger of extinction in that portion would be sufficient to cause the remainder of the range to be endangered; rather, the *complete extirpation* (in a hypothetical future) of the species in that portion would be required to cause the remainder of the range to be endangered.

The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that have no reasonable potential to be significant *and* threatened or endangered. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be ''significant,'' and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to

determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is ''significant.'' In practice, a key part of the portion status analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the species' range that clearly would not meet the biologically based definition of ''significant,'' such portions will not warrant further consideration.

Applying the process described above, we evaluated the continental U.S. wood stork DPS's range to determine if any areas could be considered a significant portion of its range, and a key portion of that determination is whether the threats are geographically concentrated in some manner. As detailed in the threat analysis in this proposed rule and finding, the primary threat to the wood stork—habitat loss, fragmentation, and modification—is a relatively uniform threat across the species' range.

It could be argued that at the time of listing, the threat of habitat destruction and fragmentation to the continental U.S. wood stork DPS at one time was concentrated in south Florida. With the current habitat regimes, nesting wood storks have persisted in south Florida with nesting numbers below historic counts but also varying annually from hundreds to several thousand in many years (Table 2). Even though we share above that no concentration of threats currently occurs in the range of this DPS, we provide here more detail on south Florida to show further why it is not a significant portion of range because of the emphasis on south Florida in the wood stork recovery plan.

The wood storks nesting in south Florida (the region south of Lake Okeechobee from Lee County on the west coast to Palm Beach County on the east coast, and the Everglades and Big Cypress systems) now represent approximately 25 percent of the breeding wood storks in the United States during the past 10 years (Tables 1 and 2). Total nesting pairs in this region have been quite variable, but showed a general pattern of decline during the 1970s and remained low through the mid 1980s. However, wood stork nesting increased in south Florida from the mid 1990s (an average of 400 to 500 pairs) to a high of 5,816 pairs in 2009. A 3-year running average since the time of listing in 1984 ranges from 457 to 3,449 pairs, with considerable variability. These observed fluctuations in the nesting between years and nesting sites have been attributed primarily to variable hydrologic conditions during the nesting season (Crozier and Gawlik 2003, p. 1; Crozier and Cook 2004, pp. 1–2). Frequent, heavy rains during nesting can cause water levels to increase rapidly. The abrupt increases in water levels during nesting, termed reversals (Crozier and Gawlik 2003, p. 1), may cause nest abandonment, re-nesting, late nest initiation, and poor fledging success. For example, optimal foraging conditions in 2006 resulted in high nesting success, but the 2-year drought that followed in 2007 and 2008 resulted in no nesting success in the Corkscrew Sanctuary rookery (Lauritsen 2007, p. 11; Lauritsen 2008, p. 12). However, 2009 nesting data for Corkscrew Sanctuary rookeries noted 1,120 nests producing 2,570 nestlings (Lauritsen 2009, p. 13). Similar rebounds in nesting activity were recorded for other south Florida rookeries in 2009, with possibly the largest number of nest starts since 1975, estimated at about 4,000 nests throughout the Everglades and Big Cypress Systems (Newman 2009, p. 51) and a total of 5,816 nesting pairs (Table 2) in south Florida.

The CERP established performance measures and related goals for wood storks and other wading bird species. Metrics include the number of pairs of nesting wood storks and the location of the wood stork colonies. The timing of nesting, which shifted from historical periods of November through December to January through March, is also a metric. There have been some recent positive measures in Everglades restoration regarding these metrics. Restoration predicts that the return of natural flows and hydrologic patterns will result in large, sustainable breeding wading bird populations, with large colonies in the coastal zone of the Everglades and a return to natural timing of nesting, with wood stork nest initiation in November or December. Cook and Kobza (2010, p. 2) suggest that Everglades National Park may be more attractive to nesting birds in recent years and that the 2009 breeding season was the best nesting year in south Florida since the 1940s. The 2009–2010 nesting year did show an improvement in nest timing with wood stork nesting in January, which is earlier than previous years, but which is still outside the nesting onset target of November to December (Newman 2009, p. 52; Gottlieb 2010, p. 42). Also, Cook and Kobza (2010, p. 2) report a general shift of colony locations to the coast in recent years.

Although the variability of habitat conditions affects the nesting efforts in south Florida and at times there is total failure of a colony or little to no nesting, we do not believe such variability will cause extirpation of wood storks in south Florida. Wood storks are a long-lived species that demonstrate considerable variation in population numbers in response to changing hydrological conditions (USFWS 1997, p. 10). We are not aware of any other threat within this portion of the range that would act synergistically and heighten our level of concern for the wood stork population. Consequently, although we recognize that it is desirable to improve the nesting success of wood storks in south Florida, we conclude that the present level of habitat threat, when combined with the restoration efforts of CERP, is not of a magnitude that leads us to delineate the wood storks in and around south Florida as being more in danger of extinction than wood storks breeding in central/north Florida through North Carolina, nor as being a significant portion of the range of the continental U.S. wood stork DPS.

In summary, the primary threat to the continental U.S. wood stork DPS—habitat loss, fragmentation, and modification—is relatively uniform throughout the DPS's range. We have determined that none of the existing or potential threats currently place the continental U.S. wood stork DPS in danger of extinction throughout all or a significant portion of its range.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing increases public awareness of threats to the continental U.S. breeding population of the wood stork, and promotes conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the State, and for recovery planning and implementation. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part below.

A number of the nesting colonies of the continental U.S. wood stork DPS occur on Federal conservation lands and are consequently afforded protection

from development and large-scale habitat disturbance. Wood stork colonies also occur on a variety of State-owned properties, and existing State and Federal regulations provide protection on these sites. There is also a significant number of wood stork colonies that occur on private lands, and through conservation partnerships, many of these colonies are protected through the owners' stewardship. In many cases these partnerships have been developed through conservation easements, wetland restoration projects, and other conservation means. The fact that wood stork habitat is primarily wetlands also assures the opportunity for conference or consultation on most projects that occur in wood stork habitat under the authorities described below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to the continental U.S. breeding population of the wood stork. If a Federal action may affect the wood stork or its habitat, the responsible Federal agency must consult with the Service to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of the wood stork. Federal agency actions that may require consultation with us include Corps' involvement in projects such as residential development, mining operations, construction of roads and bridges, or dredging that requires dredge/fill permits. Protecting and restoring wetlands that wood storks are dependent upon through the environmental regulatory review process is the most important action that Federal, State, and local regulatory agencies can undertake and is key to wood stork recovery.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. As such, these prohibitions would be applicable to the wood stork. These prohibitions, under 50 CFR 17.21 (17.31 for threatened wildlife species), make it illegal for any person subject to the jurisdiction of the United States to ''take'' (including to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt any of these) within the United States or upon the high seas, import or export, deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of a commercial activity, or to sell or offer for sale in interstate or foreign commerce, any endangered wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are codified at § 17.32 for threatened species. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in the course of otherwise lawful activities. For threatened species, permits are also available for zoological exhibition, educational purposes, and special purposes consistent with the purposes of the Act.

Questions regarding whether specific activities will constitute a violation of section 9 of the Act should be directed to the U.S. Fish and Wildlife Service, North Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section). Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (telephone 404–679–7313, facsimile 404–679–7081).

## Effects of This Rule

This rule, if made final, would revise 50 CFR 17.11(h) to reclassify the continental U.S. wood stork DPS from endangered to threatened on the List of Endangered and Threatened Wildlife. This proposed rule discusses how the continental U.S. wood stork DPS is no longer in danger of extinction throughout all or a significant portion of its range. However, this reclassification would not significantly change the protection afforded this species under the Act. Based on new information about the range of the continental U.S. wood stork DPS and where nesting is now occurring, this rule, if made final, would also revise 50 CFR 17.11(h) to reflect that the range of the continental U.S. wood stork DPS has expanded from Alabama, Florida, Georgia, and South Carolina to also include North Carolina and Mississippi (see *Distinct Vertebrate Population Segment Analysis* section above).

Anyone taking, attempting to take, or otherwise possessing a wood stork, or parts thereof, in violation of section 9 of the Act is subject to a penalty under section 11 of the Act. Pursuant to section 7 of the Act, all Federal agencies must ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of the continental U.S. wood stork DPS.

If this proposed rule is made final and the continental U.S. wood stork DPS is reclassified as threatened, recovery actions directed at the wood stork would continue to be implemented as outlined in the recovery plan (Service 1997). Highest priority recovery actions include: (1) Locate nesting habitat; (2) locate roosting and foraging habitat; (3) inform landowners; (4) protect (nesting) sites from disturbance; (5) use existing regulatory mechanisms to protect habitat; and (6) monitor productivity of stork populations. Other recovery initiatives also include appointing a recovery team to update the recovery plan to ensure the recovery criteria and actions reflect the most current information on the demographics, range, and habitat needs of the species.

Finalization of this proposed rule would not constitute an irreversible commitment on our part. Reclassification of the continental U.S. wood stork DPS from threatened status back to endangered status would be possible if changes occur in management, population status, or habitat, or if other factors detrimentally affect the DPS or increase threats to the species' survival.

## Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of at least three appropriate and independent specialists for peer review of this proposed rule. The purpose of such review is to ensure that decisions are based on scientifically sound data, assumptions, and analysis. We will send peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed reclassification to threatened. We will summarize the opinions of these reviewers in the final decision document, and we will consider their input, and any additional information we receive, as part of our process of making a final decision on the proposal. Such communication may lead to a final regulation that differs from this proposal.

## Required Determinations

### *Paperwork Reduction Act of 1995*

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork

Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act*

We have determined that we do not need to prepare an environmental assessment or environmental impact statement, as defined in the National Environmental Policy Act of 1969 (42 U.S.C 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior Manual Chapter 512 DM 2, we have considered possible effects on and have notified the Native American Tribes within the range of the continental U.S. breeding population of the wood stork about this proposal. They have been advised through a written informational mailing from the Service. If future activities resulting from this proposed rule may affect Tribal resources, a Plan of Cooperation will be developed with the affected Tribe or Tribes.

*Clarity of This Regulation (E.O. 12866)*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, *etc.*

**References Cited**

A complete list of references cited is available upon request from the North Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authors**

The primary authors of this document are the staff members of the North Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

We propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

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

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by revising the entry for ''Stork, wood'' under ''BIRDS'' in the List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| * | * | * | * | * | * | * | |
| BIRDS | | | | | | | |
| * | * | * | * | * | * | * | |
| Stork, wood ..... | *Mycteria americana* | U.S.A. (CA, AZ, TX, to Carolinas), Mexico, C. and S. America. | U.S.A. (AL, FL, GA, MS, NC, SC). | T | 142, | NA | NA |
| * | * | * | * | * | * | * | |

* * * * *

Dated: December 14, 2012.

**Rowan W. Gould,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 2012–30731 Filed 12–21–12; 4:15 pm]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 121121645–2645–01]**

**RIN 0648–BC80**

## Control Date for Qualifying Landings History in the Central Gulf of Alaska Trawl Groundfish Fisheries

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

**ACTION:** Advance notice of proposed rulemaking (ANPR); control date.

**SUMMARY:** At the request of the North Pacific Fishery Management Council (Council), this notice announces a control date of December 31, 2012, that may be used as a reference for future management actions applicable to, but not limited to, qualifying landings and permit history for an allocation-based management or catch share program in the Central Gulf of Alaska (GOA) trawl groundfish fisheries. This date corresponds to the end of the fishing year for this fishery, so that the full catch history for 2012 may be considered in any such future management actions. We also expect that this notice will publish close to the control date of December 31, 2012, and so will not either prompt speculation in advance of the control date, or disadvantage any fishers regarding their fishing activity after the control date, but before publication. This notice is intended to promote awareness of possible rulemaking and provide notice to the public that any accumulation of landings history in the Central GOA trawl groundfish fisheries occurring after the control date may not be credited for purposes of making any allocation under a future management program. This notice is also intended to discourage speculative entry into the fisheries while the Council considers whether and how allocations of fishing privileges should be developed under a future management program.

**DATES:** December 31, 2012, shall be known as the control date for the Central GOA trawl groundfish fisheries and may be used as a reference for allocations in a future management program that is consistent with the Council's objectives and applicable Federal laws.

**FOR FURTHER INFORMATION CONTACT:** Rachel Baker: 907–586–7228 or *rachel.baker@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries in the U.S. exclusive economic zone (EEZ) of the GOA under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The Council prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

This advance notice of proposed rulemaking would apply to owners and operators of catcher vessels and catcher/processors participating in Federal fisheries prosecuted with trawl gear in the Central Reporting Area of the GOA. The Central Reporting Area, defined at § 679.2 and shown in Figure 3 to 50 CFR part 679, includes the Central Regulatory Area (Statistical Areas 620 and 630).

The Council and NMFS annually establish biological thresholds and annual total allowable catch limits for groundfish species to sustainably manage the groundfish fisheries in the GOA. To achieve these objectives, NMFS requires vessel operators participating in GOA groundfish fisheries to comply with various restrictions, such as fishery closures, to maintain catch within specified total allowable catch limits. The GOA groundfish fishery restrictions also include prohibited species catch (PSC) limits for species that are generally required to be discarded when harvested. When harvest of a PSC species reaches the specified PSC limit for that fishery, NMFS closes directed fishing for the target groundfish species, even if the total allowable catch limit for that species has not been harvested.

The Council and NMFS have long sought to control the amount of fishing in the North Pacific Ocean to ensure that fisheries are conservatively managed and do not exceed established biological thresholds. One of the measures used by the Council and NMFS is the license limitation program (LLP) which limits access to the groundfish, crab, and scallop fisheries in the Bering Sea and Aleutian Islands and the GOA. The LLP is intended to limit entry into federally managed fisheries. For groundfish, the LLP requires that persons hold and assign a license to each vessel that is used to fish in federally managed fisheries, with some limited exemptions. The preamble to the final rule implementing the groundfish LLP provides a more detailed explanation of the rationale for specific provisions in the LLP (October 1, 1998; 63 FR 52642).

Over the course of the past few years, the Council has recommended amendments to the FMP to reduce the use of PSC in the GOA fisheries. Under Amendment 93 to the FMP, the Council recommended, and NMFS approved, Chinook PSC limits in the GOA pollock (*Theragra chalcogramma*) trawl fisheries (77 FR 42629, July 20, 2012). In June 2012, the Council recommended an FMP amendment to reduce halibut PSC limits for the trawl and longline fisheries in the Central GOA and Western GOA. This series of actions reflects the Council's commitment to reduce PSC in the GOA fisheries. Participants in these fisheries, particularly the Central GOA trawl fisheries, have raised concerns that the current limited access management system creates a substantial disincentive for participants to take actions to reduce PSC usage, particularly if those actions could reduce target catch rates. Additionally, any participants who choose not to take actions to reduce PSC usage stand to gain additional target catch by continuing to harvest groundfish at a higher catch rate, at the expense of any vessels engaged in PSC avoidance. In October 2012, the Council unanimously adopted a purpose and need statement, and goals and objectives, to support the development of a management system that would remove this disincentive to reduce PSC usage.

The Council intends to develop a management program that would replace the current limited access management program with allocations of allowable harvest (catch shares) to individuals, cooperatives, or other entities. The goal of the program is to improve stock conservation by creating vessel-level and/or cooperative-level incentives to control and reduce PSC, and to create accountability measures for participants when utilizing target, secondary, and PSC species. The Council also intends for the program to improve operational efficiencies, reduce incentives to fish during unsafe conditions, and support the continued participation of coastal communities that are dependent on the fisheries. The Council intends to develop an analysis of alternatives for a catch share management program that meets its goals and objectives. In developing the

alternatives for analysis, the Council will consider how other fishery management programs have considered and applied MSA catch share provisions to meet similar goals and objectives.

To dampen the effect of speculative entry into the Central GOA trawl groundfish fisheries in anticipation of the future catch share program, the Council announced a control date of December 31, 2012. The Council stated that it may not credit any catch history in those fisheries after the control date for purposes of making allocations under a future management program. The control date may be used as a reference for future management measures in determining how to credit landings and permit history acquired before or after this date for purposes of establishing an allocation-based management program. The establishment of a control date, however, does not obligate the Council to use this control date or take any action or prevent the Council from selecting another control date or imposing limits on permits acquired prior to the control date. Accordingly, this notification is intended to promote awareness that the Council may develop a catch share management program to achieve its objectives for the Central GOA trawl fisheries; to provide notice to the public that any current or future accumulation of fishing privilege interests in the Central GOA trawl fisheries may be affected, restricted, or even nullified; and to discourage speculative participation and behavior in the fisheries while the Council considers whether and how fishing privileges should be assigned or allocated in the future. Any measures the Council considers may require changes to the FMP. Such measures may be adopted in a future amendment to the FMP, which would include opportunity for further public participation and comment.

NMFS encourages public participation in the Council's development of the Central GOA trawl groundfish fisheries catch share management program. Please consult the Council's web site at *http://www.alaskafisheries.noaa.gov/npfmc/* for information on public participation in the Council's decision-making process.

This notification and control date do not impose any legal obligations, requirements, or expectation.

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

Dated: December 17, 2012.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 2012–30962 Filed 12–21–12; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register

Vol. 77, No. 247

Wednesday, December 26, 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

### Submission for OMB Review; Comment Request

December 19, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 25, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### Animal and Plant Health Inspection Service

*Title:* Specimen Submission.

*OMB Control Number:* 0579–0090.

*Summary of Collection:* The Animal Health Protection Act of 2002 (AHPA) is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. Disease prevention is the most effective method for maintaining a healthy animal population and for enhancing the United States' ability to globally compete in the trade of animals and animal products. VS Forms 10–4 and 10–4A, Specimen Submission are critical components of APHIS' disease surveillance mission. They are used routinely when specimens (such as blood, milk, tissue, or urine) from any animal (including cattle, swine, sheep, goats, horses, and poultry) are submitted to APHIS' National Veterinary Services Laboratories (NVSL) for disease testing. VS Form 5–38, Parasite Submission form, is completed by State veterinarians or other State representatives, accredited veterinarians, private laboratories, research institutions, and owners or producer.

*Need and Use of the Information:* Using APHIS form VS 10–4, State or Federal veterinarians, accredited veterinarians, or other State and Federal representatives will document the collection and submission of specimens for laboratory analysis. The form identifies the individual animal from which the specimen is taken as well as the animal's herd or flock; the type of specimen submitted, and the purpose of submitting the specimen. The National Tick Surveillance Program is based on the information submitted on VS Form 5–38, in addition to critical surveillance information needed for the Cattle Fever Tick Eradication Program. This information identifies the individual submitting the tick samples. Without the information APHIS would not have the critical information necessary to effectively operate a disease surveillance program.

*Description of Respondents:* State, Local or Tribal Government; Business or other for-profit.

*Number of Respondents:* 3,208.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 9,267.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2012–30972 Filed 12–21–12; 4:15 pm]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

December 19, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control

number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Food and Nutrition Service**

*Title:* Quality Control Review Schedule.

*OMB Control Number:* 0584–0299.

*Summary of Collection:* States agencies are required to perform Quality Control (QC) review for the Supplemental Nutrition Assistance Program (SNAP). The FNS–380–1, Quality Control Review Schedule is for State use to collect both QC data and case characteristics for SNAP and to serve as the comprehensive data entry form for SNAP QC reviews. The legislative basis for the operation of the QC system is provided by Section 16 of the Food and Nutrition Act of 2008, as amended (the Act).3

*Need and Use of the Information:* The Food and Nutrition Service (FNS) will collect information to monitor and reduce errors, develop policy strategies, and analyze household characteristic data. In addition, FNS will use the data to determine sanctions and bonus payments based on error rate performance, and to estimate the impact of some program changes to SNAP participation and costs by analyzing the available household characteristic data.

*Description of Respondents:* State, Local, or Tribal Government.

*Number of Respondents:* 53.

*Frequency of Responses:* Recordkeeping; Reporting: Weekly; Monthly.

*Total Burden Hours:* 64,542.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2012–30973 Filed 12–21–12; 4:15 pm]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

December 19, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Rural Business Service (RBS)**

*Title:* 7 CFR 4279–A, Guaranteed Loan-making General .

*OMB Control Number:* 0570–0018.

*Summary of Collection:* The Business and Industry (B&I) program was legislated in 1972 under Section 310B of the Consolidated Farm and Rural Development Act, as amended. The purpose of the program is to improve, develop, or finance businesses, industries, and employment and improve the economic and environmental climate in rural communities. This purpose is achieved through bolstering the existing private credit structure through the guaranteeing of quality loans made by lending institutions, thereby providing lasting community benefits. The B&I program is administered by the RBS through Rural Development State and sub-State offices serving each state.

*Need and Use of the Information:* RBS will collect information to determine the eligibility and credit worthiness for a lender or borrower. The information is used by Agency loan officers and approval officials to determine lender program eligibility and for program monitoring.

*Description of Respondents:* Business or other for-profit; State, Local or Tribal Government.

*Number of Respondents:* 615.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 1,269.

*Title:* Intermediary Re-lending Program.

*OMB Control Number:* 0570–0021.

*Summary of Collection:* The objective of the Intermediary Relending Program (IRP) is to improve community facilities and employment opportunities and increase economic activity in rural areas by financing business facilities and community development. This purpose is achieved through loans made by the Rural Business-Cooperative Service (RBS) to intermediaries that establish programs for the purpose of providing loans to ultimate recipients for business facilities and community development. The Community Economic Development Act of 1981 (42 U.S.C. 9812(a), section 623(a)) provides for the Secretary the authority to make loans to nonprofit entities who will in turn provide financial assistance to rural businesses to improve business, industry and employment opportunities as well as provide a diversification of the economy in rural areas.

*Need and Use of the Information:* The information requested is necessary for RBS to process applications in a responsible manner, make prudent credit and program decisions, and effectively monitor the intermediaries' activities to protect the Government's financial interest and ensure that funds obtained from the Government are used appropriately. Various forms are used to include information to identify the intermediary, describe the intermediary's experience and expertise, describe how the intermediary will operate its revolving loan fund, provide for debt instruments, loan agreements, and security, and other material necessary for prudent credit decisions and reasonable program monitoring.

*Description of Respondents:* Not-for-profit institutions; Business or other for-profit.

*Number of Respondents:* 202.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 17,959.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2012–30974 Filed 12–21–12; 4:15 pm]

**BILLING CODE 3410–XT–P**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Information Collection Activity; Comment Request

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

**DATES:** Comments on this notice must be received by February 22, 2013.

**FOR FURTHER INFORMATION CONTACT:** Michele L. Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave. SW., STOP 1522, Room 5162-South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078, FAX: (202) 720–8435 or email: *michele.brooks@wdc.usda.gov.*

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele L. Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave. SW., Washington, DC 20250–1522, FAX: (202) 720–8435 or email: *michele.brooks@wdc.usda.gov.*

*Title:* Request for Release of Lien and/or Approval of Sale.

*OMB Control Number:* 0572–0041.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* The Rural Utilities Service (RUS) makes mortgage loans and loan guarantees to electric and telecommunications systems to provide and improve electric and telecommunications service in rural areas pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq,*) (RE Act). All current and future capital assets of RUS borrowers are ordinarily mortgaged or pledged to the Federal Government as security for RUS loans. Assets include tangible and intangible utility plant, non-utility property, construction in progress, and materials, supplies, and equipment normally used in a telecommunications system. The RE Act and the various security instruments, e.g., the RUS mortgage, limit the rights of a RUS borrower to dispose of its capital assets. The RUS Form 793, Request for Release of Lien and/or Approval of Sale, allows the telecommunications program borrower to seek agency permission to sell some of its assets. The form collects detailed information regarding the proposed sale of a portion of the borrower's system. RUS telecommunications borrowers fill out the form to request RUS approval in order to sell capital assets.

*Estimate of Burden:* public reporting burden for this collection of information is estimated to average 2.75 hours per response.

*Respondents:* Business or other for-profit; not-for-profit organizations.

*Estimated Number of Respondents:* 40.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 110.

Copies of this information collection can be obtained from Rebecca Hunt, Program Development and Regulatory Analysis, at (202) 205–3660, FAX: (202) 720–8435 or email: *rebecca.hunt@wdc.usda.gov.*

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

Dated: December 13, 2012.

**John Charles Padalino,**

*Acting Administrator, Rural Utilities Service.*

[FR Doc. 2012–30672 Filed 12–21–12; 8:45 am]

BILLING CODE P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Capital Construction Fund—Deposit/Withdrawal Report.

*OMB Control Number:* 0648–0041.

*Form Number(s):* NOAA 34–82.

*Type of Request:* Regular submission (extension of a current information collection).

*Number of Respondents:* 2,000.

*Average Hours per Response:* 20 minutes.

*Burden Hours:* 667.

*Needs and Uses:* This request is for an extension of a currently approved information collection. Respondents will be commercial fishing industry individuals, partnerships, and corporations which entered into Capital Construction Fund agreements with the Secretary of Commerce allowing deferral of Federal taxation on fishing vessel income deposited into the fund for use in the acquisition, construction, or reconstruction of fishing vessels. Deferred taxes are recaptured by reducing an agreement vessel's basis for depreciation by the amount withdrawn from the fund for its acquisition, construction, or reconstruction. The deposit/withdrawal information collected from agreement holders is required pursuant to 50 CFR part 259.35 and Public Law 99–514 (The Tax Reform Act, 1986). The information collected is required to ensure that agreement holders are complying with fund deposit/withdrawal requirements established in program regulations and properly accounting for fund activity on their Federal income tax returns. The information collected must also be reported semi-annually to the Secretary of Treasury in accordance with the Tax Reform Act.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* Annually.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and

Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov*.

Dated: December 19, 2012.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2012–30976 Filed 12–21–12; 4:15 pm]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Economic Value of Puerto Rico's Coral Reef Ecosystems for Recreation/Tourism.

*OMB Control Number:* None.

*Form Number(s):* NA.

*Type of Request:* Regular submission (request for a new information collection).

*Number of Respondents:* 32.

*Average Hours per Response:* 2 hours.

*Burden Hours:* 64.

*Needs and Uses:* This request is for a regular submission (new collection).

NOAA and the U.S. Environmental Protection Agency (EPA) have entered a partnership to estimate the market and non-market economic values of Puerto Rico's coral reef ecosystems. Estimates will be made for all ecosystem services for the Guanica Bay Watershed and for recreation-tourism for all of Puerto Rico's coral reef ecosystems.

The required information is to conduct focus groups to help in designing the full surveys of visitors and residents of Puerto Rico. The four focus groups; two visitor and two resident focus groups, will be used to address the attributes of coral reef ecosystems that people may consider important, and the levels of the attributes to be valued. Attributes would include natural attributes such as water clarity/visibility, coral cover and diversity, and fish abundance and diversity. In addition, issues such as crowded conditions or number of other users that users (e.g. SCUBA divers, snorkelers, recreational fishers, and wildlife viewers) see while doing their activities on the reefs will be evaluated. This set of focus groups will be conducted one time only.

*Affected Public:* Individuals or households.

*Frequency:* One time.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* *OIRA_Submission@omb.eop.gov*.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov*.

Dated: December 19, 2012.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2012–30977 Filed 12–21–12; 4:15 pm]

**BILLING CODE 3510–NK–P**

## DEPARTMENT OF COMMERCE

### U.S. Census Bureau

### Proposed Information Collection; Comment Request; The American Community Survey 2014 Content Change

**AGENCY:** U.S. Census Bureau, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** To ensure consideration, written comments must be submitted on or before February 25, 2013.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Cheryl Chambers, U.S. Census Bureau, American Community Survey Office, Washington, DC 20233 by FAX to (301) 763–8070 or via the Internet at *ACSO.communications@census.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

The American Community Survey (ACS) collects detailed population and housing data every month and provides tabulations of these data on a yearly basis. In the past, the long-form data were collected only at the time of each decennial census. After years of development and testing, the ACS began full implementation in households in January 2005 and in Group Quarters (GQs) in January 2006.

The ACS provides more timely information for critical economic planning by governments and the private sector. In the current information-based economy, federal, state, tribal, and local decision makers, as well as private business and non-governmental organizations, need current, reliable, and comparable socioeconomic data to chart the future. In 2006, the ACS began publishing up-to-date profiles of American communities every year, providing policymakers, planners, and service providers in the public and private sectors this information every year–not just every ten years.

The ACS released estimates of population and housing characteristics for geographic areas of all sizes in December 2010. These data products, used by federal agencies and others, are similar in scope to the Summary File 3 tables from Census 2000.

In April 2012, the Department of Health and Human Services requested that OMB and Census consider the addition of a health insurance exchange or premium subsidy question to the ACS. The proposed new question would focus on individuals securing health insurance through the state exchanges, with particular attention to those receiving a premium subsidy. This question would secure information critical to the Department's, the Administration's and states' planning, implementation and evaluation of the role of the health insurance exchanges and the provision of subsidies to eligible individuals and families; as well as provisions of the Patient Protection and Accountable Care Act (ACA) slated for full implementation beginning in

CY 2014. The new question would be in addition to and not a replacement of the current ACS health insurance question. In response to this request, the Census Bureau conducted qualitative testing in 2012 of an additional question related to subsidized premiums for health insurance. Based on the results of that testing, the Census Bureau is considering adding this topic to the ACS questionnaire in 2014.

The Census Bureau is also considering a modification to the ACS question on race for implementation in 2014. Based on testing conducted in parallel with the 2010 Census called the Alternative Questionnaire Experiment, the Census Bureau saw no negative impact in modifying the categories to the race question by removing the term ''Negro'' from the category ''Black, African American, or Negro.'' Given this finding, and previous negative feedback provided to the Census Bureau on the inclusion of this term in this category, the Census Bureau is proposing removing this term from this category in the 2014 ACS.

In an effort to enhance the value of data on vacant housing units, the Census Bureau is considering the expansion of the vacancy status categories from which Field Representatives (FRs) can choose as they try to determine the status of vacant housing units. Data users have expressed a strong interest in knowing the composition of the ''Other Vacant'' category, which can be as high as 30 percent of vacant housing units and which may contain a substantial number of housing units in the so-called ''shadow inventory'' of housing units that may come on the market at some point for rent or for sale.

## II. Method of Collection

The Census Bureau will mail survey instruction materials to households selected for the ACS. The materials will instruct the residents to complete the ACS questionnaire online. For households that do not complete the online questionnaire, Census Bureau staff will then mail out a questionnaire package. For households that complete neither an online form nor a paper form, Census Bureau staff will attempt to conduct interviews via Computer Assisted Telephone Interviewing (CATI). Census Bureau staff will also conduct Computer-Assisted Personal Interviewing (CAPI) for a sub sample of households that do not respond. The Census Bureau conducts a content re-interview from a small sample of respondents.

For most types of GQs, Census Bureau FRs will conduct personal interviews with respondents to complete questionnaires or, if necessary, leave questionnaires and ask respondents to complete. Census Bureau staff collects information from GQ contacts via CAPI. Census Bureau staff will conduct a GQ contact re-interview from a sample of GQs primarily through CATI and a very small percentage via CAPI.

The Census Bureau staff will provide Telephone Questionnaire Assistance (TQA) and if the respondent indicates a desire to complete the survey by telephone, the TQA interviewer conducts the interview.

## III. Data

*OMB Control Number:* 0607–0810.

*Form Number(s):* ACS–1, ACS–1(SP), ACS–1(PR), ACS–1(PR)SP, ACS–1(GQ), ACS–1(PR)(GQ), GQFQ, ACS CATI (HU), ACS CAPI (HU), ACS RI (HU), and AGQ QI, AGQ RI.

*Type of Review:* Regular submission.

*Affected Public:* Individuals, households, and businesses.

*Estimated Number of Respondents:* We plan to contact the following number of respondents each year: 3,540,000 households; 200,000 persons in group quarters; 20,000 contacts in group quarters; 43,000 households for re-interview; and 1,500 group quarters contacts for re-interview.

*Estimated Time per Response:* Estimates are 40 minutes per household, 15 minutes per GQ contact, 25 minutes per resident in GQ, and 10 minutes per household or GQ contact in the re-interview samples.

*Estimated Total Annual Burden Hours:* The estimate is an annual average of

2,337,900 burden hours.

*Estimated Total Annual Cost:* Except for their time, there is no cost to respondents.

*Respondent's Obligation:* Mandatory.

**Legal Authority:** Title 13, United States Code, Section 182.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 20, 2012.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2012–31002 Filed 12–21–12; 4:15 pm]

**BILLING CODE 3510–07–P**

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## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 57–2010]**

### Foreign-Trade Zone 148—Knoxville, Tennessee, Toho Tenax America, Inc., Subzone 148C (Carbon Fiber Manufacturing Authority); Extension of Comment Period on New Evidence

The comment period on new evidence provided by Toho Tenax America, Inc. (TTA), in response to the examiner's preliminary recommendation not to authorize TTA to manufacture carbon fiber for the U.S. market at this time, is being extended to February 11, 2013, to allow interested parties additional time in which to comment (77 FR 73978, 12/12/2012). Rebuttal comments may be submitted during the subsequent 15-day period, until February 26, 2013. Submissions (original and one electronic copy) shall be addressed to the Board's Executive Secretary at: Foreign-Trade Zones Board, U.S. Department of Commerce, Room 21013, 1401 Constitution Ave. NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: December 18, 2012.

**Elizabeth Whiteman,**

*Acting Executive Secretary.*

[FR Doc. 2012–30943 Filed 12–21–12; 8:45 am]

**BILLING CODE P**

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## DEPARTMENT OF COMMERCE

### Foreign–Trade Zones Board

**[B–92–2012]**

### Foreign-Trade Zone 26 — Atlanta, Georgia Notification of Proposed Production Activity Suzuki Mfg. of America Corp. (All-Terrain Vehicles) Rome, Jonesboro and Cartersville, Georgia

Georgia Foreign-Trade Zone, Inc., grantee of FTZ 26, submitted a

notification of proposed production activity on behalf of Suzuki Mfg. of America Corp. (SMAC), located in Rome, Jonesboro, and Cartersville, Georgia. The notification conforming to the requirements of the regulations of the Foreign-Trade Zones Board (15 CFR 400.22) was received on November 19, 2012.

The SMAC facilities are located at: 1520 and 1627 Technology Parkway, NW., Rome (Floyd County); 9250 Main Street, Jonesboro (Clayton County); and, 400 High Point Road Cartersville (Bartow County), Georgia. A separate request for subzone designation at the SMAC facilities has been processed under Section 400.24(c) of the Board's regulations. The facilities are used for the production of all-terrain vehicles (ATVs) and related components (carriers, footrests, fuel tanks, grips/handle bars, frames, rear box assemblies). Production under FTZ procedures could exempt SMAC from customs duty payments on the foreign status components and materials used in export production. On its domestic sales, SMAC would be able to choose the duty rate during customs entry procedures that apply to ATVs and related components (free—2.5%) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

Components and materials sourced from abroad include: articles of rubber, hoses, gaskets, washers, fasteners, springs, sign plates/labels, brackets, plates, braces, fittings, body parts, engines and related parts, pumps, fans, valves, hose/pipe assemblies, guides, electrical components, coils, sensors and related assemblies, resistors, horns, relays, switches, lighting equipment, radiators, electronic control units, stampings, other parts of ATVs, brake parts, axles, gauges, and wheels (duty rate ranges from free to 8.6%).

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 4, 2013.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Pierre Duy at Pierre.Duy@trade.gov, or (202) 482–1378.

Dated: December 19, 2012.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2012–31082 Filed 12–21–12; 4:15 pm]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–427–801, A–428–801, A–475–801]**

### Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011

*Correction*

In notice document 2012–29770, appearing on pages 73415–73417 in the issue of Monday, December 10, 2012, make the following correction:

On page 73416, in the second and third columns, the table is corrected to read as set forth below.

| Company | Margin (percent) |
|---|---|
| France: | |
| Audi AG | 0.00 |
| Bosch Rexroth SAS | 0.00 |
| Caterpillar Group Services S.A | 0.00 |
| Caterpillar Materials Routiers S.A.S | 0.00 |
| Caterpillar S.A.R.L | 0.00 |
| Perkins Engines Company Limited | 0.00 |
| SNECMA | 0.00 |
| NTN–SNR | 0.00 |
| Volkswagen AG | 0.00 |
| Volkswagen Zubehor GmbH | 0.00 |
| Germany: | |
| Bayerische Motoren Werke AG | 0.00 |
| Bosch Rexroth AG | 0.00 |
| BSH Bosch und Siemens Hausgerate GmbH | 0.00 |
| Caterpillar S.A.R.L. | 0.00 |
| myonic GmbH | 0.00 |
| Robert Bosch GmbH | 0.00 |
| Robert Bosch GmbH Power Tools and Hagglunds Drives | 0.00 |
| Italy: | |
| Audi AG | 0.00 |
| Bosch Rexroth S.p.A | 0.00 |
| Caterpillar Overseas S.A.R.L | 0.00 |
| Caterpillar of Australia Pty. Ltd | 0.00 |
| Caterpillar Group Services S.A | 0.00 |
| Caterpillar Mexico, S.A. de C.V | 0.00 |
| Caterpillar Americas C.V | 0.00 |
| Hagglunds Drives S.r.l | 0.00 |
| Perkins Engines Company Limited | 0.00 |
| Schaeffler Italia S.r.l. and WPB Water Pump Bearing GmbH & Co. KG, Schaeffler Italia SpA and The Schaeffler Group | 0.00 |
| SKF Industries S.p.A., Somecat S.p.A., and SKF RIV-SKF Officine di Villar Perosa S.p.A | 0.00 |
| SNECMA | 0.00 |
| Volkswagen AG | 0.00 |
| Volkswagen Zubehor GmbH | 0.00 |

[FR Doc. C1–2012–29770 Filed 12–21–12; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–552–813]**

### Certain Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination

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

**SUMMARY:** The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of steel wire garment hangers (garment hangers) from the Socialist Republic of Vietnam. For information on the estimated subsidy rates, *see* the ''Suspension of Liquidation'' section of this notice.

**DATES:** *Effective Date:* December 24, 2012.

**FOR FURTHER INFORMATION CONTACT:** Robert Copyak or John Coniff, AD/CVD Operations, Office 8, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–2209 and 202–482–1009, respectively.

**SUPPLEMENTARY INFORMATION**

### Background

This investigation, which covers 15 programs, was initiated on January 18, 2012.[1] The Petitioners in this investigation are M&B Metal Products Company, Inc., Innovative Fabrication LLC/Indy Hanger, and US Hanger Company, LLC. The respondents in this investigation are: South East Asia Hamico Export Joint Stock Company (SEA Hamico), Nam A Hamico Export Joint Stock Company (Nam A), and Linh

[1] *See Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigation.* 77 FR 3737 (January 2, 2011) (*Initiation*), and accompanying Initiation Checklist.

Sa Hamico Company Limited (Linh Sa) (collectively, the Hamico Companies), and Infinite Industrial Hanger Limited (Infinite) and Supreme Hanger Company Limited (Supreme) (collectively, the Infinite Companies).

**Period of Investigation**

The period of investigation for which we are measuring subsidies is January 1, 2011, through December 31, 2011.

**Case History**

The events that have occurred since the Department published the *Preliminary Determination* [2] are discussed in the Memorandum to Paul Piquado, Assistant Secretary for Import Administration, Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Steel Wire Garment Hangers From the Socialist Republic of Vietnam (Decision Memorandum).[3]

**Scope of the Investigation**

The merchandise subject to the investigation is steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and/or whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped, or latex (industrial) hangers.

Specifically excluded from the scope of the investigation are (a) Wooden, plastic, and other garment hangers that are not made of steel wire; (b) steel wire garment hangers with swivel hooks; (c) steel wire garment hangers with clips permanently affixed; and (d) chrome-plated steel wire garment hangers with a diameter of 3.4mm or greater.

The products subject to the investigation are currently classified under U.S. Harmonized Tariff Schedule (HTSUS) subheadings 7326.20.0020 and 7323.99.9080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

**Scope Comments**

As discussed in the *Initiation,* we set aside a period for interested parties to raise issues regarding product coverage.[4] However, no parties submitted scope comments on the records of the AD or CVD investigations.

**Critical Circumstances**

In the *Preliminary Critical Circumstances Determination,* the Department concluded that critical circumstances do not exist with respect to the Hamico Companies, in accordance with section 703(e)(1) of the Tariff Act of 1930, as amended (the Act).[5] However, the Department also concluded that critical circumstances exist for the Infinite Companies and for imports from ''all other'' exporters of garment hangers from Vietnam.[6] On December 7, 2012, Joobles LLC (Joobles), an importer of garment hangers, submitted comments regarding the *Preliminary Critical Circumstances Determination.*[7] On December 10, 2012, the Department rejected Joobles' critical circumstances submission because it contained untimely-filed factual information.[8] The Department invited Joobles to resubmit its comments with the untimely-filed factual information removed; however, Joobles did not resubmit its comments. The Department has otherwise received no other comments.

Because there are no comments on the record, we have not changed our findings from the *Preliminary Critical Circumstances Determination.* Therefore, in accordance with section 705(a)(2) of the Act, we continue to find that critical circumstances exist with respect to imports from the Infinite Companies and ''all other'' exporters of garment hangers from Vietnam.

**Analysis of Subsidy Programs and Comments Received**

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs submitted by parties in this investigation are addressed in the Decision Memorandum, dated concurrently with this notice. The Decision Memorandum is hereby incorporated in the final review results. A list of the issues raised is attached to this notice as Appendix I. The Decision Memorandum is a public document and is on file electronically via IA ACCESS. In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/.* The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

**Suspension of Liquidation**

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual rate for each producer/exporter of the subject merchandise investigated. We determine the total net countervailable subsidy rates to be:

| Producer/exporter | Net subsidy *ad valorem* rate |
|---|---|
| South East Asia Hamico Export Joint Stock Company (SEA Hamico), Nam A Hamico Export Joint Stock Company (Nam A), and Linh Sa Hamico Company Limited (Linh Sa) (collectively, the Hamico Companies) | 31.58 |
| Infinite Industrial Hanger Limited (Infinite) and Supreme Hanger Company Limited (Supreme) (collectively, the Infinite Companies) | 90.42 |
| All Others | 31.58 |

Section 705(c)(5)(A)(i) of the Act states that for companies not individually investigated, we will normally determine an all others rate equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates based entirely on adverse facts available (AFA) under section 776 of the Act.

For this final determination, because we are applying total AFA to the Infinite Companies, the only calculated total net countervailable subsidy rate is the rate we have determined for the Hamico Companies. Therefore, for the all others rate, we are using the Hamico Companies' rate.

As a result of our *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from Vietnam which were entered or withdrawn from warehouse, for consumption on or after

[2] *See Certain Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination,* 77 FR 32930 (June 4, 2012) (*Preliminary Determination*).

[3] Public versions of all business proprietary documents and all public documents are on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building.

[4] *See Initiation,* 77 FR at 3737.

[5] *See Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Critical Circumstances,* 77 FR 73430 (December 10, 2012) *Preliminary Critical Circumstances Determination.*

[6] *Id.*

[7] *See* Joobles December 7, 2012, submission.

[8] *See* the Memorandum to the File, ''Rejectioin Untimely Data From Joobles LC,'' (December 10, 2012).

June 4, 2012, the date of the publication of the *Preliminary Determination* in the **Federal Register**. Subsequently, as a result of our *Preliminary Critical Circumstances Determination,*[9] we instructed CBP to suspend liquidation of all entries of subject merchandise from ''all other'' exporters of garment hangers from Vietnam which were entered or withdrawn from warehouse, for consumption on or after March 6, 2012, which is 90 days prior to the date of publication in the **Federal Register** of the *Preliminary Determination.*

In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after October 2, 2012, but to continue the suspension of liquidation of all entries from June 4, 2012, through October 1, 2012.

If the International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order and reinstate the suspension of liquidation under section 706(a) of the Act and will require a cash deposit of estimated CVDs for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

## ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

## Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: December 17, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

## APPENDIX

**List of Comments and Issues in the Decision Memorandum**

Comment 1: Whether the Department Should Assign a Rate Based on Total Adverse Facts Available to the Infinite Companies

Comment 2: Whether Land Leased by SEA Hamcio Provided Countervailable Benefits to Hamico Companies

Comment 3: Whether Unpaid Annual Rent on Land Leased by SEA Hamico and Used by Linh Sa Provided Countervailable Benefits to the Hamico Companies

Comment 4: Whether Export Loans from VietinBank Provide a Government Financial Contribution

Comment 5: Whether Import Duty Exemption or Reimbursements for Raw Materials are Countervailable

Comment 6: Whether the Department Should Find the Newly Discovered Interest Support Program Countervailable

[FR Doc. 2012–30948 Filed 12–21–12; 8:45 am]

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[9] *See Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Critical Circumstances,* 77 FR 73430 (December 10, 2012) (*Preliminary Critical Circumstances Determination*).

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# DEPARTMENT OF COMMERCE

## International Trade Administration

**[C–580–869]**

## Large Residential Washers From the Republic of Korea: Final Affirmative Countervailing Duty Determination

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

**SUMMARY:** The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of large residential washers (washing machines) from the Republic of Korea (Korea). For information on the estimated subsidy rates, *see* the ''Suspension of Liquidation'' section of this notice.

**DATES:** Effective December 26, 2012.

**FOR FURTHER INFORMATION CONTACT:** Justin M. Neuman or Milton Koch, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0486 and (202) 482–2584, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

The U.S. producer that filed the petition for this investigation is Whirlpool Corporation (hereafter, Whirlpool, or ''petitioner''). The mandatory respondents in this investigation are: (1) Samsung Electronics Co., Ltd., and its cross-owned affiliates Samsung Electronics Service and Samsung Electronics Logitech (collectively, Samsung); (2) LG Electronics and its cross-owned affiliate, ServeOne Co., Ltd. (ServeOne) (collectively, LG); and (3) Daewoo Electronics Corporation (Daewoo).

## Period of Investigation

The period of investigation for which we are measuring subsidies is January 1, 2011, through December 31, 2011.

## Case History

The following events have occurred since the Department published the *Preliminary Determination.*[1] From May through September 2012, the Department issued several supplemental questionnaires to participating respondents. Those parties timely responded to the Department's supplemental questionnaires. In addition, on August 6, 2012, the Department published the *Scope Amendment.*[2]

On September 7, 11, and 13, the Department issued verification outlines to the Government of Korea (GOK), LG, and Samsung, respectively. The Department conducted verification from September 17, 2012, through September 27, 2012. On October 22, 2012, the Department issued verification reports for the GOK, Samsung, and LG. On October 31, 2012, the GOK filed its case brief. LG and Samsung filed case briefs on November 2, 2012. On November 7, 2012, the petitioner filed a rebuttal brief. The Department held a public hearing on November 17, 2012, based on the timely requests of the petitioner, Samsung, and LG.

[1] *See Large Residential Washers From the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination,* 77 FR 33181 (June 5, 2012) (*Preliminary Determination*).

[2] *Large Residential Washers From the Republic of Korea: Amendment to the Scope of the Countervailing Duty Investigation,* 77 FR 46715 (August 6, 2012) (*Scope Amendment*).

As explained in the Memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for this final countervailing duty (CVD) determination is December 18, 2012.[3]

**Scope Comments**

In the *Preliminary Determination,* the Department stated that it was evaluating comments filed by the parties regarding the scope in the companion antidumping duty investigation. That analysis was placed on the record of this investigation in the *Scope Amendment,* in which we modified the description of the scope of the investigations in the manner requested by the petitioner to exclude top-load washing machines with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet. On July 25, 2012, LG requested a modification to the scope. The petitioner filed its opposition to LG's request on August 27, 2012. We did not modify the scope as requested by LG for purposes of this final determination.[4] In the briefs filed by parties, LG and the petitioner commented on the *Scope Amendment* and LG's request to alter the scope of the investigation.

**Scope of the Investigation**

The products covered by this investigation are all large residential washers and certain subassemblies thereof.

For purposes of this investigation, the term ''large residential washers'' denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, except as noted below, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm).

Also covered are certain subassemblies used in large residential washers, namely: (1) All assembled cabinets designed for use in large residential washers which incorporate, at a minimum: (a) At least three of the six cabinet surfaces; and (b) a bracket; (2) all assembled tubs[5] designed for use in large residential washers which incorporate, at a minimum: (a) a tub; and (b) a seal; (3) all assembled baskets[6] designed for use in large residential washers which incorporate, at a minimum: (a) a side wrapper;[7] (b) a base; and (c) a drive hub;[8] and (4) any combination of the foregoing subassemblies.

Excluded from the scope are stacked washer-dryers and commercial washers. The term ''stacked washer-dryers'' denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer. The term ''commercial washer'' denotes an automatic clothes washing machine designed for the ''pay per use'' market meeting either of the following two definitions:

(1)(a) It contains payment system electronics;[9] (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners;[10] *or*

(2)(a) it contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such that, in normal operation,[11] the unit cannot begin a wash cycle without first receiving a signal from a *bona fide* payment acceptance device such as an electronic credit card reader; (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners.

Also excluded from the scope are automatic clothes washing machines with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet, as certified to the U.S. Department of Energy pursuant to 10 CFR § 429.12 and 10 CFR § 429.20, and in accordance with the test procedures established in 10 CFR Part 430.

The products subject to this investigation are currently classifiable under subheading 450.20.0090 of the Harmonized Tariff System of the United States (HTSUS). Products subject to this investigation may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

**Analysis of Subsidy Programs and Comments Received**

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Decision Memorandum, which is hereby adopted by this notice. A list of the subsidy programs and the issues that parties raised and to which we responded in the Decision Memorandum is attached to this notice as an Appendix. The Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum is also accessible on the Web at *http://www.trade.gov/ia/*. The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

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

[4] *See* accompanying Memorandum to Paul Piquado, Assistant Secretary for Import Administration, Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Large Residential Washers from the Republic of Korea (Decision Memorandum) at Comment 2.

[5] A ''tub'' is the part of the washer designed to hold water.

[6] A ''basket'' (sometimes referred to as a ''drum'') is the part of the washer designed to hold clothing or other fabrics.

[7] A ''side wrapper'' is the cylindrical part of the basket that actually holds the clothing or other fabrics.

[8] A ''drive hub'' is the hub at the center of the base that bears the load from the motor.

[9] ''Payment system electronics'' denotes a circuit board designed to receive signals from a payment acceptance device and to display payment amount, selected settings, and cycle status. Such electronics also capture cycles and payment history and provide for transmission to a reader.

[10] A ''security fastener'' is a screw with a non-standard head that requires a non-standard driver. Examples include those with a pin in the center of the head as a ''center pin reject'' feature to prevent standard Allen wrenches or Torx drivers from working.

[11] ''Normal operation'' refers to the operating mode(s) available to end users (*i.e.,* not a mode designed for testing or repair by a technician).

**Use of Facts Otherwise Available, Including Adverse Inferences**

For purposes of this final determination, we have continued to rely on facts available and have continued to apply adverse inferences in accordance with sections 776(a) and (b) of the Tariff Act of 1930, as amended (Act), to determine the countervailable subsidy rate for one respondent, Daewoo. A full discussion of our decision to apply adverse facts available (AFA) is presented in the Decision Memorandum in the section ''Application of Facts Available, Including the Application of Adverse Inferences.''

**Suspension of Liquidation**

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual countervailable subsidy rate for each respondent. Section 705(c)(5)(A)(i) of the Act states that for companies not individually investigated, we will determine an all-others rate equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates based entirely on AFA under section 776 of the Act.

In this investigation, the only non-*de minimis* rate not based entirely on AFA is the rate calculated for Samsung. Consequently, the rate calculated for Samsung is also assigned as the ''all-others'' rate. For Daewoo, which did not participate in this investigation, we have determined the subsidy rate based solely on AFA, in accordance with sections 776(a) and (b) of the Act.[12] Therefore, we determine the total estimated net countervailable subsidy rates to be:

| Company | *Ad valorem* net subsidy rate |
|---|---|
| Daewoo Electronics Corporation | 72.30 percent |
| LG Electronics Inc. | 0.01 percent |
| Samsung Electronics Co., Ltd. | 1.85 percent |
| All-Others | 1.85 percent |

As a result of our *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from Korea, other than those produced/exported by LG, which received a *de minimis* countervailable subsidy rate in the *Preliminary Determination,* entered or withdrawn from warehouse, for consumption on or after June 5, 2012, the date of the publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we subsequently issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after October 3, 2012, but to continue the suspension of liquidation of all entries from June 5, 2012, through October 2, 2012.

If the ITC issues a final affirmative injury determination, we will issue a CVD order and reinstate the suspension of liquidation, and we will require a cash deposit for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

**ITC Notification**

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

**Return or Destruction of Proprietary Information**

In the event that the ITC issues a negative final injury determination, this notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: December 18, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

## Appendix

**Subsidy Valuation Information**

- Cross-Ownership and Attribution of Subsidies
- Allocation Period
- Interest Rate Benchmarks For Loans

**Application of Facts Available, Including the Application of Adverse Inferences**

**Analysis of Programs**

- Programs Determined To Be Countervailable
  - o KDB and IBK Short-Term Discounted Loans for Export Receivables
  - o Income Tax Programs
    - ■ Research, Supply, or Workforce Development Investment Tax Deductions for ''New Growth Engines'' under RSTA Article 10(1)(1)
    - ■ Research, Supply, or Workforce Development Expense Tax Deductions for ''Core Technologies'' under RSTA Article 10(1)(2)
    - ■ Tax Reduction for Research and Manpower Development: RSTA 10(1)(3)
    - ■ RSTA Article 25(2) Tax Deductions for Investments in Energy Economizing Facilities
    - ■ RSTA Article 26 Tax Deduction for Facilities Investment
  - o Gwangju Metropolitan City Production Facilities Subsidies: Tax Reductions/Exemptions under Article 276 of the Local Tax Act
  - o Grant Programs
    - ■ GOK Subsidies for ''Green Technology R&D'' and its Commercialization
    - ■ GOK 21st Century Frontier R&D Program/Information Display R&D Center Program
    - ■ Support for SME ''Green Partnerships''
    - ■ Grants Discovered at Verification
- Program Determined To Be Not Countervailable
  - o K–SURE—Short-term Export Credit Insurance
- Programs Determined To Be Not Used''o Daewoo Restructuring
  - ■ GOK-Directed Equity Infusions under the Daewoo Workout
  - ■ GOK-Directed Ongoing Preferential Lending under the Daewoo Workout
  - o IBK Preferential Loans to Green Enterprises
  - o KEXIM Export Factoring
  - o GOK Supplier Support Fund Tax Deduction

**Analysis of Comments**

Comment 1: Scope Exclusion of Smaller Top-Load Washers

Comment 2: Request To Exclude Larger-Width Washers From the Scope

Comment 3: Whether Samsung's Export Receivables That Were Negotiated With KDB and IBK Are Loans

[12] *See* the ''Application of Facts Available, Including the Application of Adverse Inferences'' section of the Decision Memorandum.

Comment 4: Whether the Department Erred in Selecting a Benchmark Interest Rate To Measure the Benefit to Samsung Under the KDB/IBK Loan Program
Comment 5: Whether Premiums Charged by K–SURE Are Adequate to Cover the Long-Term Operating Costs and Losses of the Program
Comment 6: Whether RSTA Article 10(1)(3) Is *de Facto* Specific
Comment 7: Whether Income Tax Credits Should Be Attributed to Non-Subject Merchandise
Comment 8: Whether RSTA Article 25(2) Is *de Facto* Specific
Comment 9: Whether RSTA Article 26 is Regionally Specific
Comment 10: Whether the Department Should Offset Exempted Acquisition or Registration Taxes by the Amount of Special Rural Development Tax Paid
Comment 11: Whether the Green Technology R&D Program Is Countervailable
Comment 12: Whether Grants Received by Samsung under the ''21st Century Frontier and Other R&D Programs'' Program Are Countervailable
Comment 13: Whether the Department Should Adjust Samsung's Total Sales Denominator to Exclude Sales of Services or Goods Manufactured Outside of Korea
Comment 14: Whether the Department Erred in Its Calculation of the Subsidy Rate for LG's Use of the ''Green Technology R&D'' Program
Comment 15: Whether the Department Erred in Finding That the ''SME Green Partnerships'' Program Provides a Benefit to LG
Comment 16: Whether the Department Erred in Attributing Subsidies Received by ServeOne to LG
Comment 17: Whether the Department Should Continue To Find Other Programs To Be Not Countervailable
Comment 18: Whether the Department Should Countervail Other Grants Received by Samsung That Were Identified at Verification

[FR Doc. 2012–31078 Filed 12–21–12; 4:15 pm]
**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–982]**

### Utility Scale Wind Towers From the People's Republic of China: Final Affirmative Countervailing Duty Determination

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

**SUMMARY:** The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of utility scale wind towers (wind towers) from the People's Republic of China (the PRC). For information on the estimated subsidy rates, *see* the ''Suspension of Liquidation'' section of this notice.

**DATES:** *Effective Date:* December 24, 2012.

**FOR FURTHER INFORMATION CONTACT:** Kristen Johnson or Patricia Tran, AD/CVD Operations, Office 8, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–4793 and 202–482–1503, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

This investigation, which covers 54 programs, was initiated on January 18, 2012.[1] The Petitioner in this investigation is the Wind Tower Trade Coalition.[2] The respondents in this investigation are: CS Wind China Co., Ltd. and its affiliates (collectively, CS Wind) and Titan Wind Energy (Suzhou) Co., Ltd. and its affiliates (collectively, the Titan Companies).

#### Period of Investigation

The period of investigation for which we are measuring subsidies is January 1, 2011, through December 31, 2011.

#### Case History

The events that have occurred since the Department published the *Preliminary Determination*[3] on June 6, 2012, are discussed in the Memorandum to Paul Piquado, Assistant Secretary for Import Administration, Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Utility Scale Wind Towers from the People's Republic of China (Decision Memorandum).[4]

#### Scope of the Investigation

The merchandise covered by this investigation are certain wind towers, whether or not tapered, and sections thereof. Certain wind towers are designed to support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.,* where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.,* flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with non-subject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof.

Merchandise covered by the investigation is currently classified in the Harmonized Tariff System of the United States (HTSUS) under subheadings 7308.20.0020[5] or 8502.31.0000.[6] Prior to 2011, merchandise covered by this investigation was classified in the HTSUS under subheading 7308.20.0000 and may continue to be to some degree. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

#### Scope Comments

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit

[1] *See Utility Scale Wind Towers From the People's Republic of China: Initiation of Countervailing Duty Investigation,* 77 FR 3447 (January 24, 2012) (*Initiation Notice*), and accompanying Initiation Checklist.

[2] The following companies compose the Wind Tower Trade Coalition: Broadwind Towers, Inc., DMI Industries, Katana Summit LLC, and Trinity Structural Towers, Inc.

[3] *See Utility Scale Wind Towers From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 77 FR 33422 (June 6, 2012) (*Preliminary Determination*).

[4] Public versions of all business proprietary documents and all public documents are on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building.

[5] Wind towers are classified under HTSUS 7308.20.0020 when imported as a tower or tower section(s) alone.

[6] Wind towers may also be classified under HTSUS 8502.31.0000 when imported as part of a wind turbine (*i.e.,* accompanying nacelles and/or rotor blades).

comments within 20 calendar days of publication of that notice.[7] On February 7, 2012, we received scope comments from the Petitioner.

The Department considered Petitioner's comments and issued its decision to not adopt the revised scope language proposed by Petitioner in the preliminary determination of the companion antidumping (AD) investigation.[8] For the final determination, the Department received comments regarding the scope of the investigation from Petitioner, Chengxi Shipyard Co., Ltd., and Titan Companies. After analyzing the comments, the Department has made no changes to the scope of this investigation. For a complete discussion of this issue, see the Issues and Decision Memorandum at Comment 4 of the AD investigation.

## Analysis of Subsidy Program and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs submitted by parties in this investigation are addressed in the Decision Memorandum, dated concurrently with this notice and hereby adopted by this notice. A list of the issues raised is attached to this notice as Appendix I. The Decision Memorandum is a public document and is on file electronically via IA ACCESS. In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/*. The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

## Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Tariff Act of 1930, as amended (the Act), we have calculated an individual rate for each producer/exporter of the subject merchandise investigated. We determine the total net countervailable subsidy rates to be:

| Producer/exporter | Net subsidy ad valorem rate (percent) |
|---|---|
| CS Wind China Co., Ltd., CS Wind Tech (Shanghai) Co., Ltd., and CS Wind Corporation (collectively, CS Wind) ... | 21.86 |
| Titan Wind Energy (Suzhou) Co. Ltd. (Titan Wind), Titan Lianyungang Metal Product Co. Ltd. (Titan Lianyungang), Baotou Titan Wind Power Equipment Co., Ltd. (Titan Baotou), and Shenyang Titan Metal Co., Ltd. (Titan Shenyang) (collectively, Titan Companies) ..... | 34.81 |
| All Others ..... | 28.34 |

Section 705(c)(5)(A)(i) of the Act states that for companies not individually investigated, we will determine an all others rate equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates based entirely on AFA under section 776 of the Act.

Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the ''all others'' rate by weight averaging the rates of CS Wind and the Titan Companies, because doing so risks disclosure of proprietary information. Therefore, for the all others rate, we have calculated a simple average of the two responding firms' rates.

As a result of our *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from the PRC which were entered or withdrawn from warehouse, for consumption on or after June 6, 2012, the date of the publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we later issued instructions to CBP to discontinue the suspension of liquidation for countervailing duty purposes for subject merchandise entered or withdrawn from warehouse, on or after October 4, 2012, but to continue the suspension of liquidation of all entries from June 6, 2012, through October 3, 2012.

If the ITC issues a final affirmative injury determination, we will issue a CVD order, we will instruct CBP to reinstate the suspension of liquidation under section 706(a) of the Act, and we will instruct CBP to require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

## ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

## Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: December 17, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

## Appendix—List of Comments and Issues in the Decision Memorandum

### General Issues

Comment 1: Application of CVD Law to China

Comment 2: Simultaneous Application of CVD and AD Non-Market Economy Measures

### Preferential Policy Lending

Comment 3: Specificity of Preferential Policy Lending

Comment 4: Whether State-Owned Commercial Banks Are Authorities

Comment 5: Use of an In-Country Benchmark to Measure the Benefit from Preferential Policy Lending

Comment 6: Flaws in the Calculation of the External Preferential Policy Lending Benchmark

[7] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997); and *Initiation Notice,* 77 FR 3447–8.

[8] *See Utility Scale Wind Towers From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 77 FR 46034, 46035–36 (August 2, 2012).

**Export Buyer's Credits Program**

Comment 7: Application of Adverse Facts Available (AFA) to the Export Buyer's Credits Program
Comment 8: Selection of AFA Rate for Export Buyer's Credits
Comment 9: Treatment of the AFA Rate for Export Buyer's Credits in the AD Investigation

**Provision of Hot-Rolled Steel (HRS) for Less Than Adequate Remuneration (LTAR)**

Comment 10: Whether HRS Allegation Was Sufficient to Initiate an Investigation
Comment 11: Whether Application of AFA for HRS for LTAR Establishes the Existence of a Financial Contribution
Comment 12: Whether HRS Producers are Authorities
Comment 13: Specificity Finding for HRS for LTAR
Comment 14: Whether HRS Purchases are Alloy or Non-Alloy
Comment 15: Construction of HRS Benchmark

**Provision of Electricity for LTAR**

Comment 16: Electricity Benchmarks

**Tax Programs**

Comment 17: *De Jure* Specificity of Three Tax Programs; Whether the Tax Programs Are Limited to Certain Enterprises or Groups of Enterprises

**Company-Specific Issues**

Comment 18: Allocation of CS Wind's Grants
Comment 19: Value Added Tax and Import Duties in the HRS Benchmark Used to Calculate CS Wind's Benefit
Comment 20: Whether the Department Should Apply Total AFA for HRS for LTAR with Respect to Titan Companies
Comment 21: Titan Companies' Sales Denominator

[FR Doc. 2012–30947 Filed 12–21–12; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–552–812]**

### Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances

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

**DATES:** *Effective Date:* December 24, 2012.

**SUMMARY:** On August 2, 2012, the Department of Commerce (''the Department'') published its notice of preliminary determination of sales at less than fair value (''LTFV'') in the antidumping investigation of steel wire garment hangers from the Socialist Republic of Vietnam (''Vietnam'').[1] We invited interested parties to comment on our *Preliminary Determination* of sales at LTFV. We continue to determine that steel wire garment hangers from Vietnam are being, or are likely to be, sold in the United States at LTFV as provided in section 735 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are shown in the ''Final Determination Margins'' section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Irene Gorelik or Robert Palmer, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone: (202) 482–6905 or (202) 482–9068, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Case History

The Department published its *Preliminary Determination* on August 2, 2012.[2] On August 2, 2012, Petitioners[3] filed an allegation of critical circumstances.[4] On August 3, 2012, the TJ Group[5] filed a letter withdrawing its participation from this investigation.[6] On August 24, 2012, the Department published its preliminary affirmative determination of critical circumstances.[7] On August 31, 2012, we received a case brief from Godoxa International LLC and Joobles LLC, two U.S. importers of the merchandise under consideration.[8] We did not receive case or rebuttal briefs from any other interested parties.

#### Period of Investigation

The period of investigation (''POI'') is April 1, 2011, through September 30, 2011.

#### Verification

The Department did not verify the information submitted by TJ Group pursuant to section 782(i) of the Act because the TJ Group withdrew its participation after the *Preliminary Determination,* including from the Department's planned verification. As a result, the Department did not rely upon the TJ Group's submitted information in reaching the final determination.

#### Analysis of Comments Received

All issues raised in the case brief to this investigation are addressed in the Issues and Decision Memorandum (''Decision Memo''). A list of the issues which parties have raised and to which we have responded in the Decision Memo is attached to this notice as Appendix I. The Decision Memo is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit (''CRU''), room 7046 of the main Department of Commerce building. In addition, a complete version of the Decision Memo can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The paper copy and electronic version of the Decision Memo are identical in content.

#### Changes Since the Preliminary Determination

For the final determination, we have based the TJ Group's margin on total adverse facts available (''AFA'') because of its failure to participate and consider it as part of the Vietnam-wide entity, as detailed below. Furthermore, for the final determination, the separate rate has been revised for the non-individually examined respondents that received a preliminary separate rate margin which had been based on the TJ Group's calculated margin.

#### Scope of Investigation

The merchandise subject to this investigation is steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and whether or not fashioned with paper covers or capes (with or without printing) or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped, or latex (industrial) hangers.

Specifically excluded from the scope of the investigation are (a) Wooden, plastic, and other garment hangers that

[1] *See Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 77 FR 46044 (August 2, 2012) (''*Preliminary Determination*'').

[2] *See id.*

[3] M&B Metal Products Company, Inc.; Innovative Fabrication LLC/Indy Hanger; and US Hanger Company, LLC.

[4] *See* Letter from Petitioners re; Allegation of Critical Circumstances, dated August 2, 2012.

[5] The TJ Group consists of: the Pre-Supreme Entity, Infinite Industrial Hanger Limited, and TJ Co., Ltd. *See, e.g., Preliminary Determination,* 77 FR at 46047–48, 46053 n. 109.

[6] *See* TJ Group's Letter of Withdrawal, dated August 3, 2012, at 1–2.

[7] *See Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation,* 77 FR 51514 (August 24, 2012) (''*Preliminary Critical Circumstances Determination*'').

[8] *See* Godoxa's and Joobles' Submission dated August 31, 2012.

are not made of steel wire; (b) steel wire garment hangers with swivel hooks; (c) steel wire garment hangers with clips permanently affixed; and (d) chrome plated steel wire garment hangers with a diameter of 3.4 mm or greater.

The products subject to the investigation are currently classified under U.S. Harmonized Tariff Schedule (''HTSUS'') subheadings 7326.20.0020 and 7323.99.9080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

**Use of Facts Available, Adverse Facts Available, and the Vietnam-Wide Rate**

Section 776(a) of the Act provides that if necessary information is not available on the record or if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party ''promptly after receiving a request {from the Department} for information, notifies {the Department} that such party is unable to submit the information in the requested form and manner, together with a full explanation and suggested alternative form in which such party is able to submit the information,'' the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed ''deficient'' under section 782(d) of the Act if: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act states that if the Department finds that an interested party has not acted to the best of its ability to comply with a request for information, the Department may, in reaching its determination, use an inference that is adverse to that party. The adverse inference may be based upon: (1) The petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 of the Act or determination under section 753 of the Act, or (4) any other information placed on the record.

In this investigation, the Department selected South East Asia Hamico Export Joint Stock Company (''Hamico'') and the TJ Group as mandatory respondents for individual examination.[9] In the *Preliminary Determination,* the Department determined that there were exporters/producers of the merchandise under investigation during the POI from Vietnam, including Hamico,[10] that either did not respond to the Department's request for information or failed to provide information that was not available on the record but necessary to calculate an accurate dumping margin. Therefore, pursuant to 776(a)(2)(A) and (B) of the Act, we treated these Vietnamese exporters/producers, including Hamico, as part of the Vietnam-wide entity because they did not qualify for a separate rate.[11] Further, we preliminarily found that the Vietnam-wide entity was non-cooperative because certain companies did not respond to our requests for information.[12] As a result, pursuant to section 776(b) of the Act, we preliminarily found that the use of AFA was warranted to determine the Vietnam-wide rate.[13] As AFA, we preliminarily assigned to the Vietnam-wide entity a rate of 187.51 percent, which was the highest transaction-specific rate calculated for the TJ Group at the *Preliminary Determination*.[14] Because no information has been placed on the record to contradict our *Preliminary Determination,* we continue to find, for the final determination, that the application of AFA to the Vietnam-wide entity, including Hamico and the TJ Group, is appropriate.

*The TJ Group*

As noted above, on August 3, 2012, the TJ group withdrew its participation from this investigation, including the scheduled verification of its books and records. By ceasing to participate in the investigation and withdrawing from the verification of its questionnaire responses, the TJ Group withheld information requested by the Department, failed to provide such information in a timely manner, and prevented the Department from verifying the accuracy of its information as provided by section 782(i) of the Act, pursuant to sections 776(a)(2)(A), (C), and (D) of the Act. These actions also have caused the TJ Group to fail to demonstrate its eligibility for a separate rate.[15] Therefore, for the final determination, the Department finds that the TJ Group is considered to be part of the Vietnam-wide entity (along with Hamico and the companies unresponsive to the Q&V questionnaires).

*The Vietnam-Wide Rate*

Because we begin with the presumption that all companies within a non-market economy (''NME'') country are subject to government control, and because only the companies listed under the ''Final Determination Margins'' section, below, have overcome that presumption, we are applying a single antidumping rate (*i.e.,* the Vietnam-wide rate) to all other exporters of the merchandise under consideration. Consistent with our practice, we find that these other companies did not demonstrate entitlement to a separate rate.[16] The Vietnam-wide rate applies to all entries of merchandise under consideration except for entries from CTN Limited

[9] *See* ''Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from James C. Doyle, Director, Office 9; Antidumping Duty Investigation of Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Respondent Selection,'' dated February 16, 2012.

[10] We preliminarily found that Hamico failed to provide the information requested by the Department in a timely manner and in the form required, and significantly impeded the Department's ability to calculate an accurate margin. The Department was unable to calculate a margin without the necessary information, requiring the application of facts otherwise available to Hamico for the purpose of the *Preliminary Determination. See Preliminary Determination,* 77 FR at 46049–51.

[11] *See id.*

[12] *See id.*

[13] *See id.*

[14] *See id.,* 77 FR at 46053.

[15] *See* section 776(a)(2)(D) of the Act.

[16] *See, e.g., Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value,* 65 FR 25706, 25707 (May 3, 2000).

Company, Ju Fu Co., Ltd., and Triloan Hangers, Inc., which are listed in the ''Final Determination Margins'' section below.

In the *Preliminary Determination,* the Department determined that, in selecting from among the facts available (''FA''), an adverse inference is appropriate because the Vietnam-wide entity failed to cooperate by not acting to the best of its ability to comply with requests for information.[17] As AFA, we preliminarily assigned to the Vietnam-wide entity a rate of 187.51 percent, the highest transaction-specific rate calculated for the TJ Group.[18] However, since the TJ Group is now part of the Vietnam-wide entity the Department can no longer rely on the TJ Group's highest transaction-specific margin of 187.51 percent as the AFA rate.

As stated above, the Vietnam-wide entity did not respond to our requests for information and withheld information requested by the Department pursuant to sections 776(a)(2)(A) and (B) of the Act. Because the Vietnam-wide entity now also includes the TJ Group, we also find that the Vietnam-wide entity withheld information requested by the Department, significantly impeded the Department's proceeding, and refused to allow verification of its data, pursuant to sections 776(a)(2)(A), (C), and (D) of the Act. Therefore, we determine, as in the *Preliminary Determination,* that the use of facts otherwise available is appropriate to determine the Vietnam-wide rate.

*Selection of the Adverse Facts Available Rate*

As noted above, section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. As outlined above, the Vietnam-wide entity withheld information requested by the Department, failed to provide such information in a timely manner, significantly impeded the Department's proceeding, and refused to allow verification of its data, pursuant to sections 776(a)(2)(A), (B), (C), and (D) of the Act. For these reasons, we find that the Vietnam-wide entity has failed to cooperate to the best of its ability and that it is appropriate, in selecting from among the facts otherwise available, to determine an adverse inference for the Vietnam-wide entity.

In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.[19] Because there are no longer any mandatory respondents on whose information we can rely, consistent with our practice, we determine that the appropriate rate to select as AFA is 220.68 percent, the highest margin alleged in the Petition.[20]

**Corroboration**

Section 776(c) of the Act provides that, when the Department relies on secondary information, rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described in the SAA as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under Section 751 concerning the subject merchandise.''[21] The SAA provides that to ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value.[22] The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[23] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.[24]

At the *Preliminary Determination,* as AFA, we preliminarily assigned to the Vietnam-wide entity a rate of 187.51 percent, the highest transaction-specific rate calculated for the TJ Group.[25] However, since that rate is no longer reliable, the Department has determined to rely on the highest Petition[26] margin of 220.68 percent to assign, as AFA, to the Vietnam-wide entity.

For the final determination, because there were no margins calculated for the mandatory respondents, to corroborate the 220.68 percent margin used as AFA for the Vietnam-wide entity, to the extent appropriate information was available, we are affirming our pre-initiation analysis of the adequacy and accuracy of the information in the Petition.[27] During our pre-initiation analysis, we examined evidence supporting the calculations in the Petition and the supplemental information provided by Petitioners prior to initiation to determine the probative value of the margins alleged in the Petition. During our pre-initiation analysis, we examined the information used as the basis of export price and normal value (''NV'') in the Petition, and the calculations used to derive the alleged margins. Also during our pre-initiation analysis, we examined

[17] *See Preliminary Determination,* 77 FR at 46049–51.

[18] *See id.,* 77 FR at 46051; *see also* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103–316, vol. 1, at 870 (1994) (''SAA'').

[19] *See Preliminary Determination,* 77 FR at 46050 n.79; *see also Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China,* 65 FR 34660 (May 21, 2000) and accompanying Issues and Decision Memorandum at Comment 1; *Circular Welded Austenitic Stainless Pressure Pipe,* 74 FR at 4915; *Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 14514, 14515 (March 31, 2009) (''*Circular Welded Carbon Quality Steel Pipe*'').

[20] *See Steel Wire Garment Hangers From the Socialist Republic of Vietnam and Taiwan: Initiation of Antidumping Duty Investigations,* 77 FR 3731, 3735 (''*Initiation Notice*'') (where the Department stated that ''the estimated dumping margins for steel wire garment hangers from Vietnam range from 117.48 percent to 220.68 percent.''); *see also* ''Antidumping Duty Investigation Initiation Checklist: Steel Wire Garment Hangers from Vietnam'' (''Initiation Checklist'') at 9 and Appendix V.; and ''Petitions for the Imposition of Antidumping Duties on Steel Wire Garment Hangers From Taiwan and Antidumping and Countervailing Duties on Steel Wire Garment Hangers from the Socialist Republic of Vietnam,'' filed on December 29, 2011 (the ''Petition'').

[21] *See* SAA at 870.

[22] *See id.*

[23] *See id.*

[24] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997).

[25] *See Preliminary Determination,* 77 FR at 46051; *see also* SAA at 870.

[26] *See Initiation Notice,* 77 FR at 3735 (where the Department stated that ''the estimated dumping margins for steel wire garment hangers from Vietnam range from 117.48 percent to 220.68 percent.''); *see also* Initiation Checklist at 9 and Appendix V; and the Petition.

[27] *See Initiation Notice,* 77 FR at 3731, 3735; *see also* Initiation Checklist at 9 and Appendix V and the Petition.

information from various independent sources provided either in the Petition or, based on our requests, in supplements to the Petition, which corroborated key elements of the export price and NV calculations.[28] For the final determination, we have corroborated our AFA margin by re-examining and affirming our pre-initiation analysis. Moreover, we have found no record evidence that contradicts our conclusion. Additionally, no parties commented on the selection of the Vietnam-wide rate. Therefore, we continue to find that the margin of 220.68 percent has probative value. Accordingly, we find that the rate of 220.68 percent is corroborated within the meaning of section 776(c) of the Act.

**Separate Rates**

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[29]

In the *Preliminary Determination,* we found that CTN Limited Company, Ju Fu Co., Ltd., and Triloan Hangers, Inc., demonstrated their eligibility for, and were hence assigned, separate rate status. No party has commented on the eligibility of these companies for separate rate status. Therefore, for the final determination, we continue to find that the evidence placed on the record of this investigation by these companies demonstrates both a *de jure* and *de facto* absence of government control with respect to their exports of the merchandise under investigation. Thus, we continue to find that they are eligible for separate rate status.

**Calculation of Separate Rate**

As stated in the *Preliminary Determination,* the statute and our regulations do not address directly how we should establish a rate to apply to imports from companies which we did not select for individual examination in accordance with section 777A(c)(2) of the Act in a NME investigation.[30] Generally, we have used section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy (''ME'') investigation, as guidance when we establish the rate for respondents not examined individually in a NME investigation.[31] Section 735(c)(5)(A) of the Act provides that ''the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated * * *.'' However, section 735(c)(5)(B) of the Act provides that if the estimated weighted-average margins for all individually investigated respondents are *de minimis* or based entirely on FA, the Department may use any reasonable method to determine the separate rate margin.

In this final determination, the rates assigned to the mandatory respondents are based entirely upon FA. Consequently, pursuant to section 735(c)(5)(B) of the Act, we have determined the separate rate margin using a reasonable method that is consistent with our established practice. Specifically, we have assigned to the separate rate respondents the simple average of all of the margins alleged in the Petition,[32] as noted in the *Initiation Notice,*[33] which is 157.00 percent.[34]

**Critical Circumstances**

On August 2, 2012, Petitioners submitted an allegation of critical circumstances with respect to the merchandise under consideration. On August 24, 2012, we issued the *Preliminary Critical Circumstances Determination,* stating that we had reason to believe or suspect critical circumstances exist with respect to imports of steel wire garment hangers from Vietnam. For the final determination, we are affirming our preliminary affirmative determination of critical circumstances and continue to find that critical circumstances exist with respect to imports of steel wire garment hangers from Vietnam.[35]

**Final Determination Margins**

We determine that the following margins exist for the following entities for the POI:[36]

| Exporter | Producer | Margin (percent) |
|---|---|---|
| CTN Limited Company | CTN Limited Company | 157.00 |
| Ju Fu Co., Ltd | Ju Fu Co., Ltd | 157.00 |
| Triloan Hangers, Inc | Triloan Hangers, Inc | 157.00 |
| **Vietnam-Wide Entity**[36] | | 220.68 |

[28] *See id.*

[29] *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''); *see also* 19 CFR 351.107(d).

[30] *See Preliminary Determination,* 77 FR at 46049.

[31] *See, e.g., Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part,* 77 FR 63791, 63794 (Oct. 17, 2012).

[32] *See* the Petition.

[33] *See Initiation Notice,* 77 FR at 3731.

[34] *See, e.g., Aluminum Extrusions From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 76 FR 18524, 18525 (April 4, 2011) (''For the final determination, we have assigned the 29 separate rate applicants to whom we are granting a separate rate a dumping margin of 32.79 percent, based on the simple average of the margins alleged in the petition * * *''); *see also Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe From the People's Republic of China,* 73 FR 31970, 31971–31972 (June 5, 2008) (''* * * we have assigned to the separate rate companies the simple average of the margins alleged in the petition.''); *see also Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China,* 73 FR 6479, 6480–6481 (February 4, 2008) (''Specifically, we have assigned an average of the margins calculated for purposes of initiation as the separate rate for the final determination.'').

[35] *See* Decision Memo at Comment 1.

[36] The Vietnam-wide entity includes South East Asia Hamico Export Joint Stock Company, the TJ Group (consisting of the Pre-Supreme Entity, Infinite Industrial Hanger Limited, and TJ Co., Ltd.) and the following companies: Acton Co., Ltd.; Angang Clothes Rack Manufacture Co.; Asmara Home Vietnam; B2B Co., Ltd.; Capco Wai Shing Viet Nam Co., Ltd.; Dai Nam Investment JSC; Diep Son Hangers One Member Co. Ltd.; Dong Nam A Co., Ltd.; Dong Nam A Trading Co.; EST Glory Industrial Ltd.; Focus Shipping Corp.; Godoxa Viet Nam Ltd.; HCMC General Import And Export Investment JSC; Hongxiang Business And Product Co., Ltd.; Linh Sa Hamico Company, Ltd.; Minh Quang Steel Joint Stock Company; Moc Viet Manufacture Co., Ltd.; Nam A Hamico Export Joint Stock; N-Tech Vina Co., Ltd.; NV Hanger Co., Ltd. (A/K/A Nguyen Hoang Vu Co., Ltd.); Ocean Star Transport Co., Ltd.; Quoc Ha Production Trading Service; Quyky (Factory); Quyky Group/Quyky Co., Ltd./Quyky-Yanglei International Co., Ltd.; S.I.I.C.; Tan Minh Textile Sewing Trading Co., Ltd.; Thanh Hieu Manufacturing Trading Co. Ltd.; The Xuong Co., Ltd.; Thien Ngon Printing Co., Ltd.; Top Sharp International Trading Limited; Trung Viet My Joint Stock Company; Viet Anh Imp-Exp Joint Stock Co.; Viet Hanger Investment, LLC/Viet Hanger; Vietnam Hangers Joint Stock Company; VNS/VN Sourcing/Vietnam Sourcing; and Yen Trang Co., Ltd.

**Disclosure**

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

**Continuation of Suspension of Liquidation**

As noted above, the Department found that critical circumstances exist with respect to imports of merchandise under consideration from the Vietnam-wide entity and the separate rate recipients, CTN Limited Company, Ju Fu Co., Ltd., and Triloan Hangers, Inc. In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection (''CBP'') to continue to suspend liquidation of all appropriate entries of subject merchandise, as described in the ''Scope of Investigation'' section of this notice, from the separate rate recipients and the Vietnam-wide entity that were entered, or withdrawn from warehouse for consumption on or after the date 90 days prior to the publication in the **Federal Register** of the *Preliminary Determination.*

Further, the Department will instruct CBP to require a cash-deposit equal to the weighted-average amount by which the normal value exceeds U.S. price, adjusted where appropriate for export subsidies, as follows: (1) The rate for the exporter/producer combinations listed in the table above will be the rate we have determined in this final determination; (2) for all Vietnamese exporters of merchandise under consideration which have not received their own rate, the cash-deposit rate will be the Vietnam-wide rate; and (3) for all non-Vietnamese exporters of merchandise under consideration which have not received their own rate, the cash-deposit rate will be the rate applicable to the Vietnamese exporter/producer combination that supplied that non-Vietnamese exporter. These cash-deposit instructions will remain in effect until further notice.

**ITC Notification**

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the merchandise under investigation. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the merchandise under investigation entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

**Notification Regarding APO**

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

This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 17, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

**Appendix I**

Comment 1: The Department's Preliminary Affirmative Determination of Critical Circumstances

[FR Doc. 2012–30951 Filed 12–21–12; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–552–814]**

### Utility Scale Wind Towers From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value

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

**DATES:** *Effective Date:* December 24, 2012.

**SUMMARY:** On August 2, 2012, the Department of Commerce (''Department'') published its preliminary determination of sales at less than fair value (''LTFV'') and postponement of final determination in the antidumping investigation of utility scale wind towers (''wind towers'') from the Socialist Republic of Vietnam (''Vietnam'').[1] Based on the Department's analysis of the comments received, the Department has made changes from the *Preliminary Determination.* The Department determines that wind towers from Vietnam are being, or are likely to be, sold in the United States at LTFV, as provided in section 735 of the Tariff Act of 1930, as amended (the ''Act''). The final weighted-average dumping margins for this investigation are listed in the ''Final Determination'' section below.

**FOR FURTHER INFORMATION CONTACT:** Magd Zalok or Charles Riggle, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4162 or (202) 482–0650, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department published its preliminary determination of sales at LTFV and postponement of final determination on August 2, 2012.[2] Between August 13, 2012, and August 24, 2012, the Department conducted verifications of the mandatory respondent CS Wind Vietnam Co., Ltd. (''CS Wind Vietnam'') and its parent company CS Wind Corporation (''CS Wind Corp.'') (collectively, ''CS Wind Group'').[3] Between September 14, 2012, and September 24, 2012, CS Wind Group and the Wind Tower Trade Coalition (''Petitioner'')[4] submitted surrogate value and rebuttal surrogate value comments.

On October 2, 2012, CS Wind Group and Petitioner submitted case briefs. On October 9, 2012, CS Wind Group and Petitioner submitted rebuttal briefs.

On September 4, 2012, Petitioner requested a hearing. However, on October 23, 2012, Petitioner withdrew its request for a hearing, and no other parties requested a hearing.

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[1] *See Utility Scale Wind Towers from the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 77 FR 29315 (August 2, 2012) (''*Preliminary Determination*'').

[2] *See Preliminary Determination.*

[3] *See* the ''Verification'' section below.

[4] The Wind Tower Trade Coalition is comprised of Broadwind Towers, Inc., DMI Industries, Katana Summit LLC, and Trinity Structural Towers, Inc. *See* Petitions for the Imposition of Antidumping and Countervailing Duties on Utility Scale Wind Towers from the People's Republic of China and Antidumping Duties on Utility Scale Wind Towers from the Socialist Republic of Vietnam (December 29, 2011) (''Petition'').

**Period of Investigation**

The period of investigation (''POI'') is April 1, 2011, through September 30, 2011. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was December 2011.[5]

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to this investigation, as well as comments received pursuant to the Department's requests are addressed in the Issues and Decision Memorandum.[6] A list of the issues which the parties raised and to which the Department responded in the Issues and Decision Memorandum is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and is available to all parties in the CRU, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/*. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

**Extension of Final Determination Due to Government Closure During Hurricane Sandy**

On October 31, 2012, the Department's Import Administration determined that the impact of the recent government closure during Hurricane Sandy would be best minimized by uniformly tolling all Import Administration deadlines for two days.[7] This determination applies to every proceeding before the Import Administration, including this investigation. The Department notes, however, that because the deadline of the final determination of this investigation was originally on December 15, 2012, which falls on a weekend, this deadline would have been automatically extended by two days until the following working day, Monday, December 17, 2012. Therefore, the two day extension of the deadlines due to government closure during Hurricane Sandy does not impact the deadline for the final determination of this investigation.

**Changes Since the Preliminary Determination**

- The Department revised its calculation of brokerage and handling.
- The Department made price adjustments to certain U.S. sales.
- The Department corrected the shipment dates for certain U.S. sales.
- The Department revised the reported factors of production (''FOPs'') of self-produced and free-of-charge internal components so that the total sum of all FOPs equals the packed weight of the subject merchandise.
- The Department granted a steel scrap offset.
- The Department revised the reported labor hours to include idle labor hours based on verification findings.
- The Department revised the per-unit measurement of insulated wire to reflect meters rather than pieces based on verification findings.
- The Department revised the reported pieces of tarpaulins based on verification findings.
- The Department revised the reported distance from the port to CS Wind Vietnam's manufacturing facility for all imported inputs to the simple average of the two ports used during the POI based on verification findings.
- The Department revised the distance from CS Wind Vietnam's LPG supplier to CS Wind Vietnam's manufacturing facility based on verification findings.
- The Department used the financial statements for Ganges International Pvt Ltd. for purposes of calculating the surrogate financial ratios.

**Scope of the Investigation**

The merchandise covered by this investigation are certain wind towers, whether or not tapered, and sections thereof. Certain wind towers are designed to support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts (''kW'') and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.,* where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.,* flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with nonsubject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof.

Merchandise covered by the investigation are currently classified in the Harmonized Tariff System of the United States (''HTSUS'') under subheadings 7308.20.0020[8] or 8502.31.0000.[9] Prior to 2011, merchandise covered by the investigation were classified in the HTSUS under subheading 7308.20.0000 and may continue to be to some degree. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

**Scope Comments**

The Department received comments regarding the scope of the investigation from Petitioner and CS Wind Group. After analyzing the comments, the Department has made no changes to the scope of this investigation. For a complete discussion of scope issues, *see* the Issues and Decision Memorandum at Comment 10.

**Verification**

As provided in section 782(i) of the Act, the Department verified the

[5] *See* 19 CFR 351.204(b)(1).

[6] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, regarding ''Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Utility Scale Wind Towers from the Socialist Republic of Vietnam'' (December 17, 2012) (''Issue and Decision Memorandum'').

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

[8] Wind towers are classified under HTSUS 7308.20.0020 when imported as a tower or tower section(s) alone.

[9] Wind towers may also be classified under HTSUS 8502.31.0000 when imported as part of a wind turbine (*i.e.,* accompanying nacelles and/or rotor blades).

information submitted by CS Wind Group for use in the final determination. The Department used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by this respondent.

**Non-Market Economy Country**

The Department considers Vietnam to be a non-market economy (''NME'') country.[10] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. The Department has not revoked Vietnam's status as an NME country. No party has challenged the designation of Vietnam as an NME country in this investigation. Therefore, the Department continues to treat Vietnam as an NME for purposes of this final determination.

**Surrogate Country**

In the *Preliminary Determination,* the Department stated that it selected India as the appropriate surrogate country to use in this investigation pursuant to section 773(c)(4) of the Act based on the following: (1) It is at a similar level of economic development; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from India that we can use to value the factors of production.[11] As no party has challenged the selection of India since the *Preliminary Determination,* the Department continues using India as the primary surrogate country.

**Single Entity Treatment**

In the *Preliminary Determination,* the Department determined that CS Wind Vietnam and CS Wind Corporation, the Korean parent company of CS Wind Vietnam, are affiliated pursuant to sections 771(33)(E) and (F) of the Act and that these companies should be treated as a single entity for antidumping duty purposes.[12] Furthermore, the Department found a significant potential for manipulation of production and sales decisions between CS Wind Corporation and CS Wind Vietnam.[13] Accordingly, the Department has determined it appropriate to treat CS Wind Corporation and CS Wind Vietnam as a single entity in this proceeding. Since the *Preliminary Determination,* the Department received no new information to warrant a change in its finding that CS Wind Corporation and CS Wind Vietnam are a single entity. Accordingly, consistent with the *Preliminary Determination,* the Department continues to find CS Wind Corporation and CS Wind Vietnam to be a single entity for purposes of the final determination.

**Separate Rate**

In proceedings involving NME countries, the Department holds a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of the subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[14] The Department analyzes whether each entity exporting the subject merchandise is sufficiently independent under a test arising from *Sparklers,*[15] as further developed in *Silicon Carbide.*[16] In accordance with the separate rates criteria, the Department assigns separate rates in NME cases if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over their export activities. If, however, the Department determines that a company is wholly foreign owned, then a separate rate analysis is not necessary to determine whether it is independent from government control.[17]

As indicated in the *Preliminary Determination,* Petitioner listed only two known Vietnamese exporters/producers in the Petition: CS Wind Vietnam Co., Ltd. (''CS Wind Vietnam'') and Vina-Halla Heavy Industries Ltd. (''Vina-Halla''). As noted in the *Preliminary Determination,* CS Wind Group, the respondent in this investigation, provided information indicating that it is a wholly-owned foreign enterprise.[18] Since the *Preliminary Determination,* we found no new information to warrant a change to the ownership status of CS Wind Group. Accordingly, a separate rate analysis is not necessary for this company.

**Companies Not Receiving a Separate Rate**

In the *Preliminary Determination,* the Department did not grant a separate rate to Vina-Halla because the company failed to submit a timely response to the Department's questionnaires which requested information regarding separate rate eligibility.[19] As indicated above, CS Wind Vietnam and Vina-Halla are the only two known Vietnamese exporters/producers identified in the Petition. Accordingly and consistent with the *Preliminary Determination,* the Department did not grant Vina Halla a separate rate in this final determination.

**Use of Facts Available and Adverse Facts Available**

Section 776(a) of the Act provides that the Department shall apply facts available (''FA'') if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

As FA, we have applied the weighted-average surrogate value of all internal components to the difference between the total packed weight calculated in the normal course of business for purposes of preparing packing lists for shipment, and the total weight of the sum of reported FOPs, less recovered scrap. This issue is discussed at comment 4 of the Issues and Decision Memorandum. In addition, at verification, the Department discovered that CSWG excluded certain idle labor hours from its reported labor hours. As FA, we added CS Wind Vietnam's idle production time to CSWG's reported labor hours and valued the idle labor hours using the same Chapter 6A surrogate value used to value CSWG's reported labor hours. This issue is discussed at comment 7 of the Issues and Decision Memorandum.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying FA when a party has failed to cooperate by

[10] *See Preliminary Determination,* 77 FR at 46060.

[11] *Id.,* 77 FR at 46060–61.

[12] *See Preliminary Determination,* 77 FR at 46061–62; Memorandum from Magd Zalok, International Trade Analyst, through Charles Riggle, Program Manager, AD/CVD Operations, Office 4, to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, regarding ''Affiliation and Single Entity Status of CS Wind Group Vietnam Co., Ltd. and CS Wind Corporation'' (July 26, 2012).

[13] *Id.*

[14] *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*'').

[15] *See Sparklers,* 56 FR at 20588.

[16] *See Silicon Carbide,* 59 FR at 22585.

[17] *See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China,* 72 FR 52355, 52356 (September 13, 2007).

[18] *See Preliminary Determination,* 77 FR at 46062; CS Wind Group's March 20, 2012, letter at A–11.

[19] *See Preliminary Determination,* 77 FR at 46062.

not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. We do not find that CSWG failed to cooperate by acting to the best of its ability with respect to either of these two issues, therefore, we did not apply an adverse inference in applying FA.

**Vietnam-Wide Entity**

As discussed above, Vina-Halla did not respond to the Department's questionnaires, failed to establish its eligibility for a separate rate and, thus, the Department, consistent with the *Preliminary Determination,*[20] finds that Vina-Halla remains a part of the Vietnam-wide entity. Therefore, we find that the Vietnam-wide entity withheld information requested by the Department, failed to provide information in a timely manner, and significantly impeded the proceeding by not submitting the requested information. The Vietnam-wide entity did not file documents indicating that it was having difficulty providing the requested information nor did it request that it be allowed to submit the information in an alternate form. As a result, pursuant to sections 776(a)(2)(A)–(C) of the Act, and consistent with the *Preliminary Determination,* we find that the use of facts otherwise available is appropriate to determine the rate for the Vietnam-wide entity.[21]

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an inference that is adverse to a party if the party failed to cooperate by not acting to the best of its ability to comply with requests for information.[22] The Department continues to find that the Vietnam-wide entity's failure to provide the requested information constitutes circumstances under which it is reasonable to conclude that less than full cooperation has been shown.[23] Because the Vietnam-wide entity did not respond to the Department's requests for information, it has failed to cooperate to the best of its ability. Therefore, the Department finds that, in selecting from among the facts otherwise available, an adverse inference is appropriate.

When employing an adverse inference, section 776(b) of the Act states that the Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate based on adverse facts available (''AFA''), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[24] Normally, it is the Department's practice to select, as an AFA rate, the higher of the: (a) Highest dumping margin alleged in the petition, or (b) highest calculated weighted-average dumping margin of any respondent in the investigation.[25] The dumping margins alleged in the Petition are 140.54 percent and 143.29 percent.[26] Either of these rates is higher than the calculated rate for CS Wind Group. Thus, as AFA, the Department's practice would be to assign the rate of 143.29 percent to the Vietnam-wide entity.

**Corroboration of Information**

Section 776(c) of the Act provides that, when, as FA, the Department relies on secondary information rather than on information obtained in the course of an investigation it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning merchandise subject to this investigation, or any previous review under section 751 {of the Act} concerning the merchandise subject to this investigation.''[27] To ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value.[28] Independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[29] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.[30]

As was the case in the *Preliminary Determination,*[31] in order to determine the probative value of the dumping margins in the Petition for use as AFA for purposes of the final determination, we examined information on the record and found that we were unable to corroborate either of the dumping margins contained in the Petition. Therefore, for the final determination, we have assigned the Vietnam-wide entity the rate of 58.49 percent, the highest transaction-specific dumping margin for the mandatory respondent, CS Wind Group.[32] No corroboration of this rate is necessary because we are relying on information obtained in the course of this investigation, rather than secondary information from the Petition.[33] The dumping margin for the

[20] *Id.,* 77 FR at 46062–63.

[21] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 4986, 4991 (January 31, 2003), unchanged in *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 37116 (June 23, 2003).

[22] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, 870 (1994) (''SAA''); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation,* 65 FR 5510, 5518 (February 4, 2000).

[23] *See Nippon Steel Corp.* v. *United States,* 337 F.3d 1373, 1383 (Fed. Cir. 2003) (noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a ''failure to cooperate to the best of a respondent's ability'' existed (*i.e.,* information was not provided ''under circumstances in which it is reasonable to conclude that less than full cooperation has been shown'')).

[24] *See* SAA at 870.

[25] *See Certain Stilbenic Optical Brightening Agents From the People's Republic of China: Final Determination of Sales at Less Than Fair* Value, 77 FR 17436, 17438 (March 26, 2012).

[26] *See Utility Scale Wind Towers From the People's Republic of China and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations,* 77 FR 3445 (January 24, 2012) (''*Initiation Notice''*) at Volume I, Exhibit I–14 of the Petition.

[27] *See Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China,* 73 FR 6479, 6481 (February 4, 2008), and accompanying Issues and Decision Memorandum at Comment 2 (quoting SAA at 870).

[28] *See* SAA at 870.

[29] *Id.*

[30] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997).

[31] *See Preliminary Determination,* 77 FR at 46063.

[32] *See, e.g., Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 76 FR 64318, 64322 (October 18, 2011) (assigning as an AFA rate the highest calculated transaction-specific rate among mandatory respondents).

[33] *See* section 776(c) of the Act and 19 CFR 351.308(c) and (d); *see also Final Determination of Sales at Less Than Fair Value and Affirmative*

Continued

Vietnam-wide entity applies to all entries of the merchandise under investigation except for entries of merchandise under investigation from the exporter/manufacturer combinations listed in the chart in the ''Final Determination'' section below.

**Combination Rates**

In the *Initiation Notice,* the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation.[34] This practice is described in Policy Bulletin 05.1, available at *http://www.trade.gov/ia/.*

**Final Determination**

The Department determines that the following weighted-average dumping margins exist for the period April 1, 2011, through September 30, 2011.

| Exporter | Producer | Weighted-average dumping margin (percent) |
|---|---|---|
| The CS Wind Group *. | The CS Wind Group. | 51.50 |
| Vietnam-Wide Entity **.. | ..... | 58.49 |

* The CS Wind Group consists of CS Wind Vietnam Co., Ltd. and CS Wind Corporation.

** The Vietnam-Wide Entity includes Vina-Halla Heavy Industries Ltd.

**Disclosure**

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

**Continuation of Suspension of Liquidation**

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection (''CBP'') to continue to suspend liquidation of all appropriate entries of utility scale wind towers from Vietnam as described in the ''Scope of Investigation'' section, entered or withdrawn from warehouse, for consumption, on or after August 2, 2012, the date of publication of the *Preliminary Determination* in the **Federal Register**.

The Department will instruct CBP to require a cash deposit equal to the weighted-average amount by which NV exceeds U.S. price, as follows: (1) The rate for the exporter/producer combinations listed in the table above will be the rate the Department has determined in this investigation; (2) for all Vietnamese exporters of merchandise under consideration which have not received their own rate, the rate will be the rate for the Vietnam-wide entity; and (3) for all non-Vietnamese exporters of merchandise under consideration which have not received their own rate, the rate will be the rate applicable to the Vietnamese exporter/producer combination that supplied that non-Vietnamese exporter.

**ITC Notification**

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of the final affirmative determination of sales at LTFV. As the Department's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of subject merchandise, or sales (or the likelihood of sales) for importation, of the subject merchandise. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation.

**Notification Regarding APO**

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

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 17, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

## Appendix I

**Issues for Final Determination**

1. Steel Plate
2. Surrogate Financial Statements
3. Financial Ratio Adjustments
4. Packed Weight and the Sum of FOPs
5. Scrap Offset
6. Market Economy Purchases
7. Idle Labor
8. Oxygen
9. Carbon Dioxide (CO2)
10. Base Rings
11. Brokerage & Handling
12. Date of Sale
13. Free-of-Charge Inputs

[FR Doc. 2012–30944 Filed 12–21–12; 8:45 am]

BILLING CODE 3510–DS–P

*Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China,* 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 1.

[34] *See Initiation Notice,* 77 FR at 3446.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–868]**

### Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers From the Republic of Korea

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

**SUMMARY:** We determine that imports of large residential washers (washers) from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act).

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final determination differs from the preliminary determination. The final weighted-average dumping margins for the investigated companies are listed below in the section entitled ''Final Determination Margins.''

**DATES:** *Effective Date:* December 26, 2012.

**FOR FURTHER INFORMATION CONTACT:** David Goldberger or Henry Almond, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–0049, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

The following events have occurred since the preliminary determination [1] was issued.

On August 1, 2012, we issued a supplemental questionnaire to Samsung Electronics Co., Ltd. (Samsung), addressing Whirlpool Corporation's (hereafter, the petitioner's) July 25, 2012, fraud allegation against Samsung, and we received a response to this supplemental questionnaire in this same month. Samsung responded to the petitioner's fraud allegation in August and September, 2012.

In August and October, 2012, LG Electronics Inc. (LG) submitted supplemental questionnaire responses. In addition, in October, Samsung submitted revised sales and cost databases pursuant to the Department's requests.

On August 31, 2012, the petitioner formally filed a request to amend the petition to exclude smaller top-load washers from the scope of this investigation. *See* General Issue 1 in the ''Issues and Decision Memorandum for the Antidumping Duty Investigation of Large Residential Washers from the Republic of Korea'' from Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration (Issues and Decision Memorandum), dated concurrently with this notice and incorporated herein by reference.

On September 19, 2012, the petitioner revised its targeted dumping allegation for LG with respect to region. *See* General Issue 3 in the Issues and Decision Memorandum.

On October 31, 2012, and November 7, 2012, the petitioner, LG, and Samsung submitted case and rebuttal briefs, respectively. On November 14, 2012, the Department held a hearing at the request of the petitioner, LG, and Samsung.

## Period of Investigation

The period of investigation (POI) is October 1, 2010, through September 30, 2011.

## Scope of the Investigation

The products covered by this investigation are all large residential washers and certain subassemblies thereof from Korea.

For purposes of this investigation, the term ''large residential washers'' denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, except as noted below, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm).

Also covered are certain subassemblies used in large residential washers, namely: (1) All assembled cabinets designed for use in large residential washers which incorporate, at a minimum: (a) At least three of the six cabinet surfaces; and (b) a bracket; (2) all assembled tubs [2] designed for use in large residential washers which incorporate, at a minimum: (a) A tub; and (b) a seal; (3) all assembled baskets [3] designed for use in large residential washers which incorporate, at a minimum: (a) A side wrapper;[4] (b) a base; and (c) a drive hub;[5] and (4) any combination of the foregoing subassemblies.

Excluded from the scope are stacked washer-dryers and commercial washers. The term ''stacked washer-dryers'' denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer. The term ''commercial washer'' denotes an automatic clothes washing machine designed for the ''pay per use'' market meeting either of the following two definitions:

(1) (a) it contains payment system electronics;[6] (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners;[7] *or*

(2) (a) it contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such that, in normal operation,[8] the unit cannot begin a wash cycle without first receiving a signal from a *bona fide* payment acceptance device such as an electronic credit card reader; (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners.

Also excluded from the scope are automatic clothes washing machines with a vertical

rotational axis and a rated capacity of less than 3.70 cubic feet, as certified to the U.S. Department of Energy pursuant to 10 CFR 429.12 and 10 CFR 429.20, and in accordance with the test procedures established in 10 CFR Part 430.

The products subject to this investigation are currently classifiable under subheading 8450.20.0090 of the Harmonized Tariff System of the United States (HTSUS). Products subject to this investigation may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

## Scope Comments

On May 17, 2012, the petitioner requested that the Department exclude smaller top-load washers (*i.e.,* automatic washing machines with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet) from the scope of this investigation, the concurrent antidumping investigation of washers from Mexico, and the concurrent countervailing duty investigation of washers from Korea. Subsequently, we received comments from Samsung and LG objecting to the petitioner's scope exclusion request, and comments from other interested parties supporting the request.

Based on our evaluation of these comments, the briefs which were subsequently filed by LG and the petitioner, and the information provided by U.S. Customs and Border Protection (CBP), we have amended the scope to exclude smaller top-load washers. For a complete discussion of the Department's scope determination, see Memorandum

[1] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Large Residential Washers from the Republic of Korea,* 77 FR 46391 (August 3, 2012) (*Preliminary Determination*).

[2] A ''tub'' is the part of the washer designed to hold water.

[3] A ''basket'' (sometimes referred to as a ''drum'') is the part of the washer designed to hold clothing or other fabrics.

[4] A ''side wrapper'' is the cylindrical part of the basket that actually holds the clothing or other fabrics.

[5] A ''drive hub'' is the hub at the center of the base that bears the load from the motor.

[6] ''Payment system electronics'' denotes a circuit board designed to receive signals from a payment acceptance device and to display payment amount, selected settings, and cycle status. Such electronics also capture cycles and payment history and provide for transmission to a reader.

[7] A ''security fastener'' is a screw with a non-standard head that requires a non-standard driver. Examples include those with a pin in the center of the head as a ''center pin reject'' feature to prevent standard Allen wrenches or Torx drivers from working.

from the Team to Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, ''Exclusion of Top-Load Washing Machines with a Rated Capacity Less than 3.70 Cubic Feet from the Scope of the Investigations,'' dated July 27, 2012, and Issues and Decision Memorandum.

LG requested on July 27, 2012, that larger-width washers (*i.e.,* washers with widths of 29 inches or greater) be excluded from the scope of the investigations. The petitioner objected to this request on August 27, 2012. Based on our evaluation of the parties' comments, as discussed in their briefs, we find that larger-width washers should not be excluded from the scope. *See* Issues and Decision Memorandum) for further discussion.

**Application of Facts Available**

In the *Preliminary Determination,* we determined that due to Daewoo Electronic Corporation's (Daewoo's) complete lack of cooperation in this investigation, in accordance with section 776(a)(2) of the Act, the use of facts available was appropriate as the basis for the dumping margin for Daewoo. *See Preliminary Determination,* 77 FR at 46393. Section 776(a) of the Act provides that the Department shall apply ''facts otherwise available'' if (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided in section 782(i) of the Act.

In this case, Daewoo did not respond to the Department's questionnaire by the established deadline nor did it request an extension of time to submit its response. By failing to participate in this investigation, Daewoo withheld requested information, failed to provide information with the deadlines established, and significantly impeded the proceeding. Thus, pursuant to sections 776(a)(2)(A), (B) and (C) of the Act, because Daewoo did not participate in this investigation, the Department continues to find that the use of total facts available is warranted.

In the *Preliminary Determination,* we also determined that the application of an adverse inference to Daewoo was warranted pursuant to section 776(b) of the Act. *See Preliminary Determination,* 77 FR at 46393. Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' [9] Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' [10] For purposes of this final determination, we continue to find that Daewoo did not act to the best of its ability in this proceeding, within the meaning of section 776(b) of the Act, because it failed to participate in this investigation. Therefore, an adverse inference is warranted in selecting from the facts otherwise available with respect to Daewoo.

The Department's practice, when selecting an adverse facts available (AFA) rate from among the possible sources of information, has been to select the highest rate on the record of the proceeding and to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' [11]

In order to ensure that the margin is sufficiently adverse so as to induce cooperation, we have assigned to Daewoo a rate of 82.41 percent, which is the highest rate alleged in the petition (as adjusted at initiation).[12] The Department believes that this rate is sufficiently high as to effectuate the purpose of the facts available rule (*i.e.,* we find that this rate is high enough to encourage participation in future segments of this proceeding in accordance with section 776(b) of the Act). As discussed below, we have also corroborated this rate, and determined that it is both reliable and relevant.

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used.[13] The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published prices lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See* 19 CFR 351.308(d) and the SAA at 870.

For the purposes of this investigation and to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis and for purposes of this final determination.[14] We examined evidence supporting the calculations in the petition to determine the probative value of the margins alleged in the petition for use as AFA for purposes of this final determination. During our pre-initiation analysis we examined the key elements of the U.S. price and normal value calculations used in the petition to derive margins. During our pre-initiation analysis we also examined information from various independent sources provided either in the petition or in supplements to the petition that corroborates key elements of the U.S. price and normal value calculations used in the petition to derive estimated margins.[15]

Based on our examination of the information, as discussed in detail in

[9] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, Vol. 1, at 870 (1994) (*SAA*), reprinted in 1994 U.S.C.C.A.N. 4040, 4198–99.

[10] *See Antidumping Duties: Countervailing Duties; Final Rule,* 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp.* v. *United States,* 337 F.3d 1373, 1382–83 (Fed. Cir. 2003).

[11] *See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part,* 71 FR 65082, 65084 (November 7, 2006).

[12] *See Large Residential Washers From the Republic of Korea and Mexico: Initiation of Antidumping Duty Investigations,* 77 FR 4007 (January 26, 2012) (*Initiation Notice*).

[13] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Preliminary Results of Antidumping Duty Administrative Reviews and partial Termination of Administrative Reviews,* 62 FR 57391, 57392 (November 6, 1996) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997)).

[14] *See* Antidumping Investigation Initiation Checklist dated January 19, 2012 (Initiation Checklist), at 6 through 11. *See* also *Initiation Notice,* 77 FR at 4009—4011.

[15] *Id.*

the Initiation Checklist, *Initiation Notice,* and *Preliminary Determination,* we consider the petitioner's calculation of the U.S. price and normal value underlying the 82.41 percent rate to be reliable. Therefore, because we confirmed the accuracy and validity of the information underlying the calculation of margins in the petition by examining source documents as well as publicly available information, we determine that the 82.41 percent margin in the petition is reliable for purposes of this investigation.

With respect to the relevance aspect of corroboration, as in the *Preliminary Determination,* we also considered information reasonably at our disposal to determine whether a margin continues to have relevance. We found that the 82.41 percent rate in the petition reflects the commercial practices of the large residential washer industry and, as such, is relevant to Daewoo. In making this determination, we compared the model-specific margins we calculated for LG and Samsung for the POI to the petition rate of 82.41 percent. We found that the highest model-specific margins we calculated for both LG and Samsung in this investigation were higher than or within the range of the 82.41 percent margin alleged in the petition.

Specifically, after calculating the margins for LG and Samsung as discussed below, we examined individual model comparisons and the margins we calculated based on those model comparisons in order to determine whether the rate of 82.41 percent is probative. We found a number of model comparisons with dumping margins above the rate of 82.41 percent, and a number of model comparisons with dumping margins within the range of 82.41 percent. Accordingly, we determine that the AFA rate is relevant as applied to Daewoo for this investigation because it falls within the range of model-specific margins we calculated for LG and Samsung in this investigation.[16]

Based on the foregoing analysis, we have determined that the AFA rate of 82.41 percent has probative value and is corroborated ''to the extent practicable'' as provided in section 776(c) of the Act. *See* also 19 CFR 351.308(d).[17]

[16] This corroboration methodology is consistent with our past practice. (*See Narrow Woven Ribbons With Woven Selvedge from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 41808, 41811 (July 19, 2010)). A similar corroboration methodology as been upheld by the Court of Appeals for the Federal Circuit. (*See PAM S.p.A. v. United States,* 582 F.3d 1336, 1340 (Fed. Cir. 2009)).

[17] *See Preliminary Determination,* 77 FR at 46394.

**Analysis of Comments Received**

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

**Changes Since the Preliminary Determination**

Based on our analysis of the comments received and our findings at verification, we have made certain changes to the margin calculations. For a discussion of these changes, see the ''Margin Calculations'' section of the Issues and Decision Memorandum.

**Verification**

As provided in section 782(i) of the Act, in August and September 2012, we verified the sales and cost information submitted by the respondents for use in our final determination. We used standard verification procedures including an examination of relevant accounting and production records, and original source documents provided by the respondents.[18]

[18] *See* the following memoranda entitled: ''Verification of the Cost Response of LG Electronics, Inc. in the Antidumping Duty Investigation of Large Residential Washers from the Republic of Korea,'' dated October 11, 2012; ''Verification of the Home Market and Export Price Sales Responses of LG Electronics, Inc.,'' dated October 11, 2012; ''Verification of the CEP Sales Responses of LG Electronics, Inc. and LG Electronics USA Inc.,'' dated October 15, 2012; ''Verification of Samsung Electronics America Inc. in the Antidumping Duty Investigation of Large Residential Washers from Korea,'' dated October 16, 2012; ''Verification of the Cost Response of Samsung Electronics Co., Ltd. in the Less-Than-Fair-Value Investigation of Large Residential Washers from the Republic of Korea,'' dated October 17, 2012; and ''Verification of the Sales Response of Samsung Electronics Co., Ltd. in the Less-Than-Fair-Value Investigation of Large Residential Washers form Korea,'' dated October 17, 2012.

**Targeted Dumping**

The Act allows the Department to employ the average-to-transaction comparison methodology under the following circumstances: (1) there is a pattern of export prices (EPs) or constructed export prices (CEPs) for comparable merchandise that differ significantly among purchasers, regions, or periods of time; and (2) the Department explains why such differences cannot be taken into account using the average-to-average or transaction-to-transaction methodology. *See* section 777A(d)(1)(B) of the Act.

For purposes of the final determination, we performed our targeted dumping analysis following the methodology employed in the *Preliminary Determination,* after making certain revisions to the respondents' reported U.S. sales data based on verification findings, as enumerated in the ''Margin Calculations'' section of the Issues and Decision Memorandum. In so doing, we found that the results of our final targeted dumping analysis were generally consistent with those of our preliminary targeted dumping analysis. Therefore, we continued to apply the alternative average-to-transaction method for LG's and Samsung's margin calculations in the final determination. *See* the memoranda entitled ''Final Determination Margin Calculation for LG Electronics Inc., and LG Electronics USA, Inc.'' (collectively, ''LG''), and ''Final Determination Margin Calculation for Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.'' (collectively, ''Samsung'') dated concurrently with this notice for further discussion.

**Continuation of Suspension of Liquidation**

Pursuant to 735(c)(1)(B) of the Act, we will instruct CBP to continue to suspend liquidation of all entries of subject merchandise from Korea, entered, or withdrawn from warehouse, for consumption on or after August 3, 2012, the date of publication of the preliminary determination in the **Federal Register**. CBP shall require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as shown below adjusted, where appropriate, for export subsidies. These instructions suspending liquidation will remain in effect until further notice.

**Final Determination Margins**

The weighted-average dumping margins are as follows:

| Exporter/manufacturer | Weighted-average margin percentage |
|---|---|
| Daewoo Electronics Corporation | 82.41 |
| LG Electronics, Inc. | 13.02 |
| Samsung Electronics Co., Ltd. | 9.29 |
| All Others | 11.86 |

In accordance with section 735(c)(5)(A) of the Act, the ''All Others'' rate is derived exclusive of all *de minimis* or zero margins and margins based entirely on AFA. We have based our calculation of the ''All Others'' rate on the weighted-average of the margins calculated for LG and Samsung using publicly-ranged data. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business-proprietary information, we find this rate to be the best proxy of the actual weighted-average margin determined for these respondents.[19] For further discussion of this calculation, *see* memorandum entitled ''Calculation of the All Others Rate for the Final Determination of the Antidumping Duty Investigation of Large Residential Washers from Korea,'' dated concurrently with this notice.

## Disclosure

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

## ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our final determination. As our final determination is affirmative, the ITC will determine within 45 days whether imports of the subject merchandise are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

[19] *See, e.g., Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review, Partial Rescission, and Final No Shipment Determination,* 76 FR 41203, 41205 (July 13, 2011).

## Return or Destruction of Proprietary Information

This notice will serve as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: December 18, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

## Appendix—Issues in Decision Memorandum

*General Issues*

1. Scope Exclusion of Smaller Top-Load Washers
2. Request to Exclude Larger-Width Washers from the Scope
3. Targeted Dumping
4. Zeroing in the Average-to-Transaction Method

*Company-Specific Issues*

*LG*

5. Rebates
6. Conducting the Sales-Below-Cost Test Based on Level of Trade
7. General and Administrative Expenses
8. Alleged Affiliation of LG and its Input Suppliers
9. Request to Exclude a Certain Home Market Model
10. Unreported Early Payment Discounts
11. Calculation of Profit Rate for Affiliated Logistics Services Provider
12. Treatment of Certain Selling Expenses and Rebates
13. Treatment of Affiliated Retailer's Operating Expenses
14. Adjustment of Marine Insurance Premium Ratio

*Samsung*

15. Fraud Allegation Against Samsung
16. Request to Apply Adverse Facts Available to Samsung for Its Affiliate's Conduct
17. Alleged Unforeseen Event
18. U.S. Sales Transactions Affected by the Alleged Unforeseen Event
19. Date of Sale for Samsung's Direct Shipment Sales
20. Duty Drawback
21. Adjustment to the Selling, General & Administrative Expenses of Affiliated Suppliers
22. Product Characteristic Coding

[FR Doc. 2012–31104 Filed 12–21–12; 4:15 pm]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–981]**

### Utility Scale Wind Towers From the People's Republic of China: Final Determination of Sales at Less Than Fair Value

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

**DATES:** *Effective Date:* December 24, 2012.

**SUMMARY:** On August 2, 2012, the Department of Commerce (the ''Department'') published its preliminary determination of sales at less than fair value (''LTFV'') and postponement of final determination in the antidumping investigation of utility scale wind towers (''wind towers'') from the People's Republic of China (''PRC'').[1] Based on an analysis of the comments received, the Department has made changes from the *Preliminary Determination.* The Department has determined that wind towers from the PRC are being, or are likely to be, sold in the United States at LTFV, as provided in section 735 of the Tariff Act of 1930, as amended (the ''Act''). The final weighted-average dumping margins for this investigation are listed in the ''Final Determination'' section below.

**FOR FURTHER INFORMATION CONTACT:** Lilit Astvatsatrian, Shawn Higgins, Thomas Martin, or Trisha Tran, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6412, (202) 482–0679, (202) 482–3936, or (202) 482–4852, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

The Department published its *Preliminary Determination* on August 2, 2012.[2] Between August 13, 2012, and August 24, 2012, the Department conducted verifications of the mandatory respondents (*i.e.,* Chengxi Shipyard Co., Ltd. (''CXS'') and Titan Wind Energy (Suzhou) Co., Ltd. (''Titan'')).[3] Between September 14, 2012, and September 24, 2012, CXS,

[1] *See Utility Scale Wind Towers From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 77 FR 46034 (August 2, 2012) (''*Preliminary Determination*'').

[2] *Id.*

[3] *See* the ''Verification'' section below.

Titan and the Wind Tower Trade Coalition (''Petitioner'')[4] submitted surrogate value (''SV'') and rebuttal SV comments.

On October 2, 2012, CXS, Titan and Petitioner submitted case briefs. On October 9, 2012, CXS, Titan, and Petitioner submitted rebuttal briefs.

On November 2, 2012, the Department held a hearing, which was requested by Petitioner on September 4, 2012.

**Period of Investigation**

The period of investigation (''POI'') is April 1, 2011, through September 30, 2011. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was December 2012.[5]

**Extension of Final Determination Due to Government Closure During Hurricane Sandy**

On October 31, 2012, the Department's Import Administration determined that the impact of the recent government closure during Hurricane Sandy would be best minimized by uniformly tolling all Import Administration deadlines for two days.[6] This determination applies to every proceeding before the Import Administration, including this investigation. The Department notes, however, that because the deadline of the final determination of this investigation was originally on December 15, 2012, which falls on a weekend, this deadline would have been automatically extended by two days until the following working day, Monday, December 17, 2012. Therefore, the two day extension of the deadlines due to government closure during Hurricane Sandy does not impact the deadline for the final determination of this investigation.

**Analysis of Comments Received**

All issues raised in the case briefs and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum.[7] A list of the issues which the parties raised and to which the Department responded in the Issues and Decision Memorandum is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and is available to all parties in the Central Records Unit, which is in room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *www.trade.gov/ia.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

**Changes Since the Preliminary Determination**

*Changes Applicable to Both Mandatory Respondents*

- The Department recalculated SVs and surrogate financial ratios based on data from Thailand, which was selected as the surrogate country for the final determination.[8]
- The Department used the unadjusted per-kg brokerage and handling rate for a 20-foot container to value brokerage and handling.[9]

*Changes Applicable to Only CXS*

- The Department used Thai tariff sub-category 8544.60 to value CXS's bus bars.[10]
- The Department used Ukrainian tariff sub-category 6306.12 to value CXS's tarpaulin.[11]
- The Department excluded stainless steel round bars from CXS's normal value.[12]
- The Department used the unadjusted per-kg international freight rate for a 40-foot container to value international freight.[13]
- The Department has not valued CXS's river water using the SV for municipal water.[14]
- The Department revised the distances reported by CXS to reflect the distances measured by the Department at verification.[15]
- The Department made changes based on the minor corrections presented at verification.[16]

*Changes Applicable to Only Titan*

- The Department applied Titan's reported market economy purchase price for winches.[17]
- The Department accepted the allocated surcharge for shipping fixtures in Titan's gross unit price calculation.[18]
- The Department made changes based on the minor corrections presented at verification.[19]

**Scope of the Investigation**

The merchandise covered by this investigation are certain wind towers, whether or not tapered, and sections thereof. Certain wind towers are designed to support the nacelle and

[4] The Wind Tower Trade Coalition is comprised of Broadwind Towers, Inc., DMI Industries, Katana Summit LLC, and Trinity Structural Towers, Inc.

[5] *See* 19 CFR 351.204(b)(1).

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

[7] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, ''Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Utility Scale Wind Towers from the People's Republic of China'' (December 17, 2012) (''Issues and Decision Memorandum'').

[8] *Id.* at Comment 1; Memorandum from Lilit Astvatsatrian and Trisha Tran, International Trade Compliance Analysts, AD/CVD Operations, Office 4, to the File, ''Antidumping Duty Investigation of Utility Scale Wind Towers from the People's Republic of China: Final Surrogate Value Memorandum'' (December 17, 2012) (''Final SV Memorandum'').

[9] *See* Issues and Decision Memorandum at Comment 3; Final SV Memorandum at 3–4, Attachment 8.

[10] *See* Issues and Decision Memorandum at Comment 9; Final SV Memorandum at Attachment 1.

[11] *See* Issues and Decision Memorandum at Comment 10; Final SV Memorandum at Attachment 1.

[12] *See* Issues and Decision Memorandum at Comment 12.

[13] *See* Final SV Memorandum at 4, Attachment 10.

[14] *See* Issues and Decision Memorandum at Comment 11; Final SV Memorandum at 3, Attachment 4.

[15] *See* Memorandum from Shawn Higgins and Trisha Tran, International Trade Compliance Analysts, AD/CVD Operations, Office 4, to the File, ''Antidumping Duty Investigation of Utility Scale Wind Towers from the People's Republic of China: Verification of the Antidumping Duty Questionnaire Responses of Chengxi Shipyard Co., Ltd.'' (September 21, 2012) (''CXS's Verification Report'') at 54–56; Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to Robert Bolling, Program Manager, AD/CVD Operations, Office 4 ''Utility Scale Wind Towers from the People's Republic of China: Analysis of the Final Determination Margin Calculation for Chengxi Shipyard Co., Ltd.'' (December 17, 2012) (''CXS's Final Determination Analysis Memorandum'') at 3, Attachments 3–7.

[16] *Id.* at 2, Exhibit 1.

[17] *See* Issues and Decision Memorandum at Comment 15; Memorandum from Thomas Martin and Lilit Astvatsatrian, Senior International Trade Compliance Analysts, AD/CVD, Office 4, to Robert Bolling, Program Manager, AD/CVD Operations, Office 4 ''Utility Scale Wind Towers from the People's Republic of China: Analysis of the Final Determination Margin Calculation for Titan Wind Energy (Suzhou) Ltd.'' (December 17, 2012) (''Titan's Final Determination Analysis Memorandum'') at 5–6, Attachment I.

[18] *See* Issues and Decision Memorandum at Comment 16; Titan's Final Determination Analysis Memorandum at Attachment I.

[19] *See* Memorandum from Thomas Martin and Lilit Astvatsatrian, Senior International Trade Compliance Analysts, Office 4, to the File, ''Verification of the Sales and Factors Responses of Titan Wind Energy (Suzhou) Co., Ltd. in the Antidumping Investigation of Utility Scale Wind Towers from the People's Republic of China'' (September 21, 2012) (''Titan's Verification Report'') at 2–3, Exhibit 1.

rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts (''kW'') and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.,* where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.,* flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with nonsubject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof.

Merchandise covered by the investigation is currently classified in the Harmonized Tariff System of the United States (''HTSUS'') under subheadings 7308.20.0020 [20] or 8502.31.0000.[21] Prior to 2011, merchandise covered by the investigation was classified in the HTSUS under subheading 7308.20.0000 and may continue to be to some degree. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

**Scope Comments**

The Department received comments regarding the scope of the investigation from Petitioner, CXS, and Titan. After analyzing the comments, the Department has made no changes to the scope of this investigation. For a complete discussion of this issue, see the Issues and Decision Memorandum at Comment 4.

**Verification**

As provided in section 782(i) of the Act, the Department verified the information submitted by CXS and Titan for use in the final determination.[22] The Department used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by these respondents.

**Non-Market Economy Country**

The PRC has been treated as a non-market economy (''NME'') in every proceeding conducted by the Department. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the administering authority. The Department has not revoked the PRC's status as an NME and no party has challenged the designation of the PRC as an NME in this investigation. Therefore, the Department continues to treat the PRC as an NME for purposes of this final determination and, accordingly, applied the NME methodology.

**Surrogate Country**

In the *Preliminary Determination,* the Department found that Colombia, Indonesia, Peru, South Africa, Thailand, and Ukraine are (1) at a level of economic development comparable to that of the PRC and (2) significant producers of merchandise comparable to the merchandise under consideration.[23] From among these countries, the Department preliminarily selected Ukraine as the surrogate country because, in addition to being both economically comparable to the PRC and a significant producer of comparable merchandise, Ukraine provided SV information that was most specific to many factors of production (''FOPs''), including the most significant FOP reported by each respondent (*i.e.,* steel plate).[24] After the *Preliminary Determination,* interested parties submitted financial statements from a Thai producer of identical merchandise as well as comprehensive, detailed SV information from Thailand. For the final determination, the Department has selected Thailand as the surrogate country because Thailand is: (1) At a level of economic development comparable to that of the PRC; (2) a significant producer of merchandise comparable to the merchandise under consideration; and (3) the country that provides the best available information to value FOPs using data that are specific, reliable, broad market averages, contemporaneous with the POI, and publicly available from a single surrogate country.[25] Specifically, the Department has found that Thai import data allows the Department to value each respondent's steel plate, which accounts for the largest portion of each company's normal value, more accurately than either the Ukrainian or South African data on the record of this investigation because the Thai data is most specific to the size and chemistry of the respondents' steel plate.[26] Also, Thailand provides a complete set of SVs (with only minor exceptions), including financial ratios from a surrogate company that produces identical merchandise.[27] Therefore, the Department has determined that Thailand, in addition to being at a level of economic development comparable to that of the PRC and a significant producer of merchandise comparable to wind towers, offers the best available SV information on the record of this investigation.

**Separate Rates**

In proceedings involving NMEs, the Department maintains a rebuttable presumption that all companies within the NME are subject to government control and, therefore, should be assessed a single weighted-average dumping margin.[28] The Department's policy is to assign all exporters of merchandise under consideration that are in an NME this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[29] The Department analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers* [30] and further developed in

[20] Wind towers are classified under HTSUS 7308.20.0020 when imported as a tower or tower section(s) alone.

[21] Wind towers may also be classified under HTSUS 8502.31.0000 when imported as part of a wind turbine (*i.e.,* accompanying nacelles and/or rotor blades).

[22] *See* CXS's Verification Report at 1; Titan's Verification Report at 1.

[23] *See Preliminary Determination,* 77 FR at 46036.

[24] *Id.*

[25] *See* Issues and Decision Memorandum at Comment 1.

[26] *Id.*

[27] *Id.*

[28] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039, 55040 (September 24, 2008).

[29] *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588, 20589 (May 6, 1991) (''*Sparklers*'').

[30] *Id.*

*Silicon Carbide*.[31] According to this separate rate test, the Department will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities. If, however, the Department determines that a company is wholly foreign owned, then a separate rate analysis is not necessary to determine whether that company is independent from government control and eligible for a separate rate.

*Companies Receiving a Separate Rate*

In the *Preliminary Determination,* the Department found that Sinovel Wind Group Co., Ltd. (''Sinovel''),[32] Guodian United Power Technology Baoding Co., Ltd. (''Guodian''), CS Wind China Co., Ltd. and CS Wind Corporation (collectively, ''CS Wind''), and the mandatory respondents demonstrated their eligibility for separate-rate status.[33] For the final determination, the Department continues to find that the evidence placed on the record of this investigation by Sinovel, Guodian, and the mandatory respondents demonstrate both a *de jure* and *de facto* absence of government control and, therefore, are eligible for separate-rate status. For further discussion of the separate rate analysis for CXS, *see* the Issues and Decision Memorandum at Comment 6. The Department also continues to find that the evidence placed on the record of this investigation by CS Wind demonstrates that it is wholly-owned by individuals and companies located in market economy countries. Therefore, the Department has granted CS Wind a separate rate in the final determination.

*Companies Not Receiving a Separate Rate*

In the *Preliminary Determination,* the Department did not grant a separate rate to AVIC International Renewable Energy Co. Ltd. (''AVIC'') because the company failed to submit a timely response to the Department's supplemental separate rate questionnaire and withdrew its participation in this AD investigation.[34] Consistent with the *Preliminary Determination,* the Department did not grant AVIC a separate rate in this final determination.

*Margin for the Separate Rate Companies*

Normally, the Department's practice is to assign to separate rate entities that were not individually examined a rate equal to the average of the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis,* or based entirely on adverse facts available (''AFA'').[35] Consistent with this practice, the Department has assigned Sinovel, Guodian, and CS Wind a rate of 46.38 percent, which is equal to an average of the rates calculated for the mandatory respondents.[36]

**The PRC-wide Entity**

The record indicates that, in addition to AVIC, there are other PRC exporters and/or producers of the merchandise under consideration during the POI that did not respond to the Department's requests for information. Specifically, the Department did not receive responses to its quantity and value questionnaire from over 30 PRC exporters and/or producers of merchandise under consideration that were named in the petition and to whom the Department issued the questionnaire. Because AVIC and these non-responsive PRC companies have not demonstrated that they are eligible for separate rate status, the Department considers them part of the PRC-wide entity.

**Application of Facts Available and AFA**

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

The Department has found that the PRC-wide entity withheld information requested by the Department, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information. The PRC-wide entity neither filed documents indicating it was having difficulty providing the information nor requested that it be allowed to submit the information in an alternate form. As a result, the Department has determined, pursuant to sections 776(a)(2)(A)-(C) of the Act and consistent with the *Preliminary Determination,* that it may use facts otherwise available to determine the rate for the PRC-wide entity.

Section 776(b) of the Act provides that the Department, in selecting from among the facts otherwise available, may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The Department has found that the PRC-wide entity's failure to provide the requested information constitutes circumstances under which it is reasonable to conclude that less than full cooperation has been shown.[37] Therefore, the Department has found, consistent with the *Preliminary Determination,* that the PRC-wide entity has failed to cooperate to the best of its ability to comply with requests for information and, consequently, the Department may employ an inference that is adverse to the PRC-wide entity in selecting from among the facts otherwise available.

Section 776(b) of the Act states that the Department, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate based on AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. The Department's practice is to select, as an AFA rate, the higher

[31] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*'').

[32] In the *Preliminary Determination,* the Department inadvertently omitted the producer of the merchandise under consideration sold by Sinovel from the exporter/producer combinations listed in the rate table. The producer, Hebei Qiangsheng Wind Equipment Co., Ltd., has been included in the rate table for the final determination.

[33] *See Preliminary Determination,* 77 FR at 46037–39.

[34] *Id.,*77 FR at 46039.

[35] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 71 FR 77373, 77377 (December 26, 2006), unchanged in Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China, 72 FR 19690 (April 19, 2007).

[36] *See* Memorandum from Thomas Martin, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, ''Utility Scale Wind Towers from the People's Republic of China: Calculation of the Final Margin for Separate Rate Recipients'' (December 17, 2012).

[37] *See Nippon Steel Corporation* v. *United States,* 337 F.3d 1373, 1383 (Fed. Cir. 2003) (noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a ''failure to cooperate to the best of a respondent's ability'' existed (*i.e.,* information was not provided ''under circumstances in which it is reasonable to conclude that less than full cooperation has been shown'')).

of: (1) The highest dumping margin alleged in the petition, or (2) the highest calculated weighted-average dumping margin of any respondent in the investigation.[38] In this investigation, the petition dumping margin is 213.54 percent. This rate is higher than any of the weighted-average dumping margins calculated for the companies individually examined.

**Corroboration of Information**

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.'' [39]

The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value.[40] The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[41] To corroborate secondary information, the Department will, to the extent practicable, determine whether the information used has probative value by examining the reliability and relevance of the information.

In order to determine the probative value of the dumping margins in the petition for use as AFA for purposes of this final determination, the Department examined information on the record and found that it was unable to corroborate the margin contained in the petition. Therefore, for the final determination, the Department has assigned to the PRC-wide entity the rate of 70.63 percent, which is the highest transaction-specific dumping margin for a mandatory respondent.[42] It is unnecessary to corroborate this rate because it was obtained in the course of this investigation and, therefore, is not secondary information.[43]

**Combination Rates**

As announced in the *Initiation Notice,*[44] the Department has calculated combination rates for the respondents that are eligible for a separate rate in this investigation. This practice is described in Policy Bulletin 05.1.

**Final Determination**

The Department has determined that the following weighted-average dumping margins exist for the period April 1, 2011, through September 30, 2011:

| Exporter | Producer | Weighted-average dumping margin (percent) |
|---|---|---|
| Chengxi Shipyard Co., Ltd. | Chengxi Shipyard Co., Ltd. | 47.59 |
| Titan Wind Energy (Suzhou) Co., Ltd | Titan (Lianyungang) Metal Product Co., Ltd. | 44.99 |
| Titan Wind Energy (Suzhou) Co., Ltd. | Titan Wind Energy (Suzhou) Co., Ltd. | 44.99 |
| CS Wind Corporation | CS Wind China Co., Ltd. | 46.38 |
| Guodian United Power Technology Baoding Co., Ltd | Guodian United Power Technology Baoding Co., Ltd | 46.38 |
| Sinovel Wind Group Co., Ltd. | Qiangsheng Wind Equipment Co., Ltd. | 46.38 |
| PRC-Wide Entity | | 70.63 |

**Disclosure**

In accordance with 19 CFR 351.224(b), the Department will disclose the calculations performed in this investigation to parties within five days of the date of publication of this notice in the **Federal Register**.

**Continuation of Suspension of Liquidation**

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection (''CBP'') to continue to suspend liquidation of all entries of wind towers from the PRC, as described in the ''Scope of the Investigation'' section, entered or withdrawn from warehouse for consumption on or after the date of publication of this notice in the **Federal Register**.

Further, the Department will instruct CBP to require a cash deposit equal to the weighted-average amount by which normal value exceeds U.S. price, adjusted where appropriate for export subsidies, as follows: (1) The separate rate for the exporter/producer combinations listed in the table above will be the rate the Department has determined in this final determination; (2) for all combinations of PRC exporters/producers of merchandise under consideration which have not received their own separate rate, the cash-deposit rate will be the rate for the PRC-wide entity; and (3) for all non-PRC exporters of merchandise under consideration which have not received their own separate rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These cash deposit instructions will remain in effect until further notice.

**International Trade Commission Notification**

In accordance with section 735(d) of the Act, the Department has notified the International Trade Commission (''ITC'') of the final affirmative determination of sales at LTFV. In accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with

[38] *See Certain Stilbenic Optical Brightening Agents From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 77 FR 17436, 17438 (March 26, 2012).

[39] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act (''SAA''), H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994).

[40] *Id.*

[41] *Id.*

[42] *See* CXS's Final Determination Analysis Memorandum at 6, Attachment 2; *see also* Multilayered *Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 76 FR 64318, 64322 (October 18, 2011) (assigning as an AFA rate the highest calculated transaction-specific rate among mandatory respondents).

[43] *See* section 776(c) of the Act and 19 CFR 351.308(c) and (d); *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China,* 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 1.

[44] *See Utility Scale Wind Towers From the People's Republic of China and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations,* 77 FR 3440, 3445–46 (January 24, 2012) (''*Initiation Notice*'').

material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise under consideration. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

**Notification Regarding Administrative Protective Order**

This notice also serves as a reminder to the parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of propriety information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 17, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

## Appendix

**Issues for Final Determination**

Comment 1: Whether the Department Should Continue to Use Ukraine as the Surrogate Country
Comment 2: Whether the Department Should Revise its Financial Ratio Calculations
Comment 3: Whether the Department Should Revise the SV for Brokerage and Handling
Comment 4: Whether Base Rings Are Included in the Scope of the Investigation
Comment 5: Whether the Department Should Offset the Antidumping Cash Deposit Rate for Export Subsidies
Comment 6: Whether the Department Should Grant CXS a Separate Rate
Comment 7: Whether the Department Should Apply AFA to CXS
Comment 8: Whether the Department Should Revise the SV for CXS's Expanded Metal
Comment 9: Whether the Department Should Revise the SV for CXS's Bus Bars
Comment 10: Whether the Department Should Revise the SV for CXS's Tarpaulin
Comment 11: Whether the Department Should Value CXS's River Water Using the SV for Municipal Water
Comment 12: Whether the Department Should Exclude Stainless Steel Round Bars from CXS's Normal Value
Comment 13: Whether the Department Should Use CXS's Reported Market Economy Purchase Prices
Comment 14: Whether Titan Reported the Correct Number of Flanges
Comment 15: Whether the Department Should Use Titan's Reported Market Economy Purchase Price for Winches
Comment 16: Whether the Department Should Exclude the Packing FOPs Used To Make Shipping Fixtures
Comment 17: Whether the Department Should Grant Titan a By-Product Offset

[FR Doc. 2012–30950 Filed 12–21–12; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Environmental Technologies Trade Advisory Committee (ETTAC), Request for Nominations from U.S. State Officials

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Solicitation of nominations from U.S. state officials for membership to the Environmental Technologies Trade Advisory Committee (ETTAC).

**SUMMARY:** This notice sets forth a request for nominations from U.S. state officials, or representatives from associations that represent U.S. states, to serve on the Environmental Technologies Trade Advisory Committee (ETTAC). One person will be appointed under this notice increasing the total number of members to 36.

The ETTAC was established pursuant to provisions under Title IV of the Jobs Through Trade Expansion Act, 22. U.S.C. 2151, and under the Federal Advisory Committee Act, 5 U.S.C. App.2. ETTAC was first chartered on May 31, 1994. ETTAC serves as an advisory body to the Environmental Trade Working Group of the Trade Promotion Coordinating Committee (TPCC), reporting directly to the Secretary of Commerce in his/her capacity as Chairman of the TPCC. ETTAC advises on the development and administration of policies and programs to expand U.S. exports of environmental technologies, goods, and services.

**DATES:** Nominations from officials representing U.S. states for membership must be received on or before December 31, 2012.

**ADDRESSES:** Please send nominations by post, email, or fax to the attention of Todd DeLelle, Office of Energy & Environmental Industries, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4053, Washington, DC 20230; phone 202–482–4877; email *todd.delelle@trade.gov;* fax 202–482–5665. Electronic responses should be submitted in Microsoft Word format.

*Nominations:* The Secretary of Commerce invites nominations to ETTAC of officials who will represent U.S. states interested in the trade of environmental goods and services.

Members of the ETTAC must have experience in the exportation of environmental goods and services, including:

(1) Air pollution control and monitoring technologies ;
(2) Analytic devices and services;
(3) Environmental engineering and consulting services;
(4) Financial services relevant to the environmental sector;
(5) Process and pollution prevention technologies;
(7) Solid and hazardous waste management technologies;
(8) and/or water and wastewater treatment technologies.

Nominees will be evaluated based upon their ability to carry out the goals of the ETTAC's enabling legislation. ETTAC's current Charter is available on the internet at *http://www.environment.ita.doc.gov* under the tab: *Advisory Committee.*

Nominees must be U.S. citizens. All appointments are made without regard to political affiliation. Members shall serve at the pleasure of the Secretary from the date of appointment to the Committee to the date on which the Committee's charter terminates (normally two years).

If you are interested in being nominated to become a member of ETTAC, please provide the following information (2 pages maximum):

(1) Name
(2) Title
(3) Work phone; fax; and email address
(4) Organization name and address, including Web site address
(5) Short biography of nominee, including credentials and proof of U.S. citizenship (copy of birth certificate and/or U.S. passport) and a list of citizenships of foreign countries
(6) Brief description of the organization and its business activities, including
(7) Company size (number of employees and annual sales)
(8) Exporting experience.

Please do not send company or trade association brochures or any other information.

**FOR FURTHER INFORMATION CONTACT:** Mr. Todd DeLelle, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 4053, 1401 Constitution Avenue NW., Washington, DC 20230. (Phone: 202–482–4877; Fax: 202–482–5665; email: *todd.delelle@trade.gov*).

Dated: December 19, 2012.

**Edward A. O'Malley,**

*Director, Office of Energy and Environmental Industries.*

[FR Doc. 2012–30969 Filed 12–21–12; 4:15 pm]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–835]**

### Lemon Juice from Mexico: Preliminary Results of Full Sunset Review of the Suspended Antidumping Duty Investigation

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

**DATES:** Effective December 26, 2012.

**SUMMARY:** On August 1, 2012, the Department of Commerce (''Department'') published in the **Federal Register** the notice of initiation of the sunset review of the suspended antidumping duty investigation on lemon juice from Mexico. On September 19, 2012, based on the adequacy of responses from both the domestic and the respondent interested parties, the Department determined to conduct a full sunset review as provided for in section 751(c)(5)(A) of the Act and in 19 CFR 351.218(e)(2). As a result of its analysis, the Department preliminarily finds that termination of the suspended antidumping duty investigation would be likely to lead to continuation or recurrence of dumping at the margins indicated in the ''Preliminary Results of Review'' section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Maureen Price or Sally C. Gannon, Bilateral Agreements Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4271 or (202) 482–0162, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 1, 2012, the Department initiated a sunset review of the suspended antidumping duty investigation on lemon juice from Mexico, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'').[1] The Department received a notice of intent to participate from the domestic interested party, Ventura Coastal, LLC (''Ventura''), a joint venture between Ventura Coastal and Sunkist Growers, Inc., the petitioner in the underlying investigation, within the deadline specified in 19 CFR 351.218(d)(1)(i). Ventura claimed interested party status under section 771(9)(C) of the Act as a U.S. producer of the subject merchandise. On August 31, 2012, the Department received complete substantive responses from the domestic interested party and the respondent interested parties, The Coca-Cola Company and its subsidiary, The Coca-Cola Export Corporation, Mexico Branch (collectively, ''TCCC'') and Procimart Citrus (''Procimart''), within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). On September 7, 2012, the Department received timely filed rebuttals to the substantive responses from Ventura and Procimart. As a result, pursuant to 19 CFR 351.218(e)(2), the Department determined to conduct a full sunset review.[2]

### Scope of the Suspended Investigation

The merchandise covered by the suspended investigation includes certain lemon juice for further manufacture, with or without addition of preservatives, sugar, or other sweeteners, regardless of the GPL (grams per liter of citric acid) level of concentration, brix level, brix/acid ratio, pulp content, clarity, grade, horticulture method (e.g., organic or not), processed form (e.g., frozen or not-from-concentrate), FDA standard of identity, the size of the container in which packed, or the method of packing.

Excluded from the scope are: (1) Lemon juice at any level of concentration packed in retail-sized containers ready for sale to consumers, typically at a level of concentration of 48 GPL; and (2) beverage products such as lemonade that typically contain 20% or less lemon juice as an ingredient.

Lemon juice is classifiable under subheadings 2009.39.6020, 2009.31.6020, 2009.31.4000, 2009.31.6040, and 2009.39.6040 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this Agreement is dispositive.

### Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum (''Decision Memorandum'') from Lynn Fischer Fox, Deputy Assistant Secretary for Policy & Negotiations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping, the magnitude of the margin of dumping likely to prevail if the suspended investigation were terminated, and the standing of Ventura as the domestic interested party. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memorandum, which is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available to registered users at *http://iaaccess.trade.gov/* and in the Central Records Unit (''CRU''), Room 7046 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memorandum are identical in content.

### Preliminary Results of Review

Pursuant to sections 751(c)(1) and (3) of the Act, the Department preliminarily determines that termination of the suspended antidumping duty investigation on lemon juice from Mexico would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

| Manufacturer/Exporter CHED H=≥1≥≤Weighted-Average Margin (percent) | |
|---|---|
| The Coca–Cola Export Corporation, Mexico Branch | 146.10 |
| Citrotam Internacional S.P.R. de R.L.(Citrotam)/Productos Naturales de Citricos (Pronacit) | 205.37 |
| All Others | 146.10 |

Interested parties may submit case briefs no later than 50 days after the date of publication of the preliminary results of this full sunset review, in accordance with 19 CFR 51.309(c)(1)(i). Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than the five days after the time limit for filing

[1] *See* Initiation of Five-Year (''Sunset'') Review and Correction, 77 FR 45589 (August 1, 2012).

[2] *See* Memorandum to Sally C. Gannon, Director for Bilateral Agreements, Office of Policy, on ''Sunset Review of the Agreement Suspending the Antidumping Investigation of Lemon Juice from Mexico: Adequacy Determination'' dated September 19, 2012.

case briefs in accordance with 19 CFR 351.309(d).

A hearing, if requested, will be held two days after the date the rebuttal briefs are due. The Department will issue a notice of final results of this full sunset review, which will include the results of its analysis of issues raised in any such comments, no later than March 29, 2013.

The Department is issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: December 19, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

[FR Doc. 2012–31101 Filed 12–21–12; 4:15 pm]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC379**

### 2013 Annual Determination for Sea Turtle Observer Requirement

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

**ACTION:** Notice.

**SUMMARY:** The National Marine Fisheries Service (NMFS) is providing notification that the agency will not identify additional fisheries to observe on the Annual Determination (AD) for 2013, pursuant to its authority under the Endangered Species Act (ESA). Through an AD, NMFS identifies U.S. fisheries operating in the Atlantic Ocean, Gulf of Mexico, and Pacific Ocean that will be required to take observers upon NMFS' request. The purpose of observing identified fisheries is to learn more about sea turtle interactions in a given fishery, evaluate existing measures to prevent or reduce prohibited sea turtle takes, and to determine whether additional measures to implement the prohibition against sea turtle takes may be necessary. Fisheries identified in the 2010 AD (see Table 1) remain on the AD and are therefore required to carry observers upon NMFS' request until December 31, 2014.

**ADDRESSES:** See **SUPPLEMENTARY INFORMATION** for a listing of all Regional Offices.

**FOR FURTHER INFORMATION CONTACT:** Sara McNulty, Office of Protected Resources, 301–427–8402; Ellen Keane, Northeast Region, 978–282–8476; Dennis Klemm, Southeast Region, 727–824–5312; Christina Fahy, Southwest Region, 562–980–4023; Dawn Golden, Pacific Islands Region, 808–944–2252. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### Availability of Published Materials

Information regarding the Sea Turtle Observer Requirement for Fisheries (72 FR 43176, August 3, 2007) may be obtained at *www.nmfs.noaa.gov/pr/species/turtles/regulations.htm* or from any NMFS Regional Office at the addresses listed below:

- NMFS, Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930;
- NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701;
- NMFS, Southwest Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802;
- NMFS, Pacific Islands Region, Protected Resources, 1601 Kapiolani Boulevard, Suite 1100, Honolulu, HI 96814.

#### Purpose of the Sea Turtle Observer Requirement

Under the ESA, 16 U.S.C. 1531 *et seq.,* NMFS has the responsibility to implement programs to conserve marine life listed as endangered or threatened. All sea turtles found in U.S. waters are listed as either endangered or threatened under the ESA. Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta;* North Pacific distinct population segment), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. Loggerhead (*Caretta caretta;* Northwest Atlantic distinct population segment), green (*Chelonia mydas*), and olive ridley (*Lepidochelys olivacea*) sea turtles are listed as threatened, except for breeding colony populations of green turtles in Florida and on the Pacific coast of Mexico, and breeding colony populations of olive ridleys on the Pacific coast of Mexico, which are listed as endangered. Due to the inability to distinguish between populations of green and olive ridley turtles away from the nesting beach, NMFS considers these turtles endangered wherever they occur in U.S. waters. While some sea turtle populations have shown signs of recovery, many populations continue to decline.

Incidental take, or bycatch, in fishing gear is one of the main sources of sea turtle injury and mortality nationwide. Section 9 of the ESA prohibits the take (including harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting or attempting to engage in any such conduct), including incidental take, of endangered sea turtles. Pursuant to section 4(d) of the ESA, NMFS has issued regulations extending the prohibition of take, with exceptions, to threatened sea turtles (50 CFR 223.205 and 223.206). Sections 9 and 11 of the ESA authorize the issuance of regulations to enforce the take prohibitions. NMFS may grant exceptions to the take prohibitions with an incidental take statement or an incidental take permit issued pursuant to ESA section 7 or 10, respectively. To do so, NMFS must determine that the activity that will result in incidental take is not likely to jeopardize the continued existence of the affected listed species. For some Federal fisheries and most state fisheries, NMFS has not granted an exception primarily because we lack information about fishery-sea turtle interactions.

The most effective way for NMFS to learn more about sea turtle-fishery interactions in order to prevent or minimize take is to place observers aboard fishing vessels. In 2007, NMFS issued a regulation (50 CFR 222.402) to establish procedures through which each year NMFS will identify, pursuant to specified criteria and after notice and opportunity for comment, those fisheries in which the agency intends to place observers (72 FR 43176, August 3, 2007). These regulations specify that NMFS may place observers on U.S. fishing vessels, either recreational or commercial, operating in U.S. territorial waters, the U.S. exclusive economic zone (EEZ), or on the high seas, or on vessels that are otherwise subject to the jurisdiction of the United States. Failure to comply with the requirements under this rule may result in civil or criminal penalties under the ESA.

NMFS and/or interested cooperating entities will pay the direct costs for vessels to carry observers. These include observer salary and insurance costs. NMFS may also evaluate other potential direct costs, should they arise. Once selected, a fishery will be eligible to be observed for 5 years without further action by NMFS. This will enable NMFS to develop an appropriate sampling protocol to investigate whether, how, when, where, and under what conditions incidental takes are occurring; to evaluate whether existing measures are minimizing or preventing takes; and to determine whether additional measures are needed to conserve and recover turtles.

**2013 Annual Determination**

NMFS is providing notification that the agency will not identify additional fisheries to observe for the 2013 AD, pursuant to its authority under the ESA. NMFS is not identifying additional fisheries at this time given lack of resources to implement new or expand existing observer programs to focus on sea turtles (50 CFR 222.402(a)(4)). Fisheries identified in the 2010 AD (see Table 1) remain on the AD and are therefore required to carry observers upon NMFS' request until December 31, 2014. NMFS did not identify additional fisheries to observe in the 2011 AD or in the 2012 AD.

TABLE 1—STATE AND FEDERAL COMMERCIAL FISHERIES INCLUDED ON THE ANNUAL DETERMINATION

| Fishery | Years Eligible to Carry Observers |
|---|---|
| *Trawl Fisheries* | |
| Atlantic shellfish bottom trawl | 2010–2014 |
| Mid-Atlantic bottom trawl | 2010–2014 |
| Mid-Atlantic mid-water trawl (including pair trawl) | 2010–2014 |
| Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl | 2010–2014 |
| *Gillnet Fisheries* | |
| CA halibut, white seabass and other species set gillnet (>3.5 in mesh) | 2010–2014 |
| CA yellowtail, barracuda, and white seabass drift gillnet (mesh size >3.5 in. and <14 in.) | 2010–2014 |
| Chesapeake Bay inshore gillnet | 2010–2014 |
| Long Island inshore gillnet | 2010–2014 |
| Mid-Atlantic gillnet | 2010–2014 |
| North Carolina inshore gillnet | 2010–2014 |
| Northeast sink gillnet | 2010–2014 |
| Southeast Atlantic gillnet | 2010–2014 |
| *Trap/Pot Fisheries* | |
| Atlantic blue crab trap/pot | 2010–2014 |
| Atlantic mixed species trap/pot | 2010–2014 |
| Northeast/mid-Atlantic American lobster trap/pot | 2010–2014 |
| *Pound Net/Weir/Seine Fisheries* | |
| Mid-Atlantic haul/beach seine | 2010–2014 |
| Mid-Atlantic menhaden purse seine | 2010–2014 |
| U.S. mid-Atlantic mixed species stop seine/weir/pound net (except the NC roe mullet stop net) | 2010–2014 |
| Virginia pound net | 2010–2014 |

Dated: December 18, 2012.

**Helen M. Golde,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2012–30966 Filed 12–21–12; 4:15 pm]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration (NOAA), Science Advisory Board

**[Docket Number: 121129666–2666–01]**

**RIN 0648–XC378**

### Notice of Availability of Draft Report of the NOAA Research and Development Portfolio Review Task Force and Request for Comments

**AGENCY:** Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of availability and request for public comment.

**Authority:** 5 U.S.C. App.

**SUMMARY:** NOAA's Office of Oceanic and Atmospheric Research (OAR) publishes this notice on behalf of the NOAA Science Advisory Board (SAB) to announce the availability of the draft report of the SAB Research and Development Portfolio Review Task Force (PRTF) for public comment.

**DATES:** Comments on this draft report must be received by 5:00 p.m. on January 23, 2013.

**ADDRESSES:** The Draft Report of the PRTF will be available on the NOAA Science Advisory Board Web site at: *http://www.sab.noaa.gov/Reports/prtf.html*.

The public is encouraged to submit comments electronically to *noaa.sab.comments@noaa.gov*. For individuals who do not have access to the Internet, comments may be submitted in writing to: NOAA Science Advisory Board (SAB) c/o Dr. Cynthia Decker, 1315 East-West Highway-R/SAB, Silver Spring, Maryland 20910.

**FOR FURTHER INFORMATION CONTACT:** Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, 1315 East-West Highway-R/SAB, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Fax: 301–734–1459) during normal business hours of 9 a.m. to 5 p.m. Eastern Time, Monday through Friday, or visit the NOAA SAB Web site at *http://www.sab.noaa.gov*.

For general information about the PRTF please visit the SAB Web site: *http://www.sab.noaa.gov/Working_Groups/current/SAB%20R&D%20PRTF%20Terms%20of%20Reference%20Final%2005–09–12.pdf*.

**SUPPLEMENTARY INFORMATION:** The SAB is chartered under the Federal Advisory Committee Act and is the only Federal Advisory Committee with the responsibility to advise the Under Secretary of NOAA on long- and short-term strategies for research, education, and application of science to resource management and environmental assessment and prediction. The PRTF is a subcommittee of the SAB. The PRTF is charged with providing recommendations on NOAA's current and future scientific research; this draft report was prepared in response to a NOAA request in November 2011 for the SAB to conduct a needs-based review and prioritization of NOAA's research and development (R&D) portfolio. The PRTF's review was to include identification of gaps and areas appropriate for consolidation with on-going efforts strongly linked to NOAA's current Strategic Plan. NOAA, the SAB, and the PRTF recognize the high likelihood of constrained financial resources in the coming years and believe the PRTF's review will provide

information that can be used to assist NOAA in timely planning. The SAB was also asked to provide advice on an appropriate organizational approach, within NOAA, for support of this R&D portfolio.

NOAA welcomes all comments on the content of the draft report. We also request comments on any perceived inconsistencies within the report, and possible omissions of important topics or issues. For any shortcoming noted within the report, please propose specific remedies. Suggested changes will be incorporated where appropriate, and a final report will be posted on the SAB Web site prior to the February 2013 SAB teleconference meeting. This draft report is being issued for comment only and is not intended for interim use.

Complying with the following instructions will facilitate the processing of comments and assure that all comments are appropriately considered. (1) Identify the person providing the comments by name and organization. (2) Overview comments should be provided first and should be numbered. (3) Comments that are specific to particular pages, paragraphs or lines of the section should follow any overview comments and should identify the page and line numbers to which they apply. (4) Please number each page of your comments.

Dated: December 17, 2012.

**Jason Donaldson,**

*Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.*

[FR Doc. 2012–30884 Filed 12–21–12; 8:45 am]

**BILLING CODE 3510–KD–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC400**

### Endangered and Threatened Species; Take of Anadromous Fish

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

**ACTION:** Receipt of an application for a scientific research permit.

**SUMMARY:** Notice is hereby given that NMFS has received a scientific research permit application request relating to salmonids listed under the Endangered Species Act (ESA). The proposed research program is intended to increase knowledge of the species and to help guide management and conservation efforts. The applications and related documents may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm*. These documents are also available upon written request or by appointment by contacting NMFS by phone (707) 575–6097 or fax (707) 578–3435.

**DATES:** Written comments on the permit application must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on January 23, 2013.

**ADDRESSES:** Written comments should be submitted to the Protected Resources Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404. Comments may also be submitted via fax to (707) 578–3435 or by email to *FRNpermits.SR@noaa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Jahn, Santa Rosa, CA (ph.: 707–575–6097, email.: *Jeffrey.Jahn@noaa.gov*).

**SUPPLEMENTARY INFORMATION:**

#### Species Covered in This Notice

This notice is relevant to federally threatened Central California Coast steelhead (*Oncorhynchus mykiss*).

#### Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA of 1973 (16 U.S.C. 1531–1543) and regulations governing listed fish and wildlife permits(50 CFR parts 222–226). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on the application listed in this notice should set out the specific reasons why a hearing on the application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

#### Application Received

*Permit 16417*

The Santa Clara Valley Water District (SCVWD) is requesting a 5-year scientific research permit to take juvenile Central California Coast (CCC) steelhead associated with a research project in Coyote Creek, Steven's Creek, and the Guadalupe River in Santa Clara County, California. This permit is a renewal of Permit 1121 previously issued to SCVWD. In the study described below, researchers do not expect to kill any listed fish but a small number may die as an unintended result of the research activities.

This project is part of an ongoing effort to monitor status and trends of CCC steelhead in Santa Clara County and determine relationships between CCC steelhead population abundance and SCVWD water operations and activities. This data will aid future research, restoration, and conservation efforts for ESA-listed steelhead. The objective is to continue out-migrant trapping on a daily basis from March 1 through June 15, annually. In this project, adult, juvenile, and smolt CCC steelhead will be captured (by fyke net), handled (identified, measured, weighed), marked (caudal fin-clips), sampled (fin-clips, scales), and released. A subset of fin-clipped steelhead smolts will be released upstream of the trap for a mark-recapture study to determine trap efficiency. All data and information will be shared with county, state, and federal entities for use in conservation and restoration planning efforts related to CCC steelhead.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final actions in the **Federal Register**.

Dated: December 17, 2012.

**Angela Somma,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2012–30836 Filed 12–21–12; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Hydrographic Services Review Panel

**AGENCY:** National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Notice of membership solicitation for Hydrographic Services Review Panel.

**SUMMARY:** This notice responds to the Hydrographic Service Improvements Act Amendments of 2002, Public Law

107–372, which requires the Administrator of the National Oceanic and Atmospheric Administration (NOAA), to solicit nominations (on a yearly basis) for membership on the Hydrographic Services Review Panel (HSRP). The HSRP, a Federal advisory committee, advises the Administrator on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998 (as amended) and such other appropriate matters as the Administrator refers to the Panel for review and advice. The Act states, ''the voting members of the Panel shall be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields relating to hydrographic data and hydrographic services, marine transportation, port administration, vessel pilotage, coastal and fishery management, and other disciplines as determined appropriate by the Administrator.'' The NOAA Administrator is seeking to broaden the areas of expertise represented on the Panel and encourages individuals with expertise in navigation data, products and services; coastal management; fisheries management; coastal and marine spatial planning; geodesy; water levels; and other science-related fields to apply for Panel membership. To apply for membership on the Panel, applicants should submit a current resume as indicated in the **ADDRESSES** section. A cover letter highlighting specific areas of expertise relevant to the purpose of the Panel is helpful, but not required. NOAA is an equal opportunity employer.

**DATES:** Resume application materials should be sent to the address, email, or fax specified and must be received by January 31, 2013.

**ADDRESSES:** Submit resume for Panel membership to Kathy Watson via mail, fax, or email. Mail: Kathy Watson, NOAA National Ocean Service, Office of Coast Survey, NOAA (N/CS), 1315 East West Highway, SSMC3 Rm 6126, Silver Spring, MD, 20910; Fax: 301–713–4019; Email: *Hydroservices.panel@noaa.gov;* or *kathy.watson@noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Kathy Watson, NOAA National Ocean Service, Office of Coast Survey, NOAA (N/CS), 1315 East West Highway, SSMC3 Rm 6126, Silver Spring, Maryland, 20910; Telephone: 301–713–2770 x158, Fax: 301–713–4019; Email: *Hydroservices.panel@noaa.gov;* or *kathy.watson@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** Under 33 U.S.C. 883a, *et seq.,* NOAA's National Ocean Service (NOS) is responsible for providing nautical charts and related information for safe navigation. NOS collects and compiles hydrographic, tidal and current, geodetic, and a variety of other data in order to fulfill this responsibility. The HSRP provides advice on current and emerging oceanographic and marine science technologies relating to operations, research and development; and dissemination of data pertaining to:

(A) Hydrographic surveying;
(b) Shoreline surveying;
(C) Nautical charting;
(d) Water level measurements;
(e) Current measurements;
(f) Geodetic measurements;
(g) Geospatial measurements;
(h) Geomagnetic measurements; and
(i) Other oceanographic/marine related sciences.

The Panel has fifteen voting members appointed by the NOAA Administrator in accordance with 33 U.S.C. 892c. Members are selected on a standardized basis, in accordance with applicable Department of Commerce guidance. The Co-Directors of the Center for Coastal and Ocean Mapping/Joint Hydrographic Center and two other NOAA employees serve as nonvoting members of the Panel. The Director, NOAA Office of Coast Survey, serves as the Designated Federal Official (DFO).

Although there are no current vacancies on the HSRP at this time, this solicitation seeks to update the current pool of candidate applications for consideration of appointment for potential future vacancies on the Panel.

Voting members are individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more disciplines relating to hydrographic surveying, tides, currents, geodetic and geospatial measurements, marine transportation, port administration, vessel pilotage, coastal or fishery management, and other oceanographic or marine science areas as deemed appropriate by the Administrator. Full-time officers or employees of the United States may not be appointed as a voting member. Any voting member of the Panel who is an applicant for, or beneficiary of (as determined by the Administrator) any assistance under 33 U.S.C. 892c shall disclose to the Panel that relationship, and may not vote on any other matter pertaining to that assistance.

Voting members of the Panel serve a four-year term, except that vacancy appointments are for the remainder of the unexpired term of the vacancy. Members serve at the discretion of the Administrator and are subject to government ethics standards. Any individual appointed to a partial or full term may be reappointed for one additional full term. A voting member may serve until his or her successor has taken office. The Panel selects one voting member to serve as the Chair and another to serve as the Vice Chair. The Vice Chair acts as Chair in the absence or incapacity of the Chair but will not automatically become the Chair if the Chair resigns. Meetings occur at least twice a year, and at the call of the Chair or upon the request of a majority of the voting members or of the Administrator. Voting members receive compensation at a rate established by the Administrator, not to exceed the maximum daily rate payable under section 5376 of title 5, United States Code, when engaged in performing duties for the Panel. Members are reimbursed for actual and reasonable expenses incurred in performing such duties.

## Individuals Selected for Panel Membershp

Upon selection and agreement to serve on the HSRP Panel, you become a Special Government Employee (SGE) of the United States Government. 18 U.S.C. 202(a) an SGE (s) is an officer or employee of an agency who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, not to exceed 130 days during any period of 365 consecutive days, either on a fulltime or intermittent basis. Please be aware that after the selection process is complete, applicants selected to serve on the Panel must complete the following actions before they can be appointed as a Panel member:

(a) Security Clearance (on-line Background Security Check process and fingerprinting conducted through NOAA Workforce Management); and

(b) Confidential Financial Disclosure Report—As an SGE, you are required to file a Confidential Financial Disclosure Report to avoid involvement in a real or apparent conflict of interest. You may find the Confidential Financial Disclosure Report at the following Web site. *http://www.usoge.gov/forms/form_450.aspx*

Dated: December 12, 2012.

**Rear Admiral Gerd F. Glang,**

*NOAA, Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. 2012–30926 Filed 12–21–12; 8:45 am]

**BILLING CODE 3510–JE–P**

## CONSUMER PRODUCT SAFETY COMMISSION

**[Docket No. CPSC–2012–0054]**

### Submission for OMB Review; Comment Request— Safety Standard for Automatic Residential Garage Door Operators

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (Commission or CPSC) announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of a collection of information associated with the Commission's safety standard for automatic residential garage door operators.

**DATES:** Written comments on this request for extension of approval of information collection requirements should be submitted by January 25, 2013.

**ADDRESSES:** To ensure that comments on the information collection are received, the OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: CPSC Desk Officer, FAX: 202–395–6974, or emailed to oira_submission@omb.eop.gov. All comments should be identified by Docket No. CPSC–2012–0054. In addition, written comments also should be submitted at *http://www.regulations.gov,* under Docket No. CPSC–2012–0054, or by mail/hand delivery/courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Robert H. Squibb, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; Telephone: 301–504–7923 or by email to: *rsquibb@cpsc.gov.*

SUPPLEMENTAL INFORMATION: In the **Federal Register** of October 4, 2012 and October 17, 2012 (77 FR 60686, 77 FR 63800), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information in the Safety Standard for Automatic Residential Garage Door Operators (16 CFR Part 1211). No comments were received in response to that notice. Therefore, by publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of that collection of information without change.

The Consumer Product Safety Improvement Act of 1990 (Pub. L. 101-608, 104 Stat. 3110) requires all automatic residential garage door openers manufactured after January 1, 1993, to comply with the entrapment protection requirements of UL Standard 325 that were in effect on January 1, 1992. In 1992, the Commission codified the entrapment protection provisions of UL Standard 325 in effect on January 1, 1992, as the Safety Standard for Automatic Residential Garage Door Operators, 16 CFR Part 1211, Subpart A. Certification regulations implementing the standard require manufacturers, importers, and private labelers of garage door operators subject to the standard to test their products for compliance with the standard, and to maintain records of that testing. Those regulations are codified at 16 CFR Part 1211, Subparts B and C.

The Commission uses the records of testing and other information required by the certification regulations to determine that automatic residential garage door operators subject to the standard comply with its requirements. The Commission also uses this information to obtain corrective actions if garage door operators fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

We estimate that about 23 firms are subject to the testing and recordkeeping requirements of the certification regulations. We estimate that each respondent will spend 40 hours annually on the collection of information, for a total of about 920 hours. The estimated total annual cost to industry is approximately $25,429, based on 920 hours x $27.64 (Bureau of Labor Statistics, total compensation for all sales and office workers in goods-producing private industries: *http://www.bls.gov/ncs*).

Dated: December 20, 2012.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2012–30991 Filed 12–21–12; 4:15 pm]

BILLING CODE 6355–01–P

## CONSUMER PRODUCT SAFETY COMMISSION

**[Docket No. CPSC–2012–0056]**

### Submission for OMB Review; Comment Request—Safety Standard for Omnidirectional Citizens Band Base Station Antennas

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (Commission or CPSC) announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of a collection of information associated with the Commission's safety standard for omnidirectional citizens band base station antennas.

**DATES:** Written comments on this request for extension of approval of information collection requirements should be submitted by January 25, 2013.

**ADDRESSES:** To ensure that comments on the information collection are received, the OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: CPSC Desk Officer, FAX: 202–395–6974, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified by Docket No. CPSC–2012–0056. In addition, written comments also should be submitted at *http://www.regulations.gov,* under Docket No. CPSC–2012–0056, or by mail/hand delivery/courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Robert H. Squibb, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; Telephone: 301–504–7923 or by email to: *rsquibb@cpsc.gov.*

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of October 4, 2012, and October 17, 2012 (77 FR 60682, 77 FR 63800), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the

agency's intention to seek extension of approval of the collection of information required in the Safety Standard for Omnidirectional Citizens Band Base Station (16 CFR Part 1204). No comments were received in response to that notice.

The Safety Standard for Omnidirectional Citizens Band Base Station Antennas establishes performance requirements for omnidirectional citizens band base station antennas to reduce unreasonable risks of death and injury that may result if an antenna contacts overhead power lines while being erected or removed from its site. Certification regulations implementing the standard require manufacturers, importers, and private labelers of antennas subject to the standard to test antennas for compliance with the standard and to maintain records of that testing.

The records of testing and other information required by the certification regulations allow the Commission to determine that antennas subject to the standard comply with its requirements. This information would also enable the Commission to obtain corrective actions if omnidirectional citizens band base station antennas failed to comply with the standard in a manner which creates a substantial risk of injury to the public.

We estimate that about five firms manufacture or import citizens band base station antennas subject to the standard. We estimate that the certification regulations will impose an average annual burden of about 220 hours on each of those firms. That burden will result from conducting the testing required by the regulations and maintaining records of the results of that testing. The total annual burden imposed by the regulations on manufacturers and importers of citizens band base station antennas is approximately 1,100 hours.

The hourly wage for the testing and recordkeeping required to conduct the testing and maintain records required by the regulations is approximately $61.75 (Bureau of Labor Statistics: total compensation for management, professional, and related workers in goods-producing private industries: *http://www.bls.gov/ncs*), for an estimated annual cost to the industry of $67,925.

Dated: December 20, 2012.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2012–30989 Filed 12–21–12; 4:15 pm]

**BILLING CODE 6355–01–P**

## CONSUMER PRODUCT SAFETY COMMISSION

**[Docket No. CPSC–2012–0055]**

## Submission for OMB Review; Comment Request—Flammability Standards for Children's Sleepwear

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (Commission or CPSC) announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of a collection of information associated with the flammability standards for children's sleepwear and implementing regulations.

**DATES:** Written comments on this request for extension of approval of information collection requirements should be submitted by January 25, 2013.

**ADDRESSES:** To ensure that comments on the information collection are received, the OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: CPSC Desk Officer, FAX: 202–395–6974, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified by Docket No. CPSC–2012–0055. In addition, written comments also should be submitted at *http://www.regulations.gov,* under Docket No. CPSC–2012–0055, or by mail/hand delivery/courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Robert H. Squibb, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; Telephone: 301–504–7923 or by email to *rsquibb@cpsc.gov.*

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of October 4, 2012, and October, 17, 2012, (77 FR 60684, 77 FR 63799) the Consumer Product Safety Commission (CPSC or Commission) published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the CPSC's intention to seek extension of approval of collections of information in the flammability standards for children's sleepwear and implementing regulations. No comments were received in response to that notice. Therefore, by publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of that collection of information without change.

The standards and regulations are codified as the Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X, 16 CFR part 1615; and the Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14, 16 CFR part 1616. The flammability standards and implementing regulations prescribe requirements for testing and recordkeeping by manufacturers and importers of children's sleepwear subject to the standards. The information in the records required by the regulations allows the Commission to determine if items of children's sleepwear comply with the applicable standard. This information also enables the Commission to obtain corrective actions if items of children's sleepwear fail to comply with the applicable standard in a manner that creates a substantial risk of injury.

We estimate that about 83 firms manufacture or import products subject to the two children's sleepwear flammability standards. These firms may perform an estimated 2,000 tests each, which take up to 3 hours per test. We estimate that these standards and implementing regulations will impose an average annual burden of about 6,000 hours on each of those firms (2,000 tests × 3 hours). That burden will result from conducting the testing required by the standards and maintaining records of the results of that testing mandated by the implementing regulations. The total annual burden imposed by the standards and regulations on all manufacturers and importers of children's sleepwear will be about 498,000 hours (83 firms × 6,000). The annual cost to the industry is estimated to be $30,751,500, based on an hourly wage of $61.75 (Bureau of Labor Statistics: Total compensation for management, professional, and related workers in goods-producing private industries: *http://www.bls.gov/ncs*) × 498,000 hours.

Dated: December 20, 2012.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2012–30993 Filed 12–21–12; 4:15 pm]

**BILLING CODE 6355–01–P**

## CONSUMER PRODUCT SAFETY COMMISSION

**[Docket No. CPSC–2012–0057]**

### Submission for OMB Review; Comment Request—Requirements for Electrically Operated Toys and Children's Articles

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (Commission or CPSC) announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of a collection of information associated with the Commission's safety standard for electrically operated toys and children's articles.

**DATES:** Written comments on this request for extension of approval of information collection requirements should be submitted by January 25, 2013.

**ADDRESSES:** To ensure that comments on the information collection are received, the OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: CPSC Desk Officer, FAX: 202–395–6974, or emailed to oira_submission@omb.eop.gov. All comments should be identified by Docket No. CPSC–2012–0057. In addition, written comments also should be submitted at *http://www.regulations.gov*, under Docket No. CPSC–2012–0057, or by mail/hand delivery/courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Robert H. Squibb, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; Telephone: 301–504–7923 or by email to: *rsquibb@cpsc.gov*.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of October 4, 2012, and October 17, 2012 (77 FR 60685, 77 FR 63799), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information required in the Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children (16 CFR Part 1505). No comments were received in response to that notice. Therefore, by publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of that collection of information without change.

The regulations in Part 1505 establish performance and labeling requirements for electrically operated toys and children's articles to reduce unreasonable risks of injury to children from electric shock, electrical burns, and thermal burns associated with those products. Section 1505.4(a)(3) of the regulations requires manufacturers and importers of electrically operated toys and children's articles to maintain records for 3 years containing information about: (1) Material and production specifications; (2) the quality assurance program used; (3) results of all tests and inspections conducted; and (4) sales and distribution of electrically operated toys and children's articles.

The records of testing and other information required by the regulations allow the Commission to determine if electrically operated toys and children's articles comply with the requirements of the regulations in part 1505. If the Commission determines that products fail to comply with the regulations, this information also enables the Commission and the firm to: (i) identify specific lots or production lines of products which fail to comply with applicable requirements; and (ii) notify distributors and retailers in the event those products are subject to recall.

We estimate that about 40 firms are subject to the testing and recordkeeping requirements of the regulations. Each one may have an average of 10 products each year, for which testing and recordkeeping would be required, resulting in approximately 400 records. We estimate that the tests required by the regulations can be performed on one product in 16 hours and that recordkeeping can be performed for one product in 4 hours. Thus, the estimated testing burden hours are 6,400 (16 hours x 400), and the estimated recordkeeping burden hours are 1,600 hours (400 records x 4 hours).

In addition, we estimate that each firm may spend 30 minutes or less per model on the labeling requirements. Assuming each firm produces 10 new models each year, the estimated labeling burden hours are 200 hours (40 firms x 10 models per firm x 0.5 hours per model = 200 hours) per year. The estimated total burden hours for recordkeeping and labeling are 1,800 hours for all firms (1,600 hours for recordkeeping + 200 hours for labeling). The hourly wage for the time required to perform the required testing and recordkeeping is approximately $61.75 (Bureau of Labor Statistics: total compensation for management, professional, and related workers in goods-producing private industries: *http://www.bls.gov/ncs*, and the hourly wage for the time required to maintain the labeling requirements is approximately $27.64 (Bureau of Labor Statistics, total compensation for all sales and office workers in goods-producing, private industries: *http://www.bls.gov/ncs*). The annualized total cost to the industry is estimated to be $444,952 (6,400 × $61.75 + 1,800 × $27.64).

Dated: December 20, 2012.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2012–30990 Filed 12–21–12; 4:15 pm]

**BILLING CODE 6355–01–P**

## CONSUMER PRODUCT SAFETY COMMISSION

**[Docket No. CPSC–2012–0058]**

### Submission for OMB Review; Comment Request—Safety Standard for Walk-Behind Power Lawn Mowers

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (Commission or CPSC) announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of a collection of information associated with the Commission's safety standard for walk-behind power lawn mowers.

**DATES:** Written comments on this request for extension of approval of information collection requirements

should be submitted by January 25, 2013.

**ADDRESSES:** To ensure that comments on the information collection are received, the OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: CPSC Desk Officer, FAX: 202–395–6974, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified by Docket No. CPSC–2012–0058. In addition, written comments also should be submitted at *http://www.regulations.gov,* under Docket No. CPSC–2012–0058, or by mail/hand delivery/courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Robert H. Squibb, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301–504–7923 or by email to *rsquibb@cpsc.gov.*

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of October 4, 2012, and October 17, 2012 (77 FR 60683, 77 FR 63800), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information required in the Safety Standard for Walk-Behind Power Lawn Mowers (16 CFR Part 1205). Three comments were received in response to that notice. Two commenters questioned the need to collect any information. One commenter stated that lawn mowers should not be imported from China and Korea. This comment is outside the scope of the proposed collection of information which concerns only issues related to the collection of information. The Safety Standard for Walk-Behind Power Lawn Mowers establishes performance and labeling requirements for mowers to reduce unreasonable risks of injury resulting from accidental contact with the moving blades of mowers. Certification regulations implementing the standard require manufacturers, importers, and private labelers of mowers subject to the standard to test mowers for compliance with the standard and to maintain records of that testing. The records of testing and other information required by the certification regulations allow the Commission to determine that walk-behind power mowers subject to the standard comply with its requirements. This information also enables the Commission to obtain corrective actions if mowers fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

We estimate that about 34 firms are subject to the testing and recordkeeping requirements of the certification regulations. We estimate further that the annual testing and recordkeeping burden imposed by the regulations on each of these firms on average is approximately 390 hours. Thus, the total annual burden imposed by the certification regulations on all manufacturers and importers of walk-behind power mowers is about 13,260 hours (34 firms x 390 hours).

In addition, manufacturers are expected to spend an additional hour, per production day, to collect the information for labeling. Accordingly, an additional 130 hours per firm are added to the total burden. For the 34 firms involved, the total estimated burden related to labeling is 4,420 hours. Aggregate annual burden hours related to testing, recordkeeping, and labeling are estimated to be 520 hours per firm and 17,680 hours for the industry.

The hourly wage for the time required to perform the required testing and recordkeeping is approximately $61.75 (Bureau of Labor Statistics: total compensation for management, professional, and related workers in goods-producing private industries: *http://www.bls.gov/ncs*), and the hourly wage for the time required to maintain the labeling requirements is approximately $27.64 (Bureau of Labor Statistics, total compensation for all sales and office workers in goods-producing, private industries: *http://www.bls.gov/ncs*). The annualized total cost to the industry for annual testing and recordkeeping is estimated to be $818,805, based on 13,260 hours x $61.75. The annualized cost burden related to labeling is estimated to be $122,169, based on 4,420 hours x $27.64. Aggregate burden costs related to testing, recordkeeping, and labeling are estimated to be $940,972 for the industry.

Dated: December 20, 2012.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2012–30992 Filed 12–21–12; 4:15 pm]

BILLING CODE 6355–01–P

## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 13–2]**

## Star Networks USA, LLC; Complaint

**AGENCY:** Consumer Product Safety Commission

**ACTION:** Publication of a Complaint under the Consumer Product Safety Act.

**SUMMARY:** Under provisions of its Rules of Practice for Adjudicative Proceeding (16 CFR part 1025), the Consumer Product Safety Commission must publish in the **Federal Register** Complaints which it issues. Published below is a Complaint: In the Matter of Star Networks USA, LLC.[1]

**SUPPLEMENTARY INFORMATION:** The text of the Complaint appears below.

Dated: December 18, 2012.

**Todd A. Stevenson,**

*Secretary.*

**UNITED STATES OF AMERICA**

**CONSUMER PRODUCT SAFETY COMMISSION**

In the Matter of STAR NETWORKS USA, LLC, Respondent

CPSC DOCKET NO. 13–2

*COMPLAINT*

*Nature of Proceedings*

1. This is an administrative enforcement proceeding pursuant to Section 15 of the Consumer Product Safety Act (''CPSA''), as amended, 15 U.S.C. § 2064, for public notification and remedial action to protect the public from the substantial risk of injury presented by aggregated masses of high-powered, small rare earth magnets known as Magnicube Magnet Balls (''Magnicube Spheres'') and Magnet Cubes (''Magnicube Cubes'') (collectively the ''Subject Products''), imported and distributed by STAR NETWORKS USA, LLC (''Star'' or ''Respondent'').

2. This proceeding is governed by the Rules of Practice for Adjudicative Proceedings before the Consumer Product Safety Commission (''Commission''), 16 C.F.R. part 1025.

*Jurisdiction*

3. This proceeding is instituted pursuant to the authority contained in Sections 15(c), (d), and (f) of the CPSA, 15 U.S.C. § 2064 (c), (d), and (f).

[1] Chairman Inez M. Tenenbaum and Commissioner Robert S. Adler voted to authorize the Complaint. Commissioner Nancy A. Nord voted to not authorize the Complaint.

*Parties*

4. Complaint Counsel is the staff of the Division of Compliance within the Office of the General Counsel of the Commission (''Complaint Counsel''). The Commission is an independent federal regulatory agency established pursuant to Section 4 of the CPSA, 15 U.S.C. § 2053.

5. Upon information and belief, Star is a New Jersey corporation with its principal place of business located at 26 Commerce Road, Suite B, Fairfield, New Jersey, 07004.

6. Respondent is an importer and distributor of the Subject Products.

7. As an importer and distributor of the Subject Products, Respondent is a ''manufacturer'' and ''distributor'' of a ''consumer product'' that is ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(5),(7), (8), and (11) of the CPSA, 15 U.S.C. §§ 2052(a)(5),(7), (8), and (11).

*The Consumer Product*

8. Respondent imported and distributed the Subject Products in U.S. commerce and offered them for sale to consumers for their personal use in or around a permanent or temporary household or residence, a school, and in recreation or otherwise.

9. Upon information and belief, the Subject Products consist of small, individual magnets that are packaged as aggregated masses in different sized containers holding 125, 216, 250, 343 or 1,027 small magnets, ranging in size from approximately 5.0 mm to 6.0 mm, with a variety of coatings, and a flux index greater than 50.

10. Upon information and belief, the flux index of the Magnicube Spheres ranges from 435.1 to 876.5 $kg^2mm.^2$

11. Upon information and belief, the flux index of the Magnicube Cubes ranges from 441.9 to 496.4 $kg^2mm.^2$

12. Upon information and belief, Magnicubes Spheres were introduced into U.S. commerce sometime after August 2010.

13. Upon information and belief, Magnicubes Cubes were introduced into U.S. commerce sometime after August 2010.

14. Upon information and belief, the Subject Products are manufactured by Dongyang Huale Electronics, LTD, Hengdian Industrial Area, Dongyang Zheijiang, China.

15. Upon information and belief, the Subject Products are sold in velvet-lined boxes or foam-lined tins.

16. Upon information and belief, the Subject Products range in retail price from approximately $19.95 to $79.95.

17. Upon information and belief, more than 21,000 sets of Magnicube Spheres have been sold to consumers in the United States.

18. Upon information and belief, more than 480 sets of Magnicube Cubes have been sold to consumers in the United States.

19. Upon information and belief, approximately 17 mixed sets of 125 Magnicube Spheres and 125 Magnicube Cubes marketed as the Magnicube Duo Edition have been sold to consumers in the United States.

*COUNT I*

The Subject Products are Substantial Product Hazards Under Section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2), Because They Contain Product Defects That Create a Substantial Risk of Injury to the Public

*The Subject Products are Defective Because Their Instructions, Packaging, and Warnings Are Inadequate*

20. Paragraphs 1 through 19 are hereby realleged and incorporated by reference as though fully set forth herein.

21. A defect can occur in a product's contents, construction, finish, packaging, warnings and/or instructions. 16 C.F.R. § 1115.4

22. A defect can occur when reasonably foreseeable consumer use or misuse, based in part on lack of adequate instructions and safety warnings, could result in injury, even where there are no reports of injury. 16 C.F.R. § 1115.4

23. Upon information and belief, Star offered the Subject Products for sale sometime after August 2010 through December 2012 on its direct-sales Web site, *www.magnicube.com.*

24. Upon information and belief, sometime after August 2010 through December 2012, Star's U.S. Direct sales Web site contained the following warning regarding the Subject Products: ''Keep Away from All Children! This product is NOT intended to be inhaled or swallowed, magnets should not be put in those nose or mouth. Magnets that are inhaled or swallowed may stick to intestines, which may lead to serious injury or death. Immediate medical attention is required if magnets are inhaled or swallowed. Recommended age 14+.''

25. Upon information and belief, from sometime after August 2010 through December 2012, the ''Safety Notice'' page of Star's Direct sales Web site contained the following warning regarding the Subject Products: ''Magnicube products are NOT toys for children[.] Recommended age 14+. Magnicube Magnet Balls and Magnet Cubes are not manufactured, distributed, promoted, labeled, or intended for children. Ingestion Hazard—This product represents an ingestion Hazard, DO NOT ingest magnets. Magnets that are inhaled or swallowed may stick to intestines, which may lead to serious injury or death. Immediate medical attention is required if magnets are inhaled or swallowed.''

26. Upon information and belief, Star offered the Subject Products for sale from November 2011 through July 2012, on Amazon.com, Inc.'s Web site *www.amazon.com.*

27. Upon information and belief, from November 2011 through July 2012 Star's product listing for the Subject Products on the Amazon.com, Inc.'s Web site contained the following warning: WARNING: CHOKING HAZARD—WARNING: KEEP AWAY FROM ALL CHILDREN. Do not put in mouth or nose. This product contains small magnets. Swallowed magnets can stick together across intestines causing serious infections and death. Seek immediate medical attention if magnets or swallowed or inhaled. CHOKING HAZARD—This toy is a marble. Not for children under 3 yrs. CHOKING HAZARD—This toy is a small ball. Not for children under 3 yrs. CHOKING HAZARD—Small parts. Not for children under 3 yrs. CHOKING HAZARD—Toy contains a small ball. Not for children under 3 yrs.''

28. Upon information and belief, on or about June 14, 2012, Star authorized online discount retailer Groupon, Inc. to issue an internet offer for the sale of the Subject Products on Groupon, Inc.'s Web site, *www.groupon.com.*

29. Upon information and belief, the Groupon internet offer contained the following warning: ''Recommended for ages 14 and up. Keep out of reach of children.''

30. Upon information and belief, sets of the Subject Products are currently sold in tins with the following warning printed on a sticker on the underside of the tin:

WARNING: Keep Away From All Children! This product is NOT intended to be inhaled or swallowed, magnets [*sic*] should not be put in nose or mouth. Magnets that are inhaled or swallowed may stick to intestines, which may lead to serious injury or death. Immediate medical attention is required if magents are inhaled or swallowed. Recommended age 14+.''

31. Upon information and belief, sets of the Subject Products are currently sold in boxes with following warning printed on the underside of a cardboard sleeve that wraps around the box:

WARNING: Keep Away From All Children! This product is NOT intended to be inhaled or swallowed, magnets [*sic*] should not be put in nose or mouth. Magnets that are inhaled or swallowed may stick to intestines, which may lead to serious injury or death. Immediate medical attention is required if magents are inhaled or swallowed. Recommended age 14+.''

32. Upon information and belief, the Subject Products are packaged without any instructions.

33. Before and after the Subject Products were introduced into commerce sometime after August 2010, many children under the age of 14 have ingested products (the ''Ingested Products'') that are almost identical in form, substance, and content to the Subject Products.

34. Upon information and belief, the Ingested Products are marketed and used in substantially similar ways to the Subject Products.

35. Upon information and belief, on or about January 28, 2010, a 9-year-old boy used high-powered, small, spherically-shaped magnets almost identical in form, substance, and content to the Subject Products to mimic tongue and lip piercings, and accidentally ingested seven magnets. He was treated at an emergency room.

36. Upon information and belief, on or about September 5, 2010, a 12-year-old girl accidentally swallowed two high-powered, small, spherically-shaped magnets almost identical in form, substance, and content to the Subject Products. She sought medical treatment at a hospital, including x-rays and monitoring for infection and damage to her gastrointestinal tract.

37. Upon information and belief, on or about December 23, 2010, a 3-year-old girl ingested eight high-powered, small, spherically-shaped magnets almost identical in form, substance, and content to the Subject Products that she found on a refrigerator in her home. She required surgery to remove the magnets. The magnets caused intestinal and stomach perforations, and had also become embedded in the girl's trachea and esophagus.

38. Upon information and belief, on or about January 6, 2011, a 4-year-old boy suffered intestinal perforations after ingesting three high-powered, small, spherically-shaped magnets almost identical in form, substance, and content to the Subject Products that he thought were chocolate candy because they looked like the decorations on his mother's wedding cake.

39. By November 2011, the Commission was aware of approximately 22 reports of ingestions of high-powered, small, spherically-shaped magnets almost identical in form, substance, and content to the Subject Products.

40. On November 11, 2011, the Commission issued a public safety alert warning the public of the dangers of the ingestion of rare earth magnets like the Subject Products.

41. Ingestion incidents, however, continue to occur.

42. Since the safety alert, the Commission has received dozens of reports of children ingesting high-powered, small, spherically-shaped magnets that are almost identical in form, substance, and content to the Subject Products, but may be manufactured and/or sold by firms other than the Respondent.

43. Upon information and belief, on or about January 17, 2012, a 10-year-old girl accidentally ingested two high-powered, small, spherically-shaped magnets almost identical in form, substance, and content to the Subject Products after using them to mimic a tongue piercing. The magnets became embedded in her large intestine, and she underwent x-rays, CT scans, endoscopy, and an appendectomy to remove them. The girl's father had purchased the magnets for her at the local mall.

44. All warnings on the Subject Products and/or on the Web sites where the Subject Products are or were offered for sale are inadequate and defective because they do not and cannot effectively communicate to consumers, including parents and caregivers, the hazard associated with the Subject Products and magnet ingestions.

45. Because the warnings on the Subject Products and/or on the Web sites where the Subject Products are or were offered for sale are inadequate and defective, parents will continue to give children the Subject Products or allow children to have access to the Subject Products.

46. Parents and caregivers are unlikely to appreciate the hazard associated with the product because the product warnings refer to the product as a ''marble'' and as a ''small ball.'' This product description suggests that the potential health risk posed by the Subject Products is from choking, rather than intestinal perforations or other gastrointestinal injuries that can result if more than one magnet ball is swallowed.

47. Children cannot and do not appreciate the hazard, and it is foreseeable that they will mouth the items, swallow them, or, in the case of adolescents and teens, use them to mimic body piercings. These uses can and do result in injury.

48. All warnings on the packaging of the Subject Products are inadequate and defective because the font-size of the warnings hinders legibility and may discourage consumers from reading the warning message, making it less likely that consumers will review the warnings on the packaging prior to foreseeable uses of the Subject Products. These uses can and do result in injury.

49. All warnings on the packaging and/or carrying cases of the Subject Products are inadequate and defective because the placement of the warnings only on the underside of the packaging and/or carrying case renders the warnings inconspicuous such that consumers likely will not review the warnings prior to foreseeable uses of the Subject Products. These uses can and do result in injury.

50. All warnings on the Subject Products that are packaged in boxes are inadequate and defective because the cardboard sleeve on which the warnings are written is not necessary for use of the Subject Products and is often discarded. Because the cardboard sleeve is unnecessary and is often discarded, consumers likely will not review the warnings on the packaging prior to foreseeable uses of the Subject Products. These uses can and do result in injury.

51. All warnings on the Subject Products are inadequate and defective because once the Subject Products are removed from the packaging and/or the carrying case prior to foreseeable uses of the Subject Products, the magnets themselves display no warnings, and the small size of the individual magnets precludes the addition of warnings. These uses can and do result in injury.

52. All warnings on the Subject Products are inadequate and defective because the magnets are shared and used among various consumers, including children, after the packaging is discarded; thus, many consumers of the Subject Products will have no exposure to any warnings prior to using the Subject Products. These uses can and do result in injury.

53. All warnings displayed on the carrying cases, if any, are inadequate and defective because consumers are unlikely to disassemble configurations made with the Subject Products after each use, many of which are elaborate and time-consuming to create, to return the Subject Products to the carrying case or to put the Subject Products out of the reach of children.

54. The effectiveness of the warnings on the Subject Products is further diminished by the advertising and marketing of the Subject Products.

55. Upon information and belief, as late as May 2012, Star was aware that

the Subject Products were displayed with other toys on the Amazon.com, Inc.'s Web site.

56. Upon information and belief, as of November 2012, Respondent advertised the Subject Products on its direct sale Web site as a ''toy,'' encouraging consumers to ''get out of your daze with your new toy.''

57. Upon information and belief, the Subject Products are described on Star's direct sales Web site as a magnetic puzzle, a 3d puzzle, and magnetic puzzle gift items that are typically considered playthings for children under the age of 14.

58. The advertising and marketing of the Subject Products conflict with the claimed 14+ age grade label on the Subject Products.

59. Because the advertising and marketing of the Subject Products conflict with the age label, the effectiveness of the age label is diminished.

60. The advertising and marketing of Subject Products conflict with the stated warnings on the Subject Products.

61. Because the advertising and marketing conflict with the stated warnings, the effectiveness of the warnings is diminished.

62. No warnings or instructions could be devised that would effectively communicate the hazard in a way that would be understood and heeded by consumers and would reduce the incidences of magnet ingestions.

63. Because of the lack of adequate instructions and safety warnings, a substantial risk of injury occurs as a result of the foreseeable use and misuse of the Subject Products.

*The Subject Products Are Defective Because the Risk of Injury Occurs as a Result of Its Operation and Use and the Failure of the Subject Products to Operate as Intended*

1. A design defect can be present if the risk of injury occurs as a result of the operation or use of the product or a failure of the product to operate as intended. 16 C.F.R. § 1115.4.

2. The Subject Products contain a design defect because they present a risk of injury as a result of their operation and/or use.

3. Upon information and belief, the Subject Products have been advertised and marketed by the Respondent to both children and adults.

4. As a direct result of such marketing and promotion, the Subject Products have been, and are currently used by, both children and adults.

5. The risk of injury occurs as a result of the use of the Subject Products by adults, who give the Subject Products to children or allow children to have access to the Subject Products.

6. The risk of injury occurs as a result of the foreseeable use and/or misuse of the Subject Products by children.

7. The Subject Products contain a design defect because they fail to operate as intended and present a substantial risk of injury to the public.

8. Upon information and belief, Respondent contends that the Subject Products are manipulatives that provide stress relief and other benefits to adults only.

9. The Subject Products are intensely appealing to children due to their tactile features, their small size, and their highly reflective, shiny metallic and colorful coatings.

10. Certain sets of the Subject Products come in bright color combinations which are likely to add to the perception that the magnets are intended to appeal to children because they offer creative value as puzzles, models, or art by combining magnetism and color.

11. The Subject Products are also appealing to children because they are smooth, unique, and make a soft snapping sound as they are manipulated.

12. The Subject Products also move in unexpected, incongruous ways as the poles on the magnets move to align properly, which can evoke a degree of awe and amusement among children enticing them to play with the Subject Products.

13. Despite the Respondent's current age label and asserted use of the Subject Products, they do not operate as intended because they are intensely appealing to and are often played with by children.

14. This defective design of the Subject Products poses a risk of injury because parents and caregivers buy the Subject Products for children and/or allow children to play with the Subject Products.

*The Type of the Risk of Injury Renders the Subject Products Defective*

15. The risk of injury associated with a product may render the product defective. 16 C.F.R. § 1115.4.

16. Upon information and belief, the Subject Products have low utility to consumers.

17. Upon information and belief, the Subject Products are not necessary to consumers.

18. The nature of the risk of injury includes serious, life-threatening, and long-term health conditions that can result when magnets attract to each other through intestinal walls, causing harmful tissue compression that can lead to perforations, fistulas, and other gastrointestinal injuries.

19. Children, a vulnerable population protected by the CPSA, are exposed to risk of injury by the Subject Products.

20. The risk of injury associated with the ingestion of the Subject Products is neither obvious nor intuitive.

21. Warnings and instructions cannot adequately mitigate the risk of injury associated with ingesting the Subject Products.

22. Children mouthing and ingesting the Subject Products is foreseeable.

23. Children using the Subject Products for body art, including mimicking tongue piercings, is foreseeable.

24. The type of the risk of injury renders the Subject Products defective.

*The Subject Products Create a Substantial Risk of Injury to the Public*

25. The Subject Products pose a risk of magnet ingestion by children below the age of 14, who may, consistent with developmentally appropriate behavior, place a single magnet or numerous magnets in their mouth.

26. The risk of ingestion also exists when adolescents and teens use the Subject Products to mimic piercings of the mouth, tongue, and cheek and accidentally swallow the magnets.

27. If two or more of the magnets are ingested and the magnetic forces of the magnets pull them together, the magnets can pinch or trap the intestinal walls or other digestive tissue between them, resulting in acute and long-term health consequences. Magnets that attract through the walls of the intestines result in progressive tissue injury, beginning with local inflammation and ulceration, progressing to tissue death, then perforation or fistula formation. Such conditions can lead to infection, sepsis, and death.

28. Ingestion of more than one magnet often requires medical intervention, including endoscopic or surgical procedures.

29. Because the initial symptoms of injury from magnet ingestion are nonspecific and may include nausea, vomiting, and abdominal pain, caretakers, parents, and medical professionals may easily mistake these nonspecific symptoms for other common gastrointestinal upsets, and erroneously believe that medical treatment is not immediately required, thereby delaying potentially critical treatment.

30. Medical professionals may not be aware of the dangers posed by ingestion of the Subject Products and the corresponding need for immediate evaluation and monitoring. A delay of

surgical intervention or other medical treatment due to the presentation of nonspecific symptoms and/or a lack of awareness by medical personnel of the dangers posed by multiple magnet ingestion can exacerbate life-threatening internal injuries.

31. Magnets that become affixed through the gastrointestinal walls and are not surgically removed may result in intestinal perforations which can lead to necrosis, the formation of fistulas, or ultimately, perforation of the bowel and leakage of toxic bowel contents into the abdominal cavity. These conditions can lead to serious injury and possibly even death.

32. Endoscopic and surgical procedures may also be complicated in cases of multiple magnet ingestion due to the attraction of the magnets to the metal equipment used to retrieve the magnets.

33. Children who undergo surgery to remove multiple magnets from their gastrointestinal tract are also at risk for long-term health consequences, including intestinal scarring, nutritional deficiencies due to loss of portions of the bowel, and, in the case of girls, fertility problems.

34. The Subject Products contain defects in packaging, warnings, and instructions, that create a substantial risk of injury to the public.

35. The Subject Products contain defects in design that pose a substantial risk of injury.

36. The type of the risk of injury posed by the Subject Products creates a substantial risk of injury.

37. Therefore, because the Subject Products are defective and create a substantial risk of injury, the Subject Products present a substantial product hazard within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2).

*COUNT II*

*The Subject Products Are Substantial Product Hazards Under Section 15(a)(1) of the CPSA, 15 U.S.C. § 2064(a)(1)*

38. Paragraphs 1 through 100 are hereby realleged and incorporated by reference as though fully set forth herein.

39. Upon information and belief, each of the Subject Products is an object designed and/or manufactured as a plaything for children under 14 years of age, and, therefore, each of the Subject Products that was imported and/or otherwise distributed in commerce after August 16, 2009, is a ''toy'' as that term is defined in ASTM International Standard F963–08, *Standard Consumer Safety Specification for Toy Safety,* section 3.1.72 and its most recent version, ASTM 963–11 section 3.1.81 (''the Toy Standard'').

40. As toys, and as toys intended for use by children under 14 years of age as addressed in the Toy Standard, the Subject Products that were imported and/or otherwise distributed in commerce after August 16, 2009, were and are covered by the Toy Standard.

41. Pursuant to the Toy Standard, a magnet that has a flux index greater than 50 and that is a small object as determined by the Toy Standard is a ''hazardous magnet.''

42. The Toy Standard prohibits toys from containing a loose as-received hazardous magnet.

43. The Subject Products that were imported and/or otherwise distributed in commerce after August 16, 2009 consist of and contain loose as-received hazardous magnets. As a result, the Subject Products that were imported and/or otherwise distributed in commerce after August 16, 2009 fail to comply with the Toy Standard.

44. The Subject Products that were imported and/or otherwise distributed in commerce after August 16, 2009 create a substantial risk of injury to the public.

45. Because the Subject Products that were imported and/or otherwise distributed in commerce after August 16, 2009 fail to comply with the Toy Standard and create a substantial risk of injury to the public, they are substantial product hazards as the term ''substantial product hazard'' is defined in Section 15(a)(1) of the CPSA, 15 U.S.C. § 2064(a)(1).

*Relief Sought*

Wherefore, in the public interest, Complaint Counsel requests that the Commission:

A. Determine that the Subject Products present a ''substantial product hazard'' within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2), and/or presents a ''substantial product hazard'' within the meaning of Section 15(a)(1) of the CPSA, 15 U.S.C. § 2064(a)(1).

B. Determine that extensive and effective public notification under Section 15(c) of the CPSA, 15 U.S.C. § 2064(c), is required to adequately protect children from the substantial product hazard presented by the Subject Products, and order Respondents under Section 15(c) of the CPSA, 15 U.S.C. § 2064(c) to:

(1) Cease importation and distribution of the Subject Products;

(2) Notify all persons that transport, store, distribute or otherwise handle the Subject Products, or to whom such product has been transported, sold, distributed or otherwise handled, to immediately cease distribution of the products;

(3) Notify appropriate state and local public health officials;

(4) Give prompt public notice of the defects in the Subject Products, including the incidents and injuries associated with ingestion including posting clear and conspicuous notice on Respondent's Web site, and providing notice to any third party Web site on which Respondent has placed the Subject Products for sale, and provide further announcements in languages other than English and on radio and television;

(5) Mail notice to each distributor or retailer of the Subject Products; and

(6) Mail notice to every person to whom the Subject Products were delivered or sold;

C. Determine that action under Section 15(d) of the CPSA, 15 U.S.C. § 2064(d), is in the public interest and additionally order Respondent to:

(1) Refund consumers the purchase price of the Subject Products;

(2) Make no charge to consumers and to reimburse consumers for any reasonable and foreseeable expenses incurred in availing themselves of any remedy provided under any Commission Order issued in this matter, as provided by Section 15 U.S.C. § 2064(e)(1);

(3) Reimburse retailers for expenses in connection with carrying out any Commission Order issued in this matter, including the costs of returns, refunds and/or replacements, as provided by Section 15(e)(2) of the CPSA, 15 U.S.C. § 2064(e)(2);

(4) Submit a plan satisfactory to the Commission, within ten (10) days of service of the Final Order, directing that actions specified in Paragraphs B(1) through (6) and C(1) through (3) above be taken in a timely manner;

(5) To submit monthly reports, in a format satisfactory to the Commission, documenting the progress of the corrective action program;

(6) For a period of five (5) years after issuance of the Final Order in this matter, to keep records of its actions taken to comply with Paragraphs B(1) through (6) and C(1) through (4) above, and supply these records to the Commission for the purpose of monitoring compliance with the Final Order;

(7) For a period of five (5) years after issuance of the Final Order in this matter, to notify the Commission at least sixty (60) days prior to any change in its business (such as incorporation, dissolution, assignment, sale, or petition

for bankruptcy) that results in, or is intended to result in, the emergence of a successor corporation, going out of business, or any other change that might affect compliance obligations under a Final Order issued by the Commission in this matter; and

D. Order that Respondent shall take other and further actions as the Commission deems necessary to protect the public health and safety and to comply with the CPSA.

ISSUED BY ORDER OF THE COMMISSION:

Dated this 17th day of December, 2012

BY: Kenneth R. Hinson
Executive Director
U.S. Consumer Product Safety Commission
Bethesda, MD 20814
Tel: (301) 504–7854

Mary B. Murphy, Assistant General Counsel
Division of Compliance, Office of General Counsel
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Tel: (301) 504–7808

## CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2012, I served the foregoing Complaint and List and Summary of Documentary Evidence upon all parties of record in these proceedings by mailing, certified mail, postage prepaid, a copy to each at their principal place of business, and emailing a courtesy copy, as follows:

David C. Japha, Esquire
Counsel to Respondent Star Networks USA, LLC
The Law Offices of David C. Japha, P.C.
950 S. Cherry Street, Ste. 912
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Complaint Counsel for U.S. Consumer Product Safety Commission

[FR Doc. 2012–30828 Filed 12–21–12; 8:45 am]

BILLING CODE 6355–01–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Legal Policy Board; Notice of Federal Advisory Committee Meeting

**AGENCY:** Department of Defense.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces the following federal advisory committee meeting of the Defense Legal Policy Board.

**ADDRESSES:** Holiday Inn Ballston, 4610 N. Fairfax Drive, Arlington, Virginia 22203.

**DATES:** A meeting of the Defense Legal Policy Board (hereafter referred to as ''the Board'') will be held on Tuesday, January 22, 2013. The Public Session will begin at 9:00 a.m. and end at 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Gruber, Defense Legal Policy Board, P.O. Box 3656, Arlington, VA 22203. Email: *StaffDirectorDefenseLegalPolicyBoard@osd.mil.* Phone: (703) 696–5449.

**SUPPLEMENTARY INFORMATION:** *Purpose of the Meeting:* At this meeting, the Board will deliberate on the July 30, 2012 tasking from the Secretary of Defense to review certain military justice cases in combat zones. The Board is interested in written and oral comments from the public, including non-governmental organizations, relevant to this tasking. The mission of the Board is to advise the Secretary of Defense on legal and related legal policy matters within DoD, the achievement of DoD policy goals through legislation and regulations, and other assigned matters.

*Agenda:* Prior to the Public Session, the Board will conduct an Administrative Session starting at 8:30 a.m. and ending at 9:00 a.m. to address administrative matters. After the Public Session, the Board will conduct an Administrative Session starting at 4:00 p.m. and ending at 4:30 p.m. to prepare for upcoming meetings. Pursuant to 41 CFR 102–3.160, the public may not attend the Administrative Sessions.

Tentative Agenda (updates available from the Board's Staff Director at *Staff DirectorDefenseLegalPolicyBoard @osd.mil*).

- Testimony from representatives of the Secretaries of the Military Departments.
- Testimony from a representative of the Chairman of the Joint Chiefs of Staff.
- Testimony from subject matter experts on law of armed conflict violations by U.S. Service members.
- Receipt of public comments.

*Availability of Materials for the Meeting:* A copy of the agenda for the January 22, 2013 meeting and the tasking for the Subcommittee may be obtained at the meeting or from the Board's Staff Director at *StaffDirector DefenseLegalPolicyBoard@osd.mil.*

*Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, part of this meeting is open to the public. Seating is limited and is on a first-come basis.

*Special Accommodations:* Individuals requiring special accommodations to access the public meeting should contact the Staff Director at *Staff DirectorDefenseLegalPolicyBoard@osd.mil* at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

*Procedures for Providing Public Comments:* Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Board about its mission and topics pertaining to this public session. Written comments must be received by the Designated Federal Officer at least five (5) business days prior to the meeting date so that the comments may be made available to the Board for their consideration prior to the meeting. Written comments should be submitted via email to the address for the Designated Federal Officer given in this notice in the following formats: Adobe Acrobat, WordPerfect, or Microsoft Word. Please note that since the Board operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection. If members of the public are interested in making an oral statement, a written statement must be submitted as above along with a request to provide an oral statement. After reviewing the written comments, the Chairperson and the Designated Federal Officer will determine who of the requesting persons will be able to make an oral presentation of their issue during the open portion of this meeting. Determination of who will be making an oral presentation is at the sole discretion of the Committee Chair and the Designated Federal Officer and will depend on time available and relevance to the Committee's activities. Five minutes will be allotted to persons desiring to make an oral presentation. Oral presentations by members of the public will be permitted from 3:00 p.m. to 4:00 p.m. in front of the Board. The number of oral presentations to be made will depend on the number of requests received from members of the public.

*Committee's Designated Federal Officer:* The Board's Designated Federal Officer is Mr. James Schwenk, Defense Legal Policy Board, P.O. Box 3656, Arlington, VA 22203. Email: *defenselegalpolicyboarddfo@osd.mil.* Phone: (703) 697–9343. For meeting information please contact Mr. David Gruber, Defense Legal Policy Board, P.O. Box 3656, Arlington, VA 22203. Email: *StaffDirectorDefenseLegalPolicy Board@osd.mil.* Phone: (703) 696–5449.

Dated: December 20, 2012.

**Aaron Siegel,**

*Alternate OSD* **Federal Register** *Liaison Officer, Department of Defense.*

[FR Doc. 2012–31006 Filed 12–21–12; 4:15 pm]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

**[Docket No. ED–2012–ICCD–0071]**

## Agency Information Collection Activities; Comment Request; Study of Implementation and Outcomes in Upward Bound and Other TRIO Programs

**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 22, 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–0071 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 Acting Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E105, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Study of Implementation and Outcomes in Upward Bound and other TRIO Programs.

*OMB Control Number:* 1850—NEW.

*Type of Review:* New information collection.

*Respondents/Affected Public:* Not-for-profit institutions.

*Total Estimated Number of Annual Responses:* 274.

*Total Estimated Number of Annual Burden Hours:* 183.

*Abstract:* This Upward Bound (UB) study, sponsored by the U.S. Department of Education, focuses on the implementation strategies of all regular UB projects. To do so, project directors will be asked to complete a 40 minute survey. This survey will serve two main purposes—to describe the services and strategies that Upward Bound grantees implement and to provide input into the decision-making process to identify a strategy to test as part of a random assignment demonstration. The grantee survey will be conducted with all 820 regular Upward Bound projects in the spring of 2013. Preliminary results from the survey, which will be shared internally within ED in late Spring 2013, will help inform the selection of a yet-to-be determined promising strategy or strategies for a possible experimental study that could be implemented in a set of UB grantees. ED will decide whether to exercise the option for a study of promising strategies in Upward Bound by June 2013, based, in large part, on the findings from the survey of UB grantees.

Dated: December 17, 2012.

**Stephanie Valentine,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2012–30735 Filed 12–21–12; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

## Privacy Act of 1974; System of Records

**AGENCY:** Institute of Education Sciences, Department of Education.

**ACTION:** Notice of deletions of existing systems of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) deletes eight systems of records from its existing inventory of systems of records subject to the Privacy Act.

**DATES:** These deletions are effective December 26, 2012.

**FOR FURTHER INFORMATION CONTACT:** Dr. Audrey Pendleton, Associate Commissioner, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue NW., room 502D, Washington, DC 20208–0001. Telephone: (202) 208–7078.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed in this section.

**SUPPLEMENTARY INFORMATION:** The Department deletes eight systems of records from its inventory of record systems subject to the Privacy Act (5 U.S.C. 552a). The deletions are not within the purview of subsection (r) of the Privacy Act, which requires submission of a report on a new or altered system of records.

These systems of records are no longer needed because the records are no longer collected or maintained by the Department or its contractors. Further, all data that has been collected for each

system of records has been destroyed by the contractors; therefore the following systems of records are deleted:

1. (18–13–04) Outcomes of Diversity in Higher Education Study, 64 FR 30106, 30186 (June 4, 1999), as amended 64 FR 72408 (December 27, 1999).
2. (18–13–08) Early Reading First National Evaluation, 71 FR 66506–66508 (November 15, 2006).
3. (18–13–10) Impact Evaluation of Teacher Preparation Models, 70 FR 45378–45380 (August 5, 2005).
4. (18–13–11) Evaluation of the Impact of Teacher Induction Programs, 70 FR 35231–35233 (June 17, 2005).
5. (18–13–13) Impact Evaluation of Academic Instruction for After-School Programs, 70 FR 35656–35659 (June 21, 2005).
6. (18–13–14) Impact Evaluation of the U.S. Department of Education's Student Mentoring Program, 71 FR 28021–28023 (May 15, 2006).
7. (18–13–16) Impact Evaluation of Mandatory-Random Student Drug Testing, 72 FR 15129–15131 (March 30, 2007).

The following system of records was cancelled prior to records being collected and is therefore deleted:

8. (18–13–17) Impact Evaluation of Upward Bound's Increased Focus on Higher-Risk Students, 72 FR 33213–33215 (June 15, 2007).

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: December 20, 2012.

**John Q. Easton,**

*Director, Institute of Education Sciences.*

For the reasons discussed in the preamble, the Director of the Institute of Education Sciences deletes the following systems of records:

| System number | System name |
|---|---|
| 18–13–04 ..... | Outcomes of Diversity in Higher Education Study. |
| 18–13–08 ..... | Early Reading First National Evaluation. |
| 18–13–10 ..... | Impact Evaluation of Teacher Preparation Models. |
| 18–13–11 ..... | Evaluation of the Impact of Teacher Induction Programs. |
| 18–13–13 ..... | Impact Evaluation of Academic Instruction for After-School Programs. |
| 18–13–14 ..... | Impact Evaluation of the U.S. Department of Education's Student Mentoring Program. |
| 18–13–16 ..... | Impact Evaluation of Mandatory-Random Student Drug Testing. |
| 18–13–17 ..... | Impact Evaluation of Upward Bound's Increased Focus on Higher-Risk Students. |

[FR Doc. 2012–31108 Filed 12–21–12; 4:15 pm]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

**[FE Docket No. 12–155–LNG]**

## Sempra LNG Marketing, LLC; Application for Blanket Authorization To Export Previously Imported Liquefied Natural Gas on a Short-Term Basis

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on October 26, 2012, by Sempra LNG Marketing, LLC (Sempra LNG Marketing), requesting blanket authorization to export liquefied natural gas (LNG) that previously had been imported into the United States from foreign sources in an amount up to the equivalent of 250 billion cubic feet (Bcf) of natural gas on a short-term or spot market basis for a two-year period commencing on February 1, 2013.[1] The LNG would be exported from the Cameron LNG Terminal (Cameron Terminal) owned by Sempra LNG Marketing's affiliate Cameron LNG, LLC, in Cameron Parish, Louisiana to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy. The Application was filed under section 3 of the Natural Gas Act (NGA). Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., eastern time, January 25, 2013.

**ADDRESSES:** U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Larine Moore or Beverly Howard, U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9478; (202) 586–9387; Edward Myers, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6B–256, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–3397.

**SUPPLEMENTARY INFORMATION:**

### Background

Sempra LNG Marketing, a Delaware limited liability company with its principal place of business in San Diego, California, is a wholly-owned subsidiary of Sempra LNG, a Delaware corporation. Sempra LNG, through its other subsidiaries, owns and operates LNG receipt and storage terminals in North America, including the Cameron Terminal in Cameron Parish, Louisiana.

Sempra LNG Marketing is engaged in the business of purchasing and marketing supplies of LNG. Sempra is a customer of the Cameron Terminal. On June 22, 2012, FE issued DOE/FE Order No. 3122, which granted Sempra LNG Marketing blanket authorization to import LNG from various international sources for a two year period beginning on September 1, 2012. On December 3, 2010, FE issued Order No. 2885, which granted Sempra LNG Marketing authority to export a cumulative total of

[1] *Sempra LNG Marketing, LLC,* DOE/FE Order No. 2885 (December 3, 2010) extends through January 31, 2013.

250 Bcf of previously imported LNG from the Cameron Terminal to any country with which trade is not prohibited by U.S. law or policy. The export authorization granted by Order No. 2885 is effective for a two year period that commenced on February 1, 2011.

**Current Application**

In the instant Application, Sempra LNG Marketing requests blanket authorization to export LNG from the Cameron Terminal that has been previously imported into the United States from foreign sources. Sempra requests this authority over a two-year period in an amount up to the equivalent of 250 Bcf of natural gas, on a cumulative basis, over a two-year period beginning on February 1, 2013, immediately on expiration of the authorization in Order No. 2885. Sempra LNG Marketing is seeking such authorization to export previously imported LNG to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by Federal law or policy. Sempra LNG Marketing states that it does not seek authorization to export domestically-produced natural gas or LNG.

Sempra LNG Marketing states that its requested blanket authorization would provide the additional option of exporting volumes of foreign-sourced LNG that are not needed to service the domestic market. Sempra LNG Marketing states that it is not proposing, and is not seeking authorization to export any domestically produced natural gas or LNG. This application seeks authorization only to export LNG that has been previously imported into the United States.

Sempra LNG Marketing asserts that no facility modifications or additions are required in order for it to export foreign-sourced LNG from the Cameron Terminal.

**Public Interest Considerations**

Sempra LNG Marketing states that the requested blanket authorization will allow it to purchase LNG at prevailing international prices for import to the United States, even when prices in other markets may be higher, by giving it the ability to store LNG at the Cameron Terminal and later sell it in the most competitive market. Sempra LNG Marketing states that this ability to react to changing market conditions by either importing LNG for sale in the United States, or importing LNG for subsequent export to other markets will enhance the potential supply or natural gas in the U.S. market. Sempra LNG Marketing states that when gas supplies are in balance with domestic demand, LNG will be imported and used to supplement domestic gas supplies. When there is a surplus of domestic gas supplies, as at the present time, there will be the opportunity to import LNG with the ability to later export it to serve other markets.

In support of its application, Sempra LNG Marketing states that section 3 of the NGA provides that application to export natural gas to foreign countries will be authorized unless there is a finding that they ''will not be consistent with the public interest.[2] Sempra LNG Marketing states that in reviewing an export application, FE applies the principles set forth in DOE Delegation Order No. 0204–111, which focuses primarily on the domestic need for the gas to be exported and the Secretary of Energy's natural gas policy guidelines.[3]

Sempra LNG Marketing states that in its existing authorization to export foreign-sourced LNG granted in DOE/FE Order No. 2885, FE noted that the ''U.S. consumers presently have access to substantial quantities of natural gas sufficient to meet domestic demand from multiple other sources at competitive prices without drawing on the LNG which Sempra LNG Marketing seeks to export.'' [4] Sempra LNG Marketing asserts that the relevant circumstances have not changed in the nearly two years since that finding.

**Environmental Impact**

Sempra LNG Marketing states that no new facilities or modifications to any existing facilities at the Cameron Terminal would be required in order for Sempra LNG Marketing to export LNG from that facility. Sempra LNG Marketing asserts that exports of LNG from the Cameron Terminal also would not increase the number of LNG carriers that the Cameron Terminal is designed and authorized to accommodate. Finally, Sempra LNG Marketing states that granting this application will not constitute a federal action significantly affecting the human environment within the meaning of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*

**DOE/FE Evaluation**

This export Application will be reviewed pursuant to section 3 of the NGA, as amended, and the authority contained in DOE Delegation Order No. 00–002.00L (April 29, 2011) and DOE Redelegation Order No. 00–002.04E (April 29, 2011). In reviewing this LNG export Application, DOE will consider domestic need for the natural gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Persons that may oppose this Application should comment in their responses on these issues.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

**Public Comment Procedures**

In response to this notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention, as applicable. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590. The information contained in any filing will not be held confidential and will be posted to DOE's public Web site except to the extent confidential treatment is requested and granted.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 12–155–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Oil and Gas Global Security and Supply at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Oil and Gas Global Security and Supply at the address listed in **ADDRESSES**.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the

[2] 15 U.S.C. 717b.(a). Natural gas is defined to include LNG in 10 CFR part 590.102(i).

[3] Sempra LNG Marketing referenced 49 FR 6684, February 22, 1984.

[4] *Quoting* Order No. 2885 at 5.

facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application filed by Sempra LNG Marketing is available for inspection and copying in the Office of Natural Gas Regulatory Activities Docket Room, 3E–042, 1000 Independence Avenue SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Issued in Washington, DC, on December 20, 2012.

**John A. Anderson,**

*Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.*

[FR Doc. 2012–31005 Filed 12–21–12; 4:15 pm]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP13–26–000]**

### Prior Notice of Activity Under Blanket Certificate; Dominion Transmission, Inc.

On December 7, 2012, Dominion Transmission, Inc. (Dominion) filed with the Federal Energy Regulatory Commission (Commission) an application under section 7 of the Natural Gas Act and Sections 157.205 and 157.208 of the Commission's regulations, and Dominion's authorization in Docket No. CP88–712–000, 52 FERC ¶61,112 (1990) for authority to replace TL–465 pipeline facilities located in Prince William County, Virginia. Dominion will replace the section of pipeline to meet Class 3 design requirements, as more fully detailed in the Application.

Questions regarding this application may be directed to Brad Knisley, Regulatory and Certificates Analyst, Dominion Transmission, Inc., 701 East Cary Street, Richmond, Virginia 23219, by calling 804–771–4412, by faxing 304–357–3206 or Emailing *Brad.A.Knisley@dom.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such motions or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant, on or before the comment date. It is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.fere.gov.* Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov.using* the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 18, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–30911 Filed 12–21–12; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC13–7–000]**

### Commission Information Collection Activities (FERC–607); Comment Request; Extension

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of information collection and request for comments.

**SUMMARY:** In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–607: Report on Decision or Action on Request for Federal Authorization.

**DATES:** Comments on the collection of information are due February 25, 2013.

**ADDRESSES:** You may submit comments (identified by Docket No. IC13–7–000) by either of the following methods:

- *eFiling at Commission's Web Site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission,

Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

*Instructions:* All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

*Docket:* Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

**FOR FURTHER INFORMATION CONTACT:** Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

**SUPPLEMENTARY INFORMATION:** *Title:* FERC–607: Report on Decision or Action on Request for Federal Authorization.

*OMB Control No.:*1902–0240.

*Type of Request:* Three-year extension of the FERC–607 information collection requirements with no changes to the current reporting requirements.

*Abstract:* The FERC–607 information collection requires agencies (Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, responsible for a Federal authorization) to submit to the Commission a copy of a decision or action on a request for Federal authorization and an accompanying index to the documents and materials relied on in reaching a conclusion. The Commission authorizes the construction and operation of proposed natural gas projects under Natural Gas Act Sections 3 and 7; however, the Commission does not have jurisdiction over every aspect of each natural gas project. Hence, for a natural gas project to go forward, in addition to Commission approval, several different agencies must typically reach favorable findings regarding other aspects of the project. The Energy Policy Act of 2005 (EPAct 2005) modified FERC's role in order to better coordinate the activities of the separate agencies with varying responsibilities over proposed natural gas projects. Section 313 of EPAct 2005 [1] directs FERC to compile a record of each agency's decision along with the record of the Commission's decision. The Commission compiles this record in order to serve as a consolidated record for the purpose of appeal or review (including judicial review).

*Estimate of Annual Burden*[2]*:* The Commission estimates the total Public Reporting Burden for this information collection as:

FERC–607 (IC13–7–000): REPORT ON DECISION OR ACTION ON REQUEST FOR FEDERAL AUTHORIZATION

| | Number of respondents (A) | Number of responses per respondent (B) | Total number of responses (A)x(B)=(C) | Average burden hours per response (D) | Estimated total annual burden (C)x(D) |
|---|---|---|---|---|---|
| Natural Gas Pipelines | 1 | 1 | 1 | 6 | 6 |

The total estimated annual cost burden to respondents is $414.06 [6 hours ÷ 2080 hours/year [3] * $143,540/year [4] = $414.06]

*Comments:* Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: December 19, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–30995 Filed 12–21–12; 4:15 pm]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC13–6–000]**

### Commission Information Collection Activities (FERC–606); Comment Request; Extension

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of information collection and request for comments.

**SUMMARY:** In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–606: Notification of Request for Federal Authorization and Requests for Further Information.

**DATES:** Comments on the collection of information are due February 25, 2013.

**ADDRESSES:** You may submit comments (identified by Docket No. IC13–6–000) by either of the following methods:

- *eFiling at Commission's Web Site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

*Instructions:* All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

*Docket:* Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

**FOR FURTHER INFORMATION CONTACT:** Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone

[1] Amended 15 USC 717n (Section 15)

[2] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[3] 2080 hours = 52 weeks * 40 hours per week (i.e. 1 year of full-time employment)

[4] Average salary plus benefits per full-time equivalent employee

at (202) 502–8663, and fax at (202) 273–0873.

**SUPPLEMENTARY INFORMATION:** *Title:* FERC–606: Notification of Request for Federal Authorization and Requests for Further Information.

*OMB Control No.:*1902–0241.

*Type of Request:* Three-year extension of the FERC–606 information collection requirements with no changes to the current reporting requirements.

*Abstract:* The FERC–606 information collection requires agencies (Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, responsible for a Federal authorization) responsible for issuing, conditioning, or denying requests for Federal authorizations for a proposed natural gas project to report regarding the status of an authorization request. This reporting requirement is intended to allow agencies to assist the Commission to make better informed decisions in establishing due dates for agencies' decisions. The Commission authorizes the construction and operation of proposed natural gas projects under NGA sections 3 and 7. However, the Commission does not have jurisdiction over every aspect of each natural gas project. For a natural gas project to progress the Commission must approve and several different agencies must typically reach favorable findings regarding other aspects of the project. To coordinate better the activities of the separate agencies with varying responsibilities over proposed natural gas projects, the Energy Policy Act of 2005 (EPAct 2005) modified FERC's role. Section 313 of EPAct 2005 [1] directs FERC: (1) to establish a schedule for agencies to review requests for federal authorizations required for a project.

*Estimate of Annual Burden:*[2]The Commission estimates the total Public Reporting Burden for this information collection as:

FERC–606 (IC13–6–000): NOTIFICATION OF REQUEST FOR FEDERAL AUTHORIZATION AND REQUESTS FOR FURTHER INFORMATION

| | Number of respondents | Number of responses per respondent | Total Number of responses | Average Burden hours per response | Estimated total annual burden |
|---|---|---|---|---|---|
| | (A) | (B) | (A)x(B)=(C) | (D) | (C)x(D) |
| Natural Gas Pipelines | *1* | *1* | *1* | *4* | *4* |

The total estimated annual cost burden to respondents is $276.03 [4 hours ÷ 2080 hours/year [3] * $143,540/year [4] = $276.04]

*Comments:* Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: December 19, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–30998 Filed 12–21–12; 4:15 pm]

**BILLING CODE 6717–01–P**

[1] Amended 15 USC 717n (Section 15).

[2] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[3] 2080 hours = 52 weeks * 40 hours per week (i.e. 1 year of full-time employment).

[4] Average salary plus benefits per full-time equivalent employee.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14463–000]**

### City of Avenal, California; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 14463–000.

c. *Date filed:* October 22, 2012.

d. *Applicant:* City of Avenal.

e. *Name of Project:* Tank 4 In-Conduit Hydroelectric Project.

f. *Location:* The proposed Tank 4 In-Conduit Hydroelectric Project would be located along the conduit that delivers drinking water to the City of Avenal in Kings County, California. The land on which all the project structures are located is owned by the applicant.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Rick Cunningham, Utilities Supervisor, City of Avenal, 919 Skyline Boulevard, Avenal, CA 93204, *rcunningham@cityofavenal.com,* (559) 386–5766.

i. *FERC Contact:* Linda Jemison, (202) 502–6363, *linda.jemison@ferc.gov.*

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing responsive documents:* Due to the small size of the proposed project, as well as the resource agency consultation letters filed with the application, the 60-day timeframe specified in 18 CFR 4.34(b) for filing all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions is shortened to 30 days from the issuance date of this notice. All reply comments filed in response to comments submitted by any resource agency, Indian tribe, or person, must be filed with the Commission within 45 days from the issuance date of this notice.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project:* The Tank 4 In-Conduit Hydroelectric Project would replace the City of Avenal's water storage Tank 4 with an in-conduit turbine system which would deliver energy while controlling the pressure of treated water entering the City's drink water distribution system. The intake for the water is located adjacent to the San Luis Canal. The water is treated near the intake and is conveyed approximately 6 miles to the project site. The hydroelectric system will capture some of the energy of the gravitational flow within the drinking water system to generate electricity.

m. This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the Web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number, here P–14463, in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for review and reproduction at the address in item h above.

n. *Development Application*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a competing development application. A notice of intent must be served on the applicant(s) named in this public notice.

p. *Protests or Motions To Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS'', or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and seven copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

r. *Waiver of Pre-filing Consultation:* On June 5, 2012, the applicant informed agencies, affected Indian Tribes, and adjacent property owners of its request to waive the Commission's consultation requirements under 18 CFR 4.38(c). Only the National Marine Fisheries Service representative responded, by telephone call on July 6, 2012), explaining that ''the NMFS would not respond in writing and had no comments on this Project at that time.'' No other comments were received. Therefore, the Commission intends to accept the consultation that has occurred on this project during the pre-filing period and to waive pre-filing consultation under section 4.38(c), which requires, among other things, conducting studies requested by resource agencies, and distributing and consulting on a draft exemption application.

Dated: December 18, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–30910 Filed 12–21–12; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13346–003]**

### Free Flow Power Corporation; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

*Correction*

**Editorial Note:** Notice document 2012–30397, originally scheduled to appear in the issue of Tuesday, December 18, 2012, was omitted from publication. The document was placed on public inspection on Monday, December 17, 2012 and will publish in its entirety as set forth below.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* P–13346–003.

c. *Date filed:* December 3, 2012.

d. *Applicant:* Free Flow Power Corporation (Free Flow Power), on behalf of its subsidiary Paynebridge, LLC.

e. *Name of Project:* Williams Dam Water Power Project.

f. *Location:* At the existing Williams Dam owned by the Indiana Department of Natural Resources on the East Fork White River in Lawrence County, Indiana. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Ramya Swaminathan, Chief Operating Officer, Free Flow Power Corporation, 239 Causeway Street, Suite 300, Boston, MA 02114; or at (978) 283–2822.

Daniel Lissner, General Counsel, Free Flow Power Corporation, 239 Causeway Street, Suite 300, Boston, MA 02114; or at (978) 283–2822.

Alan Topalian, Regulatory Attorney, Free Flow Power Corporation, 239 Causeway Street, Suite 300, Boston, MA 02114; or at (978) 283–2822.

i. *FERC Contact:* Aaron Liberty at (202) 502–6862 or by email at *Aaron.Liberty@ferc.gov*.

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* February 1, 2013.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

m. The application is not ready for environmental analysis at this time.

n. The proposed Williams Dam Water Power Project would be located at the existing 21.3-foot-high, 294-foot-long Williams Dam currently owned by the State of Indiana, on the East Fork White River in Lawrence County, Indiana. In addition to the dam, proposed project facilities would include: (1) An 80-foot-long, 21.5-foot-high, 100-foot-wide intake structure with trashracks having 3-inch-clear bar spacing; (2) a 126-foot-long, 70-foot-wide powerhouse integral to the dam; (3) four turbine-generator units with a combined installed capacity of 4.0 MW; (4) a 40-foot by 40-foot substation; (5) a 265-foot-long, three-phase, 12.5-kilovolt overhead transmission line connecting the project's substation to local utility distribution lines; and (6) other appurtenant facilities.

The proposed project would operate in a run-of-river mode by maintaining the reservoir's water surface elevation at the crest of the dam's spillway. The average annual generation would be about 17,850 megawatt-hours.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. Procedural schedule: The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

| | |
|---|---|
| Issue Notice of Acceptance | March 2013. |
| Issue Scoping Document 1 for comments. | April 2013. |
| Comments due on Scoping Document 1. | June 2013. |
| Issue Scoping Document 2 | June 2013. |
| Issue notice of ready for environmental analysis. | September 2013. |
| Issue Environmental Assessment (EA). | March 2014. |
| Comments on due on EA .. | April 2014. |

Dated: December 12, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–30397 Filed 12–17–12; 8:45 a.m.]

**Editorial Note:** Notice document 2012–30397, originally scheduled to appear in the issue of Tuesday, December 18, 2012, was omitted from publication. The document was placed on public inspection on Monday, December 17, 2012 and has published in its entirety.

[FR Doc. C1–2012–30397 Filed 12–21–12; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP13–294–000.
*Applicants:* Gulf South Pipeline Company, LP.
*Description:* Motion for Leave to Answer and Answer of the Indicated Shippers under RP13–294.
*Filed Date:* 12/14/12.
*Accession Number:* 20121214–5223.
*Comments Due:* 5 p.m. ET 12/26/12.

*Docket Numbers:* RP13–388–000.
*Applicants:* Questar Overthrust Pipeline Company.
*Description:* WIC Permanent Rel of Non-Conform and Ngt Rate to WPX and OXY to be effective 12/1/2012.
*Filed Date:* 12/14/12.
*Accession Number:* 20121214–5001.
*Comments Due:* 5 p.m. ET 12/26/12.

*Docket Numbers:* RP13–389–000.
*Applicants:* Equitrans, L.P.
*Description:* Negotiated Rate Service Agreement—Stone Energy Corp to be effective 12/17/2012.
*Filed Date:* 12/14/12.
*Accession Number:* 20121214–5016.
*Comments Due:* 5 p.m. ET 12/26/12.

*Docket Numbers:* RP13–390–000.
*Applicants:* Gulf South Pipeline Company, LP.
*Description:* Remove Expired Contracts from Tariff (12/14/12) to be effective 12/14/2012.
*Filed Date:* 12/14/12.
*Accession Number:* 20121214–5018.
*Comments Due:* 5 p.m. ET 12/26/12.

*Docket Numbers:* RP13–391–000.
*Applicants:* Bear Creek Storage Company, L.L.C.
*Description:* Annual Fuel Assessment of Bear Creek Storage Company, L.L.C. under RP13–391.
*Filed Date:* 12/14/12.
*Accession Number:* 20121214–5032.
*Comments Due:* 5 p.m. ET 12/26/12.

*Docket Numbers:* RP13–392–000.
*Applicants:* Natural Gas Pipeline Company of America.

*Description:* Nicor Gas Negotiated Rate Filing to be effective 1/1/2013.
*Filed Date:* 12/14/12.
*Accession Number:* 20121214–5116.
*Comments Due:* 5 p.m. ET 12/26/12.

*Docket Numbers:* RP13–393–000.
*Applicants:* Southern LNG Company, L.L.C.
*Description:* Boil-Off Compression to be effective 2/1/2013.
*Filed Date:* 12/14/12.
*Accession Number:* 20121214–5148.
*Comments Due:* 5 p.m. ET 12/26/12.

*Docket Numbers:* RP13–394–000.
*Applicants:* CenterPoint Energy Gas Transmission Comp.
*Description:* CEGT LLC—December 15, 2012 Negotiated Rate Filing to be effective 12/15/2012.
*Filed Date:* 12/14/12.
*Accession Number:* 20121214–5170.
*Comments Due:* 5 p.m. ET 12/26/12.

*Docket Numbers:* RP13–395–000
*Applicants:* Empire Pipeline, Inc.
*Description:* Empire Pipeline, Inc. submits tariff filing per 154.204: Transfer Points to be effective 1/16/2013.
*Filed Date:* 12/17/2012.
*Accession Number:* 20121217–5069.
*Comment Date:* 5:00 p.m. ET 12/31/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

**Filings in Existing Proceedings**

*Docket Numbers:* RP11–2569–005.
*Applicants:* Texas Gas Transmission, LLC.
*Description:* Compliance Filing in RP11–2569 to be effective.
*Filed Date:* 12/14/12.
*Accession Number:* 20121214–5017.
*Comments Due:* 5 p.m. ET 12/26/12.

*Docket Numbers:* RP11–65–002.
*Applicants:* Trans-Union Interstate Pipeline, L.P.
*Description:* Order 587–V Compliance Filing to Modify Tariff (11.29.12) to be effective 12/1/2012.
*Filed Date:* 12/14/12.
*Accession Number:* 20121214–5143.
*Comments Due:* 5 p.m. ET 12/26/12.

*Docket Numbers:* RP12–1111–001.
*Applicants:* Total Peaking Services, L. L. C.
*Description:* Total Peaking—Compliance Filing in RP12–1111 to be effective 12/1/2012.
*Filed Date:* 12/14/12.
*Accession Number:* 20121214–5095.
*Comments Due:* 5 p.m. ET 12/26/12.

*Docket Numbers:* RP12–1121–003.
*Applicants:* Portland General Electric Company.
*Description:* Order 587–V Compliance Filing Third Corrected Sect 25 re Letter Order 11–29–12 to be effective 12/1/2012.
*Filed Date:* 12/14/12.
*Accession Number:* 20121214–5057.
*Comments Due:* 5 p.m. ET 12/26/12.

*Docket Numbers:* RP13–122–002.
*Applicants:* Central Kentucky Transmission Company.
*Description:* NAESB 2.0 Supplemental to be effective 12/1/2012.
*Filed Date:* 12/14/12.
*Accession Number:* 20121214–5056.
*Comments Due:* 5 p.m. ET 12/26/12.

*Docket Numbers:* RP13–124–002.
*Applicants:* Hardy Storage Company, LLC.
*Description:* NAESB 2.0 Compliance Filing to be effective 12/1/2012.
*Filed Date:* 12/14/12.
*Accession Number:* 20121214–5031.
*Comments Due:* 5 p.m. ET 12/26/12.

*Docket Numbers:* RP13–178–001.
*Applicants:* USG Pipeline Company, LLC.
*Description:* Order No. 587–V Further compliance filing to be effective 12/1/2012.
*Filed Date:* 12/14/12.
*Accession Number:* 20121214–5077.
*Comments Due:* 5 p.m. ET 12/26/12

*Docket Numbers:* RP13–179–001.
*Applicants:* B–R Pipeline Company.
*Description:* Order No. 587–V Further compliance filing to be effective 12/1/2012.
*Filed Date:* 12/14/12.
*Accession Number:* 20121214–5076.
*Comments Due:* 5 p.m. ET 12/26/12.

*Docket Numbers:* RP13–43–001.
*Applicants:* Bluewater Gas Storage, LLC.
*Description:* Bluewater DEC 14 NAESB Compliance to be effective 12/1/2012.
*Filed Date:* 12/14/12.
*Accession Number:* 20121214–5058.
*Comments Due:* 5 p.m. ET 12/26/12.

*Docket Numbers:* RP13–44–001.
*Applicants:* SG Resources Mississippi, L.L.C.
*Description:* SG Resources Dec 14 Compliance Filing to be effective 2/1/2012.
*Filed Date:* 12/14/12.
*Accession Number:* 20121214–5061.
*Comments Due:* 5 p.m. ET 12/26/12.

*Docket Numbers:* RP13–45–001.
*Applicants:* Pine Prairie Energy Center, LLC.
*Description:* PPEC Dec 14 Compliance to be effective 12/1/2012.
*Filed Date:* 12/14/12.
*Accession Number:* 20121214–5059.
*Comments Due:* 5 p.m. ET 12/26/12.

*Docket Numbers:* RP13–61–001.
*Applicants:* Dominion Transmission, Inc.
*Description:* DTI—Compliance Filing—NAESB Version 2.0 to be effective 12/1/2012.
*Filed Date:* 12/14/12.
*Accession Number:* 20121214–5045.
*Comments Due:* 5 p.m. ET 12/26/12.

*Docket Numbers:* RP13–64–001.
*Applicants:* Dominion South Pipeline Company, LP.
*Description:* DSP—Compliance Filing—NAESB Version 2.0 to be effective 12/1/2012.
*Filed Date:* 12/14/12.
*Accession Number:* 20121214–5041.
*Comments Due:* 5 p.m. ET 12/26/12.

*Docket Numbers:* RP13–75–001.
*Applicants:* Northern Natural Gas Company.
*Description:* 20121214 NAESB VersIon 2.0 Compliance to be effective 12/1/2012.
*Filed Date:* 12/14/12.
*Accession Number:* 20121214–5021.
*Comments Due:* 5 p.m. ET 12/26/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 17, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–30921 Filed 12–21–12; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER11–3417–002; ER10–2895–005; ER11–2292–004;

ER11–3942–003; ER11–2293–004; ER10–2917–005; ER11–2294–004; ER12–2447–002; ER10–2918–006; ER12–199–005; ER10–2920–005; ER11–3941–003; ER10–2921–005; ER10–2922–005; ER10–3048–003; ER10–2966–005.

*Applicants:* Alta Wind VIII, LLC, Bear Swamp Power Company LLC, Brookfield Energy Marketing Inc., Brookfield Energy Marketing LP, Brookfield Power Piney & Deep Creek LLC, Brookfield Energy Marketing US LLC, Brookfield Renewable Energy Marketing US, LLC, Carr Street Generating Station, L.P., Coram California Development, L.P., Great Lakes Hydro America, LLC, Hawks Nest Hydro LLC, Longview Fibre Paper and Packaging, Inc., Rumford Falls Hydro LLC, Brookfield Smoky Mountain Hydropower LLC, Erie Boulevard Hydropower, L.P., Granite Reliable Power, LLC.

*Description:* Notice of Change in Status of the Brookfield Companies.

*Filed Date:* 12/14/2012.

*Accession Number:* 20121214–5231.

*Comment Date:* 5:00 p.m. Eastern Time on Friday, January 4, 2013.

*Docket Numbers:* ER13–562–000.

*Applicants:* New England Power Company.

*Description:* New England Power Company submits Notice of Cancellation of FERC Rate Schedule No. 427 with the Vermont Electric Power Company, Inc.

*Filed Date:* 12/14/2012.

*Accession Number:* 20121214–5232.

*Comment Date:* 5:00 p.m. Eastern Time on Friday, January 4, 2013.

Take notice that the Commission received the following qualifying facility filings:

*Docket Numbers:* QF13–155–000.

*Applicants:* Archer-Daniels-Midland Company.

*Description:* Archer-Daniels-Midland Company [Columbus] submits FERC Form 556—Notice of Self-Certification of Qualifying Cogeneration Facility Status.

*Filed Date:* 12/14/12.

*Accession Number:* 20121214–5226.

*Comments Due:* None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 17, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–30919 Filed 12–21–12; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2374–001; *ER10–1533–002.*

*Applicants:* Puget Sound Energy, Macquarie Energy LLC.

*Description:* Notice of Non-Material Change in Status of Puget Sound Energy, Inc. et al.

*Filed Date:* 12/17/12.

*Accession Number:* 20121217–5247.

*Comments Due:* 5 p.m. ET 1/7/13.

*Docket Numbers:* ER12–2207–001.

*Applicants:* California Independent System Operator Corporation.

*Description:* 12–12–17 Compliance with November 5 Order re Western Antelope Dry Ranch SGIA to be effective 7/6/2012.

*Filed Date:* 12/17/12.

*Accession Number:* 20121217–5200.

*Comments Due:* 5 p.m. ET 1/7/13.

*Docket Numbers:* ER12–2209–001.

*Applicants:* California Independent System Operator Corporation.

*Description:* 2012–12–17 Compliance with November 5 Order on Western Antelope Blue Sky SGIA to be effective 7/6/2012.

*Filed Date:* 12/17/12.

*Accession Number:* 20121217–5203.

*Comments Due:* 5 p.m. ET 1/7/13.

*Docket Numbers:* ER12–2227–001; *ER10–1952–001; ER10–1971–007.*

*Applicants:* Ensign Wind, LLC.

*Description:* NextEra Resources Entities' Notification of Non-material Change in Status and Subsidiary Name Change.

*Filed Date:* 12/17/12.

*Accession Number:* 20121217–5231.

*Comments Due:* 5 p.m. ET 1/7/13.

*Docket Numbers:* ER12–480–003.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* 12–17–12 Entergy Cost Allocation Compliance to be effective 6/1/2013.

*Filed Date:* 12/17/12.

*Accession Number:* 20121217–5199.

*Comments Due:* 5 p.m. ET 1/7/13.

*Docket Numbers:* ER13–565–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* 2503 The Central Nebraska Public Power & Irrigation District GIA to be effective 11/26/2012.

*Filed Date:* 12/17/12.

*Accession Number:* 20121217–5133.

*Comments Due:* 5 p.m. ET 1/7/13.

*Docket Numbers:* ER13–566–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* 2504 The Central Nebraska Public Power & Irrigation District GIA to be effective 11/26/2012.

*Filed Date:* 12/17/12.

*Accession Number:* 20121217–5141.

*Comments Due:* 5 p.m. ET 1/7/13.

*Docket Numbers:* ER13–567–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* 2505 The Central Nebraska Public Power & Irrigation District GIA to be effective 11/26/2012.

*Filed Date:* 12/17/12.

*Accession Number:* 20121217–5145.

*Comments Due:* 5 p.m. ET 1/7/13.

*Docket Numbers:* ER13–568–000.

*Applicants:* PacifiCorp.

*Description:* PacifiCorp submits tariff filing per 35.13(a)(2)(iii: Idaho RATFA Communications Agreements Concurrence to be effective 2/8/2013.

*Filed Date:* 12/17/12.

*Accession Number:* 20121217–5187.

*Comments Due:* 5 p.m. ET 1/7/13.

*Docket Numbers:* ER13–569–000.

*Applicants:* Avista Corporation.

*Description:* Avista Corp Rate Schedule No. 59 to be effective 12/18/2012.

*Filed Date:* 12/17/12.

*Accession Number:* 20121217–5201.

*Comments Due:* 5 p.m. ET 1/7/13.

*Docket Numbers:* ER13–570–000.

*Applicants:* PacifiCorp.

*Description:* NWE 2nd Amnd and Rstd Interconnection Agmt (AMPS) Concurrence to be effective 12/18/2012.

*Filed Date:* 12/17/12.

*Accession Number:* 20121217–5202.

*Comments Due:* 5 p.m. ET 1/7/13.

*Docket Numbers:* ER13–572–000.

*Applicants:* New York State Reliability Council, L.L.C.

*Description:* New York State Reliability Council, L.L.C.'s Submission of the Revised Installed Capacity Requirement for the New York Control Area under ER13–572.

*Filed Date:* 12/17/12.

*Accession Number:* 20121217–5226.
*Comments Due:* 5 p.m. ET 1/7/13.

Take notice that the Commission received the following public utility holding company filings:

*Docket Numbers:* PH13–4–000.
*Applicants:* ArcLight Capital Holdings, LLC.
*Description:* Notice of Change in Facts of ArcLight Capital Holdings, LLC.
*Filed Date:* 12/17/12.
*Accession Number:* 20121217–5248.
*Comments Due:* 5 p.m. ET 1/7/13

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 18, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–30988 Filed 12–21–12; 4:15 pm]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER11–2664–002.
*Applicants:* Powerex Corp.
*Description:* Powerex Corp. submits Informational Update to the 04/13/2012 Notice of Change in Status Filing.
*Filed Date:* 12/11/12.
*Accession Number:* 20121211–5197.
*Comments Due:* 5 p.m. ET 1/2/13.

*Docket Numbers:* ER11–2664–005.
*Applicants:* Powerex Corp.
*Description:* Powerex Corp submits notice of change in status.
*Filed Date:* 12/11/12.
*Accession Number:* 20121211–5196.
*Comments Due:* 5 p.m. ET 1/2/13.

*Docket Numbers:* ER13–530–001.
*Applicants:* Arizona Public Service Company.
*Description:* Ajo Improvement Company Interconnection Agreement, Service Agreement No. 326 to be effective 12/28/2012.
*Filed Date:* 12/12/12.
*Accession Number:* 20121212–5099.
*Comments Due:* 5 p.m. ET 1/2/13.

*Docket Numbers:* ER13–548–000.
*Applicants:* KGen Hinds LLC.
*Description:* Notice of Cancellation of Market-Based Rate Tariff to be effective 12/13/2012.
*Filed Date:* 12/12/12.
*Accession Number:* 20121212–5062.
*Comments Due:* 5 p.m. ET 1/2/13.

*Docket Numbers:* ER13–549–000.
*Applicants:* KGen Hot Spring LLC.
*Description:* Notice of Cancellation of Market-Based Rate Tariff to be effective 12/13/2012.
*Filed Date:* 12/12/12.
*Accession Number:* 20121212–5063.
*Comments Due:* 5 p.m. ET 1/2/13.

*Docket Numbers:* ER13–550–000.
*Applicants:* California Independent System Operator Corporation.
*Description:* 2012–12–12 Flexible Capacity and Local Reliability Resource Retention Amendment to be effective 4/1/2013.
*Filed Date:* 12/12/12.
*Accession Number:* 20121212–5123.
*Comments Due:* 5 p.m. ET 1/2/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 13, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–30917 Filed 12–21–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–1355–001.
*Applicants:* Southern California Edison Company.
Description: Southern California Edison Company submits triennial market power analysis.
*Filed Date:* 12/17/12.
*Accession Number:* 20121217–5116.
*Comments Due:* 5 p.m. ET 2/15/13.

*Docket Numbers:* ER12–550–001.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Southwest Power Pool, Inc. submits tariff filing per 35: Order No. 719 Compliance Filing to be effective 12/17/2012.
*Filed Date:* 12/17/12.
*Accession Number:* 20121217–5090.
*Comments Due:* 5 p.m. ET 1/7/13.

*Docket Numbers:* ER13–563–000.
*Applicants:* NorthWestern Corporation.
*Description:* NorthWestern Corporation submits tariff filing per 35.13(a)(2)(iii: Second Revised Rate Schedule FERC No. 27—Interconnection Agreement (Amps Line) to be effective 12/18/2012.
*Filed Date:* 12/17/12.
*Accession Number:* 20121217–5087.
*Comments Due:* 5 p.m. ET 1/7/13.

*Docket Numbers:* ER13–564–000.
*Applicants:* Florida Power Corporation.
*Description:* Florida Power Corporation submits Notice of Cancellation of Rate Schedule No. 178 with the City of Tallahassee, Florida.
*Filed Date:* 12/17/12.
*Accession Number:* 20121217–5115.
*Comments Due:* 5 p.m. ET 1/7/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests,

service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 17, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–30920 Filed 12–21–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC13–50–000.

*Applicants:* New England Power Company, New England Electric Transmission Corporation.

*Description:* Application For Authorization to Transfer Certain Transmission Facilities and Request for Expedition and Certain Waivers under Section 203 of New England Power Company and New England Electric Transmission Corporation.

*Filed Date:* 12/13/12.

*Accession Number:* 20121213–5143.

*Comments Due:* 5 p.m. ET 1/3/13.

*Docket Numbers:* EC13–51–000.

*Applicants:* ITC Midwest LLC.

*Description:* Application pursuant to section 203 of the Federal Power Act of ITC Midwest LLC.

*Filed Date:* 12/14/12.

*Accession Number:* 20121214–5142.

*Comments Due:* 5 p.m. ET 1/4/13.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2564–002; ER10–2600–002; ER10–2289–002.

*Applicants:* Tucson Electric Power Company, UNS Electric, Inc., UniSource Energy Development Company.

*Description:* Triennial Market Power Update and Report of Change in Status of Tucson Electric Power Company, et. al.

*Filed Date:* 12/14/12.

*Accession Number:* 20121214–5113.

*Comments Due:* 5 p.m. ET 2/12/13.

*Docket Numbers:* ER12–50–002.

*Applicants:* California Independent System Operator C.

*Description:* California Independent System Operator Corporation submits tariff filing per 35: 2012–12–14 CAISO Compliance Filing in Docket No. ER12–50–001 to be effective 11/1/2012.

*Filed Date:* 12/14/12.

*Accession Number:* 20121214–5171.

*Comments Due:* 5 p.m. ET 1/4/13.

*Docket Numbers:* ER13–535–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Letter Alerting of Extraneous Text in Prior eTariff Filing Under ER13–535 to be effective N/A.

*Filed Date:* 12/13/12.

*Accession Number:* 20121213–5105.

*Comments Due:* 5 p.m. ET 1/3/13.

*Docket Numbers:* ER13–551–000.

*Applicants:* Gray County Wind Energy, LLC.

*Description:* Gray County Wind and Ensign Wind Shared Facilities Agreement to be effective 12/14/2012.

*Filed Date:* 12/13/12.

*Accession Number:* 20121213–5000.

*Comments Due:* 5 p.m. ET 1/3/13.

*Docket Numbers:* ER13–552–000.

*Applicants:* Arizona Public Service Company.

*Description:* Rate Schedule No. 217, WAPA, Exhibit A to be effective 3/1/2013.

*Filed Date:* 12/13/12.

*Accession Number:* 20121213–5091.

*Comments Due:* 5 p.m. ET 1/3/13.

*Docket Numbers:* ER13–553–000.

*Applicants:* Louisville Gas and Electric Company.

*Description:* OATT Schedule 11 Loss Rev to be effective 3/1/2013.

*Filed Date:* 12/13/12.

*Accession Number:* 20121213–5129.

*Comments Due:* 5 p.m. ET 1/3/13.

*Docket Numbers:* ER13–555–000.

*Applicants:* Michigan Electric Transmission Company.

*Description:* Filing of Notice of Succession and Notice of Termination to be effective 2/12/2013.

*Filed Date:* 12/14/12.

*Accession Number:* 20121214–5039.

*Comments Due:* 5 p.m. ET 1/4/13.

*Docket Numbers:* ER13–556–000.

*Applicants:* National Grid Generation LLC.

*Description:* Annual Pension and Other Post Employment Benefits Costs Filing to be effective 1/1/2012.

*Filed Date:* 12/14/12.

*Accession Number:* 20121214–5054.

*Comments Due:* 5 p.m. ET 1/4/13.

*Docket Numbers:* ER13–557–000.

*Applicants:* American Electric Power Service Corporat,PJM Interconnection, L.L.C.

*Description:* AEPSC submits 36th Revised SA No. 1336 among AEPSC & Buckeye to Cancel FA29 to be effective 11/9/2012.

*Filed Date:* 12/14/12.

*Accession Number:* 20121214–5078.

*Comments Due:* 5 p.m. ET 1/4/13.

*Docket Numbers:* ER13–558–000.

*Applicants:* Sycamore Cogeneration Company,Southern California Edison Company.

*Description:* Joint Application of Sycamore Cogeneration Company and Southern California Edison Company to make wholesale power and capacity sales to affiliate.

*Filed Date:* 12/14/12.

*Accession Number:* 20121214–5091.

*Comments Due:* 5 p.m. ET 1/4/13.

*Docket Numbers:* ER13–559–000.

*Applicants:* Southern California Edison Company,Kern River Cogeneration Company.

*Description:* Joint Application of Kern River Cogeneration Company and Southern California Edison Company to make wholesale power and capacity sales to affiliate.

*Filed Date:* 12/14/12.

*Accession Number:* 20121214–5093.

*Comments Due:* 5 p.m. ET 1/4/13.

*Docket Numbers:* ER13–560–000.

*Applicants:* American Electric Power Service Corporat,PJM Interconnection, L.L.C.

*Description:* AEPSC submits 37th Revised Service Agreement No. 1336 among AEPSC & Buckeye to be effective 11/15/2012.

*Filed Date:* 12/14/12.

*Accession Number:* 20121214–5096.

*Comments Due:* 5 p.m. ET 1/4/13.

*Docket Numbers:* ER13–561–000.

*Applicants:* EME Homer City Generation L.P.

*Description:* EME Homer City Generation L.P. submits Notice of Cancellation.

*Filed Date:* 12/14/12.

*Accession Number:* 20121214–5141.

*Comments Due:* 5 p.m. ET 1/4/13.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES13–9–000.

*Applicants:* Montana Alberta Tie Ltd, MATL LLP.

*Description:* Montana Alberta Tie Ltd, et. al. submits Second Supplement to Application.

*Filed Date:* 12/14/12.

*Accession Number:* 20121214–5089.

*Comments Due:* 5 p.m. ET 12/21/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but

intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 14, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–30918 Filed 12–21–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP10–1069–000.
*Applicants:* Kinder Morgan Interstate Gas Transmission.
*Description:* TIGT 2012 Annual Reconciliation Filing to be effective N/A.
*Filed Date:* 12/18/12.
*Accession Number:* 20121218–5064.
*Comments Due:* 5 p.m. ET 12/31/12.

*Docket Numbers:* RP13–398–000.
*Applicants:* Natural Gas Pipeline Company of America.
*Description:* Removal of Agreements to be effective 1/19/2013.
*Filed Date:* 12/18/12.
*Accession Number:* 20121218–5086.
*Comments Due:* 5 p.m. ET 12/31/12.

*Docket Numbers:* RP13–399–000.
*Applicants:* NGO Transmission, Inc.
*Description:* NGO Transmission—Negotiated Rate Filing to be effective 1/1/2013.
*Filed Date:* 12/18/12.
*Accession Number:* 20121218–5092.
*Comments Due:* 5 p.m. ET 12/31/12.

*Docket Numbers:* RP13–400–000.
*Applicants:* TC Offshore LLC.
*Description:* Negotiated Rate Agreements to be effective 11/1/2012.
*Filed Date:* 12/18/12.
*Accession Number:* 20121218–5154.
*Comments Due:* 5 p.m. ET 12/31/12.

*Docket Numbers:* RP13–401–000.
*Applicants:* Gulf South Pipeline Company, LP.
*Description:* FSS Open Season Option to be effective 1/18/2013.
*Filed Date:* 12/19/12.
*Accession Number:* 20121219–5021.
*Comments Due:* 5 p.m. ET 12/31/12.

*Docket Numbers:* RP13–402–000.
*Applicants:* Gulfstream Natural Gas System, L.L.C.
*Description:* Gulfstream Natural Gas System, L.L.C. submits tariff filing per 154.204: Negotiated Rate Agreement—contract 9120401 to be effective 1/1/2013.
*Filed Date:* 12/19/12.
*Accession Number:* 20121219–5033.
*Comments Due:* 5 p.m. ET 12/31/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

**Filings in Existing Proceedings**

*Docket Numbers:* RP12–1134–001.
*Applicants:* Fayetteville Express Pipeline LLC.
*Description:* FEP 2012 Hub Service—Substitute Sheet Filing to be effective 1/1/2013.
*Filed Date:* 12/18/12.
*Accession Number:* 20121218–5155.
*Comments Due:* 5 p.m. ET 12/31/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 19, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary*

[FR Doc. 2012–30987 Filed 12–21–12; 4:15 pm]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP13–23–000]**

### Perryville Gas Storage LLC ; Notice of Intent To Prepare an Environmental Assessment for the Proposed Crowville Salt Dome Storage Project Limited Amendment and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Crowville Salt Dome Storage Project Limited Amendment (Project) involving construction and operation of facilities by Perryville Gas Storage LLC (Perryville) in Franklin Parish, Louisiana. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on January 21, 2013.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

Perryville provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?''. This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also

available for viewing on the FERC Web site (*www.ferc.gov*).

**Summary of the Proposed Project**

Perryville proposes to shift the location of the PGS Cavern Well No. 2 a distance of 400 feet to the southeast from its presently certificated location (FERC Docket No. CP09–418–000) in order to provide for a safer access point to the underlying salt formation. Noise impacts from proposed well drilling location would substantially change for several residences located nearby. Perryville would reduce the size of the permanent well pad from 3.1 down to 2.4 acres. The utility corridor connecting the well pad to the Natural Gas Handling Facility Site (compressor station) would be reduced in length resulting in 0.5 fewer acres of temporary ground disturbance. Perryville would use an alternate permanent access road consisting of public and private roads for the well. No changes are otherwise proposed herein to the approved storage capacity and facilities.

The general location of the project facilities is shown in appendix 1.[1]

**The EA Process**

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources;
- Cultural resources;
- Vegetation and wildlife; including migratory birds
- Endangered and threatened species;
- Air quality and noise; and
- Public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section beginning on page 4.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA [3]. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

**Consultations Under Section 106 of the National Historic Preservation Act**

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

**Public Participation**

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before January 21, 2013.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP13–23–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings*. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister*.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

**Environmental Mailing List**

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at www.ferc.gov using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

**Becoming an Intervenor**

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

**Additional Information**

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., CP13–23–000). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: December 19, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–30997 Filed 12–21–12; 4:15 pm]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14308–001–VT]**

### Carbon Zero, LLC; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for an original license for the Vermont Tissue Mill Hydroelectric Project, to be located on the Walloomsac River, in the town of Bennington, Bennington County, Vermont, and has prepared an Environmental Assessment (EA).

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access documents. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments on the EA should be filed within 30 days from the date of this notice. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/eComment.asp*. You must include your name and contact information at the end of your comments.

For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, Washington, DC 20426. Please affix ''Vermont Tissue Mill Hydroelectric Project No. 14308–001'' to all comments.

For further information, contact Amy Chang at (202) 502–8250.

Dated: December 18, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–30912 Filed 12–21–12; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14424–000]**

### Tlingit-Haida Regional Electric Authority; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments and Motions To Intervene

On June 12, 2012, Tlingit-Haida Regional Electric Authority (THREA) filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Walker Lake Hydroelectric Project, to be located on Walker Lake, near Haines, Haines Borough, Alaska. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) Two rock-filled dams approximately 15-foot-wide, and 250- and 325-foot-long, respectively, creating a usable capacity of Walker Lake of

4,300 acre-feet at a normal maximum operating elevation of 1,195 feet above mean sea level (msl); (2) a concrete spillway and diversion channel for controlled releases to Walker Creek; (3) a concrete intake at elevation 1,170 feet msl diverting flow into the penstock; (4) a 24-inch-diameter, 11,000-foot-long penstock, of which approximately 10,000 feet would be buried and 1,000 feet would be above ground; (5) a powerhouse containing one generating unit with an installed capacity of one megawatt and 780 feet of net head; (6) a 50-foot-long tailrace connecting the powerhouse with the Little Salmon River; (7) a 4-mile-long, 12.5-kilovolt transmission line extending from the project to an interconnection location near the Klehini River Bridge; and (8) appurtenant facilities. The estimated annual generation of the Walker Lake Project would be 3,615 megawatt-hours.

*Applicant Contact:* Mr. Richard George, P.O. Box 40, Angoon, AK, 99820, phone (907) 788–3771.

*FERC Contact:* Matt Buhyoff, (202) 502–6824.

*Competing Application:* This application competes with Project No. 14346–000 filed January 11, 2012. Competing applications or a notice of intent to file a competing application had to be filed on or before May 14, 2012. On May 11, 2012, THREA filed a notice of intent to file a competing application; therefore, its competing application had to be filed on or before June 13, 2012.

*Deadline for filing comments and motions to intervene:* 60 days from the issuance of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14424) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Dated: December 19, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–30994 Filed 12–21–12; 4:15 pm]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 12119–000]**

### PowerWheel Associates; Notice of Termination of Exemption by Implied Surrender and Soliciting Comments and Motions To Intervene

Take notice that the following hydroelectric proceeding has been initiated by the Commission:

a. *Type of Proceeding:* Termination of Exemption by Implied Surrender.

b. *Project No.:* 12119–000.

c. *Date Initiated:* November 20, 2012.

d. *Exemptee:* PowerWheel Associates.

e. *Name and Location of Project:* The Powerwheel Demonstration Project is located on Semitropic Water Storage District's (SWSD) main intake canal at Station 70+50 in Kern County, California.

f. *Issued Pursuant to:* 18 CFR 6.4 (2011).

g. *Exemptee Contact Information:* Mr. Kenneth R. Broome, PowerWheel Associates, 100 Rocky Creek Road, Woodside, CA 94062; phone (650) 529–1810.

h. *FERC Contact:* Anthony DeLuca, (202) 502–6632.

i. Deadline for filing comments, protests, and motions to intervene is 30 days from the issuance date of this notice. All documents may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp*. The Commission strongly encourages electronic filings. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be sent to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. Please include the project number (P–12119–000) on any documents or motions filed.

j. *Description of Project Facilities:* The project consists of an existing concrete-lined canal, a waterwheel, 7 feet in external diameter, 3½ feet in internal diameter and 14½ feet long, that is operated in a ''run-of-conduit'' mode. It has one 75-kW generating unit installed at the sloping drop structure located at Station 70+50 of the Semitropic Water Storage District's (SWSD) main intake canal.

k. *Description of Proceeding:* The Powerwheel Demonstration Project was constructed by the exemptee in 2003. The project was built for demonstration purposes and not intended to be a permanent hydroelectric facility. In several letters to the Commission in 2010 and 2011, the exemptee requested removal of the project from Commission jurisdiction, and stated that it was previously dismantled and removed from the canal drop. Efforts by Commission staff to contact the exemptee to request a formal application to surrender the exemption have been unanswered.

l. This notice is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the Docket number (P–2927) in the docket number field to access the notice. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene* — Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular proceeding.

o. *Filing and Service of Responsive Documents* — Any filing must: (1) Bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE,'' as applicable; (2) set forth in the heading the project number of the proceeding to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, protests or motions to intervene must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, protests, or motions to intervene should relate to project works, which are the subject of the termination of exemption. A copy of any protest or motion to intervene must be served upon each representative of the exemptee specified in item g above. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this notice must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described proceeding. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Dated: December 19, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–30996 Filed 12–21–12; 4:15 pm]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2003–0004; FRL–9373–4]**

## Access to Confidential Business Information by Science Applications International Corporation and Its Identified Subcontractor, Impact Innovations Systems, Inc.

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

**ACTION:** Notice.

**SUMMARY:** EPA has authorized its contractor, Science Applications International Corporation (SAIC) of McLean, VA and its identified subcontractor, Impact Innovations Systems, Inc. (IIS), to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

**DATES:** Access to the confidential data occurred on or about December 4, 2012.

**FOR FURTHER INFORMATION CONTACT:**

*For technical information contact:* Gloria Drayton-Miller, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8619; fax number: (202) 564–7490; email address: *drayton-miller.gloria@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 Notice Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How can I get copies of this document and other related information?*

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. 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.

### II. What Action is the Agency Taking?

Under EPA contract number GS–35F–4461G, Order Number 1531, contractors SAIC of 1710 SAIC Drive, McLean, VA and IIS of 9720 Capital Court, Suite 403, Manassas, VA will assist the Office of Pollution Prevention and Toxics (OPPT) in providing maintenance support of production-level applications to include InputAcel. Maintenance support actions shall include the development of new and updated documentation.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number GS–35F–4461G, Order Number 1531, SAIC and IIS will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. SAIC and IIS' personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide SAIC and IIS access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters in accordance with EPA's *TSCA CBI Protection Manual.*

Access to TSCA data, including CBI, will continue until January 27, 2013. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

SAIC and IIS' personnel were required to sign nondisclosure agreements and have been briefed on appropriate security procedures before they were permitted access to TSCA CBI.

### List of Subjects

Environmental protection, Confidential business information.

Dated: December 17, 2012.

**Matthew G. Leopard,**

*Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2012–31094 Filed 12–21–12; 4:15 pm]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2012–0881; FRL–9373–1]**

## 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 November 1, 2012 to November 30, 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 25, 2013.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2012–0881, 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) 564–8955; fax number: (202) 564–8951; 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.

*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 November 1, 2012 to November 30, 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—55 PMNS RECEIVED FROM 11/1/2012 TO 11/30/12

| Case No. | Received date | Projected notice end date | Manufacturer/importer | Use | Chemical |
|---|---|---|---|---|---|
| P–13–0082 | 11/2/2012 | 1/30/2013 | Henkel Corp. | (S) Hotmelt adhesive for panel lamination and other assemblies. | (G) Acrylic modified polyether-ester polyurethane prepolymer. |
| P–13–0083 | 11/1/2012 | 1/29/2013 | CBI | (S) Coatings additive | (G) Epoxysilane homopolymer. |
| P–13–0090 | 11/1/2012 | 1/29/2013 | Cytec Industries, Inc. | (G) Resin for non-dispersive use. | (G) Alkenenitrile, polymer with alkadiene, substituted alkyl-terminated, polymers with substituted carbonomocycles, alkoxy-terminated-substituted alkyl-alkadiene polymer, substituted carbomoncycle and halogen substituted carbomonocycle. |
| P–13–0091 | 11/5/2012 | 2/2/2013 | Cray Valley USA, LLC | (G) Additive for rubber to improve properties. | (G) Siloxane functional polybutadiene polymer. |
| P–13–0092 | 11/6/2012 | 2/3/2013 | CBI | (G) Adhesive for electrical industry use. | (G) Latex polymer. |
| P–13–0093 | 11/8/2012 | 2/5/2013 | The Goodyear Tire & Rubber Co. Department 100D. | (S) Precursor to polymerization catalyst. | (S) Neodymium, butadiene iso-bu neodecanoate complexes. |
| P–13–0094 | 11/6/2012 | 2/3/2013 | CBI | (G) Additive for adhesives, pottings and sealants. | (G) Acrylic ester functionalized polyether polymer. |
| P–13–0095 | 11/6/2012 | 2/3/2013 | Gelest, Inc. | (S) Further purified at one site; further purified material packaged and sent to end use for use in CVD LOWK dielectric barrier in microelectronic application.. | (S) Silane, bicyclo[2.2.1]hept-2-yldiethoxymethyl- |
| P–13–0096 | 11/12/2012 | 2/9/2013 | Cytec Industries, Inc. | (G) Coating resin | (G) Alkenoic acid, reaction product with alkylpolyol, polymers with substituted heteromonocycle. |

TABLE I—55 PMNS RECEIVED FROM 11/1/2012 TO 11/30/12—Continued

| Case No. | Received date | Projected notice end date | Manufacturer/importer | Use | Chemical |
|---|---|---|---|---|---|
| P–13–0097 | 11/9/2012 | 2/6/2013 | Shin ETSU Microsi | (G) Non combustible coating for non woven fabric for automobile air filters and carpet flooring materials. | (G) Vinyl chloride emulsion (acrylic group emulsion type). |
| P–13–0098 | 11/12/2012 | 2/9/2013 | CBI | (G) An open, non-dispersive use. | (G) Modified polyarylamide salt. |
| P–13–0099 | 11/13/2012 | 2/10/2013 | H.B. Fuller Company | (G) Industrial adhesive | (G) 1,4-benzenedicarboxylic acid, polymer with 2,2-dimethyl-1,3-propanediol, alkane diacid, 1,2-ethanediol, hexanedioic acid, alkanediol, .alpha.-hydro-.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 1,3-isobenzofurandione, 1,1'-methylenebis[4-isocyanatobenzene], 2-oxepanone and 2,2'-oxybis[ethanol]. |
| P–13–0100 | 11/13/2012 | 2/10/2013 | H.B. Fuller Company | (G) Industrial adhesive | (G) Alkane diacid, polymer with hexanedioic acid, alkanediol, .alpha.-hydro-.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 1,3-isobenzofurandione, 1,1'-methylenebis[4-isocyanatobenzene], 2-oxepanone and 2,2'-oxybis[ethanol]. |
| P–13–0101 | 11/13/2012 | 2/10/2013 | H.B. Fuller Company | (G) Industrial adhesive | (G) 1,3-benzenedicarboxylic acid, polymer with 1,4-benzenedicarboxylic acid, alkane diacid, 1,2-ethanediol, hexanedioic acid, alkanediol, .alpha.-hydro-.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 1,3-isobenzofurandione, 1,1'-methylenebis[4-isocyanatobenzene], 2-oxepanone and 2,2'-oxybis[ethanol]. |
| P–13–0102 | 11/13/2012 | 2/10/2013 | H.B. Fuller Company | (G) Industrial adhesive | (G) Alkane diacid, polymer with hexanedioic acid, alkanediol, .alpha.-hydro-.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 1,1'-methylenebis[4-isocyanatobenzene], 2-oxepanone and .alpha.,.alpha.',.alpha.-1. |
| P–13–0103 | 11/13/2012 | 2/10/2013 | H.B. Fuller Company | (G) Industrial adhesive | (G) Alkane diacid, polymer with 2,2-dimethyl-1,3-propanediol, 1,2-ethanediol, hexanedioic acid, alkanediol, .alpha.-hydro-.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 1,1'-methylenebis[4-isocyanatobenzene], and.alpha.,.alpha.',.alpha.-1. |
| P–13–0104 | 11/13/2012 | 2/10/2013 | H.B. Fuller Company | (G) Industrial adhesive | (G) Alkane diacid, polymer with 2,2-dimethyl-1,3-propanediol, 1,2-ethanediol, hexanedioic acid, alkanediol, .alpha.-hydro-.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 1,3-isobenzofurandione, 1,1'-methylenebis[4-isocyanatobenzene], and 2,2'-oxybis[ethanol]. |
| P–13–0105 | 11/13/2012 | 2/10/2013 | Sika Corporation | (G) Latent hardener for polyurethane roof membrane. | (G) Latent hardener for polyurethane. |
| P–13–0106 | 11/9/2012 | 2/6/2013 | The Goodyear Tire & Rubber Company. | (S) Precursor to polymerization catalyst. | (G) Neodymium, Ziegler—Natta preformed stage 1 catalyst. |
| P–13–0107 | 11/14/2012 | 2/11/2013 | Trinity Manufacturing, Inc.. | (S) Flame retardant for rubber products. | (S) Alkanes, $C_{22-30}$-branched and linear, chloro. |
| P–13–0108 | 11/14/2012 | 2/11/2013 | CBI | (S) Feed for a bromine recovery unit. | (S) Bromine, manufacturer of, by-products from distant residues. |
| P–13–0109 | 11/14/2012 | 2/11/2013 | Trinity Manufacturing, Inc.. | (S) Flame retardant in rubber products; extreme pressure additive in lubricants. | (S) Alkanes, $C_{24-28}$, chloro. |
| P–13–0110 | 11/14/2012 | 2/11/2013 | CBI | (G) Additive, open, non-dispersive use. | (G) Hydroxyalkyl methacrylate, reaction product with cyclic ether. |
| P–13–0111 | 11/15/2012 | 2/12/2013 | CBI | (G) Additive, open, non-dispersive use. | (G) Acrylfunctional polysiloxane, reaction product of alcohols with isocyanates. |
| P–13–0112 | 11/15/2012 | 2/12/2013 | CBI | (G) Additive, open, non-dispersive use. | (G) Acrylfunctional polysiloxane, reaction product of alcohols with isocyanates. |
| P–13–0113 | 11/15/2012 | 2/12/2013 | CBI | (G) Additive, open, non-dispersive use. | (G) Acrylfunctional polysiloxane, reaction product of alcohols with isocyanates. |

TABLE I—55 PMNS RECEIVED FROM 11/1/2012 TO 11/30/12—Continued

| Case No. | Received date | Projected notice end date | Manufacturer/importer | Use | Chemical |
|---|---|---|---|---|---|
| P–13–0114 | 11/19/2012 | 2/16/2013 | CBI | (S) Reactant/intermediate for polymers and oligomers, polyesters, and other materials that might include personal care and pharmaceutical applications. | (G) Sorbitan ester. |
| P–13–0115 | 11/20/2012 | 2/17/2013 | CBI | (G) Pigment dispersant | (G) Fatty acids of natural oils, conjugated, maleated, substituted phenoxyalkyl ester. |
| P–13–0116 | 11/20/2012 | 2/17/2013 | CBI | (G) Pigment dispersant | (G) Fatty acids of natural oils, conjugated, maleated, substituted phenoxyalkyl ester. |
| P–13–0117 | 11/20/2012 | 2/17/2013 | H.B. Fuller Company | (G) Industrial adhesive | (G) Vegetable oil, polymer with isocyanate. |
| P–13–0118 | 11/20/2012 | 2/17/2013 | CBI | (G) Industrial adhesive | (G) Vegetable oil, polymer with isocyanate and propanol, oxybis-. |
| P–13–0119 | 11/20/2012 | 2/17/2013 | CBI | (G) Polymer processing additive. | (S) D-glucitol, 1,3:2,4-bis-o-[(4-ethylphenyl)methylene]-. |
| P–13–0120 | 11/20/2012 | 2/17/2013 | CBI | (S) Catalyst for use in polyurethane coatings. | (G) Substituted dimethyltin. |
| P–13–0121 | 11/20/2012 | 2/17/2013 | CBI | (G) Polymeric colorant | (G) Substituted polymeric aromatic amine azo colorant. |
| P–13–0122 | 11/20/2012 | 2/17/2013 | CBI | (G) Packaging material | (G) Acetic acid ethenyl ester, copolymer, hydrolyzed. |
| P–13–0123 | 11/20/2012 | 2/17/2013 | CBI | (G) Additive, open, non-dispersive use. | (G) Salt of acidic polymers with monomeric and polymeric bases. |
| P–13–0124 | 11/20/2012 | 2/17/2013 | DIC International (USA) LLC. | (G) Polymer for coating. | (G) Coating polymer. |
| P–13–0125 | 11/20/2012 | 2/17/2013 | Soane Energy LLC | (G) Used in the upstream oil and gas industry. | (S) Poly(oxy-1,2-ethanediyl), .alpha.-hydro-.omega.-hydroxy-, hydrogen 2–$C_{15-20}$-alkenylbutanediotes. |
| P–13–0126 | 11/20/2012 | 2/17/2013 | Soane Energy LLC | (G) Used in the upstream oil and gas industry. | (S) Poly(oxy-1,2-ethanediyl), .alpha.-hydro-.omega.-hydroxy-, hydrogen 2–$C_{15-20}$-alkenylbutanediotes, sodium salts. |
| P–13–0127 | 11/20/2012 | 2/17/2013 | Miwon North America, Inc.. | (S) Resin for industrial coating. | (G) Monofunctional acrylate. |
| P–13–0128 | 11/21/2012 | 2/18/2013 | CBI | (G) Additive, open, non-dispersive use. | (G) Polyether modified potassium polystyrene maleate. |
| P–13–0129 | 11/21/2012 | 2/18/2013 | CBI | (G) Additive, open, non-dispersive use. | (G) Polyether modified fatty acid dimmer. |
| P–13–0130 | 11/20/2012 | 2/17/2013 | CBI | (G) Flow improver for oilfield applications. | (G) Formaldehyde, polymer with alklyphenols. |
| P–13–0131 | 11/26/2012 | 2/23/2013 | CBI | (G) Inhibitor for oil field applications. | (G) Tertiary ammonium compound. |
| P–13–0132 | 11/26/2012 | 2/23/2013 | Euticals, Inc. | (S) Monomer intermediate for use in the manufacture of a polymer. | (S) Boronic acid, b-[3-[(1-oxo-2-propen-1-yl)amino]phenyl]-. |
| P–13–0133 | 11/27/2012 | 2/24/2013 | CBI | (G) Catalyst for silicone polymerization. | (G) Dichlorophosphazene oligomers. |
| P–13–0134 | 11/27/2012 | 2/24/2013 | CBI | (G) Catalyst for silicone polymerization. | (G) Partially hydrolyzed dichlorophosphazene oligomers. |
| P–13–0135 | 11/26/2012 | 2/23/2013 | Euticals, Inc. | (S) Intermediate monomer for use in the manufacture of another monomer. | (G) Substituted benzenamine. |
| P–13–0136 | 11/28/2012 | 2/25/2013 | Sika Corporation | (G) Roof membrane hardener. | (G) Latent hardener for polyurethane. |
| P–13–0137 | 11/28/2012 | 2/25/2013 | CBI | (G) Chemical additive | (S) Butanedioic acid, 2-(2-octen-1-yl)-. |
| P–13–0138 | 11/28/2012 | 2/25/2013 | CBI | (G) Textile processing additive. | (S) Butanedioic acid, 2-(2-octen-1-yl)-, potassium salt (1:2). |
| P–13–0139 | 11/28/2012 | 2/25/2013 | CBI | (G) Gasoline additive | (G) Fatty acids, alkyl-unsaturated, esters with polyol. |
| P–13–0140 | 11/29/2012 | 2/26/2013 | CBI | (G) Solvent | (S) Pentanoic acid, 5-(dimethylamino)-2-methyl-5-oxo-, methyl ester. |
| P–13–0141 | 11/29/2012 | 2/26/2013 | Dow Chemical Company. | (S) Hardener for epoxy thermosetting coatings. | (G) Alkyl amines polymer with polyglycol ether, and bis a epoxy reaction products with aromatic epoxies. |

TABLE I—55 PMNS RECEIVED FROM 11/1/2012 TO 11/30/12—Continued

| Case No. | Received date | Projected notice end date | Manufacturer/importer | Use | Chemical |
|---|---|---|---|---|---|
| P–13–0142 ..... | 11/30/2012 | 2/27/2013 | Scott Bader, Inc. ..... | (G) Fabrication of composite articles. | (G) Unsaturated urethane methacrylate. |

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— 3 TMES RECEIVED FROM 11/1/12 TO 11/30/12

| Case No. | Received date | Projected notice end date | Manufacturer/importer | Use | Chemical |
|---|---|---|---|---|---|
| T–13–0002 ..... | 11/1/2012 | 12/15/2012 | Cytec Industries, Inc. .. | (G) Resin for non-dispersive use. | (G) Alkenenitrile, polymer with alkadiene, substituted alkyl-terminated, polymers with substituted carbonomocycles, alkoxy-terminated-substituted alkyl-alkadiene polymer, substituted carbomonocycle and halogen substituted carbomonocycle. |
| T–13–0003 ..... | 11/12/2012 | 12/26/2012 | Cytec Industries, Inc. .. | (G) Coating resin ..... | (G) Alkenoic acid, reaction product with alkylpolyol, polymers with substituted heteromonocycle. |
| T–13–0004 ..... | 11/26/2012 | 1/9/2013 | CBI ..... | (G) Inhibitor for oil field applications. | (G) Tertiary ammonium compound. |

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—32 NOCS RECEIVED FROM 11/1/12 TO 11/30/12

| Case No. | Received date | Commencement notice end date | Chemical |
|---|---|---|---|
| J–12–0004 ..... | 11/5/2012 | 10/25/2012 | (G) Saccharomyces cerevisiae, strain CBI. |
| P–07–0101 ..... | 11/20/2012 | 5/7/2008 | (G) Alkoxylate polymer. |
| P–08–0654 ..... | 11/20/2012 | 3/1/2009 | (G) Fatty acids, $C_{18}$-unsaturated., dimers, polymers with diamines and monoacids. |
| P–09–0106 ..... | 11/27/2012 | 11/14/2012 | (G) Fatty acids, tall-oil, reaction products with modified fatty acids and polyalkanolamines, hydrochlorides. |
| P–09–0107 ..... | 11/1/2012 | 10/4/2012 | (G) Fatty acids, tall-oil, reaction products with modified fatty acids and polyalkanolamines. |
| P–09–0263 ..... | 11/14/2012 | 10/24/2012 | (S) 4-dodecenenitrile, (4z)-. |
| P–10–0014 ..... | 11/26/2012 | 11/15/2012 | (G) Quino[2,3-b]acridine-7, 14-dione, 2,9-dichloro-5, 12-dihydro[4-[[2-(sulfooxy)ethyl]substituted]phenyl]-,sodium salt (1:1). |
| P–10–0560 ..... | 11/13/2012 | 10/4/2012 | (G) Silyl-modified polymer. |
| P–10–0561 ..... | 11/19/2012 | 10/4/2012 | (G) Silyl-modified polymer. |
| P–11–0016 ..... | 11/20/2012 | 11/1/2012 | (G) Adipic acid, polymer with benzenepolycarboxylic acids, polyakylene glycol, alkanediols, 1,1'-methylenebis[isocyanatobenzene] and a substituted-, trialkoxysilane. |
| P–11–0368 ..... | 11/20/2012 | 8/11/2011 | (G) Ipdi modified polyester resin. |
| P–11–0557 ..... | 11/27/2012 | 11/2/2012 | (G) 2-propenoic acid, 2-methyl-, 2-hydroxyethyl ester, telomers with $C_{18-26}$ alkyl acrylate, 1-dodecanthiol, *N*-(hydroxymethyl)-2-methyl-2-propenamide, polyfluorooctyl methacrylate and vinylidene chloride, 2,2'-[1,2-diazenediylbis(1-methylethylidene)]-bis[4,5-dihydro-1*H*-imidazole]hydrochloride (1:2)-initiated. |
| P–12–0044 ..... | 11/30/2012 | 11/1/2012 | (G) Multi-wall carbon nanotubes. |
| P–12–0143 ..... | 11/14/2012 | 11/2/2012 | (G) Poly(oxy-1,4-butanediyl), -hydro-hydroxy-, polymer with alkyldisocyanates. |
| P–12–0152 ..... | 11/13/2012 | 10/31/2012 | (G) Ester substituted bicyclic olefin. |
| P–12–0174 ..... | 11/28/2012 | 11/7/2012 | (G) Polyurethane. |
| P–12–0246 ..... | 11/19/2012 | 11/7/2012 | (G) Methyl, phenyl, amino-functional siloxanes and silsesquixane. |
| P–12–0247 ..... | 11/20/2012 | 10/10/2012 | (G) Alkyl carboxylic acid, oxiranyl alkyl ester, polymer with cycloalkyl dicarboxylic acid anhydride, alkyl alcohol ester. |
| P–12–0248 ..... | 11/20/2012 | 11/1/2012 | (G) Polyester type polyurethane resin. |
| P–12–0272 ..... | 11/6/2012 | 11/2/2012 | (S) 1,3-benzenedicarboylic acid, polymer with 1,4-benzenedicarboxylic acid,2,2-dimethyl-1,3-propanediol, dodecanedioic acid, 1,2-ethanediol, hexanedioic acid, 1,6-hexanediol, .alpha.-hydroxy-.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)] and 1,1'-methylenebis[4-isocyanatobenzene]. |

TABLE III—32 NOCS RECEIVED FROM 11/1/12 TO 11/30/12—Continued

| Case No. | Received date | Commencement notice end date | Chemical |
|---|---|---|---|
| P–12–0340 ..... | 11/2/2012 | 10/23/2012 | (G) Reaction product of bisphenol a diglycidyl ether and an amineterminated cycloaliphatic propoxylate. |
| P–12–0363 ..... | 11/6/2012 | 10/27/2012 | (G) Alkylcarboxyalkenyl polymer with carboxyalkenyl dihydroxyalkylate, carboxyalkenyl and alkylalkenyl sulfonate sodium salt. |
| P–12–0381 ..... | 11/26/2012 | 10/28/2012 | (G) Amido amine polyether polymer. |
| P–12–0447 ..... | 11/9/2012 | 11/7/2012 | (G) Hydrophobic modified acrylic swellable emulsion. |
| P–12–0476 ..... | 11/6/2012 | 10/29/2012 | (G) Aromatic polyester polyether polyol. |
| P–12–0482 ..... | 11/27/2012 | 11/21/2012 | (S) Flue dust, automotive metal recovery; definition: Flue dust collected from the hot gases released from a cupola furnace during a metal recovery process used by the automotive industry composed primarily of oxides of zinc, iron, manganese, aluminum, and silicon. |
| P–12–0483 ..... | 11/2/2012 | 11/1/2012 | (G) Siloxanes and silicones, substituted alkyl group-terminated, ethoxylated, polymers with 5-isocyanato-1-(isocyanatomethyl)-,1,3,3-trimethylcyclohexane and *N*-alkyl glycol, hydroxyethyl methacrylate-blocked. |
| P–12–0501 ..... | 11/9/2012 | 11/8/2012 | (S) Slimes and sludges, automotive phosphate conversion coating wastewater definition: The waste solution produced during the zinc phosphate conversion coating process of automobiles. It may contain oxides of iron, calcium, aluminum, zinc, nickel and magnesium. |
| P–12–0507 ..... | 11/27/2012 | 11/16/2012 | (G) Poly(oxyalkylene) alkylamine. |
| P–12–0511 ..... | 11/20/2012 | 11/16/2012 | (G) Poly(oxyalkylene) alkylamine. |
| P–12–0515 ..... | 11/20/2012 | 11/19/2012 | (G) Polycarboxylic acids, polymer with polyols. |
| P–12–0517 ..... | 11/20/2012 | 11/19/2012 | (G) Polycarboxylic acids, polymer with polyols. |

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 10, 2012.

**Chandler Sirmons,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2012–31063 Filed 12–21–12; 4:15 pm]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OW–2011–0943; FRL9716–6]**

## National Water Program 2012 Strategy: Response to Climate Change

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

**ACTION:** Notice of availability.

**SUMMARY:** The Environmental Protection Agency (EPA) is publishing the final ''*National Water Program 2012 Strategy: Response to Climate Change*'' *(2012 Strategy).* The *Strategy* describes a set of long-term visions and goals for the management of water resources in light of climate change and charts key strategic actions to be taken to achieve the goals in 2012 and subsequent years. The *Strategy* will be a roadmap to inform the National Water Program planning process. The *Strategy* also includes goals and strategic actions for EPA in ten geographic climate regions, largely patterned after the climate regions established by the U.S. Global Change Research Program (USGCRP). The final version of the *Strategy* reflects public comments. The final *Strategy,* is available on the Internet at: *http://www.epa.gov/water/climatechange.*

**ADDRESSES:** Public comments received on the draft strategy and the final *Strategy* are available at the Water Docket, located at the EPA Docket Center (EPA/DC), EPA West 1301 Constitution Avenue NW., Washington, DC 20004. These documents are also available via the EPA Dockets at *http://www.regulations.gov* under docket number EPA–HQ–OW–2012–0943.

**FOR FURTHER INFORMATION CONTACT:** Ms. Elana Goldstein, Office of Water (4101M), Environmental Protection Agency, Ariel Rios Building, Mail Code 4101M, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: 202–564–1800; email address: water_climate_change@epa.gov. For more information, visit: *http://www.epa.gov/water/climatechange.*

**SUPPLEMENTARY INFORMATION:** Climate change alters the hydrological background in which EPA's water programs function. Climate change poses challenges to various aspects of water resource management, including how to: address risks to drinking water, wastewater and storm water infrastructure; protect the quality of surface water, ground water and drinking water; build resilience of watersheds, wetlands, and coastal and ocean waters; and work with tribal communities to understand the implications of climate change to their economy and culture. To remain effective and continue to fulfill its mission, the National Water Program will need to adapt to already observed and projected climatic changes. To that end, EPA will continue to collaborate with partners at the federal, state, tribal, and local levels to develop the requisite information, tools and strategies.

Dated: December 17, 2012.

**Nancy K. Stoner,**

*Acting Assistant Administrator for Water.*

[FR Doc. 2012–31089 Filed 12–21–12; 4:15 pm]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9764–2]**

## Public Water System Supervision Program Approval for the State of Ohio

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

**ACTION:** Notice of tentative approval.

**SUMMARY:** Notice is hereby given that the EPA has tentatively approved revisions to the State of Ohio's public water system supervision program. Ohio

EPA has revised three of its rules to comply with the National Primary Drinking Water Regulations, including the Total Coliform Rule, the Public Notification Rule, and the Filter Backwash Recycling Rule. EPA has determined that these revisions are consistent with and no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve these revisions to the State of Ohio's public water system supervision program, thereby giving Ohio EPA primary enforcement responsibility for these regulations. Ohio EPA's revised coliform and public notification requirements became effective on December 20, 2007, and Ohio EPA has been administering the filter backwash recycling requirements since August 3, 2004.

Any interested party may request a public hearing. A request for a public hearing must be submitted by January 23, 2013, to the Regional Administrator at the EPA Region 5 address shown below. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. However, if a substantial request for a public hearing is made by January 23, 2013, EPA Region 5 will hold a public hearing, and a notice of such hearing will be given in the **Federal Register** and a newspaper of general circulation. If EPA Region 5 does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become final and effective on January 23, 2013. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

**ADDRESSES:** All documents relating to this determination are available for inspection at the following offices: Ohio Environmental Protection Agency, Division of Drinking and Ground Waters, 50 West Town Street, Suite 700, Columbus, Ohio 43215, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, and the United States Environmental Protection Agency, Region 5, Ground Water and Drinking Water Branch (WG–15J), 77 West Jackson Boulevard, Chicago, Illinois 60604, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Wendy Drake, EPA Region 5, Ground Water and Drinking Water Branch, at the address given above, by telephone at (312) 886–6705, or at *drake.wendy@epa.gov*.

**Authority:** Section 1413 of the Safe Drinking Water Act, 42 U.S.C. 300g–2, and the federal regulations implementing Section 1413 of the Act set forth at 40 CFR Part 142.

Dated: December 10, 2012.

**Susan Hedman,**

*Regional Administrator, Region 5.*

[FR Doc. 2012–30953 Filed 12–21–12; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OEI–2012–0774; FRL–9764–3]**

## Office of Environmental Information; Announcement of Availability and Comment Period for the Draft Quality Standard for Environmental Data Collection, Production, and Use by Non-EPA (External) Organizations and two associated QA Handbooks

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

**ACTION:** Notice of availability & request for comment.

**SUMMARY:** Notice of availability for a 30 day review and comment period is hereby given for the draft Quality Standard for Environmental Data Collection, Production, and Use by Non-EPA (External) Organizations and two associated draft QA Handbooks; 1) draft Handbook for Preparing Quality Management Plans (QMPs) and 2) draft Handbook for Preparing Quality Assurance (QA) Project Plans (QAPPs).

The draft Quality Standard for Environmental Data Collection, Production, and Use by Non-EPA (External) Organizations contains no new requirements.

**DATES:** Comments must be submitted on or before January 25, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OEI–2012–0774 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: oei.docket@epa.gov*
- *Fax:* 202–566–9744
- *Mail:* Announcement of Availability and Comment Period for Draft Quality Standard For Environmental Data Collection, Production, and Use By Non-EPA (External) Organizations Environmental Protection Agency, Mail code: 28221T, 1200 Pennsylvania Ave. NW.,Washington, DC 20460.
- *Hand Delivery:* 1301 Constitution Ave. NW., EPA West Building, Room 3334, Washington, DC 20460.

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–OEI–2012–0774. 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.* The *www.regulations.gov* website 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 FURTHER INFORMATION CONTACT:** John Warren; Environmental Protection Agency; 1200 Pennsylvania Avenue, MC 2811R; Washington, DC 20460; Phone: 202 564–6876; Fax: 202 565 2441; Email: *quality@epa.gov*

**SUPPLEMENTARY INFORMATION:** The draft Standard provides greater clarity about QA requirements for environmental data projects; addresses modeling activities, which were not specifically addressed in the previous EPA Order (CIO

2105.0)[1] and provides greater alignment with the EPA Quality Policy (CIO 2106.0)[2]. The draft Quality Standard defines how EPA quality requirements shall be applied to non-EPA organizations under authorized agreements governed by Federal regulations; and defines the general requirements an organization shall use to establish and maintain an effective quality management system for environmental programs. Non-EPA organizations will still be required to develop and submit a Quality Management Plan to EPA for approval for environmental data operations conducted on behalf of EPA and to use QAPPs or equivalent documents to establish quality specifications in individual project activities that collect, produce, and use environmental data.

The draft Quality Standard contains appendices which provide the requirements for QMPs and the requirements for QA Project Plans. When the standards are issued, EPA QA/R–2, *EPA Requirements for Quality Management Plans,* March 2001 (Reissued May 2006)[3] and EPA QA/R–5, *EPA Requirements for Quality Assurance Project Plans,* March 2001 (Reissued May 2006)[4] will be rescinded. Section 2.3.1 of the draft Quality Standard describes how this will impact non-EPA organizations with existing external agreements. Design of the draft Handbooks provides assistance to users creating QMPs and QAPPs that address the specifications listed in the draft Quality Standard.

EPA also plans to issue a Quality Standard for Environmental Collection, Production and Use by EPA organizations. The content of this standard is similar to the draft Quality Standard for External Organizations. This draft Quality Standard is currently being reviewed by EPA organizations. It is anticipated that both Quality Standards will be issued simultaneously.

Dated: December 18, 2012.

**Monica D. Jones,**

*Director, Quality Staff.*

[FR Doc. 2012–31096 Filed 12–21–12; 4:15 pm]

**BILLING CODE 6560–50–P**

[1] *http://intranet.epa.gov/quality/documents/21050.pdf*

[2] *http://intranet.epa.gov/quality/documents/21060.pdf*

[3] *http://www.epa.gov/quality/qs-docs/r2-final.pdf*

[4] *http://www.epa.gov/quality/qs-docs/r5-final.pdf*

## EXPORT–IMPORT BANK OF THE U.S.

**[Public Notice 2012–0555]**

### 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 03–02 Application for Medium Term Insurance or Guarantee.

**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 purpose of this collection is to gather information necessary to make a determination of eligibility of a transaction for Ex-Im Bank assistance under its medium-term guarantee and insurance program.

The form can be viewed at www.exim.gov/pub/pending/eib03–02.pdf

**DATES:** Comments should be received on or before (insert 30 days after publication) to be assured of consideration.

**ADDRESSES:** Comments maybe submitted electronically on WWW.REGULATIONS.GOV or by mail to Patricia Brewer, Export Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC 20571.

**SUPPLEMENTARY INFORMATION:** *Titles and Form Number:* EIB 03–02 Application for Medium Term Insurance or Guarantee.

*OMB Number:* 3048–0014.

*Type of Review:* Regular.

*Need and Use:* The purpose of this collection is to gather information necessary to make a determination of eligibility of a transaction for Ex-Im Bank assistance under its medium-term guarantee and insurance program.

*Affected Public:* This form affects entities involved in the export of U.S goods and services.

*Annual Number of Respondents:* 400.

*Estimated Time per Respondent:* 1 hour and 45 minutes.

*Number of forms reviewed by Ex-Im Bank:* 400.

*Government Annual Burden Hours:* 700 hours.

*Government Cost:* $38,115.

*Frequency of Reporting or Use:* As needed—each time a company seeks medium term guarantee or insurance support for an export sale.

**Sharon A. Whitt,**

*Agency Clearance Officer.*

[FR Doc. 2012–31038 Filed 12–21–12; 4:15 pm]

**BILLING CODE 6690–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### FDIC Advisory Committee on Economic Inclusion (ComE–IN); Notice of Charter Renewal

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of renewal of the FDIC Advisory Committee on Economic Inclusion.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (''FACA''), 5 U.S.C. App., and after consultation with the General Services Administration, the Chairman of the Federal Deposit Insurance Corporation has determined that renewal of the FDIC Advisory Committee on Economic Inclusion (''the Committee'') is in the public interest in connection with the performance of duties imposed upon the FDIC by law. The Committee has been a successful undertaking by the FDIC and has provided valuable feedback to the agency on important initiatives focused on expanding access to banking services for underserved populations. The Committee will continue to provide advice and recommendations on initiatives to expand access to banking services for underserved populations. The Committee will continue to review various issues that may include, but not be limited to, basic retail financial services such as check cashing, money orders, remittances, stored value cards, short-term loans, savings accounts, and other services to promote asset accumulation and financial stability. The structure and responsibilities of the Committee are unchanged from when it was originally established in November 2006. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

Dated: December 20, 2012.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Committee Management Officer.*

[FR Doc. 2012–31003 Filed 12–21–12; 4:15 pm]

**BILLING CODE 6714–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Determination of Insufficient Assets To Satisfy Claims Against Financial Institution in Receivership

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice; second correction.

**SUMMARY:** The FDIC has determined that insufficient assets exist in the receivership of Darby Bank and Trust Co., Vidalia, Georgia, to make any distribution on general unsecured claims, and therefore such claims will recover nothing and have no value.

**DATES:** The FDIC made its determination on November 19, 2012.

**FOR FURTHER INFORMATION CONTACT:** If you have questions regarding this notice, you may contact an FDIC Claims Agent at (904) 256–3925. Written correspondence may also be mailed to FDIC as Receiver of Darby Bank and Trust Co., Attention: Claims Agent, 8800 Baymeadows Way West, Jacksonville, FL 32256.

**SUPPLEMENTARY INFORMATION:** On November 12, 2010, Darby Bank and Trust Co., Vidalia, Georgia, (FIN #10312) was closed by the Georgia Department of Banking and Finance, and the Federal Deposit Insurance Corporation (''FDIC'') was appointed as its receiver (''Receiver''). In complying with its statutory duty to resolve the institution in the method that is least costly to the deposit insurance fund (see 12 U.S.C. 1823(c)(4)), the FDIC facilitated a transaction with Ameris Bank, Moultrie, Georgia, to acquire all of the deposits and most of the assets of the failed institution.

Section 11(d)(11)(A) of the FDI Act, 12 U.S.C. 1821(d)(11)(A), sets forth the order of priority for distribution of amounts realized from the liquidation or other resolution of an insured depository institution to pay claims. Under the statutory order of priority, administrative expenses and deposit liabilities must be paid in full before any distribution may be made to general unsecured creditors or any lower priority claims.

As of September 30, 2012, the maximum value of assets that could be available for distribution by the Receiver, together with maximum possible recoveries on professional liability claims against directors, officers, and other professionals, as well as potential tax refunds, was $125,488,526. As of the same date, administrative expenses and depositor liabilities equaled $173,303,177, exceeding available assets and potential recoveries by at least $47,814,651. Accordingly, the FDIC has determined that insufficient assets exist to make any distribution on general unsecured creditor claims (and any lower priority claims) and therefore all such claims, asserted or unasserted, will recover nothing and have no value.

On November 27, 2012, the FDIC published a notice in the **Federal Register** (77 FR 70779), incorrectly reciting that the date of determination was November 11, 2012. This correction recites the actual date of determination and the actual date of the publication of corrected notice.

Dated: December 18, 2012.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. 2012–30837 Filed 12–21–12; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Update Listing of Financial Institutions in Liquidation.

**SUMMARY:** Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: December 17, 2012.

Federal Deposit Insurance Corporation.

**Pamela Johnson,**

*Regulatory Editing Specialist.*

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

| FDIC Ref. No. | Bank name | City | State | Date closed |
|---|---|---|---|---|
| 10467 | Community Bank of the Ozarks | Sunrise Beach | MO | 12/14/2012 |

[FR Doc. 2012–30939 Filed 12–21–12; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL HOUSING FINANCE AGENCY

**[No. 2012–N–19]**

### Proposed Collection; Comment Request

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** 60-day Notice of Submission of Information Collection for Approval from the Office of Management and Budget.

**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA) is seeking public comments concerning a currently approved information collection known as ''Affordable Housing Program (AHP),'' which has been assigned control number 2590–0007 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three year extension of the control number, which is due to expire on February 28, 2013.

**DATES:** Interested persons may submit comments on or before February 25, 2013.

*Comments:* Submit comments to FHFA using any of the following methods:

- *Email: regcomments@fhfa.gov.* Please include Proposed Collection;

Comment Request: ''Affordable Housing Program (AHP),'' (No. 2012–N–19) in the subject line of the message.

• *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024, ATTENTION: Public Comments/Proposed Collection; Comment Request: ''Affordable Housing Program (AHP),'' (No. 2012–N–19).

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by *email* to FHFA at *regcomments@fhfa.gov* to ensure timely receipt by the agency.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, on the FHFA Web site at *http://www.fhfa.gov*. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

**FOR FURTHER INFORMATION CONTACT:** Sylvia C. Martinez, Principal Advisor/Manager, Office of the Deputy Director, Division of Bank Regulation (DBR), *Sylvia.Martinez@fhfa.gov,* (202) 649–3301; or Deattra D. Perkins, Senior Policy Analyst, DBR, *Deattra.Perkins@fhfa.gov,* (202) 649–3133 (not toll-free numbers). The telephone number for the telecommunications device for the deaf is (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

## A. Background

Section 10(j) of the Federal Home Loan Bank Act (Bank Act) requires each Bank to establish an affordable housing program, the purpose of which is to enable a Bank's members to finance homeownership by households with incomes at or below 80% of the area median income (low- or moderate-income households), and to finance the purchase, construction, or rehabilitation of rental projects in which at least 20% of the units will be occupied by and affordable for households earning 50% or less of the area median income (very low-income households). *See* 12 U.S.C. 1430(j)(1) and (2). The Bank Act requires each Bank to contribute 10% of its previous year's net earnings to its AHP annually, subject to a minimum annual combined contribution by the 12 Banks of $100 million. *See* 12 U.S.C. 1430(j)(5)(C).

The AHP regulation requires each Bank to establish a competitive application program under which each Bank accepts applications from its members for AHP subsidized advances or direct subsidies (grants). *See* 12 CFR 1291.5. The Bank evaluates the applications pursuant to AHP regulatory eligibility requirements and AHP regulatory and Bank scoring guidelines, and awards funds to the highest scoring applications. In addition, the AHP regulation authorizes a Bank, in its discretion, to set aside a portion of its annual required AHP contribution to establish homeownership set-aside programs for the purpose of promoting homeownership for low- or moderate-income households. *See* 12 CFR 1291.6. Under the homeownership set-aside programs, a Bank may provide AHP direct subsidies to members to pay for down payment assistance, closing costs, and counseling costs in connection with a household's purchase of its primary residence, and for rehabilitation assistance in connection with a household's rehabilitation of an owner-occupied residence. *See* 12 CFR 1291.6(c)(4). Currently, a Bank may allocate up to the greater of $4.5 million or 35% of its annual required AHP contribution to homeownership set-aside programs in that year.

## B. Need for and Use of the Information Collection

The Banks use AHP data collection to determine whether an AHP applicant satisfies the statutory and regulatory requirements to receive AHP subsidies. FHFA's use of the information is necessary to verify that Bank funding decisions, and the use of the funds awarded, are consistent with statutory and regulatory requirements. The AHP information collection is found in the Data Reporting Manual (DRM). *See* Resolution Number 2006–13 (available electronically in the FOIA Reading Room: *http://www.fhfa.gov/Default.aspx?Page=256&ListYear=2006&ListCategory=9#9√2006*).

The OMB number for the information collection is 2590–0007. The OMB clearance for the information collection expires on February 28, 2013. The likely respondents are institutions that are Bank members.

## C. Burden Estimate

FHFA analyzed the cost and hour burden for the six facets of the AHP information collection: AHP competitive applications; verifications of statutory and regulatory compliance of AHP competitive applications at the time of subsidy disbursement; AHP modification requests; AHP monitoring agreements; AHP recapture agreements; and homeownership set-aside program applications. As explained in more detail below, the estimate for the total annual hour burden for applicant and member respondents for all seven facets of the AHP information collection is 60,140 hours.

### *1. AHP Competitive Applications*

FHFA estimates a total annual average of 1,500 competitive applications for AHP funding, with 1 response per applicant, and a 24 hour average processing time for each application. The estimate for the total annual hour burden for AHP competitive applications is 36,000 hours (1,500 applicants x 1 application x 24 hours).

### *2. Verification of Statutory and Regulatory Compliance of AHP Competitive Applications at Time of AHP Subsidy Disbursement*

The FHFA estimates a total annual average of 600 submissions by members/applicants that the Banks review to verify compliance with statutory and regulatory requirements at the time of AHP subsidy disbursement, with a 1 hour average preparation time for each submission. The estimate for the total annual hour burden for preparation of compliance submissions is 600 hours (600 subsidy disbursements x 1 submission per disbursement x 1 hour).

### *3. AHP Modification Requests*

The FHFA estimates a total annual average of 180 modification requests, with 1 response per requestor, and a 2.5 hour average processing time for each request. The estimate for the total annual hour burden for AHP modification requests is 450 hours (180 requestors x 1 request x 2.5 hours).

### *4. AHP Monitoring Agreements*

The FHFA estimates a total annual average of 600 AHP monitoring agreements, with 1 agreement per respondent. The estimate for the average hours to implement each AHP monitoring agreement and prepare and review required reports and certifications is 7.75 hours. The estimate for the total annual hour burden for AHP monitoring agreements is 4,650 hours (600 respondents x 1 agreement x 7.75 hours).

### *5. AHP Recapture Agreements*

The FHFA estimates a total annual average of 360 AHP recapture agreements, with 1 agreement per respondent. The estimate for the average

hours to prepare and implement an AHP recapture agreement is 4 hours. The estimate for the total annual hour burden for AHP recapture agreements is 1,440 hours (360 respondents x 1 agreement x 4 hours).

*6. Homeownership Set-aside Program Applications*

The FHFA estimates a total annual average of 8,500 homeownership set-aside program applications, with 1 application per respondent, and a 2 hour average processing time for each application. The estimate for the total annual hour burden for homeownership set-aside program applications is 17,000 hours (8,500 respondents x 1 application x 2 hours).

**D. Comment Request**

Written comments are requested on: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) The accuracy of the FHFA's estimates of the burdens of the collection of information; (3) Ways to enhance the quality, utility and clarity of the information collected; and (4) Ways to minimize the burden of the collection of information on members and applicants, including through the use of automated collection techniques or other forms of information technology. Comments may be submitted in writing at the address listed above in the Comments section.

Dated: December 20, 2012.

**Kevin Winkler,**

*Chief Information Officer, Federal Housing Finance Agency.*

[FR Doc. 2012–31009 Filed 12–21–12; 4:15 pm]

BILLING CODE 8070–01–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 January 7, 2013.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *David L. Neisen,* Watkins, Minnesota, individually and as trustee of four Neisen family trusts, to retain 25 percent or more of the shares of Neisen Bancshares, Inc., Watkins, Minnesota, and thereby indirectly retain additional voting shares of Farmers State Bank of Watkins, Watkins, Minnesota.

Board of Governors of the Federal Reserve System, December 18, 2012.

**Margaret McCloskey Shanks,**

*Deputy Secretary of the Board.*

[FR Doc. 2012–30826 Filed 12–21–12; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 18, 2013.

**A. Federal Reserve Bank of New York** (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *Flushing Financial Corporation, Flushing, New York*; to become a bank holding company upon the merger of Flushing Savings Bank, FSB, Flushing, New York, with and into Flushing Commercial Bank, North New Hyde Park, New York, which will become a New York State-chartered commercial bank and change its name to Flushing Bank. Comments on this proposal must be received by January 14, 2013.

**B. Federal Reserve Bank of Kansas City** (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *BBIG Holdings, LLC, Lincoln, Nebraska,* to become a bank holding company by acquiring 50 percent of the outstanding voting shares of Hilltop Bancshares, Inc., and thereby acquire Bank of Bennington, both in Bennington, Nebraska.

Board of Governors of the Federal Reserve System, December 18, 2012.

**Margaret McCloskey Shanks,**

*Deputy Secretary of the Board.*

[FR Doc. 2012–30825 Filed 12–21–12; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise

noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 19, 2013.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204:

1. *Franklin Bancorp MHC,* Franklin, New Hampshire; to become a bank holding company by acquiring 100 percent of the voting shares of Franklin Savings Bank, Franklin, New Hampshire.

Board of Governors of the Federal Reserve System, December 19, 2012.

**Michael J. Lewandowski,**

*Assistant Secretary of the Board.*

[FR Doc. 2012–30941 Filed 12–21–12; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR Part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 18, 2013.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Westbury Bancorp, Inc.,* West Bend, Wisconsin; to become a savings and loan holding company by merging with the successor of WBSB Bancorp, MHC, and WBSB Bancorp, Inc., an existing savings and loan holding company. Westbury Bancorp. Inc., will acquire Westbury Bank, West Bend, Wisconsin.

Board of Governors of the Federal Reserve System, December 18, 2012.

**Margaret McCloskey Shanks,**

*Deputy Secretary of the Board.*

[FR Doc. 2012–30827 Filed 12–21–12; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 19, 2013.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *First Charter, MHC,* West Point, Georgia; to convert to stock form and merge with and into Charter Financial Corporation, West Point, Georgia, which proposes to become a savings and loan holding company by acquiring Charterbank, West Point, Georgia.

Board of Governors of the Federal Reserve System, December 19, 2012.

**Michael J. Lewandowski,**

*Assistant Secretary of the Board.*

[FR Doc. 2012–30940 Filed 12–21–12; 8:45 am]

**BILLING CODE 6210–01–P**

## GENERAL SERVICES ADMINISTRATION

**[Notice–GTAC–2012–01; Docket No. 2012–0002; Sequence 28]**

### Government-wide Travel Advisory Committee (GTAC)

**AGENCY:** Office of the Administrator, General Services Administration (GSA).

**ACTION:** Notice, Establishment of a Federal Advisory Committee and Solicitation of Nominations for Membership.

**SUMMARY:** The Administrator of U.S. General Services Administration has determined that the establishment of the Government-wide Travel Advisory Committee (GTAC) is necessary and in the public's interest. A charter for the GTAC has been prepared and will be filed no earlier than 15 days following the date of publication of this notice. In addition, this notice establishes criteria and procedures for the selection of members.

**DATES:** *Effective date:* This notice is effective December 24, 2012.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marcerto Barr, 1275 First Street NE., One Constitution Square, 6th Floor, Washington, DC 20417, (202) 208–7654 or by email to: *gtac@gsa.gov*.

*Background and Authority:* The GSA Office of Asset and Transportation Management, Travel and Relocation Division establishes policy that governs travel by Federal civilian employees and others authorized to travel at Government expense on temporary duty travel through the Federal Travel Regulation (FTR).

**SUPPLEMENTARY INFORMATION:** This notice is published in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), and advises of the establishment of the GTAC.

The purpose of GTAC will be to review existing travel policies,

processes, and procedures, that are accountable and transparent, beginning with the per diem methodology to aid in meeting agency missions in an effective and efficient manner at the lowest logical travel cost. Through the review process, the GTAC will address current industry and Federal travel trends and provide advice and make recommendations for improvements to increase travel efficiency and effectiveness, reduce costs, promote sustainability, and incorporate industry best practices. The Committee provides an opportunity for travel industry leaders, and other qualified individuals to offer their expert advice and recommendations to GSA, which among other things, is responsible for the development and implementation of the FTR which prescribes the policies for travel by Federal civilian employees and others authorized to travel at Government expense. These views will be offered to the Administrator of General Services on a regular basis. There exists no other source within the Federal government that could serve this function. The GTAC shall be a continuing advisory committee with an initial two-year term and will automatically expire two years from the date of the charter filing, unless renewed prior to expiration. The GTAC will be comprised of no more than 15 members, including the Chair, with extensive knowledge and expertise in travel management. The Chair will be selected from among the membership by GSA. Members may include Federal agency travel managers, hoteliers, rental car companies, airline companies, travel and lodging associations, convention and visitor bureaus, state and local government representatives, as well as corporations. GTAC members will serve a two-year term with the possibility of a one-year extension. Membership in the GTAC is limited to the individuals appointed and is non-transferrable. No person who is a Federally-registered lobbyist may serve on the GTAC. GTAC members will not receive compensation or travel reimbursements from the Government. The meetings are open to public observers, unless prior notice has been provided for a closed meeting.

*Nomination for Advisory Committee Appointment:* There is no prescribed format for the nomination. Individuals may nominate themselves or other individuals. A nomination package should include the following information for each nominee: (1) A letter of nomination stating the name, affiliation, and contact information for the nominee, membership capacity he/she will serve, nominee's field(s) of expertise, description of their interest, and qualifications (2) a complete professional biography or resume of the nominee; and (3) the name, return address, email address, and daytime telephone number at which the nominator can be contacted. GSA will consider nominations of all qualified individuals to ensure that the GTAC includes the areas of travel subject matter expertise needed. Potential candidates may be asked to provide detailed information concerning financial interests that might be affected by recommendations of the GTAC to permit evaluation of possible sources of conflicts of interest. The nomination period for interested candidates will close 30 days after publication of this notice. All nominations should be submitted in sufficient time to be received by 5 p.m. Eastern Standard Time on the closing date and be addressed to email address *mailto:gtac@gsa.gov* or by mail to: General Services Administration, Office of Government-wide Policy, 1275 First Street NE., One Constitution.

Dated: December 17, 2012.

**Chris Scott,**

*Director, Travel and Relocation Policy, Office of Asset and Transportation Management, Office of Government Policy.*

[FR Doc. 2012–30928 Filed 12–21–12; 8:45 am]

**BILLING CODE 6820–14–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Findings of Research Misconduct

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

*Terry S. Elton, Ph.D., The Ohio State University:* Based on the reports of two investigations conducted by The Ohio State University (OSU) and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Terry S. Elton, Professor, College of Pharmacy and Davis Heart and Lung Research Institute, OSU, engaged in research misconduct in research supported by National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH), grants R01 HL048848, R01 HL084498, and P01 HL70294, National Institute of Child Health and Human Development (NICHD), NIH, grant R21 HD058997, National Institute on Aging (NIA), NIH, grant R01 AG021912, National Institute of Allergy and Infectious Diseases (NIAID), NIH, grant R01 AI39963, and National Eye Institute (NEI), NIH, grant R01 ES012241.

ORI found that the Respondent engaged in research misconduct by falsifying and/or fabricating data that were included in 1 R21 HD058997–01, 1 R21 HD058997–01A1, 1 R21 HD058997–01A2, 1 RC1 HL100298–01, and in:

1. Kuhn, D.E., Nuovo, G.J., Terry, A.V. Jr., Martin, M.M., Malana, G.E., Sansom, SE., Pleister, A.P., Beck, W.D., Head, E., Feldman, D.S., & Elton, T.S. ''Chromosome 21-derived microRNAs provide an etiological basis for aberrant protein expression in human Down syndrome brains.'' *J Biol Chem* 285(2):1529–43, 2010 Jan 8.
2. Kuhn, D.E., Nuovo, G.J., Martin, M.M., Malana, G.E., Pleister, A.P., Jiang, J., Schmittgen, T.D., Terry, A.V. Jr., Gardiner, K., Head, E., Feldman, D.S., & Elton, T.S. ''Human chromosome 21-derived miRNAs are overexpressed in Down syndrome brains and hearts.'' *Biochem Biophys Res Commun* 370(3):473–7, 2008 Jun 6.
3. Martin, M.M., Buckenberger, J.A., Jiang, J., Malana, G.E., Knoell, D.L., Feldman, D.S., & Elton, T.S. ''TGFß1 stimulates human AT1 receptor expression in lung fibroblasts by cross talk between the Smad, p38 MAPK, JNK, and PI3K signaling pathways.'' *Am. J. Physiol. Lung Cell. Mol. Physiol.* 293(3):L790–9, 2007 Sept. (Retracted: *Am. J. Physiol. Lung Cell. Mol. Physiol.* 302(7):L719, 2012 Apr.)
4. Martin, M.M., Buckenberger, J.A., Jiang, J., Malana, G.E., Nuovo, G.J., Chotani, M., Feldman, D.S., Schmittgen, T.D., & Elton, T.S. ''The human angiotensin II type 1 receptor +1166 A/C polymorphism attenuates microRNA–155 binding.'' *J Biol Chem* 282(33):24262–9, 2007, Aug 17.
5. Martin, M.M., Buckenberger, J.A., Knoell, D.L., Strauch, A.R., & Elton, T.S. ''TGF-beta(1) regulation of human AT1 receptor mRNA splice variants harboring exon 2.'' *Mol Cell Endocrinol* 249(1–2):21–31, 2006 Apr 25.
6. Duffy, A.A., Martin, M.M., & Elton, T.S. ''Transcriptional regulation of the AT1 receptor gene in immortalized human trophoblast cells.'' *Biochim. Biophys. Acta.* 1680(3):158–70, 2004 Nov 5.

As a result of its investigation, OSU has recommended that all of the above publications be retracted.

Specifically, ORI finds that Respondent:

• Falsified and/or fabricated Western blots in an NIH grant application in three submissions of the same grant application:

► Figures 4, 7, 11C: 1 R21 HD058997–01

► Figures 7B, 7E, 8B: 1 R21 HD058997–01A1

► Figures 3C, 3F, 6C: 1 R21 HD058997–01A2

and false Western blots were also included in Figure 6 in grant application 1 RC1 HL100298–01.

• Falsified and/or fabricated Western blots in eighteen (18) figures and in six (6) published papers. Specifically false and/or fabricated images were included in:

► Figures 2C, 2D, 2F, 3C, 3E, 4G, 5C, 5F: *J Biol Chem* 285(2):1529–43, 2010 Jan 8

► Figures 3B, 3C, 3F, 3H, 3I, 3J: *Biochem Biophys Res Commun* 370(3):473–7, 2008 Jun 6

► Figures 2, 3, 4B, 5B, 6, 7B, 8A, 9B: *Am. J. Physiol. Lung Cell. Mol. Physiol.* 293(3):L790–9, 2007 Sept

► Figure 6: *J Biol Chem* 282(33):24262–9, 2007 Aug 17

► Figure 6: *Mol Cell Endocrinol* 249(1–2):21–31, 2006 Apr 25

► Figures 5, 6B, 7B, 9B: *Biochim. Biophys. Acta* 1680(3):158–70, 2004 Nov 5.

Dr. Elton has entered into a Voluntary Exclusion Agreement and has voluntarily agreed:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility or involvement in nonprocurement programs of the United States Government referred to as ''covered transactions'' pursuant to HHS' Implementation (2 CFR part 376 *et seq.*) of OMB Guidelines to Agencies on Govermentwide Debarment and Suspension, 2 CFR part 180 (collectively the ''Debarment Regulations'') for a period of three (3) years, beginning on November 26, 2012;

(2) To exclude himself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of three (3) years, beginning on November 26, 2012; and

(3) To request that the following publications be retracted:

• *J Biol Chem* 285(2):1529–43, 2010 Jan 8

• *Biochem Biophys Res Commun* 370(3):473–7, 2008 Jun 6

• *J Biol Chem* 282(33):24262–9, 2007, Aug 17

• *Mol Cell Endocrinol* 249(1–2):21–31, 2006 Apr 25

• *Biochim. Biophys. Acta.* 1680(3):158–70, 2004 Nov 5.

**FOR FURTHER INFORMATION CONTACT:** Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8200.

**John E. Dahlberg,**

*Deputy Director, Office of Research Integrity.*

[FR Doc. 2012–30866 Filed 12–21–12; 8:45 am]

**BILLING CODE 4150–31–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Meeting of the Presidential Commission for the Study of Bioethical Issues

**AGENCY:** Department of Health and Human Services, Office of the Assistant Secretary for Health, Presidential Commission for the Study of Bioethical Issues.

**ACTION:** Notice of meeting.

**SUMMARY:** The Presidential Commission for the Study of Bioethical Issues (the Commission) will conduct its twelfth meeting in January. At this meeting, the Commission will continue discussing topics related to the ethical issues associated with the development of medical countermeasures for children.

**DATES:** The meeting will take place Monday and Tuesday, January 14–15, 2013.

**ADDRESSES:** University of Miami Hospital Seminar Center, 1400 NW. 12th Avenue, First Floor, Miami, Florida 33136. Telephone (305) 689–5511.

**FOR FURTHER INFORMATION CONTACT:** Hillary Wicai Viers, Communications Director, Presidential Commission for the Study of Bioethical Issues, 1425 New York Avenue NW., Suite C–100, Washington, DC 20005. Telephone: 202–233–3960. Email: *Hillary.Viers@bioethics.gov.* Additional information may be obtained at www.bioethics.gov.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act of 1972, Public Law 92–463, 5 U.S.C. app. 2, notice is hereby given of the twelfth meeting of the Commission. The meeting will be held from 9 a.m. to approximately 5 p.m. on Monday, January 14, 2013, and from 9 a.m. to approximately 11:45 a.m. on Tuesday, January 15, 2013, in Miami, Fla. The meeting will be open to the public with attendance limited to space available. The meeting will also be webcast at www.bioethics.gov.

Under authority of Executive Order 13521, dated November 24, 2009, the President established the Commission. The Commission is an advisory panel of the nation's leaders in medicine, science, ethics, religion, law, and engineering. The Commission advises the President on bioethical issues arising from advances in biomedicine and related areas of science and technology. The Commission seeks to identify and promote policies and practices that ensure scientific research, health care delivery, and technological innovation are conducted in a socially and ethically responsible manner.

The main agenda item for the Commission's twelfth meeting is to continue discussing topics related to the ethical issues associated with the development of medical countermeasures for children.

The draft meeting agenda and other information about the Commission, including information about access to the webcast, will be available at www.bioethics.gov.

The Commission welcomes input from anyone wishing to provide public comment on any issue before it. Respectful debate of opposing views and active participation by citizens in public exchange of ideas enhances overall public understanding of the issues at hand and conclusions reached by the Commission. The Commission is particularly interested in receiving comments and questions during the meeting that are responsive to specific sessions. Written comments will be accepted at the registration desk and comment forms will be provided to members of the public in order to write down questions and comments for the Commission as they arise. To accommodate as many individuals as possible, the time for each question or comment may be limited. If the number of individuals wishing to pose a question or make a comment is greater than can reasonably be accommodated during the scheduled meeting, the Commission may make a random selection.

Anyone planning to attend the meeting who needs special assistance, such as sign language interpretation or other reasonable accommodations, should notify Esther Yoo by telephone at (202) 233–3960, or email at *Esther.Yoo@bioethics.gov* in advance of the meeting. The Commission will make every effort to accommodate persons who need special assistance.

Written comments will also be accepted in advance of the meeting and are especially welcome. Please address written comments by email to *info@bioethics.gov,* or by mail to the following address: Public Commentary, Presidential Commission for the Study of Bioethical Issues, 1425 New York Ave. NW., Suite C–100, Washington, DC 20005. Comments will be publicly available, including any personally identifiable or confidential business information that they contain. Trade secrets should not be submitted.

Dated: December 17, 2012.

**Lisa M. Lee,**

*Executive Director, Presidential Commission for the Study of Bioethical Issues.*

[FR Doc. 2012–31037 Filed 12–21–12; 4:15 pm]

**BILLING CODE 4154–06–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Agency for Healthcare Research and Quality, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed changes to the currently approved information collection project: ''Medical Expenditure Panel Survey—Insurance Component.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

**DATES:** Comments on this notice must be received by February 22, 2013.

**ADDRESSES:** Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

**Proposed Project**

*Medical Expenditure Panel Survey—Insurance Component*

Employer-sponsored health insurance is the source of coverage for 85 million current and former workers, plus many of their family members, and is a cornerstone of the U.S. health care system. The Medical Expenditure Panel Survey—Insurance Component (MEPS–IC) measures the extent, cost, and coverage of employer-sponsored health insurance on an annual basis. Private industry statistics are produced at the National, State, and sub-State (metropolitan area) level and State and local government statistics at the National and Census Region level. Statistics are also produced for State and Local governments. The MEPS–IC was last approved by OMB on December 12th, 2012 and will expire on December 31st, 2014. The OMB control number for the MEPS–IC is 0935–0110. All of the supporting documents for the current MEPS–IC can be downloaded from OMB's Web site at *http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201110-0935-001.*

The current MEPS–IC clearance noted the possibility of making changes to the 2013 MEPS–IC survey in order to address data needs for Patient Protection and Affordable Care Act (PPACA) and other issues. AHRQ solicited input on possible new questions from a working group of over 50 individuals that included multiple representatives from the U.S. Department of Health and Human Services' Assistant Secretary for Planning and Evaluation (ASPE), the Center for Medicare & Medicaid Services' (CMS) Center for Consumer Information and Insurance Oversight, the CMS Office of the Actuary, the National Center for Health Statistics, the President's Council of Economic Advisors, the Office of Management and Budget, the Bureau of Labor Statistics, the Employee Benefits Security Administration, and the Bureau of the Census.

After the working group agreed on a reasonable number of specific questions, the Bureau of the Census, at AHRQ's direction, conducted a pretest of these questions on a sampled set of 2012 MEPS–IC survey respondents. A telephone pretest was conducted in the spring and summer of 2012. The results of this pretest, conducted under the Census Bureau's generic pretest clearance process, led to AHRQ recommending that a subset of the tested questions be added to the survey in 2013. To avoid increasing the overall burden on survey respondents, a proportional number of questions have been proposed for deletion. Questions identified for deletion were those with limited analytic value and/or below-average response rates. The AHRQ recommendations were accepted by the HHS Data Council in November 2012.

For all establishment-level MEPS–IC forms, AHRQ proposes to make the following changes to questions asked of employers who offer health insurance:

**Additions**

- Did your organization offer health insurance to unmarried domestic partners of the same sex? Yes/No/Don't Know
- Did your organization offer health insurance to unmarried domestic partners of the opposite sex? Yes/No/Don't Know

**Deletions**

- For 2013, what was the TYPICAL waiting period before new employees could be covered by health insurance? Less than 2 weeks/2 weeks to less than 1 month/Until the first day of the next month/1–3 months/More than 3 months
- Did your organization place any limits or restrictions on health insurance coverage for the spouse of an employee if the spouse had access to coverage through another employer? Yes/No/Don't Know

For all plan-level MEPS–IC forms, AHRQ proposes to make the following changes:

**Additions**

- (For self-insured health plans that purchase stop-loss coverage) What is the specific stop-loss coverage amount per employee? $_____.00
- Did the premiums for this insurance plan vary by any of these characteristics? Smoker/non-smoker will be added to current list of Age, Gender, Wage or Salary levels, and Other. The ''Premiums did not vary'' response checkbox will be deleted and replaced with Yes/No/Don't Know responses for each characteristic.
- Did the amount an employee contributed toward his/her own coverage vary by any of these employee characteristics? Participation in a fitness/weight loss program and participation in a smoking cessation program will be added to the current list of Hours worked, Union status, Wage or salary level, Occupation, Length of employment, and Other. The ''Employee contribution did not vary'' response checkbox will be deleted and replaced with Yes/No/Don't Know responses for each characteristic.

• Which of the services listed were covered by the plan? Routine vision care for children, Routine dental care for children, Mental health care, and Substance abuse treatment will be added Routine vision care for adults and Routine dental care for adults will replace Routine vision care and Routine dental care respectively. Chiropractic care remains unchanged.

• Is this a Grandfathered health plan as defined by the Affordable Care Act? Yes/No/Don't know

**Deletions**

• How many different pricing categories or tiers of prescription drug coverage were there for this plan? Number of tiers _____ or Don't know

• What was the MAXIMUM amount this plan would have paid for an enrollee in ONE YEAR? $_____ or No annual maximum

• An employer can offer a Health Reimbursement Arrangement (HRA) by setting up an account to reimburse employees for medical expenses not covered by health insurance. Did your organization offer an HRA associated with this plan in 2013? HRAs are NOT Flexible Spending Accounts (FSAs) or Health Savings Accounts (HSAs). Yes/No/Don't Know

The MEPS Definitions form—MEPS–20(D)—will also be updated with new definitions for terms used in these new questions (and the deletion of terms used only in the deleted questions).

There are no changes to the 2013 MEPS–IC survey estimates of cost and hour burdens due to these proposed question changes. The response rate for the MEPS–IC survey also is not expected to change due to these proposed changes.

The MEPS–IC is conducted pursuant to AHRQ's statutory authority to conduct surveys to collect data on the cost, use and quality of health care, including the types and costs of private health insurance. 42 U.S.C. 299b–2(a).

**Method of Collection**

There are no changes to the current data collection methods.

**Estimated Annual Respondent Burden**

There are no changes to the current burden estimates.

**Estimated Annual Costs to the Federal Government**

There are no changes to the current cost estimates.

**Request for Comments**

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: December 13, 2012.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. 2012–30631 Filed 12–21–12; 8:45 am]

BILLING CODE 4160–90–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30-Day-13–0612]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Well-Integrated Screening and Evaluation for Women Across the Nation (WISEWOMAN) Reporting System (OMB #0920–0612, exp. 3/31/2013)—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The WISEWOMAN program (Well-Integrated Screening and Evaluation for Women Across the Nation), administered by the Centers for Disease Control and Prevention (CDC), was established to examine ways to improve the delivery of services for women who have limited access to health care and elevated risk factors for cardiovascular disease (CVD). The program focuses on reducing CVD risk factors and provides screening services for select risk factors such as elevated blood cholesterol, hypertension and abnormal blood glucose levels. The program also provides lifestyle interventions and medical referrals. On an annual basis, 21 grantees funded through the WISEWOMAN program have provided services to approximately 30,000 women who are already participating in the National Breast and Cervical Cancer Early Detection Program (NBCCEDP), also administered by CDC.

CDC seeks a one-year extension of OMB approval to collect information about WISEWOMAN grantee activities in the final year of the five-year cooperative agreement. There are no changes to the number of respondents, the data items reported to CDC, the estimated burden per response, or the total estimated annualized burden. All information will continue to be collected twice per year.

Information reported to CDC includes baseline and follow-up data (12 months post enrollment) for all women served through the WISEWOMAN program. These data, called the minimum data elements (MDE), include data elements that describe risk factors for the women served in each program and data elements that describe the number and type of intervention sessions attended. Funded grantees compile the data from their existing databases and report the MDE to CDC electronically. The estimated burden per response for Screening and Assessment MDE is 16 hours, and the estimated burden per response for Lifestyle Intervention MDE is 8 hours.

WISEWOMAN grantees also submit semi-annual progress reports that describe programmatic activities, public education and outreach, professional education, and the delivery of services. Progress reports will continue to be submitted to CDC in hardcopy format. The estimated burden per response for each progress report is 16 hours.

The information collection is designed to support continuous program monitoring and improvement. CDC uses the MDE data to assess the effectiveness of the WISEWOMAN program in

reducing the burden of cardiovascular disease risk factors among women who utilize program services. CDC uses the information submitted through progress reports to assess each grantee's progress toward meeting stated program objectives. Participation in the information collection is required under the terms of the WISEWOMAN cooperative agreement.

OMB approval is requested for one year. The total estimated annualized burden hours are 1,680.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hr) |
|---|---|---|---|---|
| WISEWOMAN Grantees | Screening and Assessment MDE | 21 | 2 | 16 |
| | Lifestyle Intervention MDE | 21 | 2 | 8 |
| | Progress Report | 21 | 2 | 16 |

Dated: December 18, 2012.

**Ron A. Otten,**

*Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2012–30929 Filed 12–21–12; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day-13–0573]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

The National HIV Surveillance System (NHSS) (OMB No. 0920–0573, Expiration 01/31/2013)-Revision-National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC). This title is being changed from the previously approved title *Adult and Pediatric HIV/AIDS Confidential Case Reports for National HIV/AIDS Surveillance* in 2009.

*Background and Brief Description*

The purpose of HIV surveillance is to monitor trends in HIV and describe the characteristics of infected persons (e.g., demographics, modes of exposure to HIV, clinical and laboratory markers of HIV disease, manifestations of severe HIV disease, and deaths among persons with HIV). HIV surveillance data are widely used at all government levels to assess the impact of HIV infection on morbidity and mortality, to allocate medical care resources and services, and to guide prevention and disease control activities.

CDC, in collaboration with health departments in the 50 states, the District of Columbia, and U.S. dependent areas, conduct national surveillance for cases of HIV infection. National surveillance includes tracking critical data across the spectrum of HIV disease from HIV diagnosis, to AIDS, the end-stage disease caused by infection with HIV, and death. In addition, this national system provides essential data to estimate HIV incidence and monitor patterns in viral resistance and HIV–1 subtypes, as well as provide information on perinatal exposures in the U.S.

The CDC surveillance case definition has been modified periodically to accurately monitor disease in adults, adolescents and children and reflect use of new testing technologies and changes in HIV treatment. Information is then updated in the case report forms and reporting software as needed. In 2012, CDC convened an expert consultation to consider revisions of various aspects of the case definition including criteria for reporting a potential case, criteria for reporting a confirmed case, and case classification (disease staging system). Recommendations for revisions in the case definition were adopted by the Council of State and Territorial Epidemiologists in June 2012 and the final case definition revision is planned for implementation in 2013 after publication.

The revisions requested include modifications to currently collected data elements and forms to align with anticipated changes in the case definitions for HIV surveillance to be published in 2012 and continuation of HIV surveillance activities funded under the new funding opportunity announcement CDC–RFA–PS13–1302 National HIV Surveillance System (NHSS). These include minor modifications of testing categories to accommodate new testing algorithms and modifications to staging criteria and non-substantial editorial changes aimed at improving the format and usability of the forms such as improved wording of terms and changes in the format of some response options. In addition, the number of data elements from the former enhanced perinatal surveillance (EPS) was reduced and the form modified for continuation in 2013 as Perinatal HIV Exposure Reporting (PHER). Surveillance data collection on variant and atypical strains (formerly variant, atypical and resistant HIV surveillance (VARHS)) will be continued as Molecular HIV Surveillance (MHS) with a reduced number of data elements previously approved under VARHS.

CDC provides funding for 59 jurisdictions to conduct adult and pediatric HIV case surveillance. Health department staffs compile information from laboratories, physicians, hospitals, clinics and other health care providers in order to complete the HIV and pediatric case reports. Updates to case reports are also entered into enhanced HIV/AIDS Reporting system (eHARS) by health departments, as additional information may be received from laboratories, vital statistics offices, or additional providers. Evaluations are also conducted by health departments on a subset of case reports (e.g. including re-abstraction/validation activities and routine interstate de-duplication) in all jurisdictions.

Supplemental surveillance data are collected in a subset of areas to provide additional information necessary to estimate HIV incidence, to better describe the extent of HIV viral

resistance and quantify HIV subtypes among persons infected with HIV and to monitor and evaluate perinatal HIV prevention efforts. Health departments funded for these supplemental data collections obtain this information from laboratories, health care providers, and medical records. CDC estimates that 25 health departments will be reporting data elements containing HIV Incidence Surveillance (HIS) data, 53 health departments will report additional data elements on HIV nucleotide sequences as part of MHS, and 35 areas will be reporting data as part of PHER annually. The total estimated annual burden hours are 53,700.

*Estimated Annualized Burden Hours*

EXHIBIT 12.A ESTIMATES OF ANNUALIZED BURDEN HOURS

| Type of respondent | Form name | Number of respondents | Number of responses per respondent | Average Burden per response (in hours) |
|---|---|---|---|---|
| Health Departments | Adult HIV Case Report | 59 | 1,260 | 20/60 |
| Health Departments | Pediatric HIV Case Report | 59 | 6 | 20/60 |
| Health Departments | Case Report Evaluations | 59 | 127 | 20/60 |
| Health Departments | Case Report Updates | 59 | 1,469 | 2/60 |
| Health Departments | Laboratory Updates | 59 | 5,876 | 1/60 |
| Health Departments | HIV Incidence Surveillance (HIS) | 25 | 2,729 | 10/60 |
| Health Departments | Molecular HIV Surveillance (MHS) | 53 | 967 | 5/60 |
| Health Departments | Perinatal HIV Exposure Reporting (PHER) | 35 | 114 | 30/60 |

**Kimberly S. Lane,**

*Deputy Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2012–31010 Filed 12–21–12; 4:15 pm]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC)—Health Disparities Subcommittee (HDS)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

*Time and Date:* 3:00 p.m.—4:10 p.m., EDT, January 23, 2013.

*Place:* Teleconference.

*Status:* Open to the public, limited only by the availability of telephone ports. The public is welcome to participate during the public comment period. A public comment period is tentatively scheduled from 4:00 p.m. to 4:05 p.m. To participate in the teleconference, please dial (877) 953–5019 and enter code 5280655.

*Purpose:* The subcommittee will provide advice to the CDC Director through the ACD on strategic and other broad issues facing CDC.

*Matters To Be Discussed:* Agenda items will include the following: review of draft recommendations for health equity at CDC.

The agenda is subject to change as priorities dictate.

*Contact Person for More Information:* Leandris Liburd, Ph.D., M.P.H., M.A., Designated Federal Officer, HDS, ACD, CDC, 1600 Clifton Road NE., M/S E–67, Atlanta, Georgia 30333, telephone (404) 498–2320, email: *LEL1@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 18, 2012.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2012–31008 Filed 12–21–12; 4:15 pm]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0176]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Experimental Study: Examination of Corrective Direct-to-Consumer Television Advertising

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by January 25, 2013.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910-New and title, ''Experimental Study: Examination of Corrective Direct-to-Consumer Television Advertising.'' Also include

the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Experimental Study: Examination of Corrective Direct-to-Consumer Television Advertising—(OMB Control Number 0910—New)**

Section 1701(a)(4) of the Public Health Service Act (42 CFR 300u(a)(4)) authorizes the Food and Drug Administration (FDA) to conduct research relating to health information. Section 903(b)(2)(c) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 CFR 393(d)(2)(c)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

FDA regulations require prescription drug ads to contain accurate information about the benefits and risks of the drug advertised. When this is not the case, corrective advertising is designed to dissipate or correct erroneous beliefs resulting from a false claim (Refs. 1 and 2). Corrective advertising emerged in public debate in the United States in the 1970s as a hypothetical remedy for deceptive advertising, having first been proposed by Georgetown University law students in 1969 as a way of dispelling the effects of deceptive advertising (Ref. 3). Corrective advertising is one remedy FDA may request in response to false or misleading prescription drug promotion. In 2009, for example, Bayer HealthCare Pharmaceuticals produced and aired corrective DTC advertising for Yaz, a birth control pill, following a warning from FDA regarding misleading claims (Ref. 4). Despite these developments, researchers and policymakers currently lack empirical literature regarding the various influences of corrective DTC ads on prescription drug consumers. The current project will examine the influence of corrective messages in the realm of consumer directed prescription drug advertising.

*Design Overview*

Phase 1 will vary the exposure to the messages (*original ad alone* vs. *original + corrective* vs. *corrective ad* alone). The goal of Phase 1 is to examine how exposure to a combination of original and corrective DTC ads affects message recall, message comprehension, perceived drug efficacy, perceived drug risk, and intentions to ask about or use the drug. Specifically, we will compare consumers who see both the original and corrective ad with those who see only the original ad, only the corrective ad, and neither ad. Participants in the Control condition will see a reminder ad for the product to control for brand name exposure.

TABLE 1—DESIGN OF PHASE 1: ORIGINAL EXPOSURE BY CORRECTIVE EXPOSURE

| Exposure to original ad | Exposure to corrective ad | |
|---|---|---|
| | Yes | No |
| Yes | | |
| No | | Control (Reminder ad) |

Phase 2 will examine the similarity of the corrective ad's theme and visual elements to those of the original ad (*same ad elements* vs. *some similar ad elements* vs. *different ad elements*) and the exposure delay (time) between viewing the original ad and the corrective ad (*no delay* vs. *1 week delay* vs. *1 month delay* vs. *6 month delay*). The purpose of Phase 2 is to examine whether a corrective ad's ability to correct misinformation is related to: (1) Corrective ad similarity to the original ad and (2) time delay between original ad and corrective ad exposure.

We will systematically vary these two characteristics to create a study with a 4 (similarity to original ad) x 4 (exposure delay) design (see Table 2).

TABLE 2—DESIGN OF PHASE 2: CORRECTIVE AD SIMILARITY BY EXPOSURE TIME DELAY

| Corrective ad similarity | Multiple exposure pod (2 viewings per sitting, for a total of 6 exposures*) | Time between Original and Corrective | | | |
|---|---|---|---|---|---|
| | | None | 1 Week | 1 Month | 6 Months |
| Same ad elements as original | | | | | |
| Some similar elements as original | | | | | |
| Different ad elements than original | | | | | |
| Control (Do not see corrective)* | | | | | |

*The control condition will be used to examine the impact of time delay on perceptions and intentions.

Prior to conducting the main study, we will pretest the stimuli, questionnaires, and data collection process. The first set of pretests will focus on the stimuli to: (1) Ensure participants perceive the stimuli as realistic and (2) ensure participants notice and comprehend the original and corrective messages in the ads. The second pretest will focus on the questionnaires and data collection process. Its purpose will be to: (1) Ensure that survey questions solicit responses that meet the study's analytic goals and (2) ensure data are captured and stored accurately for each question. The pretests are not intended to affect the study design, sample or burden.

All parts of this study will be administered over the Internet. A total of 6,650 interviews will be completed. Participants will be randomly assigned to view one version of a DTC prescription drug television ad. Following their perusal of this ad, they will answer questions about their recall and understanding of the benefit and risk information, their perceptions of the benefits and risks of the drug, and their intent to ask a doctor about the medication.

Demographic and numeracy information will be collected. In addition, participants will answer questions about their familiarity with their medical condition. The entire procedure is expected to last approximately 25 minutes in Phase 1 and 1 hour in Phase 2. This will be a one-time (rather than annual) information collection.

Participants will be randomly assigned to view one version of a DTC prescription drug television ad. Following their perusal of this ad, they will answer questions about their recall and understanding of the benefit and risk information, their perceptions of the benefits and risks of the drug, and their intent to ask a doctor about the

medication. Demographic and numeracy information will be collected. In addition, participants will answer questions about their familiarity with their medical condition. The entire procedure is expected to last approximately 20 minutes. This will be a one-time (rather than annual) information collection.

In the **Federal Register** of February 29, 2012 (77 FR 12307), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received three public submissions. In the following section, we outline the observations and suggestions raised in the comments and provide our responses.

(Comment 1) One comment expressed support for the survey.

(Response) We thank this commenter for his support of our study.

(Comment 2) One comment expressed the concern that the Internet sample would not measure individuals over 65 due to difficulties using the Internet.

(Response) We have conferred with the Internet Panel provider for this study about this issue. According to GfK,[1] the 65+ Panelists are among the most reliable respondents and their representation on the panel (15.7 percent) is reasonably proportionate to their representation in the General Population (16.7 percent).

(Comment 3) One comment stated a ''medium prevalence'' condition may not represent conditions that cluster in particular demographic groups.

(Response) Recruitment to KnowledgePanel® is based upon a random selection of residential addresses. Every residential address in the United States has an equal probability of selection within each recruitment cohort (cohort sizes may vary from recruitment wave to wave and the residential housing stock changes over time which results in differing probability of selection between recruitment waves). Thus, mailings have a proportional likelihood of reaching any specific demographic group. Finally, as the weights are calculated based upon Current Population Survey benchmarks, final adjustment of survey respondents to the U.S. population can be easily made. The panel recruits in English and Spanish with all mailings being bilingual.

We plan to use asthma and weight loss as our two medical conditions. While the particulars of an individual corrective campaign may vary, the type of violation (for example, overstatement of efficacy, minimization of risk) can occur in any drug class. Therefore, we believe that the cognitive processes involved in understanding a claim and subsequently addressing problematic claims applies across multiple medical conditions. Those with debilitating conditions might be less likely to respond to the recruitment and survey invitations but it is likely that they would be less likely to respond to other modes of survey data collection as well.

Finally, we note that this is a randomized control trial design: we are not attempting to make population estimates from these results.

(Comment 4) One comment asked if the participants would be a random and representative selection of the target audience.

(Response) We are planning to recruit panel members who self-report having been diagnosed with asthma (Phase 1) or self-identify as having a weight problem with a BMI of 25 or above (Phase 2). These are the relevant target audiences for the medical conditions being advertised. As described above, the panel of active profiled adults is weighted to be representative of the U.S. population on age, gender, race, Hispanic ethnicity, language proficiency, region, metro status, education, household income, home ownership, and Internet access using post-stratification adjustments to offset nonresponse or noncoverage bias.

(Comment 5) One comment stated that even if participants are randomly selected, the final study sample may be self-selected due to dropout over time.

(Response) We agree that dropout is a concern common to all longitudinal research. We plan to employ the following techniques to improve retention of respondents over time:

1. It is very important to notify respondents at the time of their invitation that this is a longitudinal survey and that we intend to contact them multiple times during the duration of the survey. This in an important part of the informed consent procedure. We will therefore explicitly ask respondents if we can contact them in the future. This will allow us to contact them even if they leave the panel.

2. Periodic contact also provides a vehicle to retain engagement with respondents and can be conducted via email. KnowledgePanel® members are accustomed to receiving periodic communication about surveys that they previously participated in and respond well to periodic contact.

3. When later survey waves are fielded, respondents will be reminded that they participated in the earlier survey wave, that we appreciated their agreeing to participate in subsequent survey waves and that this survey is a follow-on to the prior survey wave. The date of the prior survey field wave will be included.

4. Finally, even if a respondent has left the panel, respondents have given explicit permission, as was noted in item 1 above, to contact them regarding this survey. Thus we do not anticipate an unusual loss of participation on subsequent survey waves. In past multiwave surveys, it was not unusual for 75 percent to 85 percent of respondents to the first wave of a study to respond to a subsequent survey wave more than 1 year later.

(Comment 6) One comment questioned whether the study would be adequately powered to ensure meaningful results.

(Response) We have powered our study to detect small to medium effect sizes. We have provided a power analysis for both the main study phases and pretests.

(Comment 7) One comment suggested that rather than similarity and time delay, the proposed study should include an evaluation of both: (1) A truly informative, nondistracting, clear and conspicuous corrective ad and (2) an unclear and inconspicuous corrective ad.

(Response) We appreciate the suggestion to include clarity as an independent variable. Because we cannot study every variable of potential interest in a single study, we offer the following explanation for our choice of similarity and time delay. FDA has previously provided guidance on ways in which separate ads may be implemented in such a way as to be perceived as linked to one another:

> Psychology and marketing research suggests that the greater the perceptual similarity between disease awareness communications and reminder or product claim promotions (i.e., similarities in terms of their themes, such as story lines, or other presentation elements, such as colors, logos, tag lines, graphics, etc.), and the closer they are presented physically or in time to one another, the more likely it is that the separate messages contained in the two pieces will be remembered together in memory as one entity. Perceptual similarity is an important factor because research indicates that pieces are most likely to be linked together in memory when they have prominent cues in common, such as distinctive visual elements, a common narrator or background music, or a common story line. (Ref. 5.)

The recommendations in this guidance were based on the social science literature which suggests these properties influence people's associations. We selected similarity and time delay as our independent variables of interest in this study in order to

[1] Formerly Knowledge Networks.

provide information on the effectiveness of FDA guidance on this issue.

(Comment 8) Two comments expressed concern that the time delay conditions were not realistic, stating that a time delay of 6 months to a year might be more realistic.

(Response) We agree that a 6-month exposure delay more closely approximates real-world exposure to original and corrective messaging. In response to concerns about the realism of our approach, we have changed the study design in two ways (see Table 2). First, participants will view the stimuli embedded in a ''clutter reel'' of other ads three times over a 3-week period to approximate multiple exposures in a real-world context. Second, we have added a 6-month delay condition.

(Comment 9) One comment critiqued the references included in the 60-day **Federal Register** notice, stating:

''* * * the references offered in the instant [sic] notice seemed less concerned with presenting corrective advertising in a manner most likely to inform the consumer about the safety and efficacy of a given product and more concerned with determining whether the corrective ad might be bad for sales. Furthermore, the only example of application of a judicial remedy to enforce corrective advertising cited by one of these references distorted the clear intent of the opinion cited.''

(Response) Some of the research on corrective advertising, as the commentator notes, has assessed potential damage to an advertiser's reputation. Darke and colleagues (2008, Ref. 1) note the possibility of reputational damage, for example. Other papers cited in the 60-day notice, though, do not focus primarily on reputational damage. Mazis' work, both in the 1970s and 1980s and then again more recently (e.g., Mazis, 2001, Ref. 6), as we have seen a resurgence of corrective advertising, has been concerned with the efficacy of corrective messages. Mazis and colleagues (1983, Ref. 3), for example, focused attention on the extent to which viewers actually noticed and remembered the corrective message inserted into Listerine ads. Moreover, our study was designed to address a gap in the literature—there is scant work on the specific efficacy of televised corrective ads intended to address claims made regarding prescription drugs—rather than to simply extend and replicate past literature. The primary focus of our study is correction of misperceptions that arise from prescription drug advertising. The dependent variables we describe in the 60-day notice do not include advertiser reputation but rather are comprised of constructs such as belief in advertised claims that overstate efficacy or minimize risk, perceived risk of the advertised drug, and perceived efficacy of the advertised drug.

Please note that in response to all comments received, whether we have adopted the suggestions or not, we will specifically examine the items mentioned in cognitive testing. During this testing, nine respondents will participate in the survey while explaining why and how they have chosen their answers and which questions they find difficult to respond to or to understand.

FDA estimates the burden of this collection of information as follows:

TABLE 3—ESTIMATED BURDEN [1]

| Activity | No. of respondents | No. of responses per respondent | Total annual responses | Average burden response | Total hours |
|---|---|---|---|---|---|
| Sample availability (pretests and main survey) | 24,635 | | | | |
| Screener completes (60%) | 14,891 | 1 | 14,891 | 0.0333 | 496 |
| Eligible (85%) | 12,658 | | | | |
| Pretest (stimuli) completes (65%) | 1,450 | 1 | 1,450 | 0.333 | 483 |
| Pretest (questionnaire) completes (65%) | 200 | 1 | 200 | 0.5 | 100 |
| Phase 1 completes (65%) | 1,000 | 1 | 1,000 | .416 | 417 |
| Phase 2 completes (45%) | 4,000 | 1 | 4,000 | 1 | 4,000 |
| Pretest/Study completes | 6,650 | | | | |
| Total | | | | | 5,496 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates the total annual estimated burden imposed by this collection of information as 5,496 hours for this one-time collection.

V. References

The following references have been placed on display at the Division of Dockets Management and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday (FDA has verified the Web site addresses of the following references, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**).


1. Darke, P. R., Ashworth, L., and Ritchie, R. J. B. (2008). Damage from corrective advertising: Causes and cures. *Journal of Marketing,* 72, 81–97;
2. Mazis, M. B. & Adkinson, J. E. (1976). An experimental evaluation of a proposed corrective advertising remedy. *Journal of Marketing Research,* 13, 178–183.
3. Mazis, M. B., McNeill, D. L., & Bernhardt, K. L. (1983). Day-after recall of Listerine corrective commercials. *Journal of Public Policy & Marketing,* 2, 29–37.
4. Singer, N. (2009, February 11). A birth control pill that promised too much. *The New York Times,* p. B1.
5. From Guidance for Industry: ''Help-Seeking'' and Other Disease Awareness Communications by or on Behalf of Drug and Device Firms. Available at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm070068.pdf.* Last accessed November 23, 2012.
6. Mazis, M. B. (2001). *FTC* v. *Novartis:* The return of corrective advertising? *Journal of Public Policy & Marketing,* 20, 114–122.


Dated: *December 20, 2012.*

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2012–31028 Filed 12–21–12; 4:15 pm]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–D–0643]**

### Draft Guidance for Industry on Electronic Source Data in Clinical Investigations; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of Tuesday, November 20, 2012 (77 FR 69632). The document announced the availability of a draft guidance entitled ''Electronic Source Data in Clinical Investigations.'' The document was published with an incorrect date in the **DATES** section. This document corrects that error.

**FOR FURTHER INFORMATION CONTACT:** Ron Fitzmartin, Office of Planning & Informatics, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1160, Silver Spring, MD 20993–0002, 301–796–5333, FAX: 301–847–8443.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 2012–28198, appearing on page 69632 in the **Federal Register** of Tuesday, November 20, 2012, the following correction is made:

1. On page 69632, in the third column, in the **DATES** section, the date ''January 22, 2013'' is corrected to read ''March 26, 2013.''

Dated: December 20, 2012.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2012–31027 Filed 12–21–12; 4:15 pm]

**BILLING CODE 4160–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0899]**

### Draft Environmental Assessment and Preliminary Finding of No Significant Impact Concerning a Genetically Engineered Atlantic Salmon; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA, the Agency) is announcing the availability for public comment of the Agency's draft environmental assessment (EA) of the proposed conditions of use specified in materials submitted by AquaBounty Technologies, Inc., in support of a new animal drug application (NADA) concerning a genetically engineered (GE) Atlantic salmon. Also available for comment is the Agency's preliminary finding of no significant impact (FONSI) for those specific conditions of use.

**DATES:** Submit either electronic or written comments on the Agency's draft EA and preliminary FONSI by February 25, 2013.

**ADDRESSES:** Submit electronic comments to: *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Eric Silberhorn, Center for Veterinary Medicine (HFV–162), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8247, email:*abig@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is given that a draft EA prepared by FDA in support of an NADA associated with AQUADVANTAGE Salmon, a GE Atlantic salmon containing the *opAFP–GHc2* recombinant DNA construct is being made available for public comment. FDA is also making available for comment the Agency's preliminary FONSI for those specific conditions of use. In the event of an approval of the application, the approval would only allow AQUADVANTAGE Salmon to be produced and grown-out in the physically contained freshwater culture facilities specified in the sponsor's NADA.

To encourage public participation consistent with regulations implementing the National Environmental Policy Act (40 CFR 1501.4(b)), the Agency is placing the draft EA and the preliminary FONSI that are the subject of this notice on public display at the Division of Dockets Management (see **DATES** and **ADDRESSES**) for public review and comment for 60 days. Given that the substance of this draft EA was made available to the public in advance of the Agency's 2010 Veterinary Medicine Advisory Committee meeting and consistent with the Agency's regulations implementing the National Environmental Policy Act (21 CFR 25.51(b)(3)), FDA believes that a 60-day comment period is appropriate and does not intend to grant requests for extension of the comment period.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. 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. FDA will also place on public display any amendments to, or comments on, the Agency's draft EA and preliminary FONSI without further announcement in the **Federal Register**.

If, based on its review, the Agency finds that an environmental impact statement is not required and the NADA results in an approval by the Agency, the notice of availability of the Agency's EA and FONSI, as well as any supporting evidence, will be published with the regulation describing the approval in the **Federal Register** in accordance with 21 CFR 25.51(b).

Dated: December 20, 2012.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2012–31118 Filed 12–21–12; 11:15 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]**

### Public Workshop on Minimal Residual Disease; Public Workshop

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public workshop.

**SUMMARY:** The Food and Drug Administration (FDA), in cosponsorship with the American Society of Clinical Oncology, is announcing a public workshop that will provide a forum for discussion of extending the qualification of minimal residual disease (MRD) detection as a prognostic biomarker to an efficacy/response biomarker in evaluating new drugs for the treatment of acute myeloid leukemia (AML). Our objective is for the workshop to provide a venue for an in-depth discussion of potential endpoints for trials intended to support the approval of new drugs or biologics for treatment of AML. Participants in the workshop will examine if any currently used biomarker can be used as a surrogate endpoint, identify the preferred technology platform and performance characteristics for the assay of the biomarker, discuss any issues regarding ongoing deficiencies in methodological standardization for the biomarker, and determine the need for additional FDA-approved in-vitro diagnostics for AML drug development. The primary focus will be on the biomarkers that are or will soon be ready for incorporation into clinical trials, and the technical and regulatory challenges for use of these markers.

**DATES:** The public workshop will be held on March 4, 2013, from 8 a.m. to 4 p.m.

**ADDRESSES:** The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Entrance for the public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

**FOR FURTHER INFORMATION CONTACT:** Christine Lincoln, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6413, Silver Spring, MD 20993–0002, 301–796–2340, email: *Christine.Lincoln@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

Complete remission, relapse-free survival, and overall survival are frequently used as endpoints in clinical trials of new therapeutics for AML. These endpoints have some limitations, especially in the context of minimal residual disease. Use of morphological complete remission may miss individuals with clinically significant residual disease who are not truly in remission. For those being followed after remission induction, new evidence of submorphological disease may prompt therapy before morphological relapse. Additionally, for patients with good prognosis, the length of the clinical trial followup may be very long when survival is the outcome measured, raising logistical and financial challenges for study conduct. More information is needed on whether MRD in AML can be qualified as a response biomarker and then used as a clinical trial endpoint and what the challenges would be to implement use of such an endpoint.

This Public Workshop on Minimal Residual Disease in AML will be one of a series of FDA workshops to establish processes and procedures necessary to qualify a prognostic biomarker, MRD, as a possible response or efficacy biomarker in a group of hematological malignancies. Evaluation of clinical data suggests that MRD can be established as a potential surrogate endpoint for pivotal clinical trials and drug approval given its prominent role as a prognostic indicator in certain subtypes of acute and chronic leukemia. The Office of Hematology and Oncology Products has explored, or plans to explore, the potential utility of MRD as a surrogate endpoint in acute lymphoblastic leukemia (ALL) (including the relapsed setting), chronic lymphocytic leukemia (CLL), and AML. Given the diverse pathophysiology and natural history of these diseases and current practice standards, individualized consideration of MRD as a surrogate endpoint is warranted. The ALL workshop was held on April 18, 2012, and the CLL workshop will be held on February 27, 2013.

## II. Structure and Scope of the Workshop

The workshop's scope will include discussions of the use of flow cytometry and molecular methods used to detect and measure minimal residual disease in patients being treated for AML. The workshop will consist of formal presentations examining the regulatory, scientific, and clinical basis for use of biomarkers as potential clinical trial endpoints in AML interspersed with discussions on issues associated with these endpoints.

## III. Attendance and Registration

FDA encourages patient advocates, representatives from industry, consumer groups, health care professionals, researchers, and other interested persons to attend this public workshop. There is no registration fee for the public workshop. To register electronically, please use the following Web site: *http://www.zoomerang.com/Survey/WEB22GPAXN9NQB* (FDA has verified the Web site address, but we are not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.) Seats are limited and conference space will be filled in the order in which registrations are received. Onsite registration will be available to the extent that space is available on the day of the conference.

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.''

Dated: December 20, 2012.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2012–31043 Filed 12–21–12; 4:15 pm]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0001]**

## Public Workshop on Minimal Residual Disease; Public Workshop

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public workshop.

**SUMMARY:** The Food and Drug Administration (FDA), in cosponsorship with the American Society of Clinical Oncology, is announcing a public workshop that will provide a forum for discussion of extending the qualification of minimal residual disease (MRD) detection as a prognostic biomarker to that of an efficacy/response biomarker in evaluating new drugs for the treatment of chronic lymphocytic leukemia (CLL). Our objective for the workshop is to provide a venue for an in-depth discussion of potential surrogate endpoints for trials intended to support the approval of new drugs or biologics for the treatment of CLL. Participants in the workshop will examine the advantages and disadvantages of MRD as a surrogate endpoint for approval, identify the preferred technology platform and performance characteristics for the assay of this biomarker, and discuss any issues regarding methodological standardization for the biomarker. The primary focus will be on the biomarkers that are ready for incorporation into clinical trials and the technical and regulatory challenges for use of these markers.

**DATES:** The public workshop will be held on February 27, 2013, from 8 a.m. to 4 p.m.

**ADDRESSES:** The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Entrance for the public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

**FOR FURTHER INFORMATION CONTACT:** Christine Lincoln, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6413, Silver Spring, MD 20993–0002, 301–

796–2340, email: *Christine.Lincoln@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Public Workshop on Minimal Residual Disease will be one of a series of FDA workshops to establish processes and procedures necessary to qualify a prognostic biomarker, MRD, as a possible response or efficacy biomarker in a group of hematological malignancies. Evaluation of clinical data suggests that MRD can be established as a potential surrogate endpoint for pivotal clinical trials and drug approval given its prominent role as a prognostic indicator in certain subtypes of acute and chronic leukemia. The Office of Hematology and Oncology Products plans to explore the potential utility of MRD as a surrogate endpoint in acute lymphoblastic leukemia (ALL) (including the relapsed setting), CLL, and acute myeloid leukemia (AML). Given the diverse pathophysiology and natural history of these diseases, and current practice standards, individualized consideration of MRD as a surrogate endpoint is warranted. The ALL workshop was held on April 18, 2012. The CLL and AML workshops are scheduled for February 27, 2013, and March 4, 2013, respectively.

## II. Structure and Scope of the Workshop

The workshop's scope will extend to the use of flow cytometry and the molecular methods used to measure minimal residual disease in patients being treated for CLL. The workshop will consist of formal presentations examining the regulatory, scientific, and clinical basis for use of biomarkers as potential clinical trial endpoints in CLL followed by discussions on issues associated with use of an MRD endpoint.

## III. Attendance and Registration

FDA encourages patient advocates, representatives from industry, consumer groups, health care professionals, researchers, and other interested persons to attend this public workshop. There is no registration fee for the public workshop. To register electronically, please use the following Web site: *http://www.zoomerang.com/Survey/WEB22GPA3U95QX* (FDA has verified the Web site address, but we are not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.) Seats are limited and conference space will be filled in the order in which registrations are received. Onsite registration will be available to the extent that space is available on the day of the conference.

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.''

Dated: December 20, 2012.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2012–31044 Filed 12–21–12; 4:15 pm]

**BILLING CODE 4160–01–P**

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# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Health Resources and Services Administration

## Agency Information Collection Activities: Proposed Collection: Comment Request

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1984.

HRSA especially requests comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's function, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Information Collection Request Title: Survey of Eligible Users of the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank (OMB No. 0915–xxxx)—New**

*Abstract:* The Health Resources and Services Administration (HRSA) plans to conduct a survey of the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank (NPDB/HIPDB). The purpose of this survey is to assess the overall satisfaction of the eligible users of the NPDB/HIPDB. This survey will evaluate the effectiveness of the NPDB/HIPDB as flagging systems, sources of information, and use in decision making. Furthermore, this survey will collect information from eligible non-users of the NPDB/HIPDB to understand what can be done to aid the eligible non-users in registering, accessing, and using the information available in the NPDB/HIPDB. This survey is a follow-up to the NPDB/HIPDB users and non-users survey of 2008.

The survey will be administered to eligible users of the NPDB/HIPDB. The survey will also collect information from those that have had matched responses. A matched response occurs when an eligible user queries the NPDB/HIPDB then receives a report. The purpose of collecting the matched response data is to understand what actions or decisions are made when an eligible user receives a matched response.

The survey will be administered to non-users of the NPDB/HIPDB. Non-users of the NPDB/HIPDB are considered eligible users that have (i) never registered, (ii) registered in the past but are not currently registered, or (iii) are registered but are not using the NPDB/HIPDB. The information provided by the non-users will enable understanding of what needs to be done to facilitate and educate non-users on accessing and using the information in the NPDB/HIPDB. Finally, the survey will be administered to those that use the self-query service provided by the NPDB/HIPDB. Understanding self-query user satisfaction and how the information is used is an important component of the survey.

Eligible users of the NPDB/HIPDB will be asked to complete a web-based survey. Eligible non-users that have never registered in the NPDB/HIPDB will be contacted via telephone to obtain email information so that they will be able to complete a web-based survey. Data gathered from the survey will be compared with previous survey results. This survey will provide HRSA with the information necessary to improve the usability and effectiveness of the NPDB/HIPDB.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize

technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

The annual estimate of burden is as follows:

| Form name | Number of respondents | Number of responses per respondent | Total responses | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| NPDB/HIPDB Users Non-Matched Responses | 11,832 | 1 | 11,832 | 0.25 | 2,958 |
| NPDB/HIPDB Users Matched Responses | 1,768 | 1 | 1,768 | 0.25 | 442 |
| NPDB/HIPDB Self-Query Non-Matched Responses | 1,080 | 1 | 1,080 | 0.10 | 108 |
| NPDB/HIPDB Self-Query Matched Responses | 120 | 1 | 120 | 0.10 | 12 |
| NPDB/HIPDB Non-Users (Hospitals) | 1,200 | 1 | 1,200 | 0.10 | 120 |
| NPDB/HIPDB Non-Users (All Others) | 400 | 1 | 400 | 0.10 | 40 |
| Total | 16,400 | | 16,400 | | 3,680 |

**ADDRESSES:** Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

*Deadline:* Comments on this Information Collection Request must be received within 60 days of this notice.

Dated: December 17, 2012.

**Bahar Niakan,**

*Director, Division of Policy and Information Coordination.*

[FR Doc. 2012–30835 Filed 12–21–12; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Proposed Collection; Comment Request; Pediatric Palliative Care Campaign Pilot Survey

**SUMMARY:** In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Nursing Research (NINR), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact Ms. Adrienne Burroughs, Health Communications Specialist, Office of Communications and Public Liaison, NINR, NIH, Building 31, Room 5B10, 31 Center Drive, Bethesda, MD 20892, or call non-toll-free number (301) 496–0256, or Email your request, including your address to: *adrienne.burroughs@nih.gov*.

Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

*Proposed Collection:* Pediatric Palliative Care Campaign Pilot Survey–0925-New–National Institute of Nursing Research (NINR), National Institutes of Health (NIH).

*Need and Use of Information Collection:* NINR developed a Pediatric Palliative Care Campaign to address the communications challenges faced by health care providers who recommend and provide palliative care to pediatric populations. NINR is launching this effort to increase the use of palliative care for children living with serious illness or life-limiting conditions. The Pediatric Palliative Care Campaign Pilot Survey will assess the information and materials being disseminated as part of the Pediatric Palliative Care Campaign pilot. Survey findings will help (1) determine if the pilot campaign is effective, relevant, and useful to health care providers who recommend and provide palliative care to pediatric populations; (2) to better understand current perceptions, challenges, and information needs of health care providers when it comes to discussing pediatric palliative care so that information and materials can be refined; and (3) examine how effective the campaign pilot materials are in starting and continuing a pediatric palliative care conversation and addressing the communications needs of health care providers around this topic.

This assessment will deliver strategic and actionable guidance for refining the campaign materials so that they can be used by a wider audience of health care providers. OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 26.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total annual burden hour |
|---|---|---|---|---|
| Physicians | 25 | 1 | 30/60 | 13 |

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

| Type of respondent | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total annual burden hour |
|---|---|---|---|---|
| Nurses | 25 | 1 | 30/60 | 13 |

Dated: December 17, 2012.

**Amanda Greene,**

*Science Evaluation Officer, NINR, National Institutes of Health.*

[FR Doc. 2012–30930 Filed 12–21–12; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting. The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Nursing Research Special Emphasis Panel; Multi-Site Clinical Trial.

*Date:* January 17, 2013.

*Time:* 1:00 p.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Mary A Kelly, DEA/OR NINR/NIH, 6701 Democracy Blvd., Suite 700, Bethesda, MD 20892, 301–496–0235 *mary.kelly@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: December 19, 2012.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–30896 Filed 12–21–12; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NeuroNEXT.

*Date:* January 7, 2013.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Renaissance Capital View, 2800 South Potomac Avenue, Arlington, VA 22202.

*Contact Person:* Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 435–6033, *rajarams@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: December 18, 2012.

**Carolyn A. Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–30907 Filed 12–21–12; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Council on Aging.

*Date:* January 29–30, 2013.

*Closed:* January 29, 2013, 3:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 6, Bethesda, MD 20892.

*Open:* January 30, 2013, 8:00 a.m. to 2:00 p.m.

*Agenda:* Call to order and reports from the Director; discussion of future meeting dates; consideration of minutes from the last meeting; reports from the Task Force on Minority Aging Research and the Working Group on Program; Council speaker; Program Highlights; Intramural Program Report.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 6, Bethesda, MD 20892.

*Closed:* January 30, 2013, 2:00 p.m. to 2:30 p.m.

*Agenda:* Review of Intramural Research Program.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 6, Bethesda, MD 20892.

*Contact Person:* Robin Barr, Ph.D., Director, National Institute on Aging, Office of Extramural Activities, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9322, *barrr@nia.nih.gov.*

Any interested person my file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedure for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Information is also available on the Institute's/Center's home page: *www.nih.gov/nia/naca/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 17, 2012.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–30898 Filed 12–21–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting hosted by the NIH Scientific Management Review Board (SMRB). Presentations and discussions will address topics that have been charged to the SMRB, including the organization of substance use, abuse, and addiction research portfolios at NIH; ways to enhance the NIH SBIR/STTR programs; and the optimal approach to studying the value of biomedical research conducted by NIH.

The NIH Reform Act of 2006 (Public Law 109–482) provides organizational authorities to HHS and NIH officials to: (1) Establish or abolish national research institutes; (2) reorganize the offices within the Office of the Director, NIH including adding, removing, or transferring the functions of such offices or establishing or terminating such offices; and (3) reorganize, divisions, centers, or other administrative units within an NIH national research institute or national center including adding, removing, or transferring the functions of such units, or establishing or terminating such units. The purpose of the SMRB is to advise appropriate HHS and NIH officials on the use of these organizational authorities and identify the reasons underlying the recommendations.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Scientific Management Review Board (SMRB).

*Date:* January 14, 2013.

*Time:* 8:30 a.m. to 4:30 p.m.

*Agenda:* The meeting topics will include: (1) A report from NIH on the organization of its substance use, abuse, and addiction research portfolio; (2) an update from the SBIR/STTR Working Group; and (3) presentations that explore approaches to studying the value of biomedical research. Time will be allotted on the agenda for public comment. Sign up for public comments will begin approximately at 8:00 a.m. on January 14, 2013, and will be restricted to one sign-in per person. In the event that time does not allow for all those interested to present oral comments, any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

*Place:* National Institutes of Health, Building 31, C-Wing, 6th Floor, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Juanita Marner, Office of Science Policy, Office of the Director, NIH, National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, *smrb@mail.nih.gov.* (301) 435–1770.

The meeting will also be webcast. The draft meeting agenda and other information about the SMRB, including information about access to the webcast, will be available at *http://smrb.od.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxis, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: December 17, 2012.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–30900 Filed 12–21–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Biological Chemistry and Macromolecular Biophysics.

*Date:* January 17–18, 2013.

*Time:* 11:00 a.m. to 10:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Donald L Schneider, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7842, Bethesda, MD 20892, (301) 435–1727, *schneidd@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflicts: Gastrointestinal Physiology/Pathophysiology.

*Date:* January 23, 2013.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Atul Sahai, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov*.

*Name of Committee:* Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Risk and Disease Prevention Study Section.

*Date:* January 24–25, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Serrano Hotel, 405 Taylor Street, San Francisco, CA 94102.

*Contact Person:* Stacey FitzSimmons, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, 301–451–9956, *fitzsimmonss@csr.nih.gov*.

*Name of Committee:* Population Sciences and Epidemiology Integrated Review Group; Social Sciences and Population Studies A Study Section.

*Date:* January 24, 2013.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

*Contact Person:* Suzanne Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *ryansj@csr.nih.gov*.

*Name of Committee:* Oncology 2—Translational Clinical Integrated Review Group; Basic Mechanisms of Cancer Therapeutics Study Section.

*Date:* January 24–25, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Mandarin Oriental, 1330 Maryland Avenue SW., Washington, DC 20024.

*Contact Person:* Lambratu Rahman Sesay, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–451–3493, *rahman-sesayl@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 18, 2012.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–30904 Filed 12–21–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Renal Supportive Care Studies.

*Date:* December 27, 2012.

*Time:* 4:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Carol J. Goter-Robinson, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Diverse Studies for Diabetes.

*Date:* January 16, 2013.

*Time:* 11:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* D.G. Patel, Ph.D. Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov*.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Cric Applications.

*Date:* January 24, 2013.

*Time:* 2:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* D.G. Patel, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov*.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Pilot Studies for CKD.

*Date:* January 29, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* D.G. Patel, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov*.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK-Collaborative Interdisciplinary Team Science Research (R24)–PAR 11–221.

*Date:* February 19, 2013.

*Time:* 2:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 18, 2012.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–30903 Filed 12–21–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI CARDIA Echo & Field Centers.

*Date:* January 16, 2013.

*Time:* 9:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* YingYing Li-Smerin, MD, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892–7924, 301–435–0277, *lismerin@nhlbi.nih.gov*.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI CARDIA Coordinating Center.

*Date:* January 16, 2013.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* YingYing Li-Smerin, Ph.D., MD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892–7924, 301–435–0277, *lismerin@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated:December 19, 2012.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–30908 Filed 12–21–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Initial Review Group; Subcommittee F—Institutional Training and Education Institutional Training and Education Grant.

*Date:* February 25–26, 2013.

*Time:* 7:30 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Timothy C. Meeker, Ph.D., MD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8103, Bethesda, MD 20892, 301–594–1279, *meekert@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 17, 2012.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–30897 Filed 12–21–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; PAR–10–27, NIAID Investigator Initiated Program Project Application (P01).

*Date:* January 15, 2013.

*Time:* 11:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

*Contact Person:* Maja Maric, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 6700B Rockledge Drive, Room 3266, Bethesda, MD 20892–7616, 301–451–2634, *maja.maric@nih.gov.*

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

*Date:* January 15, 2013.

*Time:* 12:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

*Contact Person:* Andrea L. Wurster, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 3259, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616; 301–451–2660, *wurstera@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 18, 2012.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–30901 Filed 12–21–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health & Human Development (NICHD); Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. A portion of this meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review and discussion of grant applications. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below in advance of the meeting.

*Name of Committee:* National Advisory Child Health and Human Development Council

*Date:* January 17, 2013

*Open:* January 17, 2013, 8:00 a.m. to 12:00 p.m.

*Agenda:* The agenda will include: (1) A report by the Director, NICHD; (2) 50th Anniversary Scientific Colloquium Update; (3) Scientific Vision Update; and other business of the Council.

*Closed:* January 17, 2013, 1:00 p.m. to Adjournment

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, Center Drive, C-Wing, Conference Room 6, Bethesda, MD 20892

*Contact Person:* Yvonne T. Maddox, Ph.D., Deputy Director, Eunice Kenney Shriver, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike MSC 7510, Building 31, Room 2A03, Bethesda, MD 20892, (301) 496–1848

Any interested person may file written comments with the committee by forwarding the statement to the contact person listed on this notice. The statement should include the name, address, telephone number, and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxis, hotel, and airport shuttles, will be inspected before being allowedon campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's home page: *http://www.nichd.nih.gov/about/overview/advisory/nachhd/,* where an agenda and any additional information for the meeting will be posted when available.

In order to facilitate public attendance at the open session of Council, additional seating will be available in the meeting overflow rooms, Conference Rooms 7 and 8. Individuals will also be able to view the meeting via NIH Videocast. Please go to the following link for Videocast access instructions at: *http://nichd.nih.gov/about/overview/advisory/nachhd/virtual-meeting.cfm.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment program, National Institutes of Health, HHS)

Dated: December 18, 2012.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–30905 Filed 12–21–12; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Hispanic Community Health Study—Study of Latinos (HCHS–SOL) Field Centers.

*Date:* January 15, 2013.

*Time:* 8:30 a.m. to 11:30 a.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Crystal City Marriott, 1999, Jefferson Davis Highway, Arlington, VA 22202.

*Contact Person:* William J. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, *johnsonwj@nhlbi.nih.gov.*

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Hispanic Community Health Study—Study of Latinos (HCHS–SOL) Echocardiography Reading Center.

*Date:* January 15, 2013.

*Time:* 11:30 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

*Contact Person:* William J. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, *johnsonwj@nhlbi.nih.gov.*

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Hispanic Community Health Study—Study of Latinos (HCHS–SOL) Coordinating Center.

*Date:* January 15, 2013.

*Time:* 2:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

*Contact Person:* William J. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, *johnsonwj@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 18, 2012.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–30906 Filed 12–21–12; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* AIDS Research Advisory Committee, NIAID.

*Date:* February 6, 2013.

*Time:* 8:00 a.m. to 4:00 p.m.

*Agenda:* To update the Subcommittee on the recently awarded Centers for HIV/AIDS, Vaccine Immunology and Immunogen Discovery (CHAVI–ID). The principal investigators and scientific leadership groups for the two CHAVI–ID grants will present their research plans during this day-long meeting.

*Place:* National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

*Contact Person:* James A. Bradac, Ph.D., Program Official, Preclinical Research and Development Branch, Division of AIDS, Room 5116, National Institutes of Health/NIAID, 6700B Rockledge Drive, Bethesda, MD 20892–7628, 301–435–3754, *jbradac@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 18, 2012.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–30902 Filed 12–21–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory General Medical Sciences Council.

*Date:* January 24–25, 2013.

*Closed:* January 24, 2013, 8:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

*Open:* January 25, 2013, 8:30 a.m. to Adjournment.

*Agenda:* For the discussion of program policies and issues, opening remarks, report of the Acting Director, NIGMS, and other business of the Council.

*Place:* National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

*Contact Person:* Ann A. Hagan, Ph.D., Associate Director for Extramural Activities, NIGMS, NIH, DHHS, 45 Center Drive, Room 2AN24H, MSC 6200, Bethesda, MD 20892, (301) 594–4499, *hagana@nigms.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxis, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Information is also available on the Institute's/Center's home page: *http://www.nigms.nih.gov/About/Council/where* an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research, National Institutes of Health, HHS)

Dated: December 17, 2012.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–30899 Filed 12–21–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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.

**Proposed Project: National Outcome Measures (NOMs) for Substance Abuse Prevention—(OMB No. 0930–0230)—Revision**

This is a revision to the previously OMB approved instrument for the Center for Substance Abuse Prevention's (CSAP) National Outcome Measures for Substance Abuse Prevention (NOMs). Data are collected from SAMHSA/CSAP grants and contracts where community and participant outcomes are assessed. The analysis of these data helps determine whether progress is being made in achieving SAMHSA/CSAP's mission. The primary purpose of this system is to promote the use among SAMHSA/CSAP grantees and contractors of common National Outcome Measures recommended by SAMHSA/CSAP with significant input from panels of experts and state representatives.

Approval of this information collection will allow SAMHSA to continue to meet Government Performance and Results Modernization Act of 2010 (GPRAMA) reporting requirements that quantify the effects and accomplishments of its discretionary grant programs which are consistent with OMB guidance, and address goals and objectives outlined in the Office of National Drug Control Policy's Performance Measures of Effectiveness.

Note that the only changes is the deletion of one question per instrument, the deletion of prior Fiscal Years, and the PPC program which was not funded. The question being deleted is

*Has the Service Member experienced any of the following (select all that apply)*

*(a) Deployed in support of combat operations (e.g. Iraq or Afghanistan)*

*(b) Was physically injured during combat operations*

*(c) Developed combat stress symptoms/difficulties adjusting following deployment, including PTSD, depression, or suicidal thoughts*

*(d) Died or was killed*

The total annual burden estimate is shown below:

| SAMHSA/CSAP program | Number of grantees | Number of respondents | Number of responses | Responses per respondent | Hours/response | Total hours |
|---|---|---|---|---|---|---|
| **FY 13** | | | | | | |
| Science/Services: | | | | | | |
| Fetal Alcohol | 23 | 4,800 | 14,400 | 3 | 0.4 | 5,760 |
| Capacity: | | | | | | |
| HIV | 122 | 31,964 | 95,892 | 3 | 0.4 | 38,357 |
| SPF SIG | 35 | | | 0 | | |
| SPF SIG/Community Level * | | 29,925 | 29,925 | 1 | 0.4 | 11,970 |
| SPF SIG/Program Level * | | 9,100 | 27,300 | 3 | 0.4 | 10,920 |
| PFS | 37 | | | 0 | | |
| PFS/Community Level * | | 37,000 | 37,000 | 1 | 0.4 | 14,800 |
| Annual Average | 217 | 112,889 | 204,517 | | | 81,807 |

* The Strategic Prevention Framework State Incentive Grant (SPF SIG) and Partnerships for Success (PFS) have a three level evaluation: The Grantee, Community and Program Level. The Grantee level data will be pre-populated by SAMHSA. The use of the Community Level instrument is optional as they relate to targeted interventions implemented during the reporting period. At the program level, items will be selected in line with direct services implemented.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 2–1057, 1 Choke Cherry Road, Rockville, MD 20857 *OR* email her a copy at summer.king@samhsa.hhs.gov. Written comments should be received within 60 days of this notice.

**Summer King,**

*Statistician.*

[FR Doc. 2012–31007 Filed 12–21–12; 4:15 pm]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4091–DR; Docket ID FEMA–2011–0001]**

### Maryland; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Maryland (FEMA–4091–DR), dated November 20, 2012, and related determinations.

**DATES:** *Effective Date:* December 14, 2012.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Maryland is hereby amended to include the Individual Assistance program for the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of November 20, 2012.

Somerset County for Individual Assistance (already designated for Public Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2012–30882 Filed 12–21–12; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4092–DR; Docket ID FEMA–2012–0002]**

### Virginia; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–4092–DR), dated November 26, 2012, and related determinations.

**DATES:** *Effective Date:* November 26, 2012.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated November 26, 2012, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the Commonwealth of Virginia resulting from Hurricane Sandy during the period of October 26 to November 8, 2012, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the Commonwealth of Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Donald L. Keldsen, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Virginia have been designated as adversely affected by this major disaster:

The counties of Accomack, Arlington, Clarke, Craig, Culpeper, Essex, Fauquier, Frederick, Greene, Highland, King and Queen, Lancaster, Loudoun, Madison, Mathews, Middlesex, Nelson, Northampton, Northumberland, Prince William, Rappahannock, Shenandoah, Surry, Warren, and Westmoreland and the independent cities of Fairfax, Falls Church, and Manassas for Public Assistance. Direct federal assistance is authorized.

All counties and independent cities within the Commonwealth of Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2012–30877 Filed 12–21–12; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4095–DR; Docket ID FEMA–2012–0002]**

### New Hampshire; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of New Hampshire (FEMA–4095–DR), dated November 28, 2012, and related determinations.

**DATES:** *Effective Date:* November 28, 2012.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated November 28, 2012, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of New Hampshire resulting from Hurricane Sandy during the period of October 26 to November 8, 2012, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of New Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Hampshire have been designated as adversely affected by this major disaster:

Belknap, Carroll, Coos, Grafton, and Sullivan Counties for Public Assistance. Direct Federal assistance is authorized.

All counties within the State of New Hampshire are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2012–30881 Filed 12–21–12; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4093–DR; Docket ID FEMA–2012–0002]**

### West Virginia; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–4093–DR), dated November 27, 2012, and related determinations.

**DATES:** *Effective Date:* November 27, 2012.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated November 27, 2012, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of West Virginia resulting from Hurricane Sandy during the period of October 29 to November 8, 2012, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Dolph A. Diemont, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of West Virginia have been designated as adversely affected by this major disaster:

Barbour, Boone, Braxton, Clay, Fayette, Kanawha, Lewis, Nicholas, Pendleton, Pocahontas, Preston, Raleigh, Randolph, Taylor, Tucker, Upshur, Webster, and Wyoming Counties for Public Assistance. Direct federal assistance is authorized.

All counties within the State of West Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2012–30872 Filed 12–21–12; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4094–DR; Docket ID FEMA–2012–0002]**

### Alaska; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–4094–DR), dated November 27, 2012, and related determinations.

**DATES:** *Effective Date:* November 27, 2012.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated November 27, 2012, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Alaska resulting from a severe storm, straight-line winds, flooding, and landslides during the period of September 15–30, 2012, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kenneth K. Suiso, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Alaska have been designated as adversely affected by this major disaster:

Alaska Gateway REAA, Chugach REAA, Denali Borough, Kenai Peninsula Borough, and the Matanuska Susitna Borough for Public Assistance.

All boroughs and REAAs within the State of Alaska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2012–30867 Filed 12–21–12; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–NEW]**

### Agency Information Collection Activities: E-Verify Program Data Collections. New Information Collection; Comment Request.

**ACTION:** 60-Day notice.

* * * * *

The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until February 25, 2013.

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 the Department of Homeland Security (DHS), USCIS, Office of Policy and Strategy, Laura Dawkins, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140. Comments may be submitted to DHS via email at *uscisfrcomment@dhs.gov* and must include OMB Control Number 1615–NEW in the subject box. Comments may also be submitted via the Federal eRulemaking Portal at *www.Regulations.gov* under e-Docket ID number USCIS–2012–0017.

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 is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *www.Regulations.gov*.

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:* New information collection.

(2) *Title of the Form/Collection:* E-Verify Program Data Collections.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number; File OMB–69; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or private sector. The E-Verify Data Collections evaluation is necessary in order for USCIS to obtain data from employers and workers in anticipation of the enactment of mandatory state and/or national employment eligibility verification programs for all or a substantial number of employers nationwide.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

- Business/Private Sector: 135 respondents averaging 2 hours per response; plus
- Individual/Households: 400 respondents averaging 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:*

670 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed 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 19, 2012.

**Laura Dawkins,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2012–31079 Filed 12–21–12; 4:15 pm]

BILLING CODE 9111–97–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Agency Information Collection Activities: Declaration for Free Entry of Unaccompanied Articles

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security

**ACTION:** 60-Day notice and request for comments; extension of an existing collection of information.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration for Free Entry of Unaccompanied Articles (Form 3299). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13).

**DATES:** Written comments should be received on or before February 25, 2013, to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

*Title:* Declaration for Free Entry of Unaccompanied Articles

*OMB Number:* 1651–0014

*Form Number:* Form 3299

*Abstract:* 19 U.S.C. 1498 provides that when personal and household effects enter the

United States but do not accompany the owner or importer on his/her arrival in the country, a declaration is made on CBP Form 3299, Declaration for Free Entry of Unaccompanied Articles. The information on this form is needed to support a claim for duty-free entry for these effects. This form is provided for by 19 CFR 148.6, 148.52, 148.53 and 148.77. CBP Form 3299 is accessible at: *http://forms.cbp.gov/pdf/CBP_Form_3299.pdf.*

*Action:* CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to CBP Form 3299.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses and Individuals.

*Estimated Number of Respondents:* 150,000.

*Estimated Number of Total Annual Responses:* 150,000.

*Estimated Time per Response:* 45 minutes.

*Estimated Total Annual Burden Hours:* 112,500.

Dated: December 20, 2012.

**Tracey Denning,**

*Agency Clearance Officer, U.S. Customs and Border Protection.*

[FR Doc. 2012–31071 Filed 12–21–12; 4:15 pm]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Reopening of Application Period for Participation in the Air Cargo Advance Screening (ACAS) Pilot Program

**AGENCY:** U.S. Customs and Border Protection, DHS.

**ACTION:** General notice.

**SUMMARY:** On October 24, 2012, U.S. Customs and Border Protection (CBP) published a notice in the **Federal Register** that announced the formalization and expansion of the Air Cargo Advance Screening (ACAS) pilot program and a 30 day application period (until November 23, 2012) for new participants. This document announces that CBP is reopening the application period for 15 days. The ACAS pilot is a voluntary test in which participants submit a subset of the required advance air cargo data to CBP at the earliest point practicable prior to loading of the cargo onto the aircraft destined to or transiting through the United States.

**DATES:** CBP is reopening the application period to accept applications from new ACAS pilot participants until January 8, 2013. Comments concerning any aspect of the announced test may be submitted at any time during the test period.

**ADDRESSES:** Applications to participate in the ACAS pilot must be submitted via email to *CBPCCS@cbp.dhs.gov.* Written comments concerning program, policy, and technical issues may be submitted via email to *CBPCCS@cbp.dhs.gov.*

**FOR FURTHER INFORMATION CONTACT:** Regina Park, Cargo and Conveyance Security, Office of Field Operations, U.S. Customs & Border Protection, via email at *regina.park@dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

On October 24, 2012, CBP published a general notice in the **Federal Register** (77 FR 65006, corrected in 77 FR 65395 [1]) announcing that CBP is formalizing and expanding the ACAS pilot to include other eligible participants in the air cargo environment. The ACAS pilot revises the time frame for transmission by pilot participants of a subset of mandatory advance electronic information for air cargo. CBP regulations implementing the Trade Act of 2002 require advance information for air cargo to be submitted no later than the time of departure of the aircraft for the United States (from specified locations) or four hours prior to arrival in the United States for all other locations. See 19 CFR 122.48a.

The ACAS pilot is a voluntary test in which participants agree to submit a subset of the required 19 CFR 122.48a data elements (ACAS data) at the earliest point practicable prior to loading of the cargo onto the aircraft destined to or transiting through the United States. The ACAS data is used to target high-risk air cargo. The results of the ACAS pilot will help determine the relevant data elements, the time frame within which data should be submitted to permit CBP to effectively target, identify and mitigate any risk with the least impact practicable on trade operations, and any other related procedures and policies.

#### Reopening of Application Period

In the notice announcing the ACAS pilot, CBP stated that applications from new ACAS pilot participants would be accepted until November 23, 2012. However, CBP received a number of requests for extensions for submitting applications. CBP also experienced technical difficulties with the email box set up for the ACAS pilot, and therefore CBP may not have received all submitted applications. Any applicants who have not received a response from CBP will need to resubmit their applications. Accordingly, CBP is reopening the application period until January 8, 2013.

Anyone interested in participating in the ACAS pilot should refer to the notice published in the **Federal Register** on October 24, 2012, for additional application information and eligibility requirements.

Dated: December 19, 2012.

**David Murphy,**

*Acting Assistant Commissioner, Office of Field Operations.*

[FR Doc. 2012–30922 Filed 12–21–12; 8:45 am]

**BILLING CODE 9111–14–P**

[1] The **Federal Register** corrected the email address under the **ADDRESSES** heading from ''*CBPCCS@cbpdhs.gov*'' to ''*CBPCCS@cbp.dhs.gov*'' on October 26, 2012.

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5610–N–18]**

### Notice of Proposed Information Collection for Public Comment; Public Housing Reform Act: Changes to Admission and Occupancy Requirements for the Public Housing and Section 8 Assistance Programs

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The purpose of this information collection submission is to implement the requirement that public housing agencies have available upon request, their respective admission and occupancy policies for both the public and the Department of Housing and Urban Development. Public housing authorities must have on hand and available for inspection policies related to admission and continued occupancy, so as to respond to inquiries from tenants, legal-aid services, HUD, and other interested parties informally or through the Freedom of Information Act. Written documentation of policies relating to public housing and Section 8 assistance programs implemented under the Quality Housing and Work Responsibility Act of 1998, such as eligibility for admission and continued occupancy, local preferences, and rent

determination, must be maintained and made available by public housing authorities.

**DATES:** *Comments Due Date: February 25, 2013.*

**ADDRESSES:** Interested persons are invited to submit comments regarding this revised information collection. Comments should refer to the revised information collection by name/or OMB Control number and should be sent to: Colette Pollard., Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4160, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email Ms. Pollard at Colette_Pollard@hud.gov. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

**FOR FURTHER INFORMATION CONTACT:** Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** The Department will submit 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:* Public Housing Reform Act: Changes to Admission and Occupancy Requirements in the Public Housing and Section 8 Assistance Programs.

*OMB Control Number:* 2577–0230.

Description of the need for the information and proposed use:

The collection of information implements changes to the admission and occupancy requirements for the public housing and Section 8 assisted housing programs made by the Quality Housing and Work Responsibility (QHWRA) Act 1998 (Title V of the FY 1999 HUD appropriations Act, Public Law 105–276, 112 Stat. 2518, approved October 21, 1998), which amended the United States Housing Act of 1937. QHWRA made comprehensive changes to HUD's public housing, Section 8 programs. Some of the changes made by the 1998 Act (i.e., QHWRA) affect public housing only and others affect the Section 8 and public housing programs. These changes cover choice of rent, community service and self-sufficiency in *public housing;* and admission preferences and determination of income and rent in *public housing* and *Section 8 housing assistance programs.*

*Agency form numbers:* None.

*Members of affected public:* Public Housing Agencies (PHAs), State or Local Government

*Estimation of the total number of hours needed to prepare the information collection including number of respondents:* The estimated number of respondents is 4,058 annually. The average number of hours per response is 24 hours, for a total reporting burden of 97,392 hours.

*Status of the proposed information collection:* Revision of a Currently Approved Collection.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 as amended.

Dated: December 20, 2012.

**Merrie Nichols-Dixon,**

*Deputy Director for Office of Policy, Programs, and Legislative Initiatives.*

[FR Doc. 2012–31054 Filed 12–21–12; 4:15 pm]

BILLING CODE 4210–67–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R6–ES–2012–N257; 60120–1113–0000; C2]**

## Endangered and Threatened Wildlife and Plants; Draft Revised Recovery Plan for Kendall Warm Springs Dace

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability for review and comment.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability of a draft revised recovery plan for the Kendall Warm Springs dace (*Rhinichthys osculus thermalis*). This species is federally listed as endangered under the Endangered Species Act of 1973, as amended (ESA). The Service solicits review and comment from the public on this draft revised plan.

**DATES:** Comments on the draft revised recovery plan must be received on or before February 25, 2013.

**ADDRESSES:** Copies of the draft revised recovery plan are available by request from the Wyoming Field Office, U.S. Fish and Wildlife Service, 5353 Yellowstone Road, Suite 308A, Cheyenne, WY 82009; telephone 307–772–2374. Submit comments on the draft recovery plan to the Field Supervisor at this same address. An electronic copy of the draft recovery plan is available at *http://www.fws.gov/endangered/species/recovery-plans.html.*

**FOR FURTHER INFORMATION CONTACT:** Field Supervisor, at the above address, or telephone 307–772–2374.

**SUPPLEMENTARY INFORMATION:**

### Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service prepares recovery plans for the federally listed species native to the United States where a plan will promote the conservation of the species. Recovery plans describe site-specific actions necessary for the conservation of the species; establish objective, measurable criteria which, when met, would result in a determination that the species no longer needs the protection of the ESA (16 U.S.C. 1531 *et seq.*); and provide estimates of the time and cost for implementing the needed recovery measures.

The ESA requires recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the ESA, as amended in 1988, requires that public notice and opportunity for public review and comment be provided during recovery plan development. The Service will consider all information received during a public comment period when preparing each new or revised recovery plan for approval. The Service and other Federal agencies also will take these comments into consideration in the course of implementing approved recovery plans. It is our policy to request peer review of recovery plans. We will summarize and respond to the issues raised by the public and peer reviewers in an appendix to the approved recovery plan.

The Kendall Warm Springs dace (*Rhinichthys osculus thermalis*), found only in one location in western Wyoming, was first listed as endangered in 1970 under the Endangered Species Preservation Act of 1966 (80 Stat. 926; 16 U.S.C. 668aa(c)). It was later grandfathered into the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*). At the time of listing, the species was threatened by habitat destruction and modification, overexploitation, and limited distribution. Since the time of its listing, many recovery actions have been implemented, including taxonomic research, protection of habitat, cessation of the species' use as baitfish, and prohibitions against certain forms of mineral development. However, Kendall Warm Springs dace population estimates appear to be trending downward over the last decade. In addition, this fish remains vulnerable to some high-level threats. These include vulnerability to habitat changes from oil and gas development and potential competition and/or disease from the introduction of exotic species.

The recovery of the Kendall Warm Springs dace will depend on effective conservation responses to the varied and complex issues facing the species. These issues include limited distribution, exotic species, grazing, hydrologic changes, invasive plants, pollution, and energy resource exploration and development. Strategically, these issues can be reduced to two overriding concerns: potentially devastating effects from natural resource extraction and exotic species introductions. The recovery strategy for the Kendall Warm Springs dace focuses on the need to address vulnerability due to limited distribution; refugia populations; regulatory mechanisms; protecting habitat quality through a program that encompasses threats abatement; and population management, research, and monitoring. We emphasize the (1) incorporation of protective measures into land use plans; (2) protection of the spring's recharge zone; (3) establishment of two captive refugia populations; and (4) monitoring and managing population levels, genetics, and habitat conditions.

### Request for Public Comments

The Service solicits public comments on the draft recovery plan. All comments received by the date specified in **DATES** will be considered prior to approval of the plan. Written comments and materials regarding the plan should be addressed to the Field Supervisor (see **ADDRESSES** section). Comments and materials received will be available, by appointment, for public inspection during normal business hours at the above address.

### Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: *December 4, 2012.*

**Noreen E. Walsh,**

*Regional Director, Denver, Colorado.*

[FR Doc. 2012–31011 Filed 12–21–12; 4:15 pm]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

**[FWS–R2–ES–2012–N291; 20124–1113–0000–C2]**

## Endangered and Threatened Wildlife and Plants; Draft Recovery Plan for the Gulf Coast Jaguarundi

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the availability of our draft recovery plan for the Gulf Coast jaguarundi (*Puma yagouaroundi cacomitli*) under the Endangered Species Act of 1973, as amended (Act). This species historically occurred in southern Texas in the United States and is currently known to occur in eastern Mexico as far south as Veracruz. We request review and comment on our plan from local, State, and Federal agencies, and the public. We will also accept any new information on the status of the Gulf Coast jaguarundi throughout its range to assist in finalizing the recovery plan.

**DATES:** To ensure consideration, we must receive written comments on or before February 22, 2013. However, we will accept information about any species at any time.

**ADDRESSES:** If you wish to review the draft recovery plan, you may obtain a copy by visiting our Web site at *http://www.fws.gov/endangered/species/recovery-plans.html.* Alternatively, you may contact the South Texas Refuges Complex Headquarters at 3325 Green Jay Road, Alamo, Texas, or by phone at (956) 784–7500. If you wish to comment on the plan, you may submit your comments in writing by any one of the following methods:

- *U.S. mail:* Mitch Sternberg, at the above address;
- *Hand-delivery:* South Texas Refuges Complex Headquarters at the above address;
- *Fax:* (956) 787–8338; or
- *Email: Mitch_Sternberg@fws.gov.*

For additional information about submitting comments, see the ''Request for Public Comments'' section below.

**FOR FURTHER INFORMATION CONTACT:** Mitch Sternberg at the above address, phone number, or email.

**SUPPLEMENTARY INFORMATION:**

### Background

Recovery of endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program and the Act (16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act. The Act requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species.

### Species' History

We listed the Gulf Coast jaguarundi as an endangered species under the Act on June 14, 1976 (41 FR 24062). The Listed Cats of Texas and Arizona Recovery Plan (With Emphasis on the Ocelot), was completed in 1990 and it briefly addressed the jaguar, jaguarundi, and margay, but focused on the ocelot, primarily in Texas. The Draft Gulf Coast Jaguarundi Recovery Plan only applies to the Gulf Coast subspecies of jaguarundi.

The jaguarundi was originally included in the genus *Felis,* and the Gulf Coast jaguarundi was originally listed under the Act as *Felis yagouaroundi cacomitli* in 1976. Later, genus classification was changed from *Felis* to *Herpailurus,* and this widely accepted change was subsequently

made to the listing. Thus, this subspecies is currently listed under the Act as *Herpailurus (=Felis) yagouaroundi cacomitli.* However, more recent genetic work assigns the jaguarundi to the genus *Puma,* and this has become the generally accepted nomenclature. Therefore, in keeping with this current information, we refer to the Gulf Coast jaguarundi subspecies as *Puma yagouaroundi cacomitili* throughout this recovery plan, and we officially accept the new scientific name of the jaguarundi as *Puma yagouaroundi.*

The Sinaloan jaguarundi (*Puma yagouaroundi tolteca*) was originally listed under the Act at the same time as the Gulf Coast subspecies. Because all of the current information indicates that the *tolteca* subspecies occurs entirely outside the United States and has never been confirmed within the United States, the Sinaloan jaguarundi was exempted from recovery planning on June 7, 2011.

The Gulf Coast jaguarundi is found in the Tamaulipan Biotic Province of northeast Mexico and south Texas. Within Mexico it occurs in the eastern lowlands and has not been recorded in the Central Highlands. In southern Texas, jaguarundis used dense thorny shrublands. Jaguarundis will use bunchgrass pastures if dense brush or woody cover is nearby.

The primary known threats to the Gulf Coast jaguarundi are habitat destruction, degradation, and fragmentation associated with agriculture and urbanization, and, to some extent, border security activities. Mortality from collisions with vehicles is also a threat.

## Recovery Plan Goals

The objective of an agency recovery plan is to provide a framework for the recovery of a species so that protection under the Act is no longer necessary. A recovery plan includes scientific information about the species and provides criteria and actions necessary for us to be able to reclassify the species to threatened status or remove it from the Federal List of Endangered and Threatened Wildlife and Plants (List). Recovery plans help guide our recovery efforts by describing actions we consider necessary for the species' conservation, and by estimating time and costs for implementing needed recovery measures. To achieve its goals, this draft recovery plan identifies the following objectives:

- Support efforts to develop more effective survey techniques for jaguarundis and to ascertain the status, better understand ecological and conservation needs, and promote conservation of the Gulf Coast jaguarundi and its habitats.
- Assess, protect, and restore sufficient habitat and connectivity to support viable populations and genetic exchange of the Gulf Coast jaguarundi in southern Texas and in Mexico.
- Reduce the effects of human population growth and development on potential Gulf Coast jaguarundi habitat in the United States and on the jaguarundi's potential survival and mortality.
- Assure the long-term viability of jaguarundi conservation through partnerships, the development and application of incentives for landowners, application of existing regulations, and public education and outreach.
- Practice adaptive management in which recovery is monitored and recovery tasks are revised by the FWS as new information becomes available.

The draft revised recovery plan contains recovery criteria based on maintaining and increasing population numbers and habitat quality and quantity. The revised recovery plan focuses on protecting populations, managing threats, maintaining habitat, monitoring progress, and building partnerships to facilitate recovery.

As the subspecies meets recovery criteria, we will review the subspecies' status and consider removal from the List.

## Request for Public Comments

Section 4(f) of the Act requires us to provide public notice and an opportunity for public review and comment during recovery plan development. It is also our policy to request peer review of recovery plans (July 1, 1994; 59 FR 34270). In an appendix to the approved recovery plan, we will summarize and respond to the issues raised by the public and peer reviewers. Substantive comments may or may not result in changes to the recovery plan; comments regarding recovery plan implementation will be forwarded as appropriate to Federal or other entities so that they can be taken into account during the course of implementing recovery actions. Responses to individual commenters will not be provided, but we will provide a summary of how we addressed substantive comments in an appendix to the approved recovery plan.

We invite written comments on the draft recovery plan. This plan incorporates the most recent scientific research specific to the Gulf Coast jaguaurundi. In particular, we are interested in information regarding the current threats to the species and the costs associated with implementing the recommended recovery actions.

Before we approve the plan, we will consider all comments we receive by the date specified in **DATES** above. Methods of submitting comments are in the **ADDRESSES** section above.

## Public Availability of Comments

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.

Comments and materials we receive will be available, by appointment, for public inspection during normal business hours at our office (see **ADDRESSES**).

## Authority

We developed our draft recovery plan and publish this notice under the authority of section 4(f) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: December 10, 2012.

**Benjamin Tuggle,**

*Regional Director, Southwest Region.*

[FR Doc. 2012–30914 Filed 12–21–12; 8:45 am]

BILLING CODE 4310–55–P

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# DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[CACA–051552, LLCAD0700 L51010000 FX0000 LVRWB10B3980]**

## Notice of Availability of a Proposed Land Use Plan Amendment and Final Environmental Impact Statement for the Proposed McCoy Solar Energy Project, CA

**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 (FLPMA), the Bureau of Land Management (BLM) has prepared a proposed California Desert Conservation Area (CDCA) plan amendment and final environmental impact statement (EIS) for the McCoy Solar Energy Project (project)—a photovoltaic solar electricity generation

project—and by this notice is announcing its availability.

**DATES:** BLM planning regulations state that any person who meets the conditions as described in the regulations may protest the BLM's proposed plan amendment/final EIS. A person who meets the conditions and files a protest must file the protest within 30 days of the date that the Environmental Protection Agency publishes its notice of availability in the **Federal Register**.

**ADDRESSES:** Copies of the proposed plan amendment/final EIS have been sent to affected Federal, State, local government agencies, and to other stakeholders. Copies of the proposed plan amendment/final EIS are available for public inspection at the Palm Springs/South Coast Field Office, 1201 Bird Center Drive, Palm Springs, CA 92262 and the California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553–9046. Interested persons may also review the plan amendment/final EIS on the Internet at *http://www.blm.gov/ca/st/en/fo/cdd.html.* All protests must be in writing and mailed to one of the following addresses:

| Regular mail: | Overnight mail: |
|---|---|
| BLM Director (210), Attention: Brenda Williams, P.O. Box 71383, Washington, DC 20024–1383. | Attention: BLM Director (210), Brenda Williams 20 M Street SE., Room 2134LM, Washington, DC 20003 |

**FOR FURTHER INFORMATION CONTACT:** Jeffery Childers; telephone, 951–697–5308; mail, BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553–9046; or email *jchilders@blm.gov.* Also contact Mr. Childers to have your name added to our mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The applicant, McCoy Solar, LLC, has requested a right-of-way (ROW) authorization to construct, operate, maintain, and decommission an up to 750-megawatt photovoltaic solar energy generation facility and necessary ancillary facilities including a generation tie (gen-tie) line, access road and switch yard. The precise generation capacity or megawatts are dependent on the technology selected and efficiencies available at the time of ROW authorization. The proposed project includes an approximately 4,437-acre solar plant site, and linear facilities outside the solar plant site including a 14.5-mile gen-tie within a ROW width of 100 feet (Eastern Route), access roads, a distribution line, and a 2-acre switch yard (total linear disturbance is 146 acres, for a total project area of 4,583 acres) to be located adjacent to and connect into Southern California Edison's Colorado River Substation. The proposed project would require approximately 477 acres of private lands. The project site is located approximately 13 miles northwest of Blythe, California and approximately 32 miles east of Desert Center.

The BLM's purpose and need for the project is to respond to McCoy Solar, LLC's application for a ROW grant to construct, operate, maintain, and decommission a solar energy facility on public lands. The BLM will decide whether to grant, grant with modification, or deny a ROW to McCoy Solar, LLC.

The project would be located in the Riverside East Solar Energy Zone as designated in the Solar Programmatic EIS Record of Decision (ROD) signed October 12, 2012. However, the Solar Programmatic EIS ROD specifically excluded certain ''pending applications'' from the land use planning decision amending the CDCA Plan, and the ROW application for the project is subject to that exclusion (Programmatic EIS ROD Section B.1.2). This project would still require a CDCA Plan amendment since the CDCA Plan (1980, as amended), while recognizing the potential compatibility of solar energy generation facilities with other uses on public lands, requires that all sites proposed for power generation or transmission not already identified be considered through the plan amendment process.

In addition to the proposed action identified above and a no action alternative, the BLM analyzed a reduced acreage alternative, where the solar plant site would occupy approximately 2,259 acres, and a reconfigured gen-tie line and access road alternative including either an approximately 12.5-mile gen-tie and access road route (Central Route) or a 15.5-mile route to the west (Western Route). The Agency Preferred Alternative consists of an approximately 4,437-acre solar plant site and the Central Route Gen-tie alternative that would disturb 136.2 acres, including a 2-acre switch yard interconnection to the Colorado River Substation, for a total project area of 4,573.2 acres.

The proposed plan amendment/final EIS evaluates the potential impacts of the proposed project on air quality, biological resources, cultural resources, water resources, geological resources and hazards, land use, noise, paleontological resources, public health, socioeconomics, soils, traffic and transportation, visual resources, wilderness characteristics, and other resources.

A Notice of Intent to Prepare an EIS/Environmental Impact Report for the project was published in the **Federal Register** on August 29, 2011 (76 FR 167). The BLM and Riverside County held joint public scoping meetings in Palm Desert and Blythe on September 20, 2011 and October 19, 2011. The formal scoping period ended on November 28, 2011.

A Notice of Availability of the draft plan amendment/EIS for the project was published on May 25, 2012. The BLM held two public meetings: In Palm Desert on June 27, 2012, and in Blythe on June 28, 2012. The purpose of these meetings was to provide additional information to the public regarding the analysis.

In March 2012, the BLM and Riverside County bifurcated the joint process, and the BLM proceeded with an EIS, satisfying the Federal requirements under NEPA. The County will issue any required documentation under the California Environmental Quality Act (CEQA) separately before issuing its authorizations.

Comments on the draft plan amendment/EIS received from agencies, members of the public, and internal BLM review were considered and incorporated as appropriate into the proposed plan amendment/final EIS. Public comments resulted in the addition of clarifying text, modification of the western boundary to avoid additional resource conflicts, and changes to the drainage design to accommodate the revised boundary. These changes were to the physical project footprint and did not significantly change proposed land use plan decisions.

Instructions for filing a protest with the Director of the BLM regarding the project may be found in the ''Dear Reader'' letter of the proposed plan amendment/final EIS and at 43 CFR 1610.5–2. All protests must be in writing and mailed to the appropriate address as set forth in the **ADDRESSES** section above. Emailed and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either

regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the emailed or faxed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct emails to *Brenda_Hudgens-Williams@blm.gov* and faxed protests to the attention of the BLM protest coordinator at 202–245–0028.

Before including your phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.

**Karen Montgomery,**

*Acting Deputy State Director, California.*

[FR Doc. 2012–30855 Filed 12–21–12; 8:45 am]

**BILLING CODE 4310–40–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLAZ956000.L14200000.BJ0000.241A]**

### Notice of Filing of Plats of Survey; Arizona

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Filing of Plats of Survey; Arizona.

**SUMMARY:** The plats of survey of the described lands were officially filed in the Arizona State Office, Bureau of Land Management, Phoenix, Arizona, on dates indicated.

**SUPPLEMENTARY INFORMATION:**

**The Gila and Salt River Meridian, Arizona**

The supplemental plat representing the amended lottings in section 33, Township 7 North, Range 5 East, accepted December 7, 2012, and officially filed December 10, 2012, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The supplemental amended protraction diagram representing the relocation of Homestead Entry 318, and replacing protraction blocks 38 and 39 in Township 7 North, Range 5 East, accepted December 10, 2012, and officially filed December 12, 2012, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The supplemental plat representing the amended lottings in section 15, Township 19 North, Range 19 West, accepted November 30, 2012, and officially filed December 3, 2012, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat representing the dependent resurvey of portions of the subdivisional lines and mineral survey numbers 264, 951 and 4128, in sections 21 and 22, and the remonumentation of certain corners, Township 22 South, Range 10 East, accepted November 19, 2012, and officially filed November 21, 2012, for Group 1104, Arizona.

This plat was prepared at the request of the United States Forest Service.

A person or party who wishes to protest against any of these surveys must file a written protest with the Arizona State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

**FOR FURTHER INFORMATION CONTACT:** These plats will be available for inspection in the Arizona State Office, Bureau of Land Management, One North Central Avenue, Suite 800, Phoenix, Arizona, 85004–4427. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**Gary D. Knoff,**

*Acting Chief Cadastral Surveyor of Arizona.*

[FR Doc. 2012–30927 Filed 12–21–12; 8:45 am]

**BILLING CODE 4310–32–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLUT92000 L13100000 FI0000 25–7A]**

### Notice of Proposed Class II Reinstatement of Terminated Oil and Gas Lease, Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with Title IV of the Federal Oil and Gas Royalty Management Act, Quinex Energy Corporation timely filed a petition for reinstatement of oil and gas lease UTU88055 for lands in Uintah County, Utah, and paid all required rentals and royalties accruing from March 1, 2012, the date of termination.

**FOR FURTHER INFORMATION CONTACT:** Kent Hoffman, Deputy State Director, Lands and Minerals, Utah State Office, Bureau of Land Management, 440 West 200 South, Salt Lake City, UT, 84145, phone 801–539–4063.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The lessee has agreed to new lease terms for rental and royalty. The rental for UTU88055 will increase to $10 per acre and royalty to 16 ⅔ percent. The $500 administrative fee for the leases has been paid, and the lessee has reimbursed the Bureau of Land Management (BLM) $159 for the cost of publishing this notice.

**Salt Lake Meridian**

T. 6 S., R 23 E.,
Sec. 29, S1/2;
Sec. 30, all;
Sec. 31, all.

1,374.98 acres
Uintah County, Utah.

The public has 30 days after publication in the **Federal Register** to comment on the issuance of the Class II reinstatement. If no objections are received within that 30-day period, the BLM will issue a decision to the lessee reinstating the lease. Written comments will be accepted by fax at 801–539–4200, email: *khoffman@blm.gov*, or letter to: Bureau of Land Management, Utah State Office, Attn: Kent Hoffman, P.O. Box 45155, Salt Lake City, UT 84145. As the lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective March 1, 2012, subject to the original terms and conditions of the lease and the

increased rental and royalty rates cited above.

**Juan Palma,**

*State Director.*

[FR Doc. 2012–31080 Filed 12–21–12; 4:15 pm]

**BILLING CODE 4310–DQ–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNM920000 L13100000 FI0000; NMNM 126063]**

### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease NMNM 126063, NM

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease NMNM 126063 from the lessee Nadel & Gussman Permian LLC, for lands in Eddy County, New Mexico. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Rivera, Bureau of Land Management, New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502–0115 or at 505–954–2162. 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 business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** No valid lease has been issued that affects the lands. The lessee agrees to new lease terms for rentals and royalties of $10 per acre, or fraction thereof, per year, and 16⅔ percent, respectively. The lessee paid the required $500 administrative fee for the reinstatement of the lease and $159 cost for publishing this Notice in the **Federal Register**. The lessee met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). The BLM is proposing to reinstate lease NMNM 126063, effective the date of termination, March 1, 2012, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Elizabeth Rivera,**

*Land Law Examiner, Fluids Adjudication Team.*

[FR Doc. 2012–30856 Filed 12–21–12; 8:45 am]

**BILLING CODE 4310–FB–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNM920000 L13100000 FI0000; OKNM 110359]**

### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease OKNM 110359, OK

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease OKNM 110359 from the lessee Chesapeake Exploration LLC, for lands in Canadian County, Oklahoma. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Rivera, Bureau of Land Management, New Mexico State Office, P.O. Box 27115, Santa Fe, NM 87502–0115 or at 505–954–2162. 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 business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** No valid lease has been issued that affects the lands. The lessee agrees to new lease terms for rentals and royalties of $10 per acre, or fraction thereof, per year, and 16⅔ percent, respectively. The lessee paid the required $500 administrative fee for the reinstatement of the lease and $159 cost for publishing this Notice in the **Federal Register**. The lessee met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). The BLM is proposing to reinstate lease OKNM 110359, effective the date of termination, June 1, 2012, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Elizabeth Rivera,**

*Land Law Examiner, Fluids Adjudication Team.*

[FR Doc. 2012–30857 Filed 12–21–12; 8:45 am]

**BILLING CODE 4310–FB–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLES 0934 0000 L1310 0000 FI0000]**

### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease LAES 056461, LA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with Title IV of the Federal Oil and Gas Royalty Management Act of 1982, Chesapeake Louisiana, LP, filed a petition for reinstatement of oil and gas lease numbered LAES 056461 for lands in Bossier Parish, Louisiana. Petitioner has paid all required rentals and royalties accruing from December 1, 2011, the date of termination.

**FOR FURTHER INFORMATION CONTACT:** Kemba Anderson-Artis, Supervisory Land Law Examiner, Bureau of Land Management-Eastern States, 7450 Boston Blvd., Springfield, VA 22153; phone number 703–440–1659; email *kembaand@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The Bureau of Land Management-Eastern States (BLM–ES) is proposing to reinstate this lease effective December 1, 2011 (the date terminated), as a Class II reinstatement in accordance with 43 CFR part 3108, and under the original terms and conditions of the lease, excepting increased rental and royalty rates. The lessee agrees to pay higher rental and royalties at rates of $10 per acre or fraction thereof, per year, and 16 ⅔ percent, respectively. The public has 30 days after publication in the **Federal Register** to comment on the issuance of this Class II reinstatement. If no objections are received within that 30-day period, the BLM–ES will issue a decision to the lessee reinstating the lease. Written comments will be

accepted by letter and may be addressed to: Bureau of Land Management-Eastern States, Attn: Kemba Anderson-Artis, 7450 Boston Blvd., Springfield, VA 22153. Comments may be sent via email to *kembaand@blm.gov,* or by fax to 703–440–1551. The lessee has paid the required $500 administrative fee and has reimbursed the BLM for the cost of publishing this Notice in the **Federal Register**. The lessee has met all the requirements for reinstatement as set out in the Federal Oil and Gas Royalty Management Act of 1982 (Pub. L. 97–451).

**Kemba Anderson-Artis,**

*Supervisory Land Law Examiner.*

[FR Doc. 2012–30860 Filed 12–21–12; 8:45 am]

**BILLING CODE 4310–GJ–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 332–325]**

## The Economic Effects of Significant U.S. Import Restraints: Eighth Update Special Topic: Services' Contribution to Manufacturing

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice of eighth update report, scheduling of public hearing, opportunity to file written submissions.

**SUMMARY:** Following receipt of a letter dated November 2, 2012 from the United States Trade Representative (USTR), the U.S. International Trade Commission (Commission) has announced its schedule for preparing the eighth update report in investigation No. 332–325, *The Economic Effects of Significant U.S. Import Restraints,* including the scheduling of a public hearing in connection with this update report for March 19, 2013. This year's report will include a chapter on services' contribution to manufacturing.

**DATES:**

March 6, 2013: Deadline for filing requests to appear at the public hearing.

March 11, 2013: Deadline for filing pre-hearing briefs and statements.

March 19, 2013: Public hearing.

March 26, 2013: Deadline for filing post-hearing briefs and statements.

April 12, 2013: Deadline for filing all other written submissions.

November 15, 2013: Transmittal of Commission report to USTR.

**ADDRESSES:** All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov/edis3-internal/app.*

**FOR FURTHER INFORMATION CONTACT:** Project Leader Jose Signoret (*jose.signoret@usitc.gov* or 202–205–3125) or Deputy Project Leader William Deese (*william.deese@usitc.gov* or 202–205–2626) for information specific to this investigation (the eighth update). For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov).* Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: The Commission instituted this investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) following receipt of an initial request from the USTR dated May 15, 1992. The request asked that the Commission assess the quantitative economic effects of significant U.S. import restraints on the U.S. economy and prepare periodic update reports after the initial report. The Commission published a notice of institution of the investigation in the **Federal Register** of June 17, 1992 (57 FR 27063). The first report was delivered to the USTR in November 1993, the first update in December 1995, and successive updates were delivered in 1999, 2002, 2004, 2007, 2009, and 2011.

In this eighth update, as requested by the USTR in a letter dated November 2, 2012, the Commission will, in addition to the quantitative effects analysis similar to that included in prior reports, include an overview of the contributions of services (both U.S. and global) to U.S. manufacturing. The USTR asked that the report describe recent trends in U.S. and global sourcing of services and their contribution to manufacturing output and productivity, and identify sectors that have experienced the greatest changes. The USTR also asked that the report include, to the extent practicable, a discussion of services' indirect contribution to merchandise exports and also a review of available literature on this issue. The USTR asked that the information be presented in a manner that makes it accessible to a wide audience.

As in previous reports in this series, the eighth update will continue to assess the economic effects of significant import restraints on U.S. consumers and firms, the income and employment of U.S. workers, and the net economic welfare of the United States. This assessment will use the Commission's computable general equilibrium model. However, as per earlier instructions from the USTR, the Commission will not assess import restraints resulting from antidumping or countervailing duty investigations, section 337 and 406 investigations, or section 301 actions.

*Public Hearing:* A public hearing in connection with this investigation will be held at the United States International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on March 19, 2013. Requests to appear at the hearing should be filed with the Secretary no later than 5:15 p.m., March 6, 2013, in accordance with the requirements in the ''Submissions'' section below. All pre-hearing briefs and statements should be filed not later than 5:15 p.m., March 11, 2013; and all post-hearing briefs and statements addressing matters raised at the hearing should be filed not later than 5:15 p.m., March 26, 2013. In the event that, as of the close of business on March 6, 2013, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant may call the Secretary to the Commission (202–205–2000) after March 6, 2013, for information concerning whether the hearing will be held.

*Written Submissions:* In lieu of or in addition to participating at the hearing, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., April 12, 2013. All written submissions must conform to the provisions of section 201.8 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 Section 201.8 and the Commission's Handbook on Filing Procedures require that interested parties file documents

electronically on or before the filing deadline and submit eight (8) true paper copies by 12:00 noon eastern time on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional copies in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information must also conform to the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

In its request letter, the USTR stated that his office intends to make the Commission's report available to the public in its entirety, and asked that the Commission not include any confidential business information or national security classified information in the report it sends to the USTR. Any confidential business information received by the Commission in this investigation and used in preparing this report will not be published in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: December 20, 2012.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2012–31031 Filed 12–21–12; 4:15 pm]

**BILLING CODE 7020–02–P**

## JUDICIAL CONFERENCE OF THE UNITED STATES

### Hearings of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure; Federal Register; Citation of Previous Announcement: 77FR 49828

**AGENCY:** Judicial Conference of the United States, Advisory Committee on Rules of Bankruptcy Procedure.

**ACTION:** Notice of Cancellation of Open Hearing.

**SUMMARY:** The following public hearing on proposed amendments to the Federal Rules of Bankruptcy Procedure has been canceled: Bankruptcy Rules Hearing, January 18, 2013, Chicago, IL.

**FOR FURTHER INFORMATION CONTACT:** Benjamin J. Robinson, Deputy Rules Officer and Counsel, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 20, 2012.

**Benjamin J. Robinson,**

*Rules Committee Deputy and Counsel.*

[FR Doc. 2012–31040 Filed 12–21–12; 4:15 pm]

**BILLING CODE 2210–55–P**

## JUDICIAL CONFERENCE OF THE UNITED STATES

### Hearings of the Judicial Conference Advisory Committee on Rules of Appellate Procedure; Federal Register Citation of Previous Announcement: 77FR 49828

**AGENCY:** Advisory Committee on Rules of Appellate Procedure, Judicial Conference of the United States.

**ACTION:** Notice of Cancellation of Open Hearing.

**SUMMARY:** The following public hearing on proposed amendments to the Federal Rules of Appellate Procedure has been canceled: Appellate Rules Hearing, January 18, 2013, Chicago, IL.

**FOR FURTHER INFORMATION CONTACT:** Benjamin J. Robinson, Deputy Rules Officer and Counsel, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 20, 2012.

**Benjamin J. Robinson,**

*Rules Committee Deputy and Counsel.*

[FR Doc. 2012–31042 Filed 12–21–12; 4:15 pm]

**BILLING CODE 2210–55–P**

## DEPARTMENT OF JUSTICE

### Notice of Extension to Public Comment Period for Remedial Design/Remedial Action Consent Decree under the Comprehensive Environmental Response, Compensation, and Liability Act

On December 6, 2012, the Department of Justice lodged a proposed Remedial Design/Remedial Action Consent Decree (''RD/RA Consent Decree'') with the United States District Court for the Northern District of Alabama, Eastern Division in the lawsuit entitled, *United States of America* v. *Pharmacia Corporation and Solutia, Inc.,* Civil Action No. 1;02–cv–0749–KOB. The RD/RA Consent Decree resolves a portion of the United States' claims against the Defendants. Under the RD/RA Consent Decree, the Defendants will undertake cleanup activities at an area that is part of the Anniston PCB Superfund Site designated as Operable Unit 3, which covers approximately 138 acres, including the active manufacturing area. OU 3 is generally bounded by to the north by the Northern Southern and Erie Railroads, to the east by Clydesdale Avenue, to the west by and including the West End Landfill and an Alabama Power Company substation, and to the south by and including the South End Landfill and Highway 202.

In addition to remedial activities, the RD/RA Consent Decree requires the Defendants to reimburse EPA for its oversight of work performed under the Decree by the Defendants.

The prior notice indicated that the Department of Justice would receive comments concerning the settlement for a period of thirty (30) days from the date of publication of the notice on December 13, 2012. Having received a request for an extension of the initial comment period and given the public interest in this settlement, the United States is extending the comment period for an additional thirty (30) days.

The Department of Justice will receive, for a period of thirty (30) days from January 14, 2013, any comments relating to the proposed RD/RA Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to the *United States of America* v. *Pharmacia Corporation and Solutia, Inc.,* D.J. Ref. No. 90–11–2–07135/1. All comments must be submitted no later than February 13, 2013. Comments may be submitted by email or by mail:

| To submit comments: | Send them to: |
|---|---|
| By email | *pubcomment-ees.enrd@usdoj.gov.* |
| By mail ... | Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611. |

During the public comment period, the RD/RA Consent Decree may be examined and downloaded at the this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent-Decree.html.* We will provide a paper copy of the RD/RA Consent Decree upon written request and payment of reproduction costs.

Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $71.25 (25 cents per page reproduction costs) payable to the United States Treasury. For a copy of the proposed Consent Decree without the exhibits, the reproduction cost is $12.25.

**Henry Friedman,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Section.*

[FR Doc. 2012–30970 Filed 12–21–12; 4:15 pm]

**BILLING CODE P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Special Enrollment Rights under Group Health Plans

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Employee Benefits Security Administration sponsored information collection request (ICR) titled, ''Notice of Special Enrollment Rights under Group Health Plans,'' 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 23, 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–EBSA, 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:** Under Regulations 29 CFR 2590.701–6(c), a group health plan must provide an individual who is offered coverage under the plan a notice describing the plan's special enrollment rights at or before the time coverage is offered. 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 1210–0101. 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 June 25, 2012 (77 FR 37920).

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 1210–0101. 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–EBSA.

*Title of Collection:* Notice of Special Enrollment Rights under Group Health Plans.

*OMB Control Number:* 1210–0101.

*Affected Public:* Private Sector—businesses or other for-profits and not-for-profit institutions.

*Total Estimated Number of Respondents:* 2,283,712.

*Total Estimated Number of Responses:* 3,636,426.

*Total Estimated Annual Burden Hours:* 1.

*Total Estimated Annual Other Costs Burden:* $65,000.

Dated: December 17, 2012.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2012–30878 Filed 12–21–12; 8:45 am]

**BILLING CODE 4510–29–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Pre-Existing Condition Exclusion Under Group Health Plans

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Notice of Pre-Existing Condition Exclusion Under Group Health Plans,'' 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 25, 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–EBSA, 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*.

**SUPPLEMENTARY INFORMATION:** An employee group health benefit plan or its issuer that imposes a preexisting condition exclusion period must give, as part of any enrollment application, an employee eligible for coverage a general notice that describes the plan's preexisting condition exclusion—including that the plan will reduce the maximum exclusion period by the length of an employee's prior creditable coverage. If there are no such enrollment materials, the notice must be provided as soon after a request for enrollment as is reasonably possible. The EBSA has provided sample language for the general notice. *See* 29 CFR 2590.701–3(c).

A plan that uses the alternative method of crediting coverage provided in the applicable regulations must disclose the use of that method at the time of enrollment and describe how the method operates. The plan must also explain that a participant has a right to establish prior creditable coverage through a certificate or other means and to request a certificate of prior coverage from a prior plan or issuer. Finally, a plan or issuer must offer to assist the participant in obtaining a certificate from a prior plan or issuer, if necessary. *See* 29 CFR 2590.701–4(c)(4).

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 1210–0102. 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 June 25, 2012 (77 FR 37920).

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 1210–0102. 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–EBSA.

*Title of Collection:* Notice of Pre-Existing Condition Exclusion Under Group Health Plans.

*OMB Control Number:* 1210–0102.

*Affected Public:* Private Sector—businesses or other for-profits and not-for-profit institutions.

*Total Estimated Number of Respondents:* 685,114.

*Total Estimated Number of Responses:* 1,666,339.

*Total Estimated Annual Burden Hours:* 5,043.

*Total Estimated Annual Other Costs Burden:* $1,052,061.

**Authority:** 44 U.S.C. 3507(a)(1)(D).

Dated: December 19, 2012.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2012–30964 Filed 12–21–12; 4:15 pm]

**BILLING CODE 4510–29–P**

## DEPARTMENT OF LABOR

### Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO): Meeting

**AGENCY:** Veterans' Employment and Training Service, Labor.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO). The ACVETEO will discuss Department of Labor's Veterans' Employment and Training Services' (VETS) core programs and new initiatives regarding efforts that assist veterans seeking employment and raise employer awareness as to the advantages of hiring veterans. There will be an opportunity for persons or organizations to address the committee. Any individual or organization that wishes to do so should contact Mr. Gregory Green (202) 693–4734. Time constraints may limit the number of outside participants/presentations. Individuals who will need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Wednesday, January 9, 2013 by contacting Mr. Gregory Green (202) 693–4734. Requests made after this date will be reviewed, but availability of the requested accommodations cannot be guaranteed. The meeting site is accessible to individuals with disabilities. This notice also describes the functions of the Advisory Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

*Date and Time:* Friday, January 25, 2013, beginning at 9:30 a.m. and ending at approximately 4:00 p.m. (E.S.T.).

**ADDRESSES:** U.S. Department of Labor, 200 Constitution Ave. NW., Room C5521, Washington, DC 20210. ID is required to enter the building.

**FOR FURTHER INFORMATION CONTACT:** Mr. Angel M. Menendez, Designated Federal Official, Advisory Committee on Veterans' Employment, Training and Employer Outreach, (202) 693–4712, or Mr. Gregory Green, (202) 693–4734.

**SUPPLEMENTARY INFORMATION:** ACVETEO is a Congressionally mandated advisory committee authorized under Title 38, U.S. Code, Section 4110 and subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, as amended. The ACVETEO is responsible for: Assessing employment and training needs of veterans; determining the extent to which the programs and activities of the U.S. Department of Labor meet these needs; assisting to conduct outreach to employers seeking

to hire veterans; making recommendations to the Secretary, through the Assistant Secretary of Labor for Veterans' Employment and Training, with respect to outreach activities and employment and training needs of Veterans; and carrying out such other activities necessary to make required reports and recommendations. The ACVETEO meets at least quarterly.

Signed in Washington, DC, this 18th day of December, 2012.

**John K. Moran,**

*Deputy Assistant Secretary, Veterans' Employment and Training Service.*

**Agenda**

*Acveteo Meeting*

January 25, 2013

9:30 a.m. Welcome and Introduction
*Deputy Assistant Secretary (DAS) John K. Moran*
10:00 a.m. Administrative Business
*Angel M. Menendez, Designated Federal Official (DFO) for ACVETEO*
10:15 a.m. DOL–VETS Presentation/ Year in Review
*Deputy Assistant Secretary (DASVET) John K. Moran*
12:00 p.m. Lunch
1:15 p.m. Economic Programs Focused on Veteran Employment
*Paul (Bud) Bucha, Committee Chairman and several other members/guest*
2:15 p.m. Break
2:30 p.m. Transition Assistance Update
*OSD, VA and DOL*
3:00 p.m. Public Forum
3:15 p.m. Committee Member Discussion—Way Forward and Homework Assignments
4:00 p.m. Adjourn

[FR Doc. 2012–30879 Filed 12–21–12; 8:45 am]

BILLING CODE 4510–79–P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2012–0020]**

### Whistleblower Protection Advisory Committee (WPAC)

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Announcement of WPAC meeting.

**SUMMARY:** WPAC will meet January 29, 2013, in Washington, DC.

**DATES:** *WPAC meeting.* WPAC will meet from 10:30 a.m. to 5 p.m. on Tuesday, January 29, 2013.

*Submission of comments, requests to speak, speaker presentations and requests for special accommodations.* Comments, requests to speak at the WPAC meeting, speaker presentations and requests for special accommodations for the WPAC must be submitted (postmarked, sent, transmitted) by January 18, 2013.

**ADDRESSES:** *WPAC meeting.* WPAC will meet in Room N4437 A/B/C, U.S. Department of Labor, Francis Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210.

*Submission of comments, requests to speak and speaker presentations.* You may submit comments, requests to speak at the WPAC meeting and speaker presentations, identified by the docket number in this **Federal Register** notice (Docket No. OSHA–2012–0020), by one of the following methods:

*Electronically.* You may submit materials, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for making submissions.

*Facsimile.* If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

*Mail, express delivery, messenger or courier service.* You may submit your materials to the OSHA Docket Office, Docket No. OSHA–2012–0020, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350 (TTY (877) 889–5627). Deliveries (hand, express mail, messenger, courier service) are accepted during the Department of Labor's and OSHA Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t., weekdays.

*Requests for special accommodations.* Please submit requests for special accommodations for the WPAC meeting to Ms. Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *chatmon.veneta@dol.gov.*

*Instructions.* All submissions must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2012–0020). Because of security-related procedures, submission by regular mail may result in significant delay in receipt. Please contact the OSHA Docket Office for information about security procedures for making submissions. For additional information about submitting comments, requests to speak and speaker presentations, see the **SUPPLEMENTARY INFORMATION** section of this notice.

Comments, requests to speak and speaker presentations, including personal information provided, will be placed in the public docket and may be available online. Therefore, OSHA cautions interested parties about submitting personal information, such as social security numbers and birthdates.

**FOR FURTHER INFORMATION CONTACT:** *For press inquiries.* Mr. Frank Meilinger, OSHA, Office of Communications, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *meilinger.francis2@dol.gov.*

*For general information about WPAC and WPAC meetings.* Ms. Laura Seeman, OSHA, Directorate of Whistleblower Programs, U.S. Department of Labor, Room N–4624, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2199; email *seeman.laura@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

**WPAC Meeting**

WPAC will meet Tuesday, January 29, 2013, in Washington, DC. WPAC meetings are open to the public.

WPAC advises the Secretary of Labor (Secretary) and Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) on ways to improve the fairness, efficiency and transparency of OSHA's whistleblower investigations. WPAC operates in compliance with the Federal Advisory Committee Act (5 U.S.C. App. 2) and its implementing regulations (41 CFR Part 102–3).

The tentative agenda of the WPAC meeting includes:

Remarks from the Assistant Secretary;

Presentation by the Director of OSHA's Directorate of Whistleblower Programs on recent initiatives;

Remarks and explanation of meeting order and agenda from WPAC Chair;

Discussion on such topics such as improving customer service to workers and employers, improving the investigative and enforcement process, improvements of regulations governing OSHA investigations, and recommendations for cooperative activities with federal agencies responsible for areas also covered by the whistleblower protection statutes enforced by OSHA;

Public comments.

OSHA transcribes WPAC meetings and prepares detailed minutes of the meetings. OSHA places the meeting transcripts and minutes in the public record of the meeting. The public record also includes speaker presentations,

comments and other materials submitted to WPAC.

**Public Participation**

*WPAC meetings.* WPAC meetings are open to the public. Any individual attending meetings at the U.S. Department of Labor must enter the building at the Visitors' Entrance, 3rd and C Streets NW., and pass through Building Security. Attendees must have valid photo identification to enter the building. Please contact Ms. Seeman for additional information about building security measures for attending the WPAC meeting.

Individuals needing special accommodations to attend the WPAC meeting should contact Ms. Chatmon.

*Submission of written comments, requests to speak and speaker presentations.* Interested parties must submit written comments, requests to speak at the WPAC meeting and speaker presentations by January 18, 2013, using one of the methods listed in the ADDRESSES section. All submissions must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2012–0020). OSHA will provide submissions to WPAC members prior to the meeting.

Because of security-related procedures, submissions by regular mail may result in significant delay in receipt. Please contact the OSHA Docket Office for information about security procedures for submitting materials by hand delivery, express delivery, messenger or courier service.

Requests to speak must state the amount of time requested to speak, the interest the individual represents (e.g., organization name), if any, and a brief outline of the presentation. Electronic speaker presentations (e.g., PowerPoint) must be compatible with PowerPoint 2010 and other Microsoft 2010 formats. Requests to address WPAC may be granted at the discretion of the WPAC chair and as time permits.

*Public Docket of the WPAC meeting.* OSHA puts comments, requests to speak and speaker presentations, including any personal information you provide, in the public record of this WPAC meeting without change and those documents may be available online at *http://www.regulations.gov.* Therefore, OSHA cautions individuals about submitting certain personal information such as social security numbers and birthdates.

OSHA also puts the meeting transcripts and minutes and other documents from the WPAC meeting in the public record of the WPAC meeting. Although all submissions are listed in the *http://www.regulations.gov* index, some documents (e.g., copyrighted materials) are not publicly available to read or download through that Web site. All submissions, including copyrighted material, are available for inspection and copying in the OSHA Docket Office.

To read or download documents in the public record of the WPAC meeting, go to Docket No. OSHA–2012–0020 at *http://www.regulations.gov.* Please contact the OSHA Docket Office for information about materials not available through that Web site and for assistance in using the Internet to locate submissions and other documents in the public record.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, also is available at the OSHA Web site at *http://www.osha.gov.*

**Authority and Signature**

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2), its implementing regulations (41 CFR Part 102–3), chapter 1600 of Department of Labor Management Series 3 (Mar. 17, 2008), Secretary of Labor's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012), and the Secretary of Labor's authority to administer the whistleblower provisions found in Section 11(c) of the Occupational Safety and Health Act, 29 U.S.C. 660(c); the Surface Transportation Assistance Act, 49 U.S.C. 31105; the Asbestos Hazard Emergency Response Act, 15 U.S.C. 2651; the International Safe Container Act, 46 U.S.C. 80507; the Safe Drinking Water Act, 42 U.S.C. 300j–9(i); the Federal Water Pollution Control Act, 33 U.S.C. 1367; the Toxic Substances Control Act, 15 U.S.C. 2622; the Solid Waste Disposal Act, 42 U.S.C. 6971; the Clean Air Act, 42 U.S.C. 7622; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9610; the Energy Reorganization Act, 42 U.S.C. 5851; the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. 42121; the Sarbanes-Oxley Act, 18 U.S.C. 1514A; the Pipeline Safety Improvement Act, 49 U.S.C. 60129; the Federal Railroad Safety Act, 49 U.S.C. 20109; the National Transit Systems Security Act, 6 U.S.C. 1142; the Consumer Product Safety Improvement Act, 15 U.S.C. 2087; Section 1558 of the Affordable Care Act, Public Law 111–148; the Consumer Financial Protection Act of 2010, 12 U.S.C.A. 5567; the Seaman's Protection Act, 46 U.S.C. 2114; Section 402 of the FDA Food Safety Modernization Act, Public Law 111–353; and Section 31307 of the Moving Ahead for Progress in the 21st Century Act, Public Law 112–141.

Signed at Washington, DC, on December 19, 2012.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2012–30958 Filed 12–21–12; 4:15 pm]

BILLING CODE 4510–26–P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Information Security Oversight Office; State, Local, Tribal, and Private Sector Policy Advisory Committee (SLTPS–PAC)

**AGENCY:** National Archives and Records Administration, Information Security Oversight Office.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and implementing regulation 41 CFR 101–6, announcement is made for the committee meeting of the State, Local, Tribal, and Private Sector Policy Advisory Committee. To discuss the matters relating to the Classified National Security Information Program for State, Local, Tribal, and Private Sector Entities.

**DATES:** The meeting will be held on January 30, 2013, 10:00 a.m. to 12:00 noon.

**ADDRESSES:** National Archives and Records Administration, 700 Pennsylvania Avenue NW, Jefferson Room, Washington, DC 20408.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Skwirot, Senior Program Analyst, ISOO, National Archives Building, 700 Pennsylvania Avenue NW, Washington, DC 20408, on (202) 357–5398, or at robert.skwirot@nara.gov. Contact ISOO at ISOO@nara.gov.

**SUPPLEMENTARY INFORMATION:** This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than Friday, January 25, 2013. ISOO will provide additional instructions for gaining access to the location of the meeting.

Dated: December 17, 2012.

**Patrice Murray,**

*Acting Committee Management Officer.*

[FR Doc. 2012–31051 Filed 12–21–12; 4:15 pm]

**BILLING CODE 7515–01–P**

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities: Comment Request

**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.

**DATES:** Written comments should be received by February 25, 2013 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**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*.

**FOR ADDITIONAL INFORMATION OR COMMENTS:** 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).

**SUPPLEMENTARY INFORMATION:**

*Title:* Generic Clearance of the Science Resources Statistics Survey Improvement Projects.

*OMB Approval Number:* 3145–0174.

*Expiration Date of Approval:* May 31, 2013.

*Abstract.* Established within the National Science Foundation by the America COMPETES Reauthorization Act of 2010 § 505, codified in the National Science Foundation Act of 1950, as amended, the National Center for Science and Engineering Statistics (NCSES) serves as a central Federal clearinghouse for the collection, interpretation, analysis, and dissemination of objective data on science, engineering, technology, and research and development for use by practitioners, researchers, policymakers, and the public. NCSES conducts about a dozen nationally-representative surveys to obtain the data for these purposes. The Generic Clearance will be used to ensure that the highest quality data are obtained from these surveys. State of the art methodology will be used to develop, evaluate, and test questionnaires and survey concepts as well as to improve survey methodology. This may include field or pilot tests of questions for future large scale surveys, as needed.

*Expected Respondents.* The respondents will be from industry, academia, nonprofit organizations, members of the public, and State, local, and Federal governments. Respondents will be either individuals or institutions, depending upon the survey under investigation. Qualitative procedures will generally be conducted in person or over the phone, but quantitative procedures may be conducted using mail, Web, email, or phone modes, depending on the topic under investigation. Up to 11,060 respondents will be contacted across all survey improvement projects. No respondent will be contacted more than twice in one year under this generic clearance. Every effort will be made to use technology to limit the burden on respondents from small entities.

Both qualitative and quantitative methods will be used to improve NCSES's current data collection instruments and processes and to reduce respondent burden, as well as to develop new surveys. Qualitative methods include, but are not limited to, expert review; exploratory, cognitive, and usability interviews; focus groups; and respondent debriefings. Cognitive and usability interviews may include the use of scenarios, paraphrasing, card sorts, vignette classifications, and rating tasks. Quantitative methods include, but are not limited to, telephone surveys, behavior coding, split panel tests, and field tests.

*Use of the Information.* The purpose of these studies is to use the latest and most appropriate methodology to improve NCSES surveys and evaluate new data collection efforts. Methodological findings may be presented externally in technical papers at conferences, published in the proceedings of conferences, or in journals. Improved NCSES surveys will help policy makers in decisions on research and development funding, graduate education, and the scientific and technical workforce, as well as contributing to reduced survey costs.

*Burden on the Public.* NCSES estimates that a total reporting and recordkeeping burden of 14,280 hours will result from activities to improve its surveys. The calculation is shown in Table 1.

TABLE 1—POTENTIAL SURVEYS FOR IMPROVEMENT PROJECTS, WITH THE NUMBER OF RESPONDENTS AND BURDEN HOURS

| Survey name | Number of respondents [1] | Hours |
|---|---|---|
| Graduate Student Survey | [2]1,500 | 2,500 |
| SESTAT Surveys | 4,700 | 3,350 |
| Early Career Doctorate Project | 1,000 | 800 |
| New and Redesigned R&D Surveys | 400 | |
| Higher Education R&D | 60 | 1,200 |
| Government R&D | 100 | 180 |
| Nonprofit R&D | 50 | 300 |
| Business R&D | 150 | 150 |
| Microbusiness R&D | | 450 |
| Survey of Scientific & Engineering Facilities | 300 | 300 |
| Public Understanding of S&E Surveys | 200 | 50 |
| Survey of Earned Doctorates | 1,000 | 800 |
| Additional surveys not specified | 1,600 | 4,200 |
| Total | 11,060 | 14,280 |

1 Number of respondents listed for any individual survey may represent several methodological improvement projects.

2 This number refers to the science, engineering, and health-related departments within the academic institutions of the United States (not the academic institutions themselves).

*Comments:* Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden 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; Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 20, 2012.

**Suzanne Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2012–31045 Filed 12–21–12; 4:15 pm]

**BILLING CODE 7555–01–P**

## NEIGHBORHOOD REINVESTMENT CORPORATION

### Regular Board of Directors Sunshine Act Meeting

**TIME & DATE:** 2:00 p.m., Wednesday, January 9, 2013.

**PLACE:** 1325 G Street NW., Suite 800, Boardroom, Washington, DC 20005.

**STATUS:** Open.

**CONTACT PERSON FOR MORE INFORMATION:** Erica Hall, Assistant Corporate Secretary (202) 220–2376; *ehall@nw.org.*

**AGENDA:**

I. Call to Order
II. Executive Session
III. Approval of the Regular Board of Directors Meeting Minutes
IV. Approval of the Finance, Budget & Program Committee Meeting Minutes
V. Approval of the Audit Committee Meeting Minutes
VI. Motion to Approve Treasury Partnership w/NFMC
VII. Financial Report
VIII. DC Lease Update
IX. FY 12 Milestone Report & Dashboard
X. Management Updates
XI. Community Stabilization Overview
XII. NFMC & EHLP
XIII. Adjournment

**Erica Hall,**

*Assistant Corporate Secretary.*

[FR Doc. 2012–31163 Filed 12–21–12; 4:15 pm]

**BILLING CODE 7570–02–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2012–0305]**

### Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

### Background

Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 29, 2012 to December 12, 2012. The last biweekly notice was published on December 11, 2012 (77 FR 73684–73694).

**ADDRESSES:** You may access information and comment submissions related to this document, which the NRC possesses and are publically available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0305. You may submit comments by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0305. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- Fax comments to: RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**SUPPLEMENTARY INFORMATION:**

### I. Accessing Information and Submitting Comments

*A. Accessing Information*

Please refer to Docket ID NRC–2012–0305 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0305.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Documents may be viewed in ADAMS by performing a search on the document date and docket number.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

*B. Submitting Comments*

Please include Docket ID NRC–2012–0305 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

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

submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

**Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of Title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at

*hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC' Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1): (i) The information upon which the filing is based was not previously available; (ii) the information upon which the filing is based is materially different from information previously available; and (iii) the filing has been submitted in a timely fashion based on the availability of the subsequent information.

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

**Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan**

*Date of amendment request:* September 12, 2012.

*Description of amendment request:* The proposed amendment would revise Technical Specification (TS) 5.5.7, ''Steam Generator (SG) Program,'' TS 5.6.7, ''Steam Generator Tube Inspection Report,'' and Limiting Condition for Operation (LCO) 3.4.17, ''Steam Generator Tube Integrity,'' for Donald C. Cook Nuclear Plant (CNP), Units 1 and 2. The changes are consistent with NRC's approved Technical Specifications Task Force (TSTF) Traveler TSTF–510, Revision 2, ''Revision to Steam Generator Program Inspection Frequencies and Tube Sample Selection'' (ADAMS Accession Number ML110610350). The availability of this TS improvement was published in the **Federal Register** on October 27, 2011 (76 FR 66763), as part of the consolidated line item improvement process (CLIIP).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the Steam Generator (SG) Program to modify the frequency of verification of SG tube integrity and SG tube sample selection. A steam generator tube rupture (SGTR) event is one of the design basis accidents that are analyzed as part of a plant's licensing basis. The proposed SG tube inspection frequency and sample selection criteria will continue to ensure that the SG tubes are inspected such that the probability of an SGTR is not increased. Section 4.0, Technical Analysis, of the TSTF demonstrates that the change in frequencies will not increase the probability of an SGTR. The consequences of an SGTR are bounded by the conservative assumptions in the design basis accident analysis. The proposed change will not cause the consequences of an SGTR to exceed those assumptions.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the Steam Generator Program will not introduce any adverse changes to the plant design basis or postulated accidents resulting from potential tube degradation. The proposed change does not affect the design of the SGs or their method of operation. In addition, the proposed change does not impact any other plant system or component.

Therefore, it is concluded that this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The SG tubes in pressurized water reactors are an integral part of the reactor coolant pressure boundary and, as such, are relied upon to maintain the primary system's pressure and inventory. As part of the reactor coolant pressure boundary, the SG tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system. In addition, the SG tubes also isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of an SG is maintained by ensuring the integrity of its tubes.

Steam generator tube integrity is a function of the design, environment, and the physical condition of the tube. The proposed change does not affect tube design or operating environment. The proposed change will continue to require monitoring of the physical condition of the SG tubes such that there will not be a reduction in the margin of safety compared to the current requirements.

Therefore, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Robert B. Haemer, Senior Nuclear Counsel, One Cook Place, Bridgman, MI 49106.

*NRC Branch Chief:* Robert D. Carlson.

**Northern States Power Company—Minnesota, Docket No. 50–263, Monticello Nuclear Generating Plant (MNGP), Wright County, Minnesota**

*Date of amendment request:* August 21, 2012, as supplemented on November 7, 2012.

*Description of amendment request:* The amendment proposes to revise the MNGP Renewed Facility Operating License and Technical Specifications (TSs) to reflect editorial corrections to the operating license, including (1) revision of outdated references to the Nuclear Management Company, LLC to state Northern States Power Company (NSPM); (2) removal of an outdated reference to a spent fuel pool storage capacity letter; (3) administrative corrections, including correction of an incorrect phrase in the Core Operating Limits Report (COLR) specification; and (4) removal of obsolete information, including removal of the Operating Power Range Monitoring (OPRM) System note in TS Table 3.3.1.1–1 and removal of analytical methods no longer utilized from the COLR specification.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The MNGP TS and Updated Safety Analysis Report (USAR) provide the specific limitations on the number of fuel assemblies in the MNGP spent fuel pool, fresh fuel storage vault, and the reactor core. Removing the outdated letter reference from License Condition 2.B.2 in the Renewed [Facility] Operating License (ROL) has no effect on these limitations or on the supporting evaluations.

The proposed changes to the TS and ROL are administrative or editorial in nature and do not impact the physical configuration or function of plant structures, systems, or components (SSCs) or the manner in which SSCs are operated, maintained, modified, tested, or inspected. The proposed changes do not impact the initiators or assumptions of analyzed events, nor do they impact mitigation of accidents or transient events.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The MNGP TS and USAR provide the specific limitations on the number of fuel assemblies in the MNGP spent fuel pool, fresh fuel storage vault, and the reactor core. Removing the outdated letter reference from the license condition in the ROL has no effect on these limitations or on the supporting evaluations. This proposed change does not introduce a new mode of plant operation and does not involve a physical modification to the plant. The change will not introduce new accident initiators or impact the assumptions made in a safety analysis.

The proposed changes to the TS and ROL are administrative in nature and do not alter plant configuration, require that new plant equipment be installed, alter assumptions made about accidents previously evaluated, or impact the function of plant SSCs or the manner in which SSCs are operated, maintained, modified, tested, or inspected.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is related to confidence in the ability of the fission product barriers to perform their design functions during and following postulated accidents. The MNGP TS and USAR provide the specific limitations on the number of fuel assemblies in the spent fuel pool, fresh fuel storage vault, and the reactor core. Removing the outdated letter reference from the license condition in the ROL has no effect on these limitations or on the supporting evaluations. Accordingly, no margin of safety is affected.

The proposed changes are administrative in nature and do not involve any physical changes to plant SSCs or the manner in which SSCs are operated, maintained, modified, tested, or inspected. The proposed changes do not involve a change to any safety limits, limiting safety system settings, limiting conditions for operation, or design parameters for any SSC. The proposed changes do not impact any safety analysis assumptions and do not involve a change in initial conditions, system response times, or other parameters affecting an accident analysis.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401.

*NRC Branch Chief:* Robert D. Carlson.

**Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit 1, Washington County, Nebraska**

*Date of amendment request:* April 27, 2012.

*Description of amendment request:* The proposed amendment would revise (1) Technical Specification (TS) LCO 2.16, ''River Level,'' and (2) TS Surveillance Requirement 3.2, ''Equipment and Sampling Tests,'' and (3) TS Table 3–5, ''Minimum Frequencies for Equipment Tests.'' In addition, the amendment would revise the Fort Calhoun Station Radiological Emergency Response Plan declaration procedure as licensed in the NRC safety evaluation dated October 3, 2008, for conversion of the emergency action levels.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes would revise the river level limiting condition for operation (LCO) and surveillance requirement (SR) to the Fort Calhoun Station (FCS) Technical Specifications (TS) and the emergency plan (EP) emergency action level (EAL) entry condition. The proposed TS and EAL changes do not alter the physical design of the intake structure or any other plant structure, system or component (SSC) at FCS. As such, the change does not increase the probability of an accident.

In addition to the previous method of detecting river level (bubblers), radar sounding units that will give a more accurate indication of river level are being added for providing river level. The river level bubblers currently provide indications for EAL classifications, specifically initiating conditions (ICs) HU1 and HA1. Using the radar sounding units for river level measurements increases the reliability and accuracy of the indications for classifying these events. Also, the operators will have river level indication available in the control room.

The proposed TS changes for river level model NUREG–0212, Standard Technical Specifications for Combustion Engineering Pressurized Water Reactors, Revision 2. The proposed changes to the EAL conform to the NRC's regulatory guidance regarding the content of emergency plans as identified in NUREG–0654, Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants, and Nuclear Energy Institute (NEI) 99–01, Methodology for Development of Emergency Action Levels, Revision 5, dated February 2008.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS and EAL changes do not alter the physical design, safety limits, or safety analysis assumptions associated with the operation of the plant. Hence, the proposed changes do not introduce any new accident initiators, nor do they reduce or adversely affect the capabilities of any plant structure or system in the performance of their safety function.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed TS LCO requirements ensure there is adequate river level present to assure safe reactor operation and are necessary to ensure safety systems accomplish their safety function for design basis accident events. Adding an additional (SR) to the FCS TS for taking river level measurements on a daily frequency will not adversely impact any margin of safety. These proposed TS changes for the river level requirements model those provided in NUREG–0212, Revision 2.

The proposed EAL changes ensure there is adequate protection provided for the health and safety of the public and the employees of OPPD [Omaha Public Power District]. These proposed changes will result in classification of the ALERT level at an earlier (lower) flood level than in the original EAL.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* David A. Repka, Esq., Winston & Strawn, 1700 K Street NW., Washington, DC 20006–3817.

*NRC Branch Chief:* Michael T. Markley.

**Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia**

*Date of amendment request:* September 26, 2012.

*Description of amendment request:* The proposed amendments establish the requirements for the use of a temporary supply line (jumper) to provide service water to the component cooling heat exchangers.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The SW [Service Water] and CC [Component Cooling] Water Systems will function as designed under the unit operating constraints specified by this project (i.e., Unit 2 in operation and Unit 1 in a refueling outage), and the potential for a loss of component cooling is already addressed by Station Abnormal Procedures. Therefore, there is no increase in the probability of an accident previously evaluated. The possibility of flooding due to failure of the temporary SW supply jumper in the Turbine Building basement has been evaluated and dispositioned by the implementation of appropriate project constraints and compensatory measures to preclude damage to the temporary SW jumper and to respond to a postulated flooding event. During the time the temporary SW jumper is in service, the installed manual isolation valve in the SW jumper will be under administrative control 24 hours/day; the operator assigned to the administrative control will be directed

to close the valve and isolate the SW flow to the CCHXs [component cooling heat exchangers] to conserve Intake Canal inventory. In addition, a 24 hours/day flood watch will be established when the jumper is in service. Therefore, the consequences of an accident previously evaluated are not increased.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The SW and CC Water Systems' design functions and basic configurations are not being altered as a result of using the temporary SW jumper. The temporary jumper is designed to be safety-related and seismic with the design attributes of the normal SW supply line, except for the automatic isolation function and complete missile and heavy load drop protection. The design functions of the SW and CC Water Systems are unchanged as a result of the proposed changes due to (1) required plant conditions, (2) compensatory measures, (3) a contingency action plan for restoration of the normal SW supply if required, and (4) strict administrative control of the installed manual isolation valve to preclude flooding or to isolate non-essential SW within the design basis assumed time limits to maintain Intake Canal inventory. Unit 1 will be in a plant condition that will provide adequate time to restore the normal SW supply, if required. Therefore, since the SW and CC Water Systems will basically function as designed and will be operated in their basic configuration, the possibility of a new or different type of accident than previously evaluated in the UFSAR is not created.

3. Involve a significant reduction in a margin of safety.

The margin of safety as defined in the Technical Specifications is not significantly reduced since an operable SW flowpath to the required number of CCHXs is provided, and unit operating constraints, project constraints, compensatory measures, and contingency action plan will be implemented as required to ensure the integrity and the capability of the SW flowpath. The use of the temporary SW jumper will be limited to the time period when missile producing weather is not expected, and Unit 1 meets specified unit conditions. Therefore, the temporary SW jumper, under the imposed project constraints and compensatory measures, provides comparable reliability as the normal SW supply line. Furthermore, an evaluation using the Probabilistic Risk Assessment model was conducted for the use of the temporary SW jumper. The evaluation concluded that the increase in annual core damage and large, early release frequencies associated with the proposed License amendment Request is characterized as ''small changes'' consistent with RG [Regulatory Guide] 1.174. In addition, the incremental conditional core damage and large, early release probabilities associated with the proposed License Amendment Request are within the acceptance criteria in RG 1.177. Thus, the margin of safety is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar St., RS–2, Richmond, VA 23219.

*NRC Branch Chief:* Robert Pascarelli.

## Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov*.

### Dominion Nuclear Connecticut, Inc., Docket No. 50–423, Millstone Power Station, Unit 3, New London County, Connecticut

*Date of amendment request:* April 12, 2012.

*Description of amendment request:* The proposed amendment would permanently revise Technical Specification (TS) 6.8.4.g, ''Steam Generator (SG) Program,'' to exclude a portion of the steam generator tubes below the top of the steam generator tubesheet from periodic inspections. Inclusion of the permanent alternate repair criteria (PARC) in TS 6.8.4.g permits deletion of the previous temporary alternate repair criteria (TARC) for Cycle 15. In addition, this amendment request also revises the reporting criteria in TS 6.9.1.7, ''Steam Generator Tube Inspection Report,'' to remove reference to the previous Cycle 15 TARC, and adds reporting requirements specific to the PARC.

*Date of issuance:* December 6, 2012.

*Effective date:* As of the date of issuance, and shall be implemented within 30 days.

*Amendment No.:* 255.

*Renewed Facility Operating License No. NPF–69:* Amendment revised the License and Technical Specifications.

*Date of initial notice in **Federal Register**:* May 29, 2012 (77 FR 31658).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 6, 2012.

*No significant hazards consideration comments received:* No.

### Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

*Date of amendment request:* December 8, 2011, as supplemented by letters dated July 20 and October 26, 2012.

*Brief description of amendment:* The amendment revised Technical Specification 3.8.1, ''AC Sources—Operating,'' to include provisions for testing of the automatic transfer function from the onsite 22 kiloVolt bus to offsite power for Division III and the associated Standby Service Water Pump powered by the Division III bus.

*Date of issuance:* December 5, 2012.

*Effective date:* As of the date of issuance and shall be implemented

prior to startup from the next refueling outage, currently scheduled for early 2013.

*Amendment No.:* 176.

*Facility Operating License No. NPF–47:* The amendment revised the Facility Operating License and Technical Specifications.

*Date of initial notice in **Federal Register**:* May 1, 2012 (77 FR 25757). The supplemental letters dated July 20 and October 26, 2012, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 5, 2012.

*No significant hazards consideration comments received:* No.

**Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana**

*Date of amendment request:* June 20, 2012.

*Brief description of amendment:* The amendment revised the scope of Cyber Security Plan (CSP) Implementation Schedule Milestone #6 and paragraph 2.E of the facility operating license. The amendment modified the scope of Milestone #6 to apply to the technical cyber security controls only. The operational and management controls, as described in Nuclear Energy Institute (NEI) 08–09, Revision 6, would be implemented concurrent with the full implementation of the cyber security program (Milestone #8). Thus, all CSP activities would be fully implemented by the completion date, currently identified in Milestone #8 of the licensee's CSP implementation schedule.

*Date of issuance:* December 5, 2012.

*Effective date:* As of the date of issuance and shall be implemented by December 31, 2012.

*Amendment No.:* 177.

*Facility Operating License No. NPF–47:* The amendment revised the Facility Operating License.

*Date of initial notice in **Federal Register**:* September 11, 2012 (77 FR 55867).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 5, 2012.

*No significant hazards consideration comments received:* No.

**Entergy Nuclear Operations, Inc., Docket No. 50–247, Indian Point Nuclear Generating Unit 2, Westchester County, New York**

*Date of application for amendment:* October 18, 2011, as supplemented by letters dated April 27, and October 2, 2012.

*Brief description of amendment:* The amendment changes the Technical Specification Section 3.3.3, ''Post Accident Monitoring Instrumentation,'' Table 3.3.3–1, ''Post Accident Monitoring Instrumentation,'' to revise the existing requirement for two channels of the Containment Water Level (Containment Sump) function and two channels of the Containment Sump Water Level (Recirculation Sump) function to only require two Containment Water Level channels. This is consistent with the Standard Technical Specification NUREG–1431.

*Date of issuance:* November 28, 2012.

*Effective date:* As of the date of issuance, and shall be implemented within 30 days.

*Amendment No.:* 270.

*Facility Operating License No. DPR–26:* The amendment revised the License and the Technical Specifications.

*Date of initial notice in **Federal Register**:* December 27, 2011 (76 FR 80975). The supplements dated April 27, and October 2, 2012, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 28, 2012.

*No significant hazards consideration comments received:* No.

**Entergy Nuclear Operations, Inc., Docket Nos. 50–003, 50–247, and 50–286, Indian Point Nuclear Generating Units 1, 2, and 3, (IP1, IP2, and IP3) Westchester County, New York**

*Date of application for amendment:* June 14, 2012. A publicly available version is available at ADAMS Accession No. ML12184A050.

*Brief description of amendment:* The amendments would revise the Cyber Security Plan Implementation Schedule as approved in license amendments issued on August 2, 2011 (ADAMS Accession No. ML11152A027).

*Date of issuance:* November 28, 2012.

*Effective date:* These license amendments are effective as of the date of their issuance and shall be implemented by December 31, 2012.

*Amendment Nos.:* 56 for IP1, 269 for IP2, and 247 for IP3, respectively.

*Facility Operating License Nos. DPR–5, DPR–26, and DPR–64:* The amendment revised the Licenses.

*Date of initial notice in **Federal Register**:* September 11, 2012 (77 FR 55869).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 28, 2012.

*No significant hazards consideration comments received:* No.

**Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of application for amendment:* June 22, 2010.

*Brief description of amendment:* The amendment revised the Cyber Security Plan Implementation Schedule as approved in license amendment issued on August 19, 2011 (ADAMS Accession No. ML11152A011).

*Date of issuance:* December 12, 2012.

*Effective date:* This license amendment is effective as of the date of its issuance and shall be implemented by December 31, 2012.

*Amendment No.:* 303.

*Renewed Facility Operating License No. DPR–59:* The amendment revised the License

*Date of initial notice in **Federal Register**:* October 9, 2012 (77 FR 61437).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 12, 2012.

*No significant hazards consideration comments received:* Yes. The Safety Evaluation dated December 12, 2012, provides the discussion of the comments received from the New York State.

**Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan**

*Date of application for amendment:* June 20, 2012, as supplemented by letter dated November 28, 2012.

*Brief description of amendment:* The amendment revises the scope of the Cyber Security Plan Implementation Schedule Milestone No. 6 and the existing license condition in the renewed facility operating license.

*Date of issuance:* December 5, 2012.

*Effective date:* As of the date of issuance and shall be implemented by December 31, 2012.

*Amendment No.:* 248.

*Facility Operating License No. DPR–20:* Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* September 11, 2012 (77 FR 55869). The supplemental letter contained clarifying information and did not change the initial no significant hazards determination, and did not expand the scope of the original **Federal Register** Notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 5, 2012.

*No significant hazards consideration comments received:* No.

**Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit 1, and Docket No. 50–368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas**

*Date of amendment request:* June 18, 2012.

*Brief description of amendment:* The amendments revised the scope of the Cyber Security Plan (CSP) Implementation Schedule Milestone #6 and the physical protection license conditions in the facility operating licenses. The amendments modified the scope of Milestone #6 to apply to the technical cyber security controls only. The operational and management controls, as described in Nuclear Energy Institute (NEI) 08–09, Revision 6, would be implemented concurrent with the full implementation of the cyber security program (Milestone #8). Thus, all CSP activities would be fully implemented by the completion date, currently identified in Milestone #8 of the licensee's CSP implementation schedule.

*Date of issuance:* December 5, 2012.

*Effective date:* As of the date of issuance and shall be implemented by December 31, 2012.

*Amendment Nos.:* Unit 1—247; Unit 2—295.

*Renewed Facility Operating License No. DPR–51 (Unit 1) and NPF–6 (Unit 2):* The amendments revised the Facility Operating Licenses.

*Date of initial notice in **Federal Register**:* September 11, 2012 (77 FR 55871).

The Commission's related evaluation of the amendment is contained in a Safety *Evaluation dated December 5, 2012.*

*No significant hazards consideration comments received:* No.

**Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi**

*Date of application for amendment:* June 27, 2012.

*Brief description of amendment:* The amendment revised the scope of Cyber Security Plan (CSP) Implementation Schedule Milestone #6 and paragraph 2.E of the facility operating license. The amendment modified the scope of Milestone #6 to apply to the technical cyber security controls only. The operational and management controls, as described in Nuclear Energy Institute (NEI) 08–09, Revision 6, would be implemented concurrent with the full implementation of the cyber security program (Milestone #8). Thus, all CSP activities would be fully implemented by the completion date, currently identified in Milestone #8 of the licensee's CSP implementation schedule.

*Date of issuance:* December 5, 2012.

*Effective date:* As of the date of issuance and shall be implemented by December 31, 2012.

*Amendment No:* 192.

*Facility Operating License No. NPF–29:* The amendment revised the Facility Operating License.

*Date of initial notice in **Federal Register**:* September 11, 2012 (77 FR 55872).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 5, 2012.

*No significant hazards consideration comments received:* No.

**NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center (DAEC), Linn County, Iowa**

*Date of application for amendments:* June 13, 2012.

*Brief description of amendments:* The amendment approves a change in scope of Cyber Security Plan Implementation Milestone 6, and revise License Condition 2.C.(5), ''Physical Protection,'' of the Renewed Facility Operating License for the Duane Arnold Energy Center.

*Date of issuance:* November 28, 2012.

*Effective date:* This license amendment is effective as of the date of issuance and shall be implemented by December 31, 2012.

*Amendment No.:* 284.

*Renewed Facility Operating License No. DPR–49:* Amendment revised the Renewed Facility Operating License.

*Date of initial notice in **Federal Register**:* September 11, 2012 (77 FR 55873).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 28, 2012.

*No significant hazards consideration comments received:* No.

**PSEG Nuclear LLC, Docket Nos. 50–354, 50–272 and 50–311, Hope Creek Generating Station and Salem Nuclear Generating Station, Units 1 and 2, Salem County, New Jersey**

*Date of application for amendments:* July 26, 2012.

*Brief description of amendments:* The amendments revise the existing license condition regarding physical protection in each of the three facility operating licenses (FOLs) to approve a change to the scope of Implementation Milestone No. 6 of the Cyber Security Plan. Per the FOL revisions, Implementation Milestone No. 6 will only apply to the technical cyber security controls for the Hope Creek Generating Station and the Salem Nuclear Generating Station, Units 1 and 2. The amendments were submitted pursuant to 10 CFR 50.90, ''Application for amendment of license, construction permit, or early site permit.''

*Date of issuance:* December 10, 2012.

*Effective date:* The license amendments are effective as of the date of issuance.

*Amendment Nos.:* Hope Creak—192, Salem Unit 1—302, and Unit 2—285.

*Facility Operating License Nos. NPF–57, DPR–70 and DPR–75:* The amendments revised the FOLs.

*Date of initial notice in **Federal Register**:* September 11, 2012 (77 FR 55875).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 10, 2012.

*No significant hazards consideration comments received:* No.

**Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant (FNP), Units 1 and 2, Houston County, Alabama, and Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant (VEGP), Units 1 and 2, Burke County, Georgia**

*Date of amendment request:* January 12, 2012, as supplemented on August 15 and September 7, 2012.

*Brief description of amendment request:* The amendments revise the Technical Specifications (TSs) to extend the reactor coolant pump motor

flywheel examination frequency from a 10-year interval to an interval not to exceed 20 years. The reactor coolant pump flywheel inspection program in the TS is also revised to reflect consistency with Regulatory Guide 1.14, Revision 1.

*Date of issuance:* December 5, 2012.

*Effective date:* As of the date of issuance and shall be implemented within 90 days.

*Amendment Nos.:* FNP Unit 1—190 and Unit 2—185; VEGP Unit 1—168 and Unit 2—150.

*Facility Operating License Nos. NPF–2 and NPF–8:* The amendments changed the licenses and the TSs.

*Date of initial notice in **Federal Register**:* February 21, 2012 (77 FR 10000) for FNP and March 6, 2012 (77 FR 13373) for VEGP.

The Commission's related evaluation of the amendments is contained in a Safety *Evaluation dated December 5, 2012.*

*No significant hazards consideration comments received:* No.

**Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee**

*Date of application for amendment:* March 8, 2012 as supplemented July 18, 2012.

*Brief description of amendment:* The amendment revised (1) Technical Specification (TS) 3.3.7, ''Control Room Emergency Ventilation System (CREVS) Actuation Instrumentation,'' by changing the Allowable Value for the main control room air intake radiation monitoring instrumentation in Table 3.3.7–1 from less than or equal to (≤) 9.45E–05 micro-Curie per cubic centimeter (μCi/cc) (3,308 counts per minute (cpm)) to ≤ 1.647E–04 μCi/cc (3,308 cpm); and (2) TS 3.4.16, ''RCS Specific Activity,'' by lowering the DOSE EQUIVALENT iodine 131 spike limit from 21 micro-Curie/gram (μCi/gm) to 14 μCi/gm in Required Action A.1 and Condition C.

*Date of issuance:* December 5, 2012.

*Effective date:* As of the date of issuance and shall be implemented no later than 60 days from date of issuance.

*Amendment No.:* 91.

*Facility Operating License No. NPF–90:* Amendment revised the License and TSs.

*Date of initial notice in **Federal Register**:* May 15, 2012 (77 FR 28633). The supplement dated July 18, 2012, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 5, 2012.

*No significant hazards consideration comments received:* No.

**Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri**

*Date of application for amendment:* September 22, 2011, as supplemented by letter dated August 6, 2012.

*Brief description of amendment:* The amendment revised Required Action B.1 of Technical Specification (TS) 3.3.6, ''Containment Purge Isolation Instrumentation,'' such that a Note is added to the Required Action to conditionally allow containment mini-purge supply and exhaust valves that have been closed in accordance with the Action to be opened under administrative controls as required for certain operational needs. The proposed change is similar to allowances already in place in TS 3.6.3, ''Containment Isolation Valves,'' and TS 3.9.4, ''Containment Penetrations.''

*Date of issuance:* December 7, 2012.

*Effective date:* As of its date of issuance and shall be implemented within 90 days from the date of issuance.

*Amendment No.:* 205.

*Facility Operating License No. NPF–30:* The amendment revised the Operating License and Technical Specifications.

*Date of initial notice in **Federal Register**:* June 26, 2012 (77 FR 38097). The supplement dated August 6, 2012, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 7, 2012.

*No significant hazards consideration comments received:* No.

**Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas**

*Date of amendment request:* February 23, 2011, as supplemented by letter dated October 25, 2012.

*Brief description of amendment:* The amendment revised the Wolf Creek Generating Station Technical Specifications (TSs) 3.3.7, ''Control Room Emergency Ventilation System (CREVS) Actuation Instrumentation,'' 3.3.8, ''Emergency Exhaust System (EES) Actuation Instrumentation,'' 3.7.10, ''Control Room Emergency Ventilation System (CREVS),'' 3.7.11, ''Control Room Air Conditioning System (CRACS),'' 3.7.13, ''Emergency Exhaust System (EES),'' 3.8.2, ''AC [Alternating Current] Sources—Shutdown,'' 3.8.5, ''DC [Direct Current] Sources—Shutdown,'' 3.8.8, ''Inverters—Shutdown,'' and 3.8.10, ''Distribution Systems—Shutdown.'' Specifically, the amendment: (1) Deleted MODES 5 and 6 from the Limiting Condition for Operation (LCO) Applicability for the CREVS and its actuation instrumentation (TS 3.7.10 and TS 3.3.7, respectively); (2) deleted the Required Action from TS 3.7.10 and TS 3.7.11 that requires verifying that the OPERABLE CREVS/CRACS train is capable of being powered by an emergency power source; (3) revised TS 3.7.13 by incorporating a 7-day Completion Time for restoring an inoperable EES train to OPERABLE status during shutdown conditions; (4) adopted NRC-approved Technical Specification Task Force (TSTF) Change Traveler TSTF–36–A, Revision 4, ''Addition of LCO 3.0.3 N/A [not applicable] to shutdown electrical power specifications,'' for TSs 3.3.8, 3.7.13, 3.8.2, 3.8.5, 3.8.8, and 3.8.10; and (5) added a more restrictive change to the LCO Applicability for TSs 3.8.2, 3.8.5, 3.8.8, and 3.8.10 such that these LCOs apply not only during MODES 5 and 6, but also during the movement of irradiated fuel assemblies regardless of the MODE in which the plant is operating.

*Date of issuance:* December 5, 2012.

*Effective date:* As of its date of issuance and shall be implemented within 90 days of the date of issuance.

*Amendment No.:* 200.

*Renewed Facility Operating License No. NPF–42.* The amendment revised the Operating License and Technical Specifications.

*Date of initial notice in **Federal Register**:* August 23, 2011 (76 FR 52704). The supplemental letter dated October 25, 2012, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 5, 2012.

*No significant hazards consideration comments received:* No.

**Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas**

*Date of amendment request:* March 29, 2012.

*Brief description of amendment:* The amendment revised Technical Specification (TS) 5.5.9, ''Steam Generator (SG) Program,'' to exclude portions of the tube below the top of the steam generator tubesheet from periodic steam generator tube inspections. In addition, the proposed amendment revises TS 5.6.10, ''Steam Generator Tube Inspection Report,'' to remove reference to previous interim alternate repair criteria and provide reporting requirements specific to the permanent alternate repair criteria.

*Date of issuance:* December 11, 2012.

*Effective date:* As of the date of its issuance and shall be implemented prior to MODE 4 entry during startup from Refueling Outage 19, which is currently scheduled to commence on February 4, 2013.

*Amendment No.:* 201.

*Renewed Facility Operating License No. NPF–42.* The amendment revised the Operating License and Technical Specifications.

*Date of initial notice in **Federal Register**:* July 3, 2012 (77 FR 39525).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 11, 2012.

*No significant hazards consideration comments received:* No.

**Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas**

*Date of amendment request:* June 13, 2012.

*Brief description of amendment:* The amendment revised the scope of Cyber Security Plan (CSP) Implementation Schedule Milestone #6 and paragraph 2.E of the renewed facility operating license. The amendment modified the scope of Milestone #6 to apply to the technical cyber security controls only. The operational and management controls, as described in Nuclear Energy Institute (NEI) 08–09, Revision 6, would be implemented concurrent with the full implementation of the cyber security program (Milestone #8). Thus, all CSP activities would be fully implemented by the completion date, currently identified in Milestone #8 of the licensee's CSP implementation schedule.

*Date of issuance:* December 12, 2012.

*Effective date:* As of the date of its issuance and shall be implemented by December 31, 2012.

*Amendment No.:* 202.

*Renewed Facility Operating License No. NPF–42.* The amendment revised the Operating License.

*Date of initial notice in **Federal Register**:* October 2, 2012 (77 FR 60156).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 12, 2012.

*No significant hazards consideration comments received:* No.

**Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual notice of consideration of issuance of amendment, proposed no significant hazards consideration determination, and opportunity for a hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License or Combined License, as applicable, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852.

Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, and electronically on the Internet at the NRC's Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

All documents filed in the NRC's adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public

Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

**Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California**

*Date of application for amendments:* December 2, 2012.

*Brief description of amendments:* The amendments made a one-time change to Technical Specification (TS) 3.7.10, ''Control Room Ventilation System (CRVS),'' to modify the completion time for Required Action A.1, from 7 days to 13 days. This change will allow completion of a modification and required testing to restore the CRVS actuation relays and both CRVS trains to OPERABLE status. TS 3.7.10 Condition A Required Action A.1 was entered on November 27, 2012, at 20:38 Pacific Standard Time (PST), due to the inoperable CRVS actuation relays and the associated completion time will expire on December 4, 2012, at 20:38 PST.

*Date of issuance:* December 4, 2012.

*Effective date:* As of its date of issuance and shall be implemented prior to the expiration of the 7-day completion time, or December 4, 2012, at 20:38 PST.

*Amendment Nos.:* Unit 1—213; Unit 2—215.

*Facility Operating License Nos. DPR–80 and DPR–82:* The amendments revised the Facility Operating Licenses and Technical Specifications.

*Public comments requested as to proposed no significant hazards consideration (NSHC):* No.

The Commission's related evaluation of the amendments, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated December 4, 2012 (ADAMS Accession No. ML12338A020).

*Attorney for licensee:* Jennifer Post, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

*NRC Branch Chief:* Michael T. Markley.

Dated at Rockville, Maryland, this 14th day of December 2012.

For the Nuclear Regulatory Commission.

**Michele G. Evans,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2012–30777 Filed 12–21–12; 4:15 pm]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Advanced Boiling Water Reactor; Notice of Meeting

The ACRS Subcommittee on Advanced Boiling Water Reactor (ABWR) will hold a meeting on January 16, 2013, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is propriety pursuant to 5 U.S.C. 552(c)(4). The agenda for the subject meeting shall be as follows:

**Wednesday, January 16, 2013—1:00 p.m. until 5:00 p.m.**

The Subcommittee will review Chapter 2 of the Safety Evaluation Report associated with the Combined License Application (COLA) for South Texas Project (STP) Units 3 and 4. The Subcommittee may also review proposed resolution of ACRS Action Items associated with the STP COLA. The Subcommittee will hear presentations by and hold discussions with the applicant, Nuclear Innovation North America (NINA), the NRC staff, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Maitri Banerjee (Telephone 301–415–6973 or Email: Maitri.Banerjee@nrc.gov) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146–64147).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: December 12, 2012.

**Antonio Dias,**

*Technical Advisor, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2012–31041 Filed 12–21–12; 4:15 pm]

**BILLING CODE 7590–01–P**

## PENSION BENEFIT GUARANTY CORPORATION

### Pendency of Request for Approval of Special Withdrawal Liability Rules; the I.A.M. National Pension Fund National Pension Plan

**AGENCY:** Pension Benefit Guaranty Corporation

**ACTION:** Notice of pendency of request.

**SUMMARY:** This notice advises interested persons that the Pension Benefit Guaranty Corporation (''PBGC'') has received a request from The I.A.M. National Pension Fund National Pension Plan for approval of a plan amendment providing for special withdrawal liability rules. Under § 4203(f) of the Employee Retirement Income Security Act of 1974 and PBGC's regulation on Extension of Special Withdrawal Liability Rules, a multiemployer pension plan may, with PBGC approval, be amended to provide for special withdrawal liability rules similar to those that apply to the construction and entertainment industries. Such approval is granted only if PBGC determines that the rules apply to an industry with characteristics that make use of the special rules appropriate and that the rules will not pose a significant risk to PBGC. Before granting an approval, PBGC's regulations require PBGC to give interested persons an opportunity to comment on the request. The purpose of this notice is to advise interested persons of the request and to solicit their views on it.

**DATES:** Comments must be submitted on or before February 7, 2013.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the Web site instructions for submitting comments.
- *Email: reg.comments@pbgc.gov.*
- *Fax:* 202–326–4224.
- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

Comments received, including personal information provided, will be posted to *http://www.pbgc.gov*. Copies of comments may also be obtained by writing to Disclosure Division, Office of General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

**FOR FURTHER INFORMATION CONTACT:** Beth A. Bangert, Attorney, Office of the Chief Counsel, Suite 340, 1200 K Street NW., Washington, DC 20005–4026, 202–326–4020. (For TTY/TTD users, call the Federal relay service toll free at 1–800–877–8339 and ask to be connected to 202–326–4020.)

**SUPPLEMENTARY INFORMATION:**

### Background

Section 4203(a) of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (''ERISA''), provides that a complete withdrawal from a multiemployer plan generally occurs when an employer permanently ceases to have an obligation to contribute under the plan or permanently ceases all covered operations under the plan. Under § 4205 of ERISA, a partial withdrawal generally occurs when an employer: (1) Reduces its contribution base units by seventy percent in each of three consecutive years; or (2) permanently ceases to have an obligation under one or more but fewer than all collective bargaining agreements under which the employer has been obligated to contribute under the plan, while continuing to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required or transfers such work to another location or to an entity or entities owned or controlled by the employer; or (3) permanently ceases to have an obligation to contribute under the plan for work performed at one or more but fewer than all of its facilities, while continuing to perform work at the facility of the type for which the obligation to contribute ceased.

Although the general rules on complete and partial withdrawal identify events that normally result in a diminution of the plan's contribution base, Congress recognized that, in certain industries and under certain circumstances, a complete or partial cessation of the obligation to contribute normally does not weaken the plan's contribution base. For that reason, Congress established special withdrawal rules for the construction and entertainment industries.

For construction industry plans and employers, § 4203(b)(2) of ERISA provides that a complete withdrawal occurs only if an employer ceases to have an obligation to contribute under a plan and the employer either continues to perform previously covered work in the jurisdiction of the collective

bargaining agreement, or resumes such work within five years without renewing the obligation to contribute at the time of resumption. Section 4203(c)(1) of ERISA applies the same special definition of complete withdrawal to the entertainment industry, except that the pertinent jurisdiction is the jurisdiction of the plan rather than the jurisdiction of the collective bargaining agreement. In contrast, the general definition of complete withdrawal in § 4203(a) of ERISA defines a withdrawal to include permanent cessation of the obligation to contribute regardless of the continued activities of the withdrawn employer.

Congress also established special partial withdrawal liability rules for the construction and entertainment industries. Under § 4208(d)(1) of ERISA, ''[a]n employer to whom § 4203(b)(relating to the building and construction industry) applies is liable for a partial withdrawal only if the employer's obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required.'' Under § 4208(d)(2) of ERISA, ''[a]n employer to whom § 4203(c) (relating to the entertainment industry) applies shall have no liability for a partial withdrawal except under the conditions and to the extent prescribed by the [PBGC] by regulation.''

Section 4203(f)(1) of ERISA provides that PBGC may prescribe regulations under which plans in other industries may be amended to provide for special withdrawal liability rules similar to the rules prescribed in § 4203(b) and (c) of ERISA. Section 4203(f)(2) of ERISA provides that such regulations shall permit the use of special withdrawal liability rules only in industries (or portions thereof) in which PBGC determines that the characteristics that would make use of such rules appropriate are clearly shown, and that the use of such rules will not pose a significant risk to the insurance system under Title IV of ERISA. Section 4208(e)(3) of ERISA provides that PBGC shall prescribe by regulation a procedure by which plans may be amended to adopt special partial withdrawal liability rules upon a finding by PBGC that the adoption of such rules is consistent with the purposes of Title IV of ERISA.

PBGC's regulations on Extension of Special Withdrawal Liability Rules (29 CFR Part 4203) prescribes procedures for a multiemployer plan to ask PBGC to approve a plan amendment that establishes special complete or partial withdrawal liability rules. The regulation may be accessed on PBGC's Web site (*http://www.pbgc.gov*).

Section 4203.5(b) of the regulation requires PBGC to publish a notice of the pendency of a request for approval of special withdrawal liability rules in the **Federal Register**, and to provide interested parties with an opportunity to comment on the request.

**The Request**

PBGC received a request, dated July 9, 2010, from The I.A.M. National Pension Fund National Pension Plan (''I.A.M. Fund''), which the I.A.M. Fund subsequently amended, for approval of a plan amendment providing for special withdrawal liability rules. PBGC's summary of the actuarial reports provided by the I.A.M. Fund may be accessed on PBGC's Web site (*http://www.pbgc.gov*). A copy of the complete filing may be requested from the PBGC Disclosure Officer. The fax number is 202–326–4042. It may also be obtained by writing the Disclosure Officer, PBGC, 1200 K Street NW., Suite 11101, Washington, DC 20005.

In brief, the I.A.M. Fund is a multiemployer plan covering workers with various skill-sets including those providing services to federal and District of Columbia government agencies. The I.A.M. Fund's submission represents that the industry for which the rule is requested has characteristics similar to those of the construction industry. The I.A.M. Fund submitted an amendment prescribing special withdrawal liability rules, which, if approved by PBGC, would be retroactively effective as of January 1, 2009, to the extent permitted by ERISA § 4214(a). Under the proposed amendment, complete withdrawal of an employer would occur only: (a) Under conditions similar to those described in ERISA § 4203(b)(2) for the building and construction industry; (b) upon the employer's sale or transfer of a substantial portion of its business or assets to another entity who performs such work in the jurisdiction of the collective bargaining agreement but has no obligation to contribute to the I.A.M. Fund; or (c) when the employer ceases to have an obligation to contribute in connection with the withdrawal of every or substantially all employer(s) from the I.A.M. Fund. Partial withdrawal of an employer would occur only under conditions similar to those described in ERISA § 4208(d)(1). The request includes the actuarial data on which the I.A.M. Fund relies to support its contention that the amendment will not pose a significant risk to the insurance system under Title IV of ERISA.

Issued at Washington, DC, December 17, 2012.

**Joshua Gotbaum,**

*Director.*

[FR Doc. 2012–30934 Filed 12–21–12; 8:45 am]

BILLING CODE 7709–01–P

## POSTAL REGULATORY COMMISSION

**[Docket No. CP2013–28; Order No. 1587]**

## International Mail Contract

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recently-filed Postal Service request concerning a contingent pricing arrangement related to an international mail contract. This document invites public comments on the request and addresses several related procedural steps.

**DATES:** *Comments are due:* December 27, 2012.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Introduction
II. Notice of Filing
III. Commission Action
IV. Ordering Paragraphs

**I. Introduction**

On December 14, 2012, the Postal Service filed notice of a contingency price arrangement (Pricing Arrangement) pursuant to a provision in an expired International Business Reply Service (IBRS) competitive contract.[1] The Postal Service intends for the new prices, which apply to certain postage-prepaid items returned from overseas locations to a U.S.-based entity, to begin

[1] Notice of United States Postal Service of Prices Under Functionally Equivalent International Business Reply Service Competitive Contract 1 Negotiated Service Agreement, December 14, 2012 (Notice). The Notice was filed pursuant to 39 CFR 3015.5. Notice at 1.

January 1, 2013 and to continue indefinitely. *Id.* Attachment 1 at 1.

The Postal Service requests that the Commission include the Pricing Arrangement within the IBRS Competitive Contract 1 product on the competitive products list based on its functional equivalence to IBRS contracts in Docket Nos. CP2009–20 and CP2009–22. *Id.* at 4.

**II. Contents of Filing**

The filing includes a Notice and the following attachments:

- Attachment 1—a redacted copy of the Postal Service's notice to the customer concerning the intended application of contingency prices;
- Attachment 2—a redacted copy of the certification under 39 CFR 3015.5(c)(2);
- Attachment 3—a redacted copy of Governors' Decision No. 08–24; and
- Attachment 4—an application for non-public treatment of material filed under seal.

The Postal Service also provided a redacted copy of the Pricing Arrangement and supporting financial documentation as a public Excel file. *Id.* at 5.

*Product history.* The Commission added International Business Reply Service Contract 1 to the competitive product list in Order No. 178, following consideration in two baseline cases.[2] The controlling Governors' Decision is No. 08–24. *Id.* at 1–2.

IBRS competitive contracts are for U.S.-based entities that seek a channel for returned merchandise or other articles from their overseas customers. These entities typically supply preprinted, prepaid IBRS packaging in which overseas customers can place used or defective consumer items and enter them into the mailstream at no direct cost. *Id.* at 1. The Postal Service's contracting partner is the recipient of IBRS items, not the sender, and therefore has no control over the contingency that IBRS items might be tendered after expiration of the contract. *Id.* at 2. Given that costs are incurred in accepting and delivering these items, the Postal Service and its IBRS contracting partners have agreed to let the Postal Service set prices to cover costs and potentially incentivize customers to enter into new arrangements. *Id.*

*Instant docket.* The contract that triggered the prices in the Pricing Arrangement was executed before the Commission's current rules for competitive and market dominant products took effect. *Id.* That contract expired March 31, 2008 and no successor contract was executed. The Postal Service asserts that the prices in the Pricing Arrangement occur under a surviving contractual term. *Id.* It expects the prices to apply to an extremely small number of postal items due to the mailer's profile and the passage of time since expiration of the contract. *Id.* at 4.

*Related dockets.* The Postal Service states that it has filed three previous notices of changes in contingency prices under the underlying expired contract (covering calendar years 2010, 2011 and 2012), and that the Commission has added each pricing arrangement to the competitive product list under the IBRS Competitive Contract 1 product based on functional equivalence. *Id.* at 3–4. The Postal Service addresses several points about the status of the underlying contract under Commission rules, and concludes that filing materials under 39 CFR 3015.5, as it has done here, resolves any inconsistency. *Id.* at 4.

*Functional equivalency.* The Postal Service asserts that the Pricing Arrangement is essentially identical to those envisioned in the contracts the Commission included in the IBRS Competitive Contract 1 product in Docket Nos. CP2009–20 and CP2009–22, with minor procedural variations due to different negotiation outcomes. *Id.* at 5–6. It asserts that the nature of the service provided in all three contracts is essentially the same. *Id.* at 6. The Postal Service also incorporates by reference its position on functional equivalence in Docket No. CP2009–22. *Id.* at 6.

**III. Commission Action**

The Commission establishes Docket No. CP2013–28 for consideration of matters raised in the Notice. The Commission invites comments on whether the Pricing Arrangement is consistent with the requirements of 39 CFR 3015.5 and the policies of 39 U.S.C. 3632 and 3633. The Commission also invites comments on the Postal Service's intention to have the new contingency prices apply indefinitely. Comments are due no later than December 27, 2012. The public portions of the Postal Service's filing can be accessed via the Commission's Web site at *http://www.prc.gov*. Information on how to obtain access to nonpublic material appears at 39 CFR 3007.40.

The Commission appoints James F. Callow to represent the interest of the general public (Public Representative) in this case.

**IV. Ordering Paragraphs**

*It is ordered:*

1. The Commission establishes Docket No. CP2013–28 to consider matters raised by the Postal Service's Notice.
2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public.
3. Comments by interested persons in this proceeding are due no later than December 27, 2012.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2012–30942 Filed 12–21–12; 8:45 am]

BILLING CODE 7710–FW–P

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2013–21 and CP2013–29; Order No. 1583]**

## New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recently-filed Postal Service request to add First-Class Package Service Contract 31 to the competitive product list, along with a related contract. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* December 27, 2012.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

**I. Introduction**

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add First-Class Package Service Contract 31 to the competitive product list.[1] The

[2] *See* Docket Nos. M2009–14 and CP2009–20.

[1] Request of the United States Postal Service to Add First-Class Package Service Contract 31 to

Postal Service asserts that First-Class Package Service Contract 31 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2013–21.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2013–29.

*Request.* To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

*Related contract.* The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on the day that the Commission issues all regulatory approvals. *Id.* at 2. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and related financial information, should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

## II. Notice of Filings

The Commission establishes Docket Nos. MC2013–21 and CP2013–29 to consider the Request pertaining to the proposed First-Class Package Service Contract 31 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than December 27, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Pamela A. Thompson to serve as Public Representative in these dockets.

## III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2013–21 and CP2013–29 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Pamela A. Thompson is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than December 27, 2012.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2012–30858 Filed 12–21–12; 8:45 am]

BILLING CODE 7710–FW–P

Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 17, 2012 (Request).

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2013–23 and CP2013–31; Order No. 1585]**

## New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recently-filed Postal Service request to add First-Class Package Service Contract 33 to the competitive product list, along with a related contract. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* December 27, 2012.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

## I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add First-Class Package Service Contract 33 to the competitive product list.[1] The Postal Service asserts that First-Class Package Service Contract 33 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2013–23.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2013–31.

*Request.* To support its Request, the Postal Service filed six attachments as follows:

[1] Request of the United States Postal Service to Add First-Class Package Service Contract 33 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 17, 2012 (Request).

• Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;

• Attachment B—a redacted copy of the contract;

• Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;

• Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;

• Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and

• Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

*Related contract.* The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on the day that the Commission issues all regulatory approvals. *Id.* at 2. The contract will expire on January 27, 2013. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and related financial information, should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

## II. Notice of Filings

The Commission establishes Docket Nos. MC2013–23 and CP2013–31 to consider the Request pertaining to the proposed First-Class Package Service Contract 33 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than December 27, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Claude B. Lawrence to serve as Public Representative in these dockets.

## III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2013–23 and CP2013–31 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Claude B. Lawrence is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than December 27, 2012.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2012–30874 Filed 12–21–12; 8:45 am]

**BILLING CODE 7710–FW–P**

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## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2013–22 and CP2013–30; Order No. 1584]**

## New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recently-filed Postal Service request to add First-Class Package Service Contract 32 to the competitive product list, along with a related contract. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* December 27, 2012.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

## I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add First-Class Package Service Contract 32 to the competitive product list.[1] The Postal Service asserts that First-Class Package Service Contract 32 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2013–22.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2013–30.

*Request.* To support its Request, the Postal Service filed six attachments as follows:

• Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;

• Attachment B—a redacted copy of the contract;

• Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;

• Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;

• Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and

• Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at

[1] Request of the United States Postal Service to Add First-Class Package Service Contract 32 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 17, 2012 (Request).

1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

*Related contract.* The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on the day that the Commission issues all regulatory approvals. *Id.* at 2. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and related financial information, should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

## II. Notice of Filings

The Commission establishes Docket Nos. MC2013–22 and CP2013–30 to consider the Request pertaining to the proposed First-Class Package Service Contract 32 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than December 27, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Pamela A. Thompson to serve as Public Representative in these dockets.

## III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2013–22 and CP2013–30 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Pamela A. Thompson is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than December 27, 2012.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2012–30859 Filed 12–21–12; 8:45 am]

BILLING CODE 7710–FW–P

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## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2013–24 and CP2013–32; Order No. 1586]**

## New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recently-filed Postal Service request to add First-Class Package Service Contract 34 to the competitive product list, along with a related contract. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* December 27, 2012.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

## I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add First-Class Package Service Contract 34 to the competitive product list.[1] The Postal Service asserts that First-Class Package Service Contract 34 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2013–24.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2013–32.

*Request.* To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

*Related contract.* The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on the day that the Commission issues all regulatory approvals. *Id.* at 2. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and

[1] Request of the United States Postal Service to Add First-Class Package Service Contract 34 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 17, 2012 (Request).

related financial information, should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

**II. Notice of Filings**

The Commission establishes Docket Nos. MC2013–24 and CP2013–32 to consider the Request pertaining to the proposed First-Class Package Service Contract 34 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than December 27, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Claude B. Lawrence to serve as Public Representative in these dockets.

**III. Ordering Paragraphs**

*It is ordered:*

1. The Commission establishes Docket Nos. MC2013–24 and CP2013–32 to consider the matters raised in each docket.
2. Pursuant to 39 U.S.C. 505, Claude B. Lawrence is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
3. Comments by interested persons in these proceedings are due no later than December 27, 2012.
4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2012–30875 Filed 12–21–12; 8:45 am]

BILLING CODE 7710–FW–P

## POSTAL SERVICE

### Board of Governors; Sunshine Act Meeting

**DATES AND TIMES:** January 7, 2013 at 4:00 p.m., and January 8, 2013, at 8:45 a.m.

**PLACE:** Phoenix, Arizona.

**STATUS:** Closed.

**Matters To Be Considered**

*Monday, January 7, 2013 at 4:00 p.m.*

1. Strategic Issues.

*Tuesday, January 8, 2013 at 8:45 a.m.*

1. Strategic Issues continued.
2. Financial Matters.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

**CONTACT PERSON FOR MORE INFORMATION:** Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

**Julie S. Moore,**

*Secretary.*

[FR Doc. 2012–31090 Filed 12–20–12; 4:15 pm]

BILLING CODE 7710–12–P

## POSTAL SERVICE

### Product Change—First-Class Package Service Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* December 24, 2012.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 17, 2012, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 33 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2013–23, CP2013–31.

**Stanley F. Mires,**

*Attorney, Legal Policy & Legislative Advice.*

[FR Doc. 2012–30883 Filed 12–21–12; 8:45 am]

BILLING CODE 7710–12–P

## POSTAL SERVICE

### Product Change—First-Class Package Service Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* December 24, 2012.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 17, 2012, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 32 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2013–22, CP2013–30.

**Stanley F. Mires,**

*Attorney, Legal Policy & Legislative Advice.*

[FR Doc. 2012–30869 Filed 12–21–12; 8:45 am]

BILLING CODE 7710–12–P

## POSTAL SERVICE

### Product Change—First-Class Package Service Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* December 24, 2012.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 17, 2012, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 34 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2013–24, CP2013–32.

**Stanley F. Mires,**

*Attorney, Legal Policy & Legislative Advice.*

[FR Doc. 2012–30880 Filed 12–21–12; 8:45 am]

BILLING CODE 7710–12–P

## POSTAL SERVICE

### Product Change—First-Class Package Service Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* December 24, 2012.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 17, 2012, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 34 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2013–24, CP2013–32.

**Stanley F. Mires,**

*Attorney, Legal Policy & Legislative Advice.*

[FR Doc. 2012–30880 Filed 12–21–12; 8:45 am]

BILLING CODE 7710–12–P

## RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

### Agency Information Collection Activities: Renewal of Currently Approved Collection; Comment Request

**AGENCY:** Recovery Accountability and Transparency Board.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Recovery Accountability and Transparency Board (Board) invites comments on the proposed renewal of a currently approved information collection request (ICR) as required by the Paperwork Reduction Act of 1995 (PRA).

**DATES:** Interested persons are invited to submit comments on or before February 22, 2013.

**ADDRESSES:** Send comments to Atticus Reaser, Office of General Counsel, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue NW, Suite 700, Washington, DC 20006. Alternatively, you can email comments to *comments@ratb.gov.* Please be sure to identify the title of the collection in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Atticus Reaser, General Counsel, 202–254–7900.

**SUPPLEMENTARY INFORMATION:** The PRA and its implementing regulations, 5 CFR part 1320, require federal agencies to provide 60 days notice to the public for comment on information collection activities—including renewals of currently approved ICRs—before seeking approval of such activities by the Office of Management and Budget (OMB). Accordingly, the Board invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the information collection activities are necessary for the Board to properly execute its functions; (ii) the accuracy of the Board's estimates of the burden of the information collection activities; (iii) ways for the Board to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for the Board to minimize the burden of information collection activities on the public.

The Board is planning to submit the following currently approved ICR to OMB for review and approval of renewal under the PRA:

*Title of Collection:* FederalReporting.gov Recipient Registration System.

*ICR Reference No.:* 200912–0430–001.

*OMB Control No.:* 043–0002.

*ICR Status:* The approval for this ICR is scheduled to expire on 2/28/2013.

*Description:* Section 1512 of the American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 115 (2009) (Recovery Act), requires recipients of Recovery Act funds to report on the use of those funds. These reports are submitted to FederalReporting.gov, and certain information from these reports is then posted to the publically available Web site Recovery.gov.

The FederalReporting.gov Recipient Registration System (FRRS) was developed to protect the Board and FederalReporting.gov users from individuals seeking to gain unauthorized access to user accounts on FederalReporting.gov. FRRS is used for the purpose of verifying the identity of the user; allowing users to establish an account on FederalReporting.gov; providing users access to their FederalReporting.gov account for reporting data; allowing users to customize, update, or terminate their accounts with FederalReporting.gov; and renewing or revoking a user's account on FederalReporting.gov, thereby protecting FederalReporting.gov and FederalReporting.gov users from potential harm caused by individuals with malicious intentions gaining unauthorized access to the system.

To assist in this goal, FRRS will collect a registrant's name, email address, telephone number and extension, three security questions and answers, and, by way of a DUNS number, organization information. The person registering for FederalReporting.gov will generate a self-assigned password that will be stored on the FRRS, but will only be accessible to the registering individual.

*Affected Public:* Private sector, and state, local, and tribal governments.

*Total Estimated Number of Respondents:* 1000.

*Frequency of Responses:* Once.

*Total Estimated Annual Burden Hours:* 83.

Dated: December 19, 2012.

**Atticus Reaser,**

*General Counsel.*

[FR Doc. 2012–30952 Filed 12–21–12; 8:45 am]

BILLING CODE 6820–GA–P

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Form N–MFP, OMB Control No. 3235–0657, SEC File No. 270–604.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 30(b) of the Investment Company Act of 1940 [15 U.S.C. 80a-30(b)] (''Act'') provides that ''[e]very registered investment company shall file with the Commission…such information, documents, and reports (other than financial statements), as the Commission may require to keep reasonably current the information and documents contained in the registration statement of such company….'' Rule 30b1–7 under the Act [17 CFR 270.30b1–7], entitled ''Monthly Report for Money Market Funds,'' provides that every registered investment company, or series thereof, that is regulated as a money market fund under rule 2a-7 [17

CFR 270.2a-7] must file with the Commission a monthly report of portfolio holdings on Form N–MFP [17 CFR 274.201] no later than the fifth business day of each month. Form N–MFP sets forth the specific disclosure items that money market funds must provide. The report must be filed electronically using the Commission's electronic filing system (''EDGAR'') in eXtensible Markup Language (''XML'') format.

Certain provisions of the rule and form contain ''collection of information'' requirements. We estimate that 684 money market funds are required by rule 30b1–7 to file, on a monthly basis, a complete report on Form N–MFP disclosing certain information regarding the fund and its portfolio holdings. We further estimate that an additional ten new money market funds will file reports on Form N–MFP each year. For purposes of this Paperwork Reduction Act analysis, the burden associated with the requirements of rule 30b1–7 is included in the collection of information requirements of Form N–MFP, rather than the rule. Based on conversations with industry participants, we estimate that money market funds prepare and file their reports on Form N–MFP by either (1) licensing a software solution and preparing and filing the report in house, or (2) retaining a service provider to provide data aggregation and validation services as part of the preparation and filing of reports on Form N–MFP on behalf of the fund.

We estimate that 35% of money market funds (239 funds) license a software solution and file reports on Form N–MFP in house; we further estimate that each fund that files reports on Form N–MFP in house requires an average of approximately 42 burden hours to compile (including review of the information), tag, and electronically file the Form N–MFP for the first time and an average of approximately 8 burden hours for subsequent filings. Therefore, we estimate the per fund average annual hour burden is 96 hours for existing funds and 130 hours for new money market funds. Based on an estimate of 239 existing fund filers and 4 new fund filers each year, we estimate that filing reports on Form N–MFP in house takes 23,464 hours per year.

We estimate that 65% of money market funds (445 funds) retain the services of a third party to provide data aggregation and validation services as part of the preparation and filing of reports on Form N–MFP on the fund's behalf; we further estimate that each fund requires an average of approximately 21 burden hours to compile and review the information with the service provider prior to electronically filing the report for the first time and an average of approximately 4 burden hours for subsequent filings. Therefore, we estimate the per fund average annual hour burden is 48 hours for existing funds and 65 hours for new money market funds. Based on an estimate of 445 existing fund filers and 6 new fund filers each year, we estimate that filing reports on Form N–MFP using a service provider takes 21,750 hours per year. In sum, we estimate that filing reports on Form N–MFP imposes a total annual hour burden of 45,214 on all money market funds.

In addition to the costs associated with the hours burdens discussed above, money market funds incur other external costs. Based on discussions with industry participants, we estimate that money market funds that file reports on Form N–MFP in house license a third-party software solution to assist in filing their reports at an average cost of $3,360 per fund per year. In addition, we estimate that money market funds that use a service provider to prepare and file reports on Form N–MFP pay an average fee of $8,000 per fund per year. In sum, we estimate that all money market funds incur on average, in the aggregate, external annual costs of $4,424,480.[1] This estimate is based on the following calculation: (243 money market funds (239 existing funds + 4 new funds) that file reports on Form N–MFP in house x $3,360 per fund, per year) + (451 money market funds (445 existing funds + 6 new funds) that file reports on Form N–MFP using a service provider x $8,000 per fund, per year) = $4,424,480.

The public may view the background documentation for this information collection at the following Web site: *http://www.reginfo.gov*. Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an email to Shagufta Ahmed at Shagufta_Ahmed@omb.eop.gov; and (ii) Thomas Bayer, Director/CIO, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 18, 2012.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–31022 Filed 12–21–12; 4:15 pm]

**BILLING CODE 8011–01–**

[1] The estimate of burden hours and costs are made solely for the purposes of the Paperwork Reduction Act. The estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. The collection of information under Form N–MFP is mandatory. The information provided by the form is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

## SECURITIES AND EXCHANGE COMMISSION

**[OMB Control No. 3235–0586, SEC File No. 270–522]**

## Submission for OMB Review; Comment Request

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:* Rule 38a–1.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 38a–1 (17 CFR 270.38a–1) under the Investment Company Act of 1940 (15 U.S.C. 80a) (''Investment Company Act'') is intended to protect investors by fostering better fund compliance with securities laws. The rule requires every registered investment company and business development company (''fund'') to: (i) Adopt and implement written policies and procedures reasonably designed to prevent violations of the federal securities laws by the fund, including procedures for oversight of compliance by each investment adviser, principal underwriter, administrator, and transfer agent of the fund; (ii) obtain the fund board of directors' approval of those policies and procedures; (iii) annually review the adequacy of those policies and procedures and the policies and procedures of each investment adviser, principal underwriter, administrator, and transfer agent of the fund, and the effectiveness of their implementation; (iv) designate a chief compliance officer to administer the fund's policies and procedures and prepare an annual report to the board that addresses certain specified items relating to the policies and procedures; and (v)

maintain for five years the compliance policies and procedures and the chief compliance officer's annual report to the board.

The rule contains certain information collection requirements that are designed to ensure that funds establish and maintain comprehensive, written internal compliance programs. The information collections also assist the Commission's examination staff in assessing the adequacy of funds' compliance programs.

While Rule 38a–1 requires each fund to maintain written policies and procedures, most funds are located within a fund complex. The experience of the Commission's examination and oversight staff suggests that each fund in a complex is able to draw extensively from the fund complex's ''master'' compliance program to assemble appropriate compliance policies and procedures. Many fund complexes already have written policies and procedures documenting their compliance programs. Further, a fund needing to develop or revise policies and procedures on one or more topics in order to achieve a comprehensive compliance program can draw on a number of outlines and model programs available from a variety of industry representatives, commentators, and organizations.

There are approximately 4,237 funds subject to Rule 38a–1. Among these funds, 146 were newly registered in the past year. These 146 funds, therefore, were required to adopt and document the policies and procedures that make up their compliance programs. Commission staff estimates that the average annual hour burden for a fund to adopt and document these policies and procedures is 105 hours. Thus, we estimate that the aggregate annual burden hours associated with the adoption and documentation requirement is 15,330 hours.

In 2010, Commission staff began to estimate the hour burden associated with money market funds' adoption of certain policies and procedures aimed at ensuring that these funds meet reasonably foreseeable shareholder redemptions (the ''general liquidity requirement''). Commission staff estimates that each newly-registered money market fund will incur a one-time additional average burden of 9 hours to document and adopt policies and procedures that will assist in complying with the general liquidity requirement. Approximately 10 money market funds were newly registered in the past year. Thus, we estimate that the additional aggregate annual burden hours associated with general liquidity requirement policies and procedures is 90 hours.

All funds are required to conduct an annual review of the adequacy of their existing policies and procedures and the policies and procedures of each investment adviser, principal underwriter, administrator, and transfer agent of the fund, and the effectiveness of their implementation. In addition, each fund chief compliance officer is required to prepare an annual report that addresses the operation of the policies and procedures of the fund and the policies and procedures of each investment adviser, principal underwriter, administrator, and transfer agent of the fund, any material changes made to those policies and procedures since the date of the last report, any material changes to the policies and procedures recommended as a result of the annual review, and certain compliance matters that occurred since the date of the last report. The staff estimates that each fund spends 49 hours per year, on average, conducting the annual review and preparing the annual report to the board of directors. Thus, we estimate that the annual aggregate burden hours associated with the annual review and annual report requirement is 207,613 hours.

Finally, the staff estimates that each fund spends 6 hours annually, on average, maintaining the records required by proposed Rule 38a–1. Thus, the annual aggregate burden hours associated with the recordkeeping requirement is 25,422 hours.

In total, the staff estimates that the aggregate annual information collection burden of Rule 38a–1 is 248,455 hours. The estimate of burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with this collection of information requirement is mandatory. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site: *http://www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 18, 2012.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–30892 Filed 12–21–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 30306; File No. 812–13874]**

## Yorkville ETF Trust and Yorkville ETF Advisors, LLC; Notice of Application

December 17, 2012.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an Application for an Order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

**SUMMARY:** *Summary of Application:* Applicants request an Order that would permit (a) series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Creation Units for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.[1]

*Applicants:* Yorkville ETF Trust (the ''Trust'') and Yorkville ETF Advisers (the ''Adviser'').

[1] Capitalized terms not otherwise defined in this notice have the same meaning ascribed to them in the Application.

**DATES:** *Filing Dates:* The Application was filed on February 28, 2011, and amended on July 20, 2011, September 19, 2011, May 11, 2012, October 11, 2012, and December 14, 2012.

*Hearing or Notification of Hearing:* An Order granting the Application will be issued unless the Commission Orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 11, 2013, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: Darren Schuringa, Yorkville ETF Advisors, LLC, 950 Third Avenue, 23rd Floor, New York, NY 10022.

**FOR FURTHER INFORMATION CONTACT:** Courtney S. Thornton, Senior Counsel at (202) 551–6812, or David P. Bartels, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete Application may be obtained via the Commission's Web site by searching for the file number, or for an Applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

## Applicants' Representations

1. The Trust is a Delaware statutory trust and will be registered with the Commission as an open-end management investment company. The Trust initially will be comprised of a single series, Yorkville PTP ETF (''Initial Fund''), which will hold some or all of the component securities (''Component Securities'') of an index, Solactive PTP Index (''Initial Underlying Index'').[2]

2. Applicants request that the Order apply to the Initial Fund and any future series of the Trust and future open-end management investment companies or series thereof advised by the Adviser or an entity controlling, controlled by, or under common control with the Adviser that comply with the terms and conditions of the Application (each such company or series, a ''Future Fund'' and together with the Initial Fund, the ''Funds''). In addition, applicants request that any exemption under Section 12(d)(1)(J) from Sections 12(d)(1)(A) and (B) apply to: (a) Each Fund that is currently or subsequently part of the same ''group of investment companies'' as the Trust within the meaning of Section 12(d)(1)(G)(ii) of the Act, as well as any principal underwriter for the Funds and any broker or dealer registered under the Securities Exchange Act of 1934 (''Broker'') selling Shares of a Fund to Funds of Funds; and (b) each Fund of Funds that enters into a participation agreement (''FOF Participation Agreement'') with a Fund.[3]

3. Each Fund will hold certain equity or fixed income securities (''Portfolio Securities'') and financial instruments selected to correspond before fees and expenses generally to the performance of a specified securities index (''Underlying Index''). Each Fund will offer separate investment portfolios comprised primarily of equity securities (''Equity Funds'') or fixed income securities (or a combination of equity and fixed income securities) (''Fixed Income Funds''). Certain of the Funds may seek to track Underlying Indices comprised of foreign and domestic equity and/or fixed income securities and/or solely foreign equity and/or fixed income securities (''Foreign Funds''). The Funds may also invest in ''Depositary Receipts'' representing foreign securities.[4] A Fund will not invest in any Depositary Receipts that the Adviser or Sub-Adviser deems to be illiquid or for which pricing information is not readily available.

4. The Adviser will be the investment adviser to the Initial Fund. The Adviser is a Delaware limited liability company and is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). The Adviser may in the future enter into sub-advisory agreements with one or more additional investment advisers to act as sub-advisers (each, a ''Sub-Adviser'') for the Funds. Any Sub-Adviser will be registered under the Advisers Act.

5. The Trust will enter into a distribution agreement with one or more distributors. Each distributor will be a Broker and will act as distributor and principal underwriter of one or more of the Funds (''Distributor''). No Distributor will be affiliated with any Exchange. The Distributor of any Fund may be an affiliated person of that Fund's Adviser and/or Sub-Advisers, or an affiliated person of that affiliated person (''Second-Tier Affiliate'').

6. No entity that creates, compiles, sponsors or maintains an Underlying Index (''Index Provider'') is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or a Second-Tier Affiliate, of the Trust or a Fund, a promoter of a Fund, the Adviser, any Sub-Adviser, or a Distributor.

7. The investment objective of each Fund will be to provide investment results that correspond, before fees and expenses, generally to the performance of its Underlying Index.[5] Each Fund will sell and redeem Creation Units only on a ''Business Day,'' which is defined as any day that the NYSE is open for business and includes any day that a Fund is required to be open under section 22(e) of the Act. A Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund using a replication strategy will invest in the Component Securities in its Underlying Index in the same approximate proportions as in the Underlying Index. A Fund using a representative sampling strategy will hold some, but not necessarily all of the Component

[2] The Initial Underlying Index will be a domestic rules based index designed to give investors a means of tracking the performance of U.S. Publicly Traded Partnerships of which approximately 80%, as measured by market capitalization, are Master Limited Partnerships. The compiler of the Initial Underlying Index is not an affiliated person or a Second-Tier Affiliate (as defined below) of the Trust or a Fund, of the Adviser, of any Sub-Adviser (as defined below) to or promoter of a Fund, or of the Distributor (as defined below).

[3] In no case will a Fund that invests in other open- and/or closed-end investment companies and/or ETFs as a ''fund of funds'' rely on the exemption from Section 12(d)(1).

[4] Depositary Receipts are typically issued by a financial institution, a ''Depository'', and evidence ownership in a security or pool of securities that have been deposited with the Depository. No affiliated persons of applicants or any Sub-Adviser will serve as the Depository for any Depository Receipts held by a Fund.

[5] Applicants represent that each Fund will invest at least 80% of its total assets in Component Securities. In the case of Foreign Funds, each Fund will invest at least 80% of its total assets in Component Securities and Depositary Receipts representing such Component Securities (or, where Depositary Receipts are themselves Component Securities of an Underlying Index, the securities underlying such Depositary Receipts). In the case of certain Fixed Income Funds, each Fund will invest at least 80% of its total assets in Component Securities and TBA Transactions representing Component Securities. Each Fund also may invest up to 20% of its total assets in futures contracts, options on future contracts, options, swaps, cash, cash equivalents and securities that are not Component Securities but which the Adviser or Sub-Adviser believes will assist the Fund in tracking the performance of its Underlying Index.

Securities of its Underlying Index.[6] Applicants state that, if a representative sampling strategy is used, a Fund will not be expected to track the performance of its Underlying Index with the same degree of accuracy as would a Fund that invests in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that each Fund will have a tracking error relative to the performance of its Underlying Index of no more than 5 percent.

8. Applicants state that Creation Units are expected to consist of between 25,000 and 100,000 Shares and will have an initial price in the range of $1,000,000 to $10,000,000. All Orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into an agreement with the Distributor (''Authorized Participant''). The Distributor will be responsible for transmitting the Orders to the Funds. An Authorized Participant must be either: (i) A Broker or other participant in the Continuous Net Settlement system of the NSCC, a clearing agency registered with the Commission, or (ii) a participant in the Depository Trust Company (''DTC'', and such participant, ''DTC Participant''). The Distributor also will be responsible for delivering the Fund's prospectus to those persons acquiring Shares in Creation Units and for furnishing Order confirmations to those placing Orders. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

9. Shares generally will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemptions will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[7] On any given Business Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and Redemption Instruments will correspond *pro rata* to the positions in the Fund's portfolio (including cash positions),[8] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;[9] (c) TBA Transactions, short positions, derivatives and other positions that cannot be transferred in kind[10] will be excluded from the Deposit Instruments and Redemption Instruments;[11] (d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio;[12] or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a ''Rebalancing'').

10. If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Deposit Instruments or Redemption Instruments exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (''Cash Amount'').

11. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount, as described above; (b) if, on a given Business Day, the Fund announces before the open of trading that all purchases, all redemptions, or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption Order from an Authorized Participant (as defined below), the Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; (d) if, on a given Business Day, the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or the DTC; or (ii) in the case of Foreign Funds, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if the Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[13]

12. Each Business Day, before the open of trading on the national securities exchange (as defined in section 2(a)(26) of the Act) (''Exchange'') on which the Shares are listed, the Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and Redemption Instruments, as well as the estimated Cash Amount (if any) for that day. The Exchange will disseminate every 15 seconds throughout the trading day through the facilities of the Consolidated Tape Association an amount representing, on a per Share basis, the sum of the current value of the Deposit Instruments and any estimated Cash Amount. The list of Deposit Instruments and Redemption Instruments will apply until a new list is announced on the following Business Day, and there will be no intra-day

[6] Securities are selected for inclusion in a Fund following a representative sampling strategy to have aggregate investment characteristics, fundamental characteristics, and liquidity measures similar to those of the Fund's Underlying Index taken in its entirety.

[7] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act. In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

[8] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for that Business Day.

[9] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[10] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the fund does not intend to seek such consents.

[11] Because these instruments will be excluded from the Deposit Instruments and Redemption Instruments, their value will be reflected in the determination of the Cash Amount (as defined below).

[12] A Fund may only use sampling for this purpose if the sample: (i) Is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (ii) consists entirely of instruments that are already included in the Fund's portfolio; and (iii) is the same for all Authorized Participants on a given Business Day.

[13] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

changes to the list except to correct errors in the published list.

13. An investor acquiring or redeeming a Creation Unit from a Fund will be charged a fee (''Transaction Fee'') to prevent the dilution of the interests of the remaining shareholders resulting from costs in connection with the purchase or redemption of Creation Units.[14] Variations in the Transaction Fees may be imposed from time to time in accordance with rule 22d–1 under the Act. Transaction Fees will be limited to amounts that have determined by the Fund to be appropriate and will take into account operational processing costs associated with the recent Deposit Instruments and Redemption Instruments of the Fund. In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities.

14. Purchasers of Shares in Creation Units may hold the Shares or may sell the Shares into the secondary market. Shares will be listed and traded on an Exchange. It is expected that one or more Exchange market makers (''Market Makers'') will maintain a market for Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/offer market. Shares sold in the secondary market will be subject to customary brokerage commissions and charges.

15. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers also may purchase Creation Units for use in market-making activities.[15] Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors. Applicants expect that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option to continually purchase or redeem Creation Units at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

16. Beneficial Owners of Shares may sell their Shares in the secondary market but must accumulate enough Shares to constitute a whole Creation Unit in Order to redeem through the applicable Fund. Redemption Orders must be placed by or through an Authorized Participant. An entity redeeming Shares in Creation Unit aggregations ''outside'' the ETF Clearing Process may be required to pay a higher Transaction Fee than would have been charged had the redemption been effected through the ETF Clearing Process. In addition, an entity redeeming Shares that receives cash in lieu of one or more Redemption Instruments may be assessed a higher Transaction Fee on the ''cash in lieu'' portion to cover the costs of selling such Redemption Instruments.

17. Applicants state that they will take such steps as may be necessary to avoid confusion in the public's mind between the Funds and a traditional ''open-end investment company'' or ''mutual fund.'' Neither the Trust nor any Fund will be advertised, marketed or otherwise held out as a traditional open-end investment company or a mutual fund. Instead, each Fund will be marketed as an ''ETF.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Units or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may purchase or redeem Shares from the Fund in Creation Units only. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to Beneficial Owners.

**Applicants' Legal Analysis**

1. Applicants request an Order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

*Sections 5(a)(1) and 2(a)(32) of the Act*

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, Applicants request an Order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants state that listing on an Exchange will afford all holders of shares the benefit of intra-day liquidity. Applicants believe that because Creation Units may always be purchased and redeemed at NAV (less certain transactional expenses), the price of Creation Units on the secondary market and the price of the individual Shares of a Creation, taken together, should not vary substantially from the NAV of a Creation Unit.

*Section 22(d) of the Act and Rule 22c–1 under the Act*

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on

[14] Where a Fund permits a purchaser to substitute cash in lieu of depositing a portion of the requisite Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Instruments.

[15] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC Participants will maintain records reflecting Beneficial Owners of Shares.

NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve a Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third party market forces, such as supply and demand. Therefore, Applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, Applicants contend that the proposed distribution system will be orderly because competitive forces will ensure that the difference between the market price of Shares and their NAV remains narrow.

*Section 22(e)*

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that the settlement of redemptions of Creation Units of the Foreign Funds is contingent not only on the settlement cycle of the U.S. securities markets, but also on the delivery cycles present in international markets in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Redemption Instruments to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 14 calendar days. Applicants therefore request relief from section 22(e) in Order to provide for payment or satisfaction of redemptions within a longer number of calendar days as required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Securities of each Foreign Fund customarily clear and settle, but in all cases no later than 14 calendar days following the tender of a Creation Unit.[16]

8. Applicants submit that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within 14 calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state that a Foreign Fund's statement of additional information will disclose those local holidays, if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days, and the maximum number of days, up to 14 calendar days, needed to deliver the proceeds for each affected Foreign Fund. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.

*Section 12(d)(1)*

9. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request an exemption to permit management investment companies (''Investing Management Companies'') and unit investment trusts (''Investing Trusts'') registered under the Act that are not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Funds (collectively, ''Funds of Funds'') to acquire shares of a Fund beyond the limits of section 12(d)(1)(A). In addition, Applicants seek relief to permit a Fund or Broker to sell Shares to Funds of Funds in excess of the limits of section 12(d)(1)(B).

11. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

12. Applicants believe that neither a Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue influence over the Funds.[17] To limit the control that a Fund of Funds may have over a Fund, applicants propose a condition prohibiting a Fund of Funds Adviser or a Sponsor, any person controlling, controlled by, or under common control with the Fund of Funds Adviser or Sponsor, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with the Fund of Funds Adviser or Sponsor (''Fund of Funds Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Fund of Funds Sub-Adviser, any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion

[16] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade.

[17] A ''Fund of Funds Affiliate'' is the Fund of Funds Adviser, Fund of Funds Sub-Adviser(s), any Sponsor, promoter, or principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is the investment adviser, sub-adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

of such investment company or issuer) advised or sponsored by the Fund of Funds Sub-Adviser or any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser (''Fund of Funds Sub-Advisory Group'').

13. Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting'').[18]

14. Applicants assert that the proposed conditions address any concerns regarding excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged to the Investing Management Company are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. In addition, under condition B.5, a Fund of Funds Adviser or a trustee or Sponsor of an Investing Trust will, as applicable, waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b-1 under the Act) received by the Fund of Funds Adviser, Trustee or Sponsor or an affiliated person of the Fund of Funds Adviser, Trustee or Sponsor, from the Funds in connection with the investment by the Fund of Funds in the Fund. Applicants state that any sales charges or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds set forth in NASD Conduct Rule 2830.[19]

15. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund may acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act. To ensure that Funds of Funds comply with the terms and conditions of the requested relief from section 12(d)(1), any Fund of Funds that intends to invest in a Fund in reliance on the requested Order will enter into an agreement (''FOF Participation Agreement'') between the Fund and the Fund of Funds requiring the Fund of Funds to adhere to the terms and conditions of the requested Order. The FOF Participation Agreement also will include an acknowledgement from the Fund of Funds that it may rely on the requested Order only to invest in Funds and not in any other investment company.

16. Applicants also note that a Fund may choose to reject a direct purchase of Shares in Creation Units by a Fund of Funds. To the extent that a Fund of Funds purchases Shares in the secondary market, a Fund would still retain its ability to reject initial purchases of Shares made in reliance on the requested Order by declining to enter into the FOF Participation Agreement prior to any investment by a Fund of Funds in excess of the limits of section 12(d)(1).

*Sections 17(a)(1) and (2) of the Act*

17. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or Second-Tier Affiliate, from selling any security to or acquiring any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include: (a) Any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser (an ''Affiliated Fund'').

18. Applicants request an exemption from section 17(a) of the Act pursuant to sections 17(b) and 6(c) of the Act to permit certain affiliated persons to make in-kind purchases and redemptions with a Fund when they are affiliated persons of the Fund or Second-Tier Affiliates solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds.

19. Applicants assert that no useful purpose would be served by prohibiting these types of affiliated persons from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. Both the deposit procedures for in-kind purchases and the redemption procedures for in-kind redemptions of Creation Units will be effected in the same manner for all purchases and redemptions, regardless of size or number of the purchases or redemptions of Creation Units. Portfolio Securities, Deposit Instruments, Redemption Instruments, and Cash Redemption Payments (except for any permitted cash-in-lieu amounts) will be the same regardless of the identity of the purchaser or redeemer. Deposit Instruments and Redemption Instruments will be valued in the identical manner as those Portfolio Securities currently held by the relevant Funds regardless of the identity of the purchaser or redeemer. Therefore, Applicants state that the method of valuing in-kind purchases and redemptions will not create an opportunity for affiliated persons, or Second-Tier Affiliates, of a Fund to effect a transaction detrimental to other holders of Shares of that Fund. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

20. Applicants also seek relief from section 17(a) to permit a Fund that is an affiliated person of a Fund of Funds to sell its Shares to and redeem its Shares from a Fund of Funds.[20] Applicants

[18] An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, or employee of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, or employee is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

[19] Any references to NASD Conduct Rule 2830 include any successor or replacement rule to NASD Conduct Rule 2830 that may be adopted by Financial Industry Regulatory Authority.

[20] To the extent that purchases and sales of Shares of a Fund occur in the secondary market (and not through principal transactions directly between a Fund of Funds and a Fund), relief from section 17(a) would not be necessary. The requested relief is intended to cover, however, transactions directly

state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by a Fund of Funds for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Shares.[21] Applicants state that any proposed transactions directly between the Funds and Funds of Funds will be consistent with the policies of each Fund and each Fund of Funds involved. The FOF Participation Agreement will require any Fund of Funds that purchases Creation Units directly from a Fund to represent that the purchase of Creation Units from a Fund by a Fund of Funds will be accomplished in compliance with the investment restrictions of the Fund of Funds and will be consistent with the investment policies set forth in the Fund of Funds' registration statement.

**Applicants' Conditions**

Applicants agree that any Order of the Commission granting the requested relief will be subject to the following conditions:

*A. Index-Based ETF Relief*

1. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based ETFs.

2. As long as the Funds operate in reliance on the requested Order, the Shares of each Fund will be listed on an Exchange.

3. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

4. The Web site for each Fund, which is and will be publicly accessible at no charge, will contain on a per Share basis, for each Fund, the prior Business Day's NAV and the market closing price or the Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

*B. Section 12(d)(1) Relief*

1. The members of the Fund of Funds Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of the Fund of Funds Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Fund of Funds Advisory Group or the Fund of Funds Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its voting securities of the Fund in the same proportion as the vote of all other holders of the Fund's voting securities. This condition does not apply to the Fund of Funds Sub-Advisory Group with respect to a Fund for which the Fund of Funds' Sub-Adviser or a person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in a Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Fund of Funds Adviser and any Fund of Funds Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the Shares of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the Board, including a majority of the disinterested directors or trustees, will determine that any consideration paid by the Fund to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (b) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Fund of Funds Adviser, or trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund pursuant to rule 12b–1 under the Act) received from a Fund by the Fund of Funds Adviser, or trustee or Sponsor, or an affiliated person of the Fund of Funds Adviser, or trustee or Sponsor, other than any advisory fees paid to the Fund of Funds Adviser, or trustee or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Fund of Funds in the Fund. Any Fund of Funds Sub-Adviser will waive fees otherwise payable to the Fund of Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Fund of Funds Sub-Adviser, or an affiliated person of the Fund of Funds Sub-Adviser, other than any advisory fees paid to the Fund of Funds Sub-Adviser or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Fund of Funds Sub-Adviser. In the event that the Fund of Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by a Fund of Funds in the Shares of the Fund exceeds the limit of section

between Funds and Funds of Funds. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person of a Fund of Funds because the Adviser or an entity controlling, controlled by or under common control with the Adviser is also an investment adviser to the Fund of Funds.

[21] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of Shares or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to a Fund of Funds, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Fund. The Board will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of Beneficial Owners.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in the Shares of a Fund in excess of the limits in section 12(d)(1)(A), a Fund of Funds will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers or trustee and Sponsor, as applicable, understand the terms and conditions of the Order, and agree to fulfill their responsibilities under the Order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Fund of the investment. At such time, the Fund of Funds will also transmit to the Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the Order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–30893 Filed 12–21–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTERCITATION OF PREVIOUS ANNOUNCEMENT:** [77 FR 74894, December 18, 2012].

**STATUS:** Closed Meeting.

**PLACE:** 100 F Street, NE., Washington, DC.

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** Thursday, December 20, 2012 at 2:00 p.m.

**CHANGE IN THE MEETING:** Time Change.

The Closed Meeting scheduled for Thursday, December 20, 2012 at 2:00 p.m. was changed to Thursday, December 20, 2012 at 9:00 a.m.

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 20, 2012.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2012–31030 Filed 12–20–12; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68459; File No. TP 13–02]**

### Order Granting Limited Exemptions From Exchange Act Rule 10b–17 and Rules 101 and 102 of Regulation M to ALPS ETF Trust, ALPS/GS Momentum Builder Growth Markets Equities and U.S. Treasuries Index ETF, ALPS/GS Momentum Builder Multi-Asset Index ETF, and ALPS/GS Momentum Builder Asia ex-Japan Equities and U.S. Treasuries Index ETF Pursuant to Exchange Act Rule 10b–17(b)(2) and Rules 101(d) and 102(e) of Regulation M

December 18, 2012.

By letter dated December 18, 2012 (the ''Letter''), as supplemented by conversations with the staff of the Division of Trading and Markets, counsel for ALPS ETF Trust (the ''Trust'') on behalf of the Trust, ALPS/GS Momentum Builder Growth Markets Equities and U.S. Treasuries Index ETF, ALPS/GS Momentum Builder Multi-Asset Index ETF, and ALPS/GS Momentum Builder Asia ex-Japan Equities and U.S. Treasuries Index ETF (each a ''Fund'' and, collectively, the ''Funds''), any national securities exchange on or through which shares issued by the Funds (''Shares'') may subsequently trade, and persons or entities engaging in transactions in Shares (collectively, the ''Requestors'') requested exemptions, or interpretive or no-action relief, from Rule 10b–17 of the Securities Exchange Act of 1934, as amended (''Exchange Act'') and Rules 101 and 102 of Regulation M in connection with secondary market transactions in Shares and the creation or redemption of aggregations of Shares

of at least 50,000 shares (''Creation Units'').

The Trust is registered with the Commission under the Investment Company Act of 1940, as amended (''1940 Act'') as an open-end management investment company. Each Fund seeks to track the performance of a particular underlying index (''Index''), which for each Fund is comprised of shares of exchange traded products (''ETPs'') (primarily exchange-traded funds, or ''ETFs,'' but also some exchange-traded commodity pools). Using a methodology developed by the index provider, each Index seeks to provide exposure to price momentum of certain equity markets and U.S. fixed income markets by reflecting the combination of weightings of the ETPs that underlie each Index that would have provided the highest six-month historical return, subject to constraints on maximum and minimum weights and volatility controls.[1] The Index is rebalanced monthly, but may also be rebalanced as frequently as daily if the daily volatility control is triggered.[2] Each Fund intends to operate as an ''ETF of ETFs'' by seeking to track the performance of its underlying Index in investing at least 80% of its assets in the ETPs that comprise each Index. Except for the fact that the Funds will operate as ETFs of ETFs, the Funds will operate in a manner identical to the ETPs that comprise each Index.

The Requestors represent, among other things, the following:

- Shares of the Funds will be issued by the Trust, an open-end management investment company that is registered with the Commission;
- The Trust will continuously redeem Creation Units at net asset value (''NAV'') and the secondary market price of the Shares should not vary substantially from the NAV of such Shares;
- Shares of the Funds will be listed and traded on the NYSE Arca (the ''Exchange'') or other exchange in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Exchange Act;
- All ETPs in which the Funds are invested will meet all conditions set forth in a relevant class relief letter,[3] or will have received individual relief from the Commission;[4]
- At least 70% of each Fund is comprised of component securities that meet the minimum public float and minimum average daily trading volume thresholds under the ''actively-traded securities'' definition found in Regulation M for excepted securities during each of the previous two months of trading prior to formation of the relevant Fund; provided, however, that if the Fund has 200 or more component securities, then 50% of the component securities must meet the actively-traded securities thresholds;
- All the components of each Index will have publicly available last sale trade information;
- The intra-day proxy value of each Fund per share and the value of each Index will be publicly disseminated by a major market data vendor throughout the trading day;
- On each business day before the opening of business on the Exchange, the Funds' custodian, through the National Securities Clearing Corporation, will make available the list of the names and the numbers of securities and other assets of each Fund's portfolio that will be applicable that day to creation and redemption requests;
- The Exchange or other market information provider will disseminate every 15 seconds throughout the trading day through the facilities of the Consolidated Tape Association an amount representing on a per-share basis, the current value of the securities and cash to be deposited as consideration for the purchase of Creation Units;
- The arbitrage mechanism will be facilitated by the transparency of the Funds' portfolio and the availability of the intra-day indicative value, the liquidity of securities and other assets held by the Funds, ability to acquire such securities, as well as the arbitrageurs' ability to create workable hedges;
- The Funds will invest solely in liquid securities;
- The Funds will invest in securities that will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges;
- The Requestors believe that arbitrageurs are expected to take advantage of price variations between each Fund's market price and its NAV; and
- A close alignment between the market price of Shares and each Fund's NAV is expected.

**Regulation M**

While redeemable securities issued by an open-end management investment company are excepted from the provisions of Rule 101 and 102 of Regulation M, the Requestors may not rely upon that exception for the Shares.[5] However, we find that it is appropriate in the public interest and is consistent with the protection of investors to grant a conditional exception from Rules 101 and 102 to persons who may be deemed to be participating in a distribution of Shares and the Funds as described in more detail below.

**Rule 101 of Regulation M**

Generally, Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any ''distribution participant'' and its ''affiliated purchasers'' from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in the rule. Rule 100 of

[1] Two levels of volatility control are applied. The monthly volatility control is performed on each monthly rebalancing date and sets a maximum limit on the annualized historic six-month ''realized'' volatility of any selected combination of ETF weights. Each Index is then rebalanced at that time to reflect such limit. The daily volatility control rebalances a portion or all of the current Index components into short-term fixed income ETFs in order to reduce volatility when the annualized historic three-month volatility of the current Index components exceeds a predetermined level. Following any rebalance resulting from the Index components' volatility exceeding such level, each Index is rebalanced into its prior composition when the annualized historic three-month volatility of such composition declines below the predetermined level.

[2] The Requestors represented to the staff of the Division of Trading and Markets that, with regards to these volatility controls, (1) if they trigger a rebalance, the rebalance will be posted three days in advance to the relevant Web site by the calculation agent and (2) based on historical backtesting performed by the Index Provider, the daily volatility control would only have been triggered in the past under rare circumstances.

[3] Letter from Catherine McGuire, Esq., Chief Counsel, Division of Market Regulation, to the Securities Industry Association Derivative Products Committee (November 21, 2005); Letter from Racquel L. Russell, Branch Chief, Division of Market Regulation, to George T. Simon, Esq., Foley & Lardner LLP (June 21, 2006); Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Clifford Chance US LLP (October 24, 2006); Letter from James A. Brigagliano, Associate Director, Division of Market Regulation, to Benjamin Haskin, Esq., Willkie, Farr & Gallagher LLP (April 9, 2007); or Letter from Josephine Tao, Associate Director, Division of Trading and Markets, to Domenick Pugliese, Esq., Paul, Hastings, Janofsky and Walker LLP (June 27, 2007).

[4] One Underlying ETF is an actively-managed ETF and has received individual relief, but also is entitled to rely in part on a prior letter from Josephine Tao, Associate Director, Division of Trading and Markets, to Richard F. Morris of WisdomTree Asset Management, Inc., dated May 9, 2008, with respect to relief regarding Section 11(d)(1) of the Exchange Act and Rules 10b–10, 11d1–2, 15c1–5, and 15c1–6 under the Exchange Act.

[5] While ETFs operate under exemptions from the definitions of ''open-end company'' under Section 5(a)(1) of the 1940 Act and ''redeemable security'' under Section 2(a)(32) of the 1940 Act, the Funds and their securities do not meet those definitions.

Regulation M defines ''distribution'' to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, or other persons who have agreed to participate or are participating in a distribution of securities. The Shares are in a continuous distribution and, as such, the restricted period in which distribution participants and their affiliated purchasers are prohibited from bidding for, purchasing, or attempting to induce others to bid for or purchase extends indefinitely.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will continuously redeem at the NAV Creation Unit size aggregations of the Shares of the Funds and that a close alignment between the market price of Shares and each Fund's NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (d) of Rule 101 of Regulation M with respect to the Funds, thus permitting persons participating in a distribution of Shares of the Funds to bid for or purchase such Shares during their participation in such distribution.[6]

**Rule 102 of Regulation M**

Rule 102 of Regulation M prohibits issuers, selling security holders, or any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will redeem at the NAV Creation Units of Shares of the Funds and that a close alignment between the market price of Shares and each Fund's NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (e) of Rule 102 of Regulation M with respect to the Funds, thus permitting the Funds to redeem Shares of the Funds during the continuous offering of such Shares.

**Rule 10b–17**

Rule 10b–17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with Rule 10b–17(b). Based on the representations and facts in the Letter, and subject to the conditions below, we find that it is appropriate in the public interest, and consistent with the protection of investors to grant the Trust a conditional exemption from Rule 10b–17 because market participants will receive timely notification of the existence and timing of a pending distribution, and thus the concerns that the Commission raised in adopting Rule 10b–17 will not be implicated.[7]

**Conclusion**

*It is hereby ordered,* pursuant to Rule 101(d) of Regulation M, that the Trust, based on the representations and facts presented in the Letter is exempt from the requirements of Rule 101 with respect to the Funds, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Funds to bid for or purchase such Shares during their participation in such distribution.

*It is further ordered,* pursuant to Rule 102(e) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 102 with respect to the Funds, thus permitting the Funds to redeem Shares of the Funds during the continuous offering of such Shares.

*It is further ordered,* pursuant to Rule 10b–17(b)(2), that the Trust, based on the representations and the facts presented in the Letter and subject to the conditions below, is exempt from the requirements of Rule 10b–17 with respect to transactions in the shares of the Funds.

This exemptive relief is subject to the following conditions:

- The Trust will comply with Rule 10b–17 except for Rule 10b–17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b–17(b)(1)(v)(a) and (b) to the Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. Persons relying upon this exemption shall discontinue transactions involving the Shares of the Funds under the circumstances described above and in the Letter, pending presentation of the facts for the Commission's consideration, in the event that any material change occurs with respect to any of the facts or representations made by the Requestors. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 10(b), and Rule 10b–5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. This order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–30889 Filed 12–21–12; 8:45 am]

**BILLING CODE 8011–01–P**

[6] Additionally, we confirm the interpretation that a redemption of Creation Unit size aggregations of Shares of the Fund and the receipt of securities in exchange by a participant in a distribution of Shares of the Fund would not constitute an ''attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period'' within the meaning of Rule 101 of Regulation M and therefore would not violate that rule.

[7] We also note that timely compliance with Rule 10b–17(b)(1)(v)(a) and (b) would be impractical in light of the nature of the Fund. This is because it is not possible for the Fund to accurately project ten days in advance what dividend, if any, would be paid on a particular record date.

[8] 17 CFR 200.30–3(a)(6) and (9).

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

### IAS Energy, Inc., IB3 Networks, Inc., IBroadband, Inc., ICP Solar Technologies, Inc., IdentiPHI, Inc., iDNA, Inc., Immune Network Ltd., Inca Designs, Inc., Indico Technologies, Inc. (n/k/a Indico Resources Ltd.), Infopage, Inc. (a/k/a Tamija Gold & Diamond Exploration, Inc.), Innofone.com, Inc. (n/k/a Goldstar Global Minerals Corp.), Instachem Systems, Inc. (n/k/a CH Lighting International Corp.), Interlink-US-Network, Ltd., and International Aerospace Enterprises, Inc.,; Order of Suspension of Trading

December 20, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of IAS Energy, Inc. because it has not filed any periodic reports since the period ended January 31, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of IB3 Networks, Inc. because it has not filed any periodic reports since the period ended September 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of IBroadband, Inc. because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ICP Solar Technologies, Inc. because it has not filed any periodic reports since the period ended October 31, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of IdentiPHI, Inc. because it has not filed any periodic reports since the period ended 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 iDNA, Inc. because it has not filed any periodic reports since the period ended October 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Immune Network Ltd. because it has not filed any periodic reports since the period ended December 31, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Inca Designs, Inc. 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 Indico Technologies, Inc. (n/k/a Indico Resources Ltd.) because it has not filed any periodic reports since the period ended November 30, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Infopage, Inc. (a/k/a Tamija Gold & Diamond Exploration, Inc.) because it has not filed any periodic reports since the period ended September 30, 1993.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Innofone.com, Inc. (n/k/a Goldstar Global Minerals Corp.) because it has not filed any periodic reports since the period ended March 31, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Instachem Systems, Inc. (n/k/a CH Lighting International Corp.) because it has not filed any periodic reports since the period ended March 31, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Interlink-US-Network, Ltd. 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 International Aerospace Enterprises, Inc. because it has not filed any periodic reports since the period ended March 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 20, 2012, through 11:59 p.m. EST on January 4, 2013.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2012–31023 Filed 12–20–12; 4:15 pm]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68481; File No. SR–ICC–2012–23]**

### Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change to Add Rules Related to the Clearing of iTraxx Europe Index CDS

December 19, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 6, 2012, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. 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 purpose of the proposed rule change is to adopt new rules that will provide the basis for ICC to clear additional credit default swap contracts. Specifically, ICC is proposing to amend Chapters 8, 20 and 26 and Schedule 401 and Schedule 502 of its rules as well as make corresponding changes to the applicable ICC Policies and Procedures to provide for the clearance of iTraxx Europe Index CDS (''iTraxx Contracts'').

ICC proposes to amend Chapter 8 of its rules to provide for an additional Guaranty Fund Contribution by those Clearing Participants that present Specific Wrong Way Risk (i.e., the risk that arises from the fact that iTraxx Contracts include, in part, the names of certain Clearing Participants or Clearing Participant affiliates). In a default scenario, if the defaulting Clearing Participant has funded a Specific Wrong Way Risk Contribution, the Specific Wrong Way Risk Contributions of all contributing Clearing Participants would be used immediately following the defaulting Clearing Participant's funds to cure deficits related to the default.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

ICC proposes to amend Chapter 20 of its rules to remove definitions that are included in Chapter 26E of the rules as well as to include the Specific WWR Guaranty Fund Contribution, as appropriate, as a portion of Clearing Participant funds.

ICC proposes to amend Section 26E of its rules to include certain additional provisions relevant to the treatment of restructuring credit events under iTraxx and standard single-name CDS Contracts referencing European corporate reference entities (''European SN Contracts'').

ICC proposes to add Section 26F to provide for the clearance of the iTraxx Contracts, which reference the iTraxx Europe corporate index. As discussed in more detail in Item II.A below, new Section 26F of the ICC rules provides for the definitions and certain specific contract terms for cleared iTraxx Contracts.

ICC will update Schedule 401 of its Rules (Eligible Collateral & Thresholds), as applicable, with respect to Initial Margin and Guaranty Fund liquidity requirements for Non-Client and Client-Related positions for both US Dollar and Euro denominated products.

ICC will also update Schedule 502 of its Rules (Cleared Products List) to incorporate the additional cleared products. Upon Commission approval, ICC will list the following European Indices: Markit iTraxx Europe Main Series 18 with a 5-year maturity, maturing on December 20, 2017; Markit iTraxx Europe Main Series 18 with a 10-year maturity, maturing on December 20, 2022; Markit iTraxx Europe Main Series 17 with a 5-year maturity, maturing on June 20, 2017; Markit iTraxx Europe Main Series 17 with a 10-year maturity, maturing on June 20, 2022; Markit iTraxx Europe Main Series 16 with a 5-year maturity, maturing on December 20, 2016; Markit iTraxx Europe Main Series 16 with a 10-year maturity, maturing on December 20, 2021; Markit iTraxx Europe Main Series 15 with a 5-year maturity, maturing on June 20, 2016; Markit iTraxx Europe Main Series 15 with a 10-year maturity, maturing on June 20, 2021; Markit iTraxx Europe Main Series 14 with a 5-year maturity, maturing on December 20, 2015; Markit iTraxx Europe Main Series 14 with a 10-year maturity, maturing on December 20, 2020; Markit iTraxx Europe Main Series 13 with a 5-year maturity, maturing on June, 20, 2015; Markit iTraxx Europe Main Series 13 with a 10-year maturity, maturing on June, 20, 2020; Markit iTraxx Europe Main Series 12 with a 5-year maturity, maturing on December 20, 2014; Markit iTraxx Europe Main Series 12 with a 10-year maturity, maturing on December 20, 2019; Markit iTraxx Europe Main Series 11 with a 5-year maturity, maturing on June 20, 2014; Markit iTraxx Europe Main Series 11 with a 10-year maturity, maturing on June 20, 2019; Markit iTraxx Europe Main Series 10 with a 5-year maturity, maturing on December 20, 2013; Markit iTraxx Europe Main Series 10 with a 10-year maturity, maturing on December 20, 2018; Markit iTraxx Europe Main Series 9 with a 5-year maturity, maturing on June 20, 2013; Markit iTraxx Europe Main Series 9 with a 10-year maturity, maturing on June 20, 2018; Markit iTraxx Europe Main Series 8 with a 5-year maturity, maturing on December 20, 2012; Markit iTraxx Europe Main Series 8 with a 10-year maturity, maturing on December 20, 2017; Markit iTraxx Europe Main Series 7 with a 10-year maturity, maturing June 20, 2017; Markit iTraxx Crossover Series 18 with a 5-year maturity, maturing on December 20, 2017; Markit iTraxx Crossover Series 17 with a 5-year maturity, maturing on June 20, 2017; Markit iTraxx Crossover Series 16 with a 5-year maturity, maturing on December 20, 2016; Markit iTraxx Crossover Series 15 with a 5-year maturity, maturing on June 20, 2016; Markit iTraxx Crossover Series 14 with a 5-year maturity, maturing on December 20, 2015; Markit iTraxx Crossover Series 13 with a 5-year maturity, maturing on June, 20, 2015; Markit iTraxx Crossover Series 12 with a 5-year maturity, maturing on December 20, 2014; Markit iTraxx Crossover Series 11 with a 5-year maturity, maturing on June 20, 2014; Markit iTraxx Crossover Series 10 with a 5-year maturity, maturing on December 20, 2013; Markit iTraxx Crossover Series 9 with a 5-year maturity, maturing on June 20, 2013; Markit iTraxx HiVol Series 18 with a 5-year maturity, maturing on December 20, 2017; Markit iTraxx HiVol Series 17 with a 5-year maturity, maturing on June 20, 2017; Markit iTraxx HiVol Series 16 with a 5-year maturity, maturing on December 20, 2016; Markit iTraxx HiVol Series 15 with a 5-year maturity, maturing on June 20, 2016; Markit iTraxx HiVol Series 14 with a 5-year maturity, maturing on December 20, 2015; Markit iTraxx HiVol Series 13 with a 5-year maturity, maturing on June, 20, 2015; Markit iTraxx HiVol Series 12 with a 5-year maturity, maturing on December 20, 2014; Markit iTraxx HiVol Series 11 with a 5-year maturity, maturing on June 20, 2014; Markit iTraxx HiVol Series 10 with a 5-year maturity, maturing on December 20, 2013; Markit iTraxx HiVol Series 9 with a 5-year maturity, maturing on June 20, 2013; and Markit iTraxx HiVol Series 8 with a 5-year maturity, maturing on December 20, 2012.

ICC also updated its Policies and Procedures to provide for the clearance of iTraxx Contracts, specifically the ICC Treasury Operations Policies & Procedures, ICC Risk Management Framework and ICC End-of-Day (''EOD'') Price Discovery Policies and Procedures.

Consistent with the changes to Schedule 401 of the ICC Rules, the ICC Treasury Operations Policies & Procedures have been updated to include Initial Margin and Guaranty Fund liquidity requirements for Non-Client and Client-Related positions for both US Dollar and Euro denominated products. In order to accommodate the return of funds during London banking hours, the ICC Treasury Operations Policies & Procedures have been updated to require requests for Euro withdrawals to be submitted by 9:00 a.m. Eastern.

The ICC Risk Management Framework has been updated to account for Euro denominated portfolios. Specifically, updates have been made to the Guaranty Fund, Initial Margin and Mark-to-Market Methodologies to address: Wrong Way Risk, Foreign Exchange Risk, Liquidity Risk, Time Zone Risk, and Operational Risk. Additionally, the Portfolio Approach was updated to include appropriate portfolio benefits between North American CDS Indices and iTraxx Contracts.

The ICC EOD Price Discovery Policies and Procedures has been updated to provide that ICC will use ICE Clear Europe's EOD prices for iTraxx Contracts and rely on the ICE Clear Europe Firm Trade process to ensure the accuracy of price submissions. ICC will extend the risk time-horizon for iTraxx Contracts to account for the half day difference, on average, between the EOD price discovery process timings. The extended risk horizon accounts for the fact that European markets close earlier and new financial information may be reflected only in the North American instrument prices and not reflected in the iTraxx Contracts, in general.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements

may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.[3]

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

ICC has identified iTraxx Contracts as products that have become increasingly important for market participants to manage risk and express views with respect to European corporate credit risk. ICC's clearance of these Contracts will facilitate the prompt and accurate settlement of swaps and contribute to the safeguarding of securities and funds associated with swap transactions. In addition, ICC notes that the Commodity Futures Trading Commission has determined that iTraxx Europe CDS contracts would be subject to mandatory clearing under Section 2(h) of the Commodity Exchange Act.

iTraxx Contracts have similar terms to the CDX North American Index CDS contracts (''CDX.NA Contracts'') and CDX Emerging Market Index (''CDX.EM Contracts'') currently cleared by ICC and governed by Sections 26A and 26C of the ICC rules. Accordingly, the proposed rules found in Section 26F largely mirror the ICC rules for those Contracts, with certain modifications that reflect the underlying reference entities (European corporate reference entities instead of North American corporate or Latin American sovereign entities) and differences in terms and market conventions. The iTraxx Contracts reference the iTraxx Europe index, the current series of which consists of 125 European corporate reference entities. iTraxx Contracts, consistent with market convention and widely used standard terms documentation, can be triggered by credit events for failure to pay, bankruptcy and restructuring. iTraxx Contracts will be denominated in Euro.

Rule 26F–102 (Definitions) sets forth the definitions used for the iTraxx Contract Rules. An ''Eligible iTraxx Europe Untranched Index'' is defined as ''each particular series and version of an iTraxx Europe index or sub-index, as published by the iTraxx Untranched Publisher, included from time to time in the List of Eligible iTraxx Untranched Indexes,'' which is a list maintained, updated and published from time to time by the ICC Board of Managers or its designee, containing certain specified information with respect to each index. ''iTraxx Europe Untranched Terms Supplement'' refers to the market standard form of documentation used for credit default swaps on the iTraxx Europe index, which is incorporated by reference into the contract specifications in Chapter 26F. The remaining definitions are substantially the same as the definitions found in ICC Section 26A and Section 26C, other than certain conforming changes.

Rules 26F–309 (Acceptance of iTraxx Europe Untranched Contracts by ICE Clear Credit), 26F–315 (Terms of the Cleared iTraxx Europe Untranched Contract), and 26F–316 (Updating Index Version of Fungible Contracts After a Credit Event or a Succession Event; Updating Relevant Untranched Standard Terms Supplement) reflect or incorporate the basic contract specifications for iTraxx Contracts and are substantially the same as under ICC Section 26A for CDX.NA Contracts and ICC Section 26C for CDX.EM Contracts. In addition to various non-substantive conforming changes, proposed Rule 26F–317 (Terms of iTraxx Europe Untranched Contracts) differs from the corresponding Rule 26A–317 to reflect the fact that restructuring is a credit event for the iTraxx Contract.[4]

In addition, ICC proposes to make conforming changes in Section 26E of the Rules (the CDS Restructuring Rules), principally to address the particular restructuring terms that apply to iTraxx Contracts and European SN Contracts. Specifically, ICC proposes to modify the notice delivery procedures in Rule 26E–104 to include ''notices to exercise movement option'' under the Mod Mod R terms. In addition, the definition of ''Triggered Restructuring CDS Contract'' has been modified to reflect that under Mod Mod R terms a CDS contract may be triggered in part following a restructuring credit event.

Section 17A(b)(3)(F) of the Act[5] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F), because ICC believes that the clearance of iTraxx Contracts will facilitate the prompt and accurate settlement of swaps and contribute to the safeguarding of securities and funds associated with swap transactions.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**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–ICC–2012–23 on the subject line.

[3] The Commission has modified the text of the summaries prepared by ICE Clear Credit.

[4] The provisions dealing with the ''spin-out'' of a single name CDS following a restructuring credit event for a component of the iTraxx Europe index are part of the iTraxx Europe Untranched Standard Terms Supplement (Nov. 2009 edition), which is incorporated into the contract specifications for cleared iTraxx Europe contracts through proposed ICC Rule 26F–315(c). Specifically, Section 7.3(b) of the Supplement addresses the removal of the restructured reference entity from the index and continuation of that component as a separate contract. (Proposed ICC Rule 26F–317(h) clarifies the treatment of the reference obligation for that separate cleared contract.) This is part of the basic standard terms of the iTraxx Europe contract and operates the same way in both the cleared and uncleared contexts (much like other aspects of the market standard terms supplements and/or ISDA Credit Derivatives Definitions on which other cleared and uncleared CDS trade).

[5] 15 U.S.C. 78q–1(b)(3)(F).

*Paper Comments*

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICC–2012–23. 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 filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's Web site at *https://www.theice.com/publicdocs/regulatory_filings/ICEClearCredit_120512.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2012–23 and should be submitted on or before January 16, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–31020 Filed 12–21–12; 4:15 pm]

**BILLING CODE 8011–01–P**

[6] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68468; File No. SR–FINRA–2012–055]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Date by Which Eligible Registrants Must Complete a Firm-Element Continuing Education Program To Qualify To Engage in a Security Futures Business

December 19, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on December 12, 2012, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b-4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend NASD Rule 1022 (Categories of Principal Registration) and NASD Rule 1032 (Categories of Representative Registration) to extend the deadline by which eligible registrants must complete a firm-element continuing education requirement to engage in a security futures business to December 31, 2015, or one business day prior to the date a revised examination that includes security futures products is offered.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In 2002, FINRA modified the following registration categories to include the activities of engaging in and supervising securities futures: (1) Registered Options Principal (Series 4); (2) Limited Principal—General Securities Sales Supervisor (Series 9/10); (3) General Securities Representative (Series 7); and (4) Registered Options Representative (Series 42).[4] FINRA also required that persons currently registered or becoming registered in these categories complete a firm-element continuing education requirement addressing security futures before they conducted any security futures business. FINRA instituted this continuing education requirement to ensure that registered personnel, who may not be familiar with risks, trading characteristics, terms and nomenclature of these products, or the fact that they are subject to the joint jurisdiction of the SEC and CFTC, receive the necessary training.

FINRA initially considered replacing the firm-element continuing education requirement with revised qualification examinations for these categories that addressed security futures; however, due to low trading volume in security futures and limited interest for registered representatives to engage in security futures business, such qualification examinations have not been implemented. Accordingly, FINRA has twice extended the deadline for completing a firm-element continuing education requirement.[5] In view of the fact that there are no revised

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 17 CFR 240.19b-4(f)(6).

[4] *See* Securities Exchange Act Release No. 46663 (October 15, 2002), 67 FR 64944 (October 22, 2002) (Order Approving File No. SR–NASD–2002–40).

[5] In 2006, FINRA extended the deadline for completing a firm-element continuing education requirement from December 31, 2006 to December 31, 2009. *See* Securities Exchange Act Release No. 54617 (October 17, 2006), 71 FR 62498 (October 25, 2006) (Notice of Filing and Immediate Effectiveness of File No. SR–NASD–2006–118). In 2009, FINRA extended the deadline for completing a firm-element continuing education requirement from December 31, 2009 to December 31, 2012. *See* Securities Exchange Act Release No. 61231 (December 23, 2009), 74 FR 69173 (December 30, 2009) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2009–092).

qualification examinations addressing security futures, FINRA intends to continue to require eligible registrants to complete the mandated firm-element continuing education requirement before engaging in any security futures business. The proposed rule change amends NASD Rule 1022 and NASD Rule 1032 to extend the deadline by which eligible registrants must complete the firm-element continuing education requirement to engage in a security futures business from December 31, 2012 to December 31, 2015, or one business day prior to the date a revised examination that includes security futures products is offered.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be December 31, 2012.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change is necessary to continue to allow eligible registrants to complete a firm-element continuing education program that will qualify them to engage in a security futures business.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that the proposed rule change is necessary to continue to allow eligible registrants to complete a firm-element continuing education program that will qualify them to engage in a security futures business.

*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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b-4(f)(6) thereunder.[8]

FINRA has requested that the Commission waive the 30-day operative delay to permit the proposed rule change to become operative on December 31, 2012. The Commission finds that waiver of the operative delay is consistent with the protection of investors and the public interest because the waiver will keep in place the ability of registered persons to qualify to sell security futures by completing a firm-element continuing education program in lieu of an exam. Therefore, the Commission designates the proposal operative on December 31, 2012.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments:*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2012–055 on the subject line.

*Paper Comments:*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2012–055. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the FINRA's principal office. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2012–055, and should be submitted on or before January 16, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–31012 Filed 12–21–12; 4:15 pm]

**BILLING CODE 8011–01–P**

[6] 15 U.S.C. 78o–3(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b-4(f)(6).

[9] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68471; File No. SR–FINRA–2012–056]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Expiration Date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps)

December 19, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 12, 2012, Financial Industry Regulatory

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to extend the expiration date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps) to July 17, 2013. FINRA Rule 0180 temporarily limits, with certain exceptions, the application of FINRA rules with respect to security-based swaps.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''),[4] Title VII of which established a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was intended among other things to enhance the authority of regulators to implement new rules designed to reduce risk, increase transparency, and promote market integrity with respect to such products. In general, the Dodd-Frank Act provides that the Commodity Futures Trading Commission (''CFTC'') will regulate ''swaps'' and the SEC will regulate ''security-based swaps.''[5] The Dodd-Frank Act contemplates certain self-regulatory organization responsibilities in this area as well.[6]

Title VII of the Dodd-Frank Act became effective on July 16, 2011 (360 days after the enactment of the Dodd-Frank Act, *i.e.* the ''Effective Date''), unless a provision requires a rulemaking.[7] The SEC has taken a number of actions in connection with Title VII, including providing certain temporary exemptions[8] to address the expansion, pursuant to Title VII, of the Act's definition of ''security'' to expressly encompass security-based swaps[9] and requesting public comment on the anticipated sequencing of the compliance dates of final rules to be adopted by the SEC pursuant to Title VII.[10]

In its Exemptive Release, the SEC noted that the expansion of the Act's definition of ''security'' raises certain complex issues of interpretation, including issues as to the application of those provisions to registered broker-dealers. The SEC determined that it was appropriate to provide market participants with additional time to consider the potential impact on their businesses and the interpretive questions raised, and to provide the SEC with any related requests for guidance or relief, along with the underlying analysis. Further, in the Policy Statement, the SEC noted that it has been considering how to implement the new requirements that will be applicable to security-based swaps pursuant to the final rules to be adopted by the SEC pursuant to Title VII in a practical and efficient manner that avoids unnecessary disruption to the security-based swaps market.

Because the Act's expanded definition of ''security'' has implications for numerous provisions under FINRA rules[11] similar to those noted by the SEC in the Exemptive Release, and in the interest of avoiding unnecessary market disruption, on July 8, 2011, FINRA filed for immediate effectiveness FINRA Rule 0180,[12] which, with certain exceptions, is intended to temporarily limit the application of FINRA rules with respect to security-based swaps.[13]

The CFTC's and the Commission's rulemaking with respect to swaps and security-based swaps pursuant to Title VII is ongoing. FINRA believes it is appropriate and in the public interest to extend FINRA Rule 0180 for a limited period, to July 17, 2013, pending the implementation of new rules and guidance that would provide greater regulatory clarity in relation to security-based swap activities, so as to provide relief from certain FINRA requirements and thereby help avoid undue market disruptions resulting from the change to

[3] 17 CFR 240.19b–4(f)(6).

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

[5] The terms ''swap'' and ''security-based swap'' are defined in Sections 721 and 761 of the Dodd-Frank Act. *See also* Securities Exchange Act Release No. 67453 (July 18, 2012), 77 FR 48208 (August 13, 2012) (Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Record-Keeping).

[6] *See, e.g.,* Sections 712 and 763 of the Dodd-Frank Act.

[7] The Dodd-Frank Act provides that if a Title VII provision requires a rulemaking, the provision will go into effect ''not less than'' 60 days after publication of the related final rule or on July 16, 2011, whichever is later. *See* Sections 754 and 774 of the Dodd-Frank Act.

[8] *See* Securities Exchange Act Release No. 64795 (July 1, 2011), 76 FR 39927 (July 7, 2011) (Order Granting Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With the Pending Revision of the Definition of ''Security'' To Encompass Security-Based Swaps) (the ''Exemptive Release'').

[9] *See* SEA Section 3(a)(10) (15 U.S.C. 78c(a)(10)), as revised by Section 761 of the Dodd-Frank Act.

[10] *See* Securities Exchange Act Release No. 67177 (June 11, 2012), 77 FR 35625 (June 14, 2012) (Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act) (the ''Policy Statement'').

[11] The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE. The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[12] *See* Securities Exchange Act Release No. 64884 (July 14, 2011), 76 FR 42755 (July 19, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR–FINRA–2011–033) (''FINRA Rule 0180 Notice of Filing''). On January 13, 2012, FINRA filed for immediate effectiveness a rule change to extend the implementation of FINRA Rule 0180 to January 17, 2013. *See* Securities Exchange Act Release No. 66156 (January 13, 2012), 77 FR 3027 (January 20, 2012) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR–FINRA–2012–004).

[13] In its Exemptive Release, the Commission noted that the relief is targeted and does not include, for instance, relief from the Act's antifraud and anti-manipulation provisions. FINRA has noted that FINRA Rule 0180 is similarly targeted. For instance, paragraph (a) of FINRA Rule 0180 provides that FINRA rules shall not apply to members' activities and positions with respect to security-based swaps, except for FINRA Rules 2010 (Standards of Commercial Honor and Principles of Trade), 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices), 3310 (Anti-Money Laundering Compliance Program) and 4240 (Margin Requirements for Credit Default Swaps). *See also* paragraphs (b) and (c) of FINRA Rule 0180 (addressing the applicability of additional rules) and FINRA Rule 0180 Notice of Filing.

the definition of ''security'' under the Act. FINRA will amend the expiration date of Rule 0180 in subsequent filings as necessary such that the expiration date will coincide with the implementation of such rules and guidance.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that FINRA can implement the proposed rule change immediately and prevent FINRA Rule 0180 from lapsing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[14] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change would further the purposes of the Act because, consistent with the goals set forth by the Commission in the Exemptive Release and the Policy Statement, the proposed rule change will help to avoid undue market disruption resulting from the expiration of FINRA Rule 0180 before the implementation of new rules and guidance that would provide greater regulatory clarity in relation to security-based swap activities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that the proposed rule change would prevent undue market disruption that would otherwise result if security-based swaps were, by virtue of the expansion of the Act's definition of ''security'' to encompass security-based swaps, subject to the application of all FINRA rules before the implementation of new rules and guidance that would provide greater regulatory clarity in relation to security-based swap activities. FINRA believes that, by extending the expiration of FINRA Rule 0180, the proposed rule change will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

[14] 15 U.S.C. 78*o*–3(b)(6).

*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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

FINRA has requested that the Commission waive both the 5-day advance filing requirement [18] and the 30-day operative delay requirement so that the proposal may become operative upon filing. The Commission hereby grants both of those requests. The proposed rule is consistent with the goals set forth by the Commission when it issued the Exemptive Release and the Policy Statement and will help avoid undue market interruption resulting from the change to the definition of ''security'' under the Act. Therefore, the Commission believes it is consistent with the protection of investors and the public interest to waive both the requirement that the proposed rule be filed at least five (5) days in advance and the 30-day operative delay requirement. Therefore the Commission designates the proposal as operative upon filing.[19]

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] 17 CFR 240.19b–4(f)(6). Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[19] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2012–056 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2012–056. 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 FINRA. All comments received will be posted without change; the

Commission does not edit personal identifying information from submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2012–056 and should be submitted on or before January 16, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–30980 Filed 12–21–12; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68470; File No. SR–NYSE–2012–68]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Sections 902.02 and 902.03 of the New York Stock Exchange LLC Listed Company Manual To Introduce an Initial Application Fee

December 19, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,2 notice is hereby given that on December 6, 2012, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 Sections 902.02 and 902.03 of its Listed Company Manual to introduce an Initial Application Fee. The Exchange proposes to immediately reflect the proposed changes in the Listed Company Manual, but not to implement the proposed changes until January 1, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

### 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 Sections 902.02 and 902.03 of its Listed Company Manual to introduce an Initial Application Fee. The Exchange proposes to immediately reflect the proposed changes in the Listed Company Manual, but not to implement the proposed changes until January 1, 2013.[3]

The Exchange proposes to introduce an Initial Application Fee of $25,000 within Section 902.03 of the Listed Company Manual, which would be effective January 1, 2013.[4] An issuer would be required to pay an Initial Application Fee if it applied to list an equity security on the Exchange, except that an issuer:

(i) Applying to list within 36 months following emergence from bankruptcy and that has not had a security listed on a national securities exchange during such period;

(ii) relisting a class of stock that is registered under the Securities Exchange Act of 1934 (the ''Act'') that was delisted from a national securities exchange and only if such delisting was:

(a) Within the previous 12 calendar months; and

(b) due to the issuer's failure to file a required periodic financial report with the Commission or other appropriate regulatory authority; or

(iii) transferring the listing of any class of equity securities from any other national securities exchange

would not be required to pay an Initial Application Fee in connection with its application for listing such equity security.

Accordingly, issuers for whom the Initial Application Fee waivers would be applicable would generally be the same as the issuers for whom Listing Fees would be waived, as provided in Section 902.02 of the Listed Company Manual.[5]

As with the Listing Fee waivers, none of the Initial Application Fee waivers would be applicable to the listing of any class of securities if the issuer's primary class of common stock remains listed on another national securities exchange. The Initial Application Fee would be non-refundable.

An issuer applying to list an equity security on the Exchange is subject to a preliminary confidential review by NYSE Regulation, Inc. (''NYSER'') in which NYSER determines the issuer's qualification for listing. As set forth in Section 702.02 of the Listed Company Manual, if NYSER determines in connection with this preliminary confidential review that the issuer is qualified for listing, the issuer is informed that it has been cleared as eligible to list and that the Exchange will accept a formal Original Listing Application from the Issuer. It is the Exchange's practice to notify the issuer of its eligibility clearance and the conditions to its listing by means of a letter (the ''pre-clearance'' letter).

For an issuer subject to the Initial Application Fee, its payment would be a prior condition to eligibility clearance being granted. As a practical matter, the Exchange anticipates that an issuer would pay the Initial Application Fee after NYSER has completed its preliminary confidential review and has determined that the issuer is eligible to submit a formal Original Listing Application, but before the ''pre-clearance'' letter has been issued. Typically, the Exchange is in contact with an issuer prior to the issuance of a ''pre-clearance'' letter and provides oral confirmation of the issuer's

[3] The Exchange has proposed changes to the Listed Company Manual, as reflected in the Exhibit 5 attached hereto, in a manner that would permit readers of the Listed Company Manual to identify the changes that would be implemented on January 1, 2013. The Commission notes that the Exhibit 5 referenced in the previous sentence is attached to the filing, not to this Notice.

[4] The Exchange also proposes to include references to the Initial Application Fee in Section 902.02, where necessary and appropriate. Additionally, the Exchange proposes to amend certain text of Section 902.03 to account for the proposed inclusion of the Initial Application Fee therein. The Exchange also proposes to amend the text describing the implementation of Section 902.03 to reflect that the reference to the proposed rule change that implemented the text therein added the original text, not the text in its current form.

[5] *See* Securities Exchange Act Release No. 68017 (October 9, 2012), 77 FR 63404 (October 16, 2012) (SR–NYSE–2012–47). The Initial Application fee would only apply with respect to the listing of equity securities. Listing Fees are not limited in this respect.

eligibility clearance prior to the issuance of the ''pre-clearance'' letter.

The Initial Application Fee would be applied towards the applicable Listing Fees for an issuer that lists on the Exchange. If an issuer paid an Initial Application Fee in connection with the application to list an equity security but did not immediately list such security, the Issuer would not be required to pay a subsequent Initial Application Fee if it later listed such security so long as (i) the issuer had a registration statement regarding such security on file with the Commission, or, (ii) if the issuer withdrew its registration statement, the issuer refiled a registration statement regarding such security within 12 months of the date of such withdrawal. The Exchange is proposing the Initial Application Fee because it would allow the Exchange to recover, in part, the costs associated with processing and evaluating an issuer's application, irrespective of whether the relevant issuance qualifies for listing or whether such issuer decides to list on the Exchange. In addition, the Initial Application Fee would provide a disincentive for impractical applications by issuers. The proposed change is not otherwise intended to address any other matter, and the Exchange is not aware of any significant problem that issuers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(4) and Section 6(b)(5) of the Act,[7] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed Initial Application Fee of $25,000 is reasonable because it would allow the Exchange to recover, in part, the costs associated with processing and evaluating an issuer's application, irrespective of whether the relevant issuance qualifies for listing or whether such issuer decides to list on the Exchange. In this regard, the Exchange believes that the Initial Application Fee of $25,000 is reasonably related to the amount of time, resources and cost associated with the Exchange's review of an initial application for listing an equity security.[8] Furthermore, the Exchange believes that the Initial Application Fee is reasonable because it would provide a disincentive for impractical applications by issuers.

The Exchange believes that the Initial Application Fee is equitable and not unfairly discriminatory because it would be charged to all issuers that apply for listing an equity security on the Exchange, except, as proposed, those issuers that qualify for a waiver. In this regard, the Exchange believes that it is equitable and not unfairly discriminatory to charge an Initial Application Fee to issuers that apply to list an equity security, but not to issuers of other types of securities (e.g., closed-end funds or structured products). Specifically, while the Exchange conducts a comprehensive and thorough review of every listing application it receives, regardless of security type or issuer, the Exchange believes that its costs associated with processing and evaluating an issuer's application to list an equity security on the Exchange are generally significantly higher than the costs associated with other types of securities, such that it is equitable and not unfairly discriminatory to charge the Initial Application Fee only to issuers of equity securities. In this regard, the Exchange notes that the review that is required to be performed with respect to an issuer of an equity security is more extensive than that required for the review of, for example, an issuer of a closed-end fund.

The Exchange believes that it is reasonable to waive the Initial Application Fee for an issuer that applies to list within 36 months following emergence from bankruptcy, so long as such issuer has not had a security listed on a national securities exchange during such period, because this will incentivize such issuer to list its security on the Exchange, which will result in increased transparency and liquidity with respect to the issuer's security, thereby benefiting investors. In this regard, the Exchange notes that the issuer, like all other listing applicants, would be required to satisfy the Exchange's listings standards as well as the other governance requirements and standards that the Exchange requires of issuers listed on the Exchange. Accordingly, the Exchange believes that it is in the public's interest, and the interest of the issuer, to provide an opportunity for the increased transparency and liquidity that is attendant with listing on the Exchange, and therefore that it is reasonable to waive the Initial Application Fees for such issuers. The Exchange believes that the number of additional issuers that will qualify for this waiver, as proposed, will be limited. The Exchange also believes that limiting the waiver period to 36 months following emergence from bankruptcy is reasonable because, in the Exchange's opinion, it is a period of time that is sufficient for the issuer to meet the Exchange's qualifications for listing.

The Exchange also believes that it is reasonable to limit the waiver to issuers that have emerged from bankruptcy but have not yet had a security listed on a national securities exchange during such period because if an issuer has already listed its security post-emergence, it has already exposed itself to the requirements and transparency associated with listing on a national securities exchange, which is what the Exchange is incentivizing by waiving the Initial Application Fees. The Exchange also believes that this is equitable and not unfairly discriminatory because the goal of the waiver is to incentivize listing, and the transparency and public benefits (e.g., increased liquidity) that are attendant therewith. Accordingly, these goals would already be achieved for an issuer that has already listed on another national securities exchange post-emergence, and to waive the Initial Application Fee would therefore be inconsistent with the waiver's purpose.

The Exchange also believes that it is reasonable to provide a waiver of the Initial Application Fee to an issuer listing a class of stock that is registered under the Act that was delisted from a national securities exchange if such delisting was (a) within the previous 12 calendar months, and (b) due to the issuer's failure to file a required periodic financial report with the Commission or other appropriate regulatory authority. The Exchange anticipates that these will be companies that were otherwise in compliance with the quantitative listing standards of the Exchange or another national securities exchange, but that fell behind on their Act reporting because their auditors or the Commission required restatements of their financial statements and that these companies will relist on the Exchange (or another national securities exchange) as soon as their filings are up to date. The Exchange believes that it

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and 15 U.S.C. 78f(b)(5).

[8] The Exchange notes that NASDAQ also charges a non-refundable $25,000 application fee to issuers on The NASDAQ Global Market. *See* NASDAQ Rule 5910. *See also* Securities Exchange Act Release No. 61669 (March 5, 2010), 75 FR 11958 (March 12, 2010) (SR–NASDAQ–2009–081). NASDAQ also charges a non-refundable $5,000 application fee to issuers on The NASDAQ Capital Market. *See* NASDAQ Rule 5920. *See also* Securities Exchange Act Release No. 59663 (March 31, 2009), 74 FR 15552 (April 6, 2009) (SR–NASDAQ–2009–018).

would be appropriate to waive Initial Application Fees for these companies and that such a waiver does not constitute an inequitable or unfairly discriminatory allocation of fees because such companies would have previously paid an initial listing fee to another national securities exchange, and that to make them pay the Initial Application Fee, which would be applied towards the applicable Listing Fee for an issuer that lists on the Exchange, would further penalize them unnecessarily. The Exchange also believes that limiting the waiver period to 12 months after delisting is reasonable because the waiver would apply to issuers that were delisted within a relatively recent time frame.

The Exchange believes that it is equitable and not unfairly discriminatory to charge Initial Application Fees to issuers that were delisted for reasons other than financial reporting because these other issuers would not have been in compliance with the quantitative listing standards of the Exchange at the time of delisting from a listing standards perspective, and such lack of compliance would be due to reasons other than financial reporting. In this regard, the Exchange believes that these issuers differ from other delisted issuers because such delisting was not due to a quantitative listing standard of the Exchange, but instead was because of a financial reporting requirement under the Act. Similarly, the Exchange believes that it is equitable and not unfairly discriminatory to charge Initial Application Fees to issuers that are registered under the Act but not previously listed on a national securities exchange because such issuers would not have previously paid an Initial Application Fee to the Exchange or, presumably, a similar fee to another national securities exchange.

The Exchange also believes that this aspect of the proposed change is equitable and not unfairly discriminatory because, in addition to applying equally to all issuers that are applying to list equity securities on the Exchange, it would differentiate between those issuers whose securities are delisted solely for financial reporting reasons and those issuers whose securities were delisted for other reasons or were not previously listed on a national securities exchange. In this regard, the Exchange believes that these issuers would not be unfairly penalized if they are required to pay Initial Application Fees.

The Exchange also believes that it is reasonable to provide a waiver of the Initial Application Fee to an issuer transferring the listing of any class of equity securities to list on the Exchange because such an issuer would have been free to continue to list on the other national securities exchange on which it was previously listed. In this regard, the issuer would have already paid a listing fee and may have already paid an application fee to the other exchange for the initial application to list on that market.[9] Accordingly, it is reasonable to not charge the Initial Application Fee so as to avoid double-charging issuers for the listing of their equity securities. It is also equitable and not unfairly discriminatory to waive the Initial Application Fee to an issuer transferring the listing of any class of equity securities to list on the Exchange because all issuers transferring the listing of their equity securities in this manner would be eligible for the waiver of the Initial Application Fee. It is also equitable and not unfairly discriminatory because such issuers would be under no obligation to transfer their listing to the Exchange and would be disincentivized to do so if they were subject to the Initial Application Fee. In this regard, the waiver would contribute to providing issuers with the ability to choose the listing market that best suits their needs and that is the ideal market for listing their equity securities.

Overall, the Exchange believes that instances of the Initial Application Fee waiver being granted to issuers that apply to list on the Exchange will be relatively rare. Accordingly, the Exchange does not anticipate that it will experience any meaningful diminution in revenue as a result of the proposed waiver and therefore does not believe that the proposed waiver would in any way negatively affect its ability to continue to adequately fund its regulatory program or the services that the Exchange provides to issuers.

Additionally, the Exchange believes that the non-substantive changes that are proposed, which are technical and conforming changes, are reasonable because they will ensure that the proposed substantive changes are incorporated in a clear and accurate manner. These changes are also equitable and not unfairly discriminatory because they will benefit all issuers and all other readers of the Listed Company Manual.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [10] of the Act and subparagraph (f)(2) of Rule 19b–4 [11] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

**Electronic Comments**

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2012–68 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- NYSE–2012–68. 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

[9] *See e.g., Id.* [sic]

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b 4(f)(2).

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 publicly available. All submissions should refer to File Number SR–NYSE–2012–68 and should be submitted on or before January 16, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–30979 Filed 12–21–12; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68480; File No. SR–CBOE–2012–118]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Options Regulatory Fee

December 19, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 7, 2012, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') proposes to amend its Options Regulatory Fee. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission.

### 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 has reevaluated the current amount of the Options Regulatory Fee (''ORF'') in connection with its annual budget review. In light of increased regulatory costs and expected volume levels for 2013, the Exchange proposes to increase the ORF from $.0065 per contract to $.0085 per contract. The Exchange is amending the ORF due to substantial increases in resources devoted to regulatory services, including the recent hiring of many new employees, increased office space and regulatory systems enhancements. These increased regulatory costs coincide with a decrease in industry transaction volume. The proposed fee would be operative on January 2, 2013.

The ORF is assessed by the Exchange to each Trading Permit Holder for all options transactions executed or cleared by the Trading Permit Holder that are cleared by The Options Clearing Corporation (''OCC'') in the customer range, i.e., transactions that clear in a customer account at OCC, regardless of the marketplace of execution. In other words, the Exchange imposes the ORF on all customer-range transactions executed by a Trading Permit Holder, even if the transactions do not take place on the Exchange.[3] The ORF also is charged for transactions that are not executed by a Trading Permit Holder but are ultimately cleared by a Trading Permit Holder. In the case where a Trading Permit Holder executes a transaction and a different Trading Permit Holder clears the transaction, the ORF is assessed to the Trading Permit Holder who executed the transaction. In the case where a non-Trading Permit Holder executes a transaction and a Trading Permit Holder clears the transaction, the ORF is assessed to the Trading Permit Holder who clears the transaction. The ORF is collected indirectly from Trading Permit Holders through their clearing firms by OCC on behalf of the Exchange.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of Trading Permit Holder customer options business, including performing routine surveillances, investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange notes that its regulatory responsibilities with respect to Trading Permit Holder compliance with options sales practice rules have been allocated to FINRA under a 17d–2 agreement. The ORF is not designed to cover the cost of options sales practice regulation.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange notifies Trading Permit Holders of adjustments to the ORF via regulatory circular.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange rules require each Trading Permit Holder to record the appropriate account origin code on all orders at the time of entry in order to allow the Exchange to properly prioritize and route orders and assess transaction fees pursuant to the rules of the Exchange and report resulting transactions to the OCC. CBOE order origin codes are defined in CBOE Regulatory Circular RG12–057. The Exchange represents that it has surveillances in place to verify that Trading Permit Holders mark orders with the correct account origin code.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[5] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The Exchange believes the proposed fee change is reasonable because industry transaction volume has declined while the Exchange's regulatory expenses have increased. The Exchange is amending the ORF due to substantial increases in resources devoted to regulatory services, including the recent hiring of many new employees, increased office space and regulatory systems enhancements. The proposed ORF increase would help to offset these increased regulatory expenses but does not result in total regulatory revenue exceeding total regulatory costs.

The Exchange believes the ORF is equitable and not unfairly discriminatory because it is objectively allocated to Trading Permit Holders in that it is charged to all Trading Permit Holders on all their transactions that clear as customer at the OCC. Moreover, the Exchange believes the ORF ensures fairness by assessing higher fees to those Trading Permit Holders that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., Trading Permit Holder proprietary transactions) of its regulatory program.[6]

The ORF is designed to recover a material portion of the costs of supervising and regulating Trading Permit Holder customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange notifies Trading Permit Holders of adjustments to the ORF via regulatory circular.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE 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 neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[7] of the Act and paragraph (f) of Rule 19b–4[8] thereunder. 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–CBOE–2012–118 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–CBOE–2012–118. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–118, and should be submitted on or before January 16, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–31019 Filed 12–21–12; 4:15 pm]

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[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may decide to modify the ORF or assess a separate regulatory fee on Trading Permit Holder proprietary transactions if the Exchange deems it advisable. *See* email from Jaime Galvan, Senior Attorney, CBOE, to Johnna Dumler, Special Counsel, Commission, dated December 18, 2012.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 C.F.R. 240.19b–4(f).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68476; File No. SR–NYSEArca-2012–138]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade PIMCO Foreign Currency Strategy Exchange-Traded Fund Under NYSE Arca Equities Rule 8.600

December 19, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that, on December 6, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): PIMCO Foreign Currency Strategy Exchange-Traded Fund. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b-4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the PIMCO Foreign Currency Strategy Exchange-Traded Fund (''Fund'') under NYSE Arca Equities Rule 8.600,[3] which governs the listing and trading of Managed Fund Shares.[4] The Shares will be offered by PIMCO ETF Trust (''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[5]

The investment manager to the Fund is Pacific Investment Management Company LLC (''PIMCO'' or ''Adviser''). PIMCO Investments LLC serves as the distributor for the Fund (''Distributor''). State Street Bank & Trust Co. serves as the custodian and transfer agent for the Fund (''Custodian'' or ''Transfer Agent'').

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[6] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Adviser is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. If PIMCO elects to hire a sub-adviser for the Fund that is also affiliated with a broker-dealer, such sub-adviser will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new manager, adviser, or sub-adviser becomes affiliated with a broker-dealer, it 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.

Principal Investment Strategies

According to the Registration Statement, the Fund will seek maximum

[3] The Commission has previously approved the listing and trading on the Exchange of other actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving Exchange listing and trading of five fixed income funds of the PIMCO ETF Trust); 66321 (February 3, 2012), 77 FR 6850 (February 9, 2012) (SR–NYSEArca–2011–95) (order approving listing and trading of PIMCO Total Return Exchange Traded Fund); and 66670 (March 28, 2012), 77 FR 20087 (April 3, 2012) (SR–NYSEArca–2012–09) (order approving listing and trading of PIMCO Global Advantage Inflation-Linked Bond Strategy Fund).

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index, or combination thereof.

[5] The Trust is registered under the 1940 Act. On October 28, 2011, the Trust filed an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''1933 Act'') and the 1940 Act relating to the Fund (File Nos. 333–155395 and 811–22250) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 28993 (November 10, 2009) (File No. 812–13571) (''Exemptive Order'').

[6] 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 its 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.

total return,[7] consistent with prudent investment management. The Fund will invest under normal circumstances[8] at least 80% of its assets in currencies of, or Fixed Income Instruments[9] denominated in the currencies of, foreign (non-U.S.) countries, including, but not limited to, a combination of short-term Fixed Income Instruments, money market securities, and currency forwards[10] backed by high-quality, low duration securities (''80% Holdings'').[11] The Fund will seek exposure to foreign (non-U.S.) currencies likely to outperform the U.S. dollar over the long-term. Assets not invested in the 80% Holdings may be invested in other types of Fixed Income Instruments (*e.g.,* Fixed Income Instruments denominated in U.S. dollars).

According to the Registration Statement, the Fund may invest up to 50% of its total assets in securities and instruments that are economically tied to emerging market countries, which may include assets comprising the 80% Holdings.[12] PIMCO will select the Fund's country and currency composition based on its evaluation of relative interest rates, inflation rates, exchange rates, monetary and fiscal policies, trade and current account balances, legal and political developments, and other specific factors PIMCO believes to be relevant. The Fund will normally limit its exposure to a single non-U.S. currency (from currency holdings or investments in securities denominated in that currency) to 20% of its total assets.

According to the Registration Statement, the average portfolio duration of the Fund will vary based on PIMCO's forecast for interest rates and, under normal market conditions, will vary from zero to three years.[13] The Fund may invest in both high yield securities (''junk bonds'') rated Ba, or investment grade securities rated Baa or higher, by Moody's Investors Service, Inc. (''Moody's''), or equivalently rated by Standard & Poor's Ratings Services (''S&P'') or Fitch, Inc. (''Fitch''), or, if unrated, determined by PIMCO to be of comparable quality.[14] The Fund currently anticipates that at least 50% of issues of Fixed Income Instruments held by the Fund will be rated investment grade or determined by PIMCO to be of comparable quality.[15] The Fund is non-diversified, which means that it may invest its assets in a smaller number of issuers than a diversified fund.[16]

While corporate debt securities and debt securities economically tied to an emerging market country generally must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment for the Fund, at least 80% of issues of such securities held by the Fund must have $200 million or more par amount outstanding. The Fund may invest up to 10% of its assets in mortgage-backed securities or in other asset-backed securities, although this limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities.

According to the Registration Statement, the Fund may purchase or sell securities on a when-issued, delayed delivery, or forward commitment basis and may engage in short sales. The Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts or by using other investment techniques (such as buy backs or dollar rolls).

Investment Selection Techniques

According to the Registration Statement, in selecting investments for the Fund, PIMCO will develop an outlook for interest rates, currency exchange rates and the economy,

[7] The ''total return'' sought by the Fund will consist of income and capital appreciation, if any, which generally arises from decreases in interest rates, foreign currency appreciation, or improving credit fundamentals for a particular sector or security.

[8] The term ''under normal circumstances'' includes, but is not limited to, the absence of 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.

[9] ''Fixed Income Instruments,'' as used generally in the Registration Statement, includes:

- Debt securities issued or guaranteed by the U.S. Government, its agencies or government-sponsored enterprises (''U.S. Government Securities'');
- Corporate debt securities of U.S. and non-U.S. issuers, including convertible securities and corporate commercial paper;
- Mortgage-backed and other asset-backed securities;
- Inflation-indexed bonds issued both by governments and corporations;
- Structured notes, including hybrid or ''indexed'' securities and event-linked bonds;
- Bank capital and trust preferred securities;
- Loan participations and assignments;
- Delayed funding loans and revolving credit facilities;
- Bank certificates of deposit, fixed time deposits and bankers' acceptances;
- Repurchase agreements on Fixed Income Instruments and reverse repurchase agreements on Fixed Income Instruments;
- Debt securities issued by states or local governments and their agencies, authorities and other government-sponsored enterprises;
- Obligations of non-U.S. governments or their subdivisions, agencies and government-sponsored enterprises; and
- Obligations of international agencies or supranational entities.

Only those Fixed Income Instruments that are denominated in foreign (non-U.S.) currencies count towards the 80% Holdings (as defined above).

[10] A forward foreign currency exchange contract involves an obligation to purchase or sell a specific currency at a future date at a price set at the time of the contract.

[11] In connection with its holdings in Fixed Income Instruments, the Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. PIMCO's Counterparty Risk Committee evaluates the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, PIMCO credit analysts evaluate each approved counterparty using various methods of analysis, including company visits, earnings updates, the broker-dealer's reputation, PIMCO's past experience with the broker-dealer, market levels for the counterparty's debt and equity, the counterparty's liquidity and its share of market participation.

[12] PIMCO generally considers an instrument to be economically tied to an emerging market country if the issuer or guarantor is a government of an emerging market country (or any political subdivision, agency, authority or instrumentality of such government), if the issuer or guarantor is organized under the laws of an emerging market country, or if the currency of settlement is a currency of an emerging market country. PIMCO has broad discretion to identify countries that it considers to qualify as emerging markets. In making investments in emerging market instruments, the Fund emphasizes those countries with relatively low gross national product per capita and with the potential for rapid economic growth. Emerging market countries are generally located in Asia, Africa, the Middle East, Latin America, and Eastern Europe.

[13] Duration is a measure used to determine the sensitivity of a security's price to changes in interest rates. The longer a security's duration, the more sensitive it will be to changes in interest rates.

[14] Securities rated Ba or lower by Moody's, or equivalently rated by S&P or Fitch, are sometimes referred to as ''high yield securities'' or ''junk bonds,'' while securities rated Baa or higher are referred to as ''investment grade.'' Unrated securities may be less liquid than comparably rated securities and involve the risk that the portfolio manager may not accurately evaluate the security's comparative credit rating. To the extent that the Fund invests in unrated securities, the Fund's success in achieving its investment objective may depend more heavily on the portfolio manager's creditworthiness analysis than if the Fund invested exclusively in rated securities. *See* note 15, *infra.*

[15] PIMCO utilizes sophisticated proprietary techniques in its creditworthiness analysis of unrated securities similar to the processes utilized by Moody's, S&P, and Fitch in their respective analyses of rated securities. For example, in making a ''comparable quality'' determination for an unrated security, PIMCO may evaluate the likelihood of payment by the obligor, the nature and provisions of the debt obligation, and/or the protection afforded by, and relative position of, the debt obligation in the event of bankruptcy, reorganization, or other arrangement under laws affecting creditors' rights. Upon consideration of these and other factors, PIMCO may determine that an unrated security is of comparable quality to rated securities in which the Fund may invest consistent with the Fund's credit quality guidelines described above.

[16] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80e).

analyze credit and call risks, and use other asset selection techniques. The proportion of the Fund's investments in securities with particular characteristics (such as quality, sector, interest rate, or maturity) will vary based on PIMCO's outlook for the U.S. economy and the economies of other countries in the world, the financial markets, and other factors. In seeking to identify undervalued currencies, PIMCO may consider many factors, including but not limited to longer-term analysis of relative interest rates, inflation rates, real exchange rates, purchasing power parity, trade account balances, and current account balances, as well as other factors that influence exchange rates such as flows, market technical trends, and government policies. With respect to fixed income investing, PIMCO will attempt to identify areas of the bond market that are undervalued relative to the rest of the market. PIMCO identifies these areas by grouping Fixed Income Instruments into sectors such as money markets, governments, corporates, mortgages, asset-backed, and international. Sophisticated proprietary software then will assist in evaluating sectors and pricing specific investments. Once investment opportunities are identified, PIMCO will shift assets among sectors depending upon changes in relative valuations, credit spreads, and other factors.

Additional Information Regarding Principal Investment Strategies[17]

The Fund will invest in currencies and Fixed Income Instruments that are economically tied to foreign (non-U.S.) countries. PIMCO generally considers an instrument to be economically tied to a non-U.S. country if the issuer is a foreign government (or any political subdivision, agency, authority, or instrumentality of such government), or if the issuer is organized under the laws of a non-U.S. country. In the case of certain money market instruments, such instruments will be considered economically tied to a non-U.S. country if either the issuer or the guarantor of such money market instrument is organized under the laws of a non-U.S. country.

The Fund will invest in foreign currencies and may invest in Fixed Income Instruments denominated in foreign (non-U.S.) currencies or receive revenues in foreign currencies, and may engage in foreign currency transactions on a spot (cash) basis and enter into forward foreign currency exchange contracts.[18] A forward foreign currency exchange contract, which involves an obligation to purchase or sell a specific currency at a future date at a price set at the time of the contract, reduces the Fund's exposure to changes in the value of the currency it will deliver and increases its exposure to changes in the value of the currency it will receive for the duration of the contract. Certain foreign currency transactions may also be settled in cash rather than the actual delivery of the relevant currency. The effect on the value of the Fund is similar to selling securities denominated in one currency and purchasing securities denominated in another currency. A contract to sell foreign currency would limit any potential gain which might be realized if the value of the hedged currency increases. The Fund may enter into these contracts to hedge against foreign exchange risk, to increase exposure to a foreign currency, or to shift exposure to foreign currency fluctuations from one currency to another. Suitable hedging transactions may not be available in all circumstances and there can be no assurance that the Fund will engage in such transactions at any given time or from time to time.

The Fund may invest in variable and floating rate debt securities, which are securities that pay interest at rates that adjust whenever a specified interest rate changes and/or that reset on predetermined dates (such as the last day of a month or calendar quarter). To the extent the Fund invests in variable and floating rate debt securities that are deemed illiquid, the Fund will limit such holdings to an amount consistent with the 15% limitation on illiquid securities discussed below. The Fund may invest in floating rate debt instruments (''floaters'') and engage in credit spread trades. Variable and floating rate securities generally are less sensitive to interest rate changes, but may decline in value if their interest rates do not rise as much, or as quickly, as interest rates in general. Conversely, floating rate securities will not generally increase in value if interest rates decline.

The Fund may invest in bank capital securities. Bank capital securities are issued by banks to help fulfill their regulatory capital requirements. There are two common types of bank capital: Tier I and Tier II. Bank capital is generally, but not always, of investment grade quality. Tier I securities are typically exchange-traded and often take the form of trust preferred securities. Tier II securities are commonly thought of as hybrids of debt and preferred stock. Tier II securities are typically traded over-the-counter, are often perpetual (with no maturity date), callable, and have a cumulative interest deferral feature. This means that under certain conditions, the issuer bank can withhold payment of interest until a later date. However, such deferred interest payments generally earn interest.

The Fund may make short sales as part of its overall portfolio management strategies or to offset a potential decline in value of a security.

Other Portfolio Holdings and Non-Principal Investment Strategies

For the purpose of achieving income, the Fund may lend its portfolio securities to brokers, dealers, and other financial institutions, provided a number of conditions are satisfied, including that the loan is fully collateralized. When the Fund lends portfolio securities, its investment performance will continue to reflect changes in the value of the securities loaned, and the Fund will also receive a fee or interest on the collateral. Cash collateral received by the Fund in securities lending transactions may be invested in short-term liquid Fixed Income Instruments or in money market or short-term mutual funds or similar investment vehicles, including affiliated money market or short-term mutual funds.

The Fund may invest in, to the extent permitted by Section 12(d)(1)(A) of the 1940 Act, other affiliated and unaffiliated funds, such as open-end or closed-end management investment companies, including other exchange traded funds, provided that the Fund's investment in units or shares of investment companies and other open-end collective investment vehicles will not exceed 10% of the Fund's total assets. The Fund may invest securities lending collateral in one or more money market funds to the extent permitted by Rule 12d1–1 under the 1940 Act, including series of PIMCO Funds, an affiliated open-end management investment company managed by PIMCO.

Subject to the restrictions and limitations of the 1940 Act, the Fund may elect to pursue its investment objective either by investing directly in

[17] Many of the investment strategies of the Fund are discretionary, which means that PIMCO can decide from time to time whether to use them or not.

[18] The Fund will limit its investments in currencies to those currencies with a minimum average daily foreign exchange turnover of USD $1 billion, as determined by the Bank for International Settlements (''BIS'') Triennial Central Bank Survey. As of the most recent BIS Triennial Central Bank Survey, at least 52 separate currencies had minimum average daily foreign exchange turnover of USD $1 billion. For a list of eligible BIS currencies, see www.bis.org.

securities or instruments, or by investing in one or more underlying investment vehicles or companies that have substantially similar investment objectives and policies as the Fund.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment). Certain financial instruments, including, but not limited to, Rule 144A securities, loan participations and assignments, delayed funding loans, revolving credit facilities,[19] and fixed- and floating-rate loans[20] will be included in the 15% limitation on illiquid 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.[21]

The Fund intends to qualify annually and elect to be treated as a regulated investment company under Subchapter M of the Internal Revenue Code.[22]

The Fund may not concentrate its investments in a particular industry, as that term is used in the 1940 Act, and as interpreted, modified, or otherwise permitted by regulatory authority having jurisdiction from time to time.[23]

If PIMCO believes that economic or market conditions are unfavorable to investors, PIMCO may temporarily invest up to 100% of the Fund's assets in certain defensive strategies, including holding a substantial portion of the Fund's assets in cash, cash equivalents, or other highly rated short-term securities, including securities issued or guaranteed by the U.S. government, its agencies, or instrumentalities.

The Fund will not invest in any non-U.S registered equity securities, except if such securities are traded on exchanges that are members of the Intermarket Surveillance Group (''ISG'').

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of the Fund's broad-based securities market index (as defined in Form N–1A).[24]

The Fund will not invest in options contracts, futures contracts, or swap agreements, in accordance with the Trust's Exemptive Order.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Fund's Reporting Authority will 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 Fund's portfolio. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[25] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value (''NAV'') per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Net Asset Value

The NAV of the Fund's Shares will be determined by dividing the total value of the Fund's portfolio investments and other assets, less any liabilities, by the total number of Shares outstanding.

Fund Shares will be valued as of the close of trading (normally 4:00 p.m. Eastern time (''E.T.'')) on each business day. Information that becomes known to the Fund or its agents after the NAV has been calculated on a particular day will not generally be used to retroactively adjust the price of a security or the NAV determined earlier that day. The Fund reserves the right to change the time its NAV is calculated if the Fund closes earlier, or as permitted by the Commission.

For purposes of calculating NAV, portfolio securities and other assets for which market quotes are readily available will be valued at market value. Market value is generally determined on the basis of last reported sales prices, or if no sales are reported, based on quotes obtained from a quotation reporting system, established market makers, or pricing services. Domestic and foreign fixed income securities will normally be valued on the basis of quotes obtained from brokers and dealers or pricing services using data reflecting the earlier closing of the principal markets for those securities. Prices obtained from independent pricing services use information provided by market makers or estimates of market values obtained from yield data relating to investments or securities with similar characteristics.

Creations and Redemptions of Shares

According to the Registration Statement, Shares of the Fund that trade in the secondary market will be ''created'' at NAV[26] by Authorized

[19] The Fund may enter into, or acquire participations in, delayed funding loans and revolving credit facilities, in which a lender agrees to make loans up to a maximum amount upon demand by the borrower during a specified term. These commitments may have the effect of requiring the Fund to increase its investments in a company at a time when it might not otherwise decide to do so (including at a time when the company's financial condition makes it unlikely that such amounts will be repaid). To the extent that the Fund is committed to advance additional funds, it will segregate or ''earmark'' assets determined to be liquid by PIMCO in accordance with procedures established by the Fund's Board of Trustees in an amount sufficient to meet such commitments.

[20] The Fund may invest in fixed- and floating-rate loans, which investments generally will be in the form of loan participations and assignments of portions of such loans. Participations and assignments involve special types of risk, including credit risk, interest rate risk, liquidity risk, and the risks of being a lender.

[21] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); and Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

[22] 26 U.S.C. 851.

[23] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[24] The Fund's broad-based securities market index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

[25] 17 CFR 240.10A–3.

[26] The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of trading on the New York Stock Exchange (''NYSE''), generally 4:00 p.m. E.T. (''NAV Calculation Time'') on any business day. NAV per Share is calculated by dividing the Fund's net assets by the number of Fund Shares outstanding. For more information regarding the valuation of Fund investments in calculating the Fund's NAV, see the Registration Statement.

Participants only in block-size Creation Units of 100,000 Shares or multiples thereof. The Fund will offer and issue Shares at their NAV per Share generally in exchange for a basket of debt securities held by the Fund (''Deposit Securities'') together with a deposit of a specified cash payment (''Cash Component''). Alternatively, the Fund may issue Creation Units in exchange for a specified all-cash payment (''Cash Deposit''). Similarly, Shares can be redeemed only in Creation Units, generally in-kind for a portfolio of debt securities held by the Fund and/or for a specified amount of cash.

Except when aggregated in Creation Units, Shares will not be redeemable by the Fund. The prices at which creations and redemptions occur are based on the next calculation of NAV after an order is received. Requirements as to the timing and form of orders are described in the Authorized Participant agreement. PIMCO will make available on each business day via the National Securities Clearing Corporation (''NSCC''), prior to the opening of business (subject to amendments) on the Exchange (currently 9:30 a.m. E.T.), the identity and the required amount of each Deposit Security and the amount of the Cash Component (or Cash Deposit) to be included in the current Fund Deposit [27] (based on information at the end of the previous business day). Creations and redemptions must be made by an Authorized Participant or through a firm that is either a participant in the Continuous Net Settlement System of the NSCC or a DTC participant, and in each case, must have executed an agreement with the Distributor and Transfer Agent with respect to creations and redemptions of Creation Unit aggregations.

Additional information regarding the Trust, the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions, and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to but not defined in this proposed rule change are defined in the Registration Statement.

Availability of Information

The Trust's Web site (*www.pimcoetfs.com*), which is publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Trust's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (''Bid/Ask Price''),[28] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session (9:30 a.m. E.T. to 4:00 p.m. E.T.) on the Exchange, the Fund will disclose on the Trust's Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.[29]

On a daily basis, the Adviser will disclose for each portfolio security or other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security and financial instrument, number of shares or dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge. In addition, price information for the debt securities and other financial instruments held by the Fund will be available through major market data vendors.

In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the NSCC. The basket represents one Creation Unit of the Fund. The NAV of the Fund will normally be determined as of the close of the regular trading session on the NYSE (ordinarily 4:00 p.m. E.T.) on each business day.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* 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. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[30] The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[31] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 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. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets

[27] The Deposit Securities and Cash Component or, alternatively, the Cash Deposit, constitute the ''Fund Deposit,'' which represents the investment amount for a Creation Unit of the Fund.

[28] The Bid/Ask Price of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[29] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[30] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values taken from the CTA or other data feeds.

[31] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures 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.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the ISG from other exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[32]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[33] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Fund will not invest in any non-U.S registered equity securities, except if such securities are traded on exchanges that are members of the ISG. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage; that is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of the Fund's broad-based securities market index (as defined in Form N–1A). According to the Registration Statement, the Fund will invest under normal circumstances at least 80% of its assets in currencies of, or Fixed Income Instruments denominated in the currencies of, foreign countries, including, but not limited to, a combination of short-term Fixed Income Instruments, money market securities, and currency forwards backed by high-quality, low duration securities. The Fund may invest up to 50% of its total assets in securities and instruments (including currencies and Fixed Income Instruments) that are economically tied to emerging market countries. The Fund currently anticipates that at least 50% of issues of Fixed Income Instruments held by the Fund will be rated investment grade or determined by PIMCO to be of comparable quality. The Fund will normally limit its exposure to a single non-U.S. currency (from currency holdings or investments in securities denominated in that currency) to 20% of its total assets. Further, the Fund will limit its investments in currencies to those currencies with a minimum average daily foreign exchange turnover of USD $1 billion as determined by the BIS Triennial Central Bank Survey. The Fund may invest in corporate debt securities. While corporate debt securities and debt securities economically tied to an emerging market country generally must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment for the Fund, at least 80% of issues of such securities held by the Fund must have $200 million or more par amount outstanding. The Fund may invest up to 10% of its assets in mortgage-backed securities or in other asset-backed securities, although this limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities. The Fund may hold up to 15% of its net assets in illiquid securities. The Fund will not invest in options contracts, futures contracts, or swap agreements.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the

[32] For a list of the current members of ISG, see http://www.isgportal.org. The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[33] 15 U.S.C. 78f(b)(5).

public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the Portfolio Indicative Value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on the Trust's Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. 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, and quotation and last sale information will be available via the CTA high-speed line. The Trust's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. In connection with its holdings in Fixed Income Instruments, the Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last-sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Adviser is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, the Fund's Reporting Authority will 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 Fund's portfolio.

*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–2012–138 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–2012–138. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549 on official business days between 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at www.nyse.com. 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–2012–138 and should be submitted on or before January 16, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–31016 Filed 12–21–12; 4:15 pm]

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[34] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68473; File No. SR–Phlx–2012–140]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Permit and Order Entry Port Fee

December 19, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on December 12, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Permit Fee and Order Entry Port Fee.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to be operative on January 2, 2013.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to increase the Permit Fee in Section VI, entitled ''Membership Fees'' at Part A entitled ''Permit and Registration Fees'' of the Pricing Schedule to recoup costs associated with the administration of the Exchange's members. The Exchange also proposes to amend Section VII entitled ''Other Member Fees'' at Part B entitled ''Port Fees'' of the Pricing Schedule to increase the Order Entry Port [3] Fee. The Exchange believes that this increase is necessary to keep pace with escalating technology costs.

Permit Fee

The Exchange assesses two different Permit Fees based on whether a member or member organization is transacting business on the Exchange. The Exchange assesses members and member organizations that are transacting business on the Exchange a Permit Fee of $2,000 per month. A member or member organization will be assessed the $2,000 monthly Permit Fee if that member or member organization: (1) Transacts its option orders in its assigned Phlx house account in a particular month; or (2) is a clearing member of The Options Clearing Corporation or a Floor Broker; or (3) for those member organizations which are under common ownership, transacts at least one options trade in a Phlx house account that is assigned to one of the member organizations under common ownership.[4] The Exchange assesses members and member organizations that are not transacting business on the Exchange a Permit Fee of $7,500 per month. A member or member organization is assessed the $7,500 Permit Fee for not transacting business on the Exchange if that member is either: (i) Not a PSX Only Participant; [5] or (ii) not engaged in an options business at Phlx in a particular month. In addition, a member or member organization that sponsors an options participant [6] would pay an additional Permit Fee for each sponsored options participant.

The Exchange is proposing to increase the $2,000 Permit Fee for members transacting business on the Exchange to $2,100 per month. The Exchange is seeking to recoup costs incurred from the membership administration function.[7]

Order Entry Port Fee

The Exchange currently assesses an Order Entry Port Fee per month, per mnemonic [8] of $500. This fee is assessed on members regardless of whether the order entry mnemonic is active [9] during the billing month. The fee is assessed regardless of usage, and solely on the number of order entry ports assigned to each member organization.[10] The Exchange proposes to increase the Order Entry Port Fee from $500 to $550 per month, per mnemonic. The Exchange believes that this increase would allow the Exchange to keep pace with increasing technology costs.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(4) of the Act [12] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that the proposed increase to the Permit Fee for members transacting business on the Exchange is reasonable because the Exchange is seeking to recoup costs

[3] The Order Entry Port Fee is a connectivity fee assessed on members in connection with routing orders to the Exchange via an external order entry port. Members access the Exchange's network through order entry ports. A member organization may have more than one order entry port.

[4] For purposes of the Permit Fee, ''common ownership'' is defined as at least 75% common ownership between the member organizations.

[5] Applicants that apply for membership solely to participate in the NASDAQ OMX PSX equities market are not assessed a Permit Fee, Application Fee, Initiation Fee, or Account Fee. *See* Securities Exchange Act Release No. 61863 (April 7, 2010), 75 FR 20021 (April 16, 2010) (SR–Phlx–2010–54).

[6] *See* Exchange Rule 1094 titled Sponsored Participants. A Sponsored Participant may obtain authorized access to the Exchange only if such access is authorized in advance by one or more Sponsoring Member Organizations. Sponsored Participants must enter into and maintain participant agreements with one or more Sponsoring Member Organizations establishing a proper relationship(s) and account(s) through which the Sponsored Participant may trade on the Exchange.

[7] The Exchange is not amending the Permit Fee for members who are not transacting business on the Exchange.

[8] Order entry mnemonics are codes that identify member organization order entry ports.

[9] An order entry mnemonic is considered active if a member organization sends at least one order to the Exchange using that order entry mnemonic during the applicable billing month. *See* Securities Exchange Act Release No. 58728 (October 3, 2008), 73 FR 59695 (October 9, 2008) (SR–Phlx–2008–70).

[10] The Exchange waives the $500 per month per mnemonic Order Entry Port Fee for mnemonics used exclusively for complex orders where one of the components of the complex order is the underlying security.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

related to membership administration. The proposed fee is in the range of similar fees at other exchanges and less than other fees.[13] In addition, the Exchange believes that the Permit Fee is equitable and not unfairly discriminatory, because unlike other exchanges, Phlx's Permit Fees are the same for every options permit holder that is conducting business at the Exchange. The Exchange also believes that the increased fee is equitable and not unfairly discriminatory because the Permit Fee for not transacting business on the Exchange remains substantially higher as is the case today.

The Exchange believes that the increase to the Order Entry Port Fee is reasonable because it would allow the Exchange to keep pace with increasing technology costs. The Exchange believes that the increase to the Order Entry Port Fee is equitable and not unfairly discriminatory because all members would be subject to the same fees and waivers related to the Order Entry Port Fee.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee increases are competitive with fees at other options exchanges.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

[13] *See* the Chicago Board Options Exchange, Incorporated's Fees Schedule. Per month a Market Maker Trading Permit is $5,500, a SPX Tier Appointment is $3,000, a VIX Tier Appointment if $2,000, a Floor Broker Trading Permit is $9,000, an Electronic Access Permit is $1,600 and there is no access fee for a CBSX Trading Permit. *See also* the International Securities Exchange LLC's Schedule of Fees. Per month an Electronic Access Member is assessed $500.00 for membership and a market maker is assessed from $2,000 to $4,000 per membership depending on the type of market maker. *See also* C2 Options Exchange, Incorporated's Fees Schedule. Per month, a market-maker is assessed a $5,000 permit fee, an Electronic Access Permit is assessed a $1,000 permit fee and a SPXM Tier appointment is assessed a $4,000 fee after March 31, 2013. *See also* NYSE Arca, Inc.'s Fee Schedule. Per month, a Floor Broker, Office and Clearing Firm are assessed a $1,000 per month fee for the first Options Trading Permit (''OTP'') and $250 thereafter, and a market maker is assessed a $4,000 per month fee for one to four OTPs and $2,000 thereafter.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2012–140 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–Phlx–2012–140.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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–2012–140* and should be submitted on or before January 16, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–30981 Filed 12–21–12; 4:15 pm]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68475; File No. SR–FINRA–2012–054]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add the Term Chief Legal Officer to the Definition of General Counsel

December 19, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 11, 2012, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as concerned solely with the administration of the self-regulatory organization under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(3) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

FINRA is proposing to amend to amend [sic] FINRA Rule 9120 (Definitions) to add the term ''Chief Legal Officer'' to the definition of ''General Counsel.''

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

FINRA is proposing to expand the definition of General Counsel to acknowledge changes in FINRA's executive management. When FINRA adopted the Code of Procedure in 1997, it defined ''General Counsel'' as meaning ''the General Counsel of [FINRA], or his or her delegatee, who shall be a person who reports to the General Counsel of [FINRA] * * *.''[5] Recently FINRA has appointed a Chief Legal Officer, an action that is similar to appointments made in the legal departments of other self-regulatory organizations. The proposed rule change adds the term ''Chief Legal Officer'' to the definition of ''General Counsel.'' This addition will confirm that when the Code of Procedure refers to the General Counsel, the reference includes FINRA's Chief Legal Officer and his or her delegatees.

FINRA has filed the proposed rule change for immediate effectiveness. The effective date and the implementation date will be the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(8) of the Act,[6] which requires, among other things, that FINRA rules provide a fair procedure for the disciplining of members and persons associated with members, and Section 15A(b)(6) of the Act,[7] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general to protect investors and the public interest. The proposed rule change will confirm that the Chief Legal Officer may take certain actions that the Code of Procedure also authorizes the General Counsel to take. In making this clarification, FINRA believes that the proposed rule change will assist in the efficient administration of actions governed by the Code of Procedure. Adding the term ''Chief Legal Officer'' will allow the Code of Procedure to match its terms with the titles currently used by FINRA's executives. FINRA believes that the proposed rule change will, accordingly, make the Code of Procedure easier to understand and apply.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as the proposed rule change is concerned solely with the administration of the FINRA.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and paragraph (f)(3) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2012–054 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2012–054. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the FINRA's principal office. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2012–054, and should be submitted on or before January 16, 2013

[5] *See* Securities Exchange Act Release No. 38908 (August 7, 1997), 62 FR 43385 (August 13, 1997) (Order Approving File No. SR–NASD–97–28).

[6] 15 U.S.C. 78o–3(b)(8).

[7] 15 U.S.C. 78o–3(b)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(3).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–31015 Filed 12–21–12; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68479; File No. SR–C2–2012–040]**

## Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Options Regulatory Fee

December 19, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 7, 2012, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') proposes to amend its Options Regulatory Fee. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission.

### 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 has reevaluated the current amount of the Options Regulatory Fee (''ORF'') in connection with its annual budget review. In light of increased regulatory costs and expected volume levels for 2013, the Exchange proposes to increase the ORF from $.0015 per contract to $.002 per contract. The Exchange is amending the ORF due to substantial increases in resources devoted to regulatory services, including the recent hiring of many new employees, increased office space and regulatory systems enhancements. These increased regulatory costs coincide with a decrease in industry transaction volume. The proposed fee would be operative on January 2, 2013.

The ORF is assessed by the Exchange to each Permit Holder for all options transactions executed or cleared by the Permit Holder that are cleared by The Options Clearing Corporation (''OCC'') in the customer range, i.e., transactions that clear in a customer account at OCC, regardless of the marketplace of execution. In other words, the Exchange imposes the ORF on all customer-range transactions executed by a Permit Holder, even if the transactions do not take place on the Exchange.[3] The ORF also is charged for transactions that are not executed by a Permit Holder but are ultimately cleared by a Permit Holder. In the case where a Permit Holder executes a transaction and a different Permit Holder clears the transaction, the ORF is assessed to the Permit Holder who executed the transaction. In the case where a non-Permit Holder executes a transaction and a Permit Holder clears the transaction, the ORF is assessed to the Permit Holder who clears the transaction. The ORF is collected indirectly from Permit Holders through their clearing firms by OCC on behalf of the Exchange.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of Permit Holder customer options business, including performing routine surveillances, investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange notes that its regulatory responsibilities with respect to Permit Holder compliance with options sales practice rules have been allocated to FINRA under a 17d–2 agreement. The ORF is not designed to cover the cost of options sales practice regulation.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange notifies Permit Holders of adjustments to the ORF via regulatory circular.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act5, which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Permit Holders and other persons using its facilities. The Exchange believes the proposed fee change is reasonable because industry transaction volume has declined while the Exchange's regulatory expenses have increased. The Exchange is amending the ORF due to substantial increases in resources devoted to regulatory services, including the recent hiring of many new employees, increased office space and regulatory systems enhancements. The proposed ORF increase would help to offset these increased regulatory expenses but does not result in total regulatory revenue exceeding total regulatory costs.

The Exchange believes the ORF is equitable and not unfairly discriminatory because it is objectively allocated to Permit Holders in that it is

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange rules require each Permit Holder to record the appropriate account origin code on all orders at the time of entry in order to allow the Exchange to properly prioritize and route orders and assess transaction fees pursuant to the rules of the Exchange and report resulting transactions to the OCC. C2 order origin codes are defined in C2 Regulatory Circular RG10–4. The Exchange represents that it has surveillances in place to verify that Permit Holders mark orders with the correct account origin code.

[4] 15 U.S.C. 78f(b).

charged to all Permit Holders on all their transactions that clear as customer at the OCC. Moreover, the Exchange believes the ORF ensures fairness by assessing higher fees to those Permit Holders that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., Permit Holder proprietary transactions) of its regulatory program.[6]

The ORF is designed to recover a material portion of the costs of supervising and regulating Permit Holder customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange notifies Permit Holders of adjustments to the ORF via regulatory circular.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

C2 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 neither solicited nor received comments on the proposed rule change.

[6] If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may decide to modify the ORF or assess a separate regulatory fee on Permit Holder proprietary transactions if the Exchange deems it advisable. *See* email from Jaime Galvan, Senior Attorney, C2, to Johnna Dumler, Special Counsel, Commission, dated December 18, 2012.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[7] of the Act and paragraph (f) of Rule 19b–4[8] thereunder. 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–C2–2012–040 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2012–040. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the 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 NW., 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–C2–2012–040, and should be submitted on or before January 16, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–31018 Filed 12–21–12; 4:15 pm]

**BILLING CODE 8011–01–P**

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 C.F.R. 240.19b–4(f).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68478; File No. SR–BOX–2012–023]**

## Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase the Position and Exercise Limits for Options on the iShares MSCI Emerging Markets Index Fund to 500,000 Contracts

December 19, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 12, 2012, BOX Options Exchange LLC (''BOX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Interpretive Material to Rule 3120 (Position Limits) to increase the position and exercise limits for options on the iShares MSCI Emerging Markets Index Fund (''EEM'') to 500,000 contracts. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Position limits for exchange-traded fund (''ETFs'') options, such as EEM options, are determined pursuant to Rule 3120 (Position Limits) and vary according to the number of outstanding shares and trading volume during the most recent six-month trading period of an underlying stock or ETF. The largest in capitalization and most frequently traded stocks and ETFs have an option position limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; smaller capitalization stocks and ETFs have position limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market. The current position limit for EEM options is 250,000 contracts. The purpose of the proposed rule change is to amend Interpretative Material (IM–3120–2) to Rule 3120 to increase the position and exercise limits for EEM options to 500,000 contracts.[3] There is precedent for establishing position limits for options on actively-traded ETFs and these position limit levels are set forth in IM–3120–2.[4]

In support of this proposed rule change, and as noted by the Chicago Board Options Exchange, Incorporated (''CBOE'') in a related filing,[5] the below trading statistics compare EEM to IWM and SPY. As shown in the table, the average daily volume in 2011 for EEM was 65 million shares compared to 64.1 million shares for IWM and 213 million shares for SPY. The total shares outstanding for EEM was 922.9 million compared to 192.6 million shares for IWM and 716.1 million shares for SPY. Further, the fund market cap for EEM was $41.1 billion compared to $15.5 billion for IWM and $98.3 billion for SPY.

| ETF | 2011 ADV (mil. shares) | 2011 ADV (option contracts) | Shares outstanding (Mil.) | Fund market cap ($bil) |
|---|---|---|---|---|
| EEM | 65 | 280,000 | 922.9 | 41.1 |
| IWM | 64.1 | 662,500 | 192.6 | 15.5 |
| SPY | 213 | 2,892,000 | 716.1 | 98.3 |

In further support of this proposal, the Exchange represents that EEM still qualifies for the initial listing criteria set forth in Rule 5020(h) for ETFs holding non-U.S. component securities.[6] EEM tracks the performance of the MSCI Emerging Markets Index, which has approximately 800 component securities.[7] ''The MSCI Emerging Markets Index is a free float-adjusted market capitalization index that is designed to measure equity market performance of emerging markets. The MSCI Emerging Markets Index consists of the following 21 emerging market country indices: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Morocco, Peru, Philippines, Poland, Russia, South Africa, Taiwan, Thailand, and Turkey.'' [8] The Exchange represents that more than 50% of the weight of the securities held by EEM are now subject to a comprehensive surveillance agreement (''CSA'').[9] Additionally, the component securities of the MSCI Emerging Markets Index on which EEM is based for which the primary market is in any one country that is not subject to a CSA do not represent 20% or more of the weight of the MSCI Emerging Markets Index.[10] Finally, the component securities of the MSCI Emerging Markets Index on which EEM is based for which the primary market is in any two countries that are not subject to CSAs do not represent 33% or more of the weight of the MSCI Emerging Markets Index.[11]

The Exchange believes that the liquidity in the underlying ETF and the liquidity in EEM options support its request to increase the position and exercise limits for EEM options. As to the underlying ETF, through October 17, 2012 the year-to-date average daily trading volume for EEM across all exchanges was 49.3 million shares. As to EEM options, the year-to-date average daily trading volume for EEM options across all exchanges was approximately 250,000 contracts. The Exchange believes that increasing position limits for EEM options will lead to a more liquid and competitive market environment for EEM options that will benefit customers interested in this product. Under the Exchange's proposal, the options reporting requirement for EEM would continue unabated. Thus, the Exchange would still require that each Options Participant and associated person of an Options Participant that maintain a position in EEM options on the same side of the market, for its own account or for the account of a customer, report certain information to the Exchange.

[3] By virtue of IM–3140–1 to Rule 3140, which is not being amended by this filing, the exercise limit for EEM options would be similarly increased. *See* IM–3140–1 to Rule 3140 (Exercise Limits).

[4] IM–3120–2 lists exceptions to standard position limits which are, for put or call option contracts overlying the following securities: 300,000 contracts for the DIAMONDS Trust (DIA); 500,000 contracts for the iShares Russell 2000 Index Fund (IWM); 900,000 contracts for the PowerShares QQQ Trust (QQQQ); and no limit for the Standard and Poor's Depository Receipts Trust (SPY).

[5] *See* Securities Exchange Act Release No. 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012) (SR–CBOE–2012–066).

[6] The Exchange notes that the initial listing criteria for options on ETFs that hold non-U.S. component securities are more stringent than the maintenance listing criteria for those same ETF options. *See* Rule 5020(h) and Rule 5030(h).

[7] *See http://us.ishares.com/product_info/fund/overview/EEM.htm* and *http://www.msci.com/products/indices/licensing/msci_emerging_markets/*. Identification of the specific securities in the EEM and their individual concentrations in the EEM can be accessed at: *http://us.ishares.com/product_info/fund/holdings/EEM.htm.*

[8] *See http://www.msci.com/products/indices/tools/index.html#EM.*

[9] *See* Rule 5020(h)(2)(A).

[10] *See* Rule 5020(h)(2)(B).

[11] *See* Rule 5020(h)(2)(C).

This information would include, but would not be limited to, the option position, whether such position is hedged and, if so, a description of the hedge, and the collateral used to carry the position, if applicable. In addition, the general reporting requirement for customer accounts that maintain an aggregate position of 200 or more option contracts would remain at this level for EEM options.[12]

As the anniversary of listed options trading approaches its fortieth year, the Exchange believes that the existing surveillance procedures and reporting requirements at BOX Options Exchange LLC, other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. In addition, routine oversight inspections of the Exchange's regulatory programs by the Commission have not uncovered any material inconsistencies or shortcomings in the manner in which the Exchange's market surveillance is conducted. These procedures utilize daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both options and underlying stocks.[13]

Furthermore, large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G.[14] Options positions are part of any reportable positions and, thus, cannot be legally hidden. Moreover, the Exchange's requirement that Options Participants are to file reports with the Exchange for any customer who held aggregate large long or short positions of any single class for the previous day will continue to serve as an important part of the Exchange's surveillance efforts.

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that an Options Participant or associated person of an Options Participants or its customer may try to maintain an inordinately large un-hedged position in an option, particularly on EEM. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a Participant must maintain for a large position held by itself or by its customer.[15] In addition, the Commission's net capital rule, Rule 15c3–1[16] under the Act imposes a capital charge on Participants to the extent of any margin deficiency resulting from the higher margin requirement, which should serve as an additional form of protection.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.[17] In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[18] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the proposed rule change will benefit large market makers (which generally have the greatest potential and actual ability to provide liquidity and depth in the product), as well as retail traders, investors, and public customers, by providing them with a more effective trading and hedging vehicle. In addition, the Exchange believes that the structure of EEM options and the considerable liquidity of the market for EEM options diminish the opportunity to manipulate this product and disrupt the underlying market that a lower position limit may protect against.

*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*

The Exchange has neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that it can increase the position and exercise limits for EEM options immediately, which will result in consistency and uniformity among the competing options exchanges as to the position and exercise limits for EEM options. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[21] The Commission notes the proposal is substantively identical to a proposal that was recently approved by the Commission, and does not raise any new regulatory issues.[22] For these reasons, the Commission designates the proposed rule change as operative upon filing.

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

[12] Reporting requirements are stated in Rule 3150 (Reports Related to Position Limits).

[13] These procedures have been effective for the surveillance of EEM options trading and will continue to be employed.

[14] 17 CFR 240.13d-1.

[15] *See* Rule 10120 (Margin Requirements) for a description of margin requirements.

[16] 17 CFR 240.15c3–1.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[21] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] *See* Securities Exchange Act Release No. 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012) (SR–CBOE–2012–066).

change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to rule-comments@sec.gov. Please include File Number SR–BOX–2012–023 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–BOX–2012–023.* 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–BOX–2012–023* and should be submitted on or before January 16, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–31017 Filed 12–21–12; 4:15 pm]

**BILLING CODE 8011–01–P**

[23] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68457; File No. SR–CBOE–2012–120]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 2, To Allow the Listing and Trading of a P.M.-Settled S&P 500 Index Option Product

December 18, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 5, 2012, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. On December 17, 2012, the Exchange filed Amendments No. 1 and 2 to the proposed rule change.[3] 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 permit the listing and trading of P.M.-settled S&P 500 Index options on a pilot basis. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this rule filing is to permit the listing and trading, on a pilot basis, of Standard & Poor's 500 Index (''S&P 500'') options with third-Friday-of-the-month (''Expiration Friday'') expiration dates for which the exercise settlement value will be based on the index value derived from the closing prices of component securities (''P.M.-settled'') for an initial period of twelve months (the ''Pilot Program''). The S&P 500 is a capitalization-weighted index of 500 stocks from a broad range of industries. The component stocks are weighted according to the total market value of their outstanding shares. The impact of a component's price change is proportional to the issue's total market share value, which is the share price times the number of shares outstanding. These are summed for all 500 stocks and divided by a predetermined base value. The base value for the S&P 500 is adjusted to reflect changes in capitalization resulting from, among other things, mergers, acquisitions, stock rights, and substitutions.

The proposed contract (''SPXPM'') would use a $100 multiplier, and the minimum trading increment would be $0.05 for options trading below $3.00 and $0.10 for all other series. Strike price intervals would be set no less than 5 points apart. Consistent with existing rules for index options, the Exchange would allow up to twelve near-term expiration months,[4] as well as LEAPS.[5] Expiration processing would occur on Saturday following the Expiration Friday. The product would have European-style exercise, and because it is based on the S&P 500, there would be no position limits.[6] The Exchange has the flexibility to open for trading additional series in response to customer demand. SPXPM would be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange withdrew Amendment No. 1 on December 17, 2012. In Amendment No. 2, the Exchange represented that it does not believe that CBOE Trading Permit Holders will experience significant operations issues when trading P.M.-settled S&P 500 Index products on CBOE.

[4] The Exchange wishes to give the same expiration month options for SPXPM as are given for SPX, since both options classes are derived from the S&P 500.

[5] Pursuant to CBOE Rule 24.9(b)(1)(A), index LEAPS may expire from 12–180 months from the date of issuance.

[6] There would be reporting requirements pursuant to Rule 4.13, *Reports Related to Position Limits,* and Interpretation and Policy .03 to Rule 24.4, *Position Limits for Broad-Based Index Options,* which sets forth the reporting requirements for certain broad-based indexes that do not have position limits.

traded on the Exchange's Hybrid Trading System (''Hybrid'').

SPXPM is currently being traded, on the same terms as proposed for the Pilot Program, on a pilot basis on C2 Options Exchange, Incorporated (''C2'') (the ''C2 Pilot Program'').[7] C2 (which is wholly owned by the same corporation, CBOE Holdings, Inc., as CBOE) intends to cease trading SPXPM upon the introduction of SPXPM trading on CBOE. C2 and CBOE do not intend to engage in trading of SPXPM at the same time. CBOE intends to begin trading SPXPM on or around January 22, 2013.

The Exchange does not expect that CBOE Trading Permit Holders will experience significant operations issues regarding the proposed rule change. The listing of SPXPM is merely the listing of a new class to be traded on Hybrid, and from the standpoint of Trading Permit Holders, the procedures and processes involved are similar to those involved with the listing and trading of any other new class on Hybrid. Currently, there are no C2 Trading Permit Holders that are not also CBOE Trading Permit Holders, so any C2 Trading Permit Holder that is currently trading SPXPM on C2 will have access to trade SPXPM on CBOE. As with any other new class, any CBOE Market-Maker who wishes to act as a Market-Maker for SPXPM will have to follow the Exchange's Market-Maker appointment procedures and get an SPXPM appointment.

CBOE proposes to abide by the same reporting requirements for its Pilot Program as C2 has abided by for the C2 Pilot Program. As such, the Exchange proposes to submit a pilot program report to the Securities and Exchange Commission (the ''Commission'') at least two months prior to the expiration date of the Pilot Program (the ''annual report''). The annual report would contain an analysis of volume, open interest, and trading patterns. The analysis would examine trading in the proposed option product as well as trading in the securities that comprise the S&P 500 index. In addition, for series that exceed certain minimum open interest parameters, the annual report would provide analysis of index price volatility and share trading activity. In addition to the annual report, the Exchange would provide the Commission with periodic interim reports while the pilot is in effect that would contain some, but not all, of the information contained in the annual report. The annual report would be provided to the Commission on a confidential basis.

The annual report would contain the following volume and open interest data:

(1) Monthly volume aggregated for all trades;

(2) monthly volume aggregated by expiration date;

(3) monthly volume for each individual series;

(4) month-end open interest aggregated for all series;

(5) month-end open interest for all series aggregated by expiration date; and

(6) month-end open interest for each individual series.

In addition to the annual report, the Exchange would provide the Commission with interim reports of the information listed in Items (1) through (6) above periodically as required by the Commission while the pilot is in effect. These interim reports would also be provided on a confidential basis. The annual report would also contain the information noted in Items (1) through (6) above for Expiration Friday, A.M.-settled S&P 500 index options traded on CBOE.

In addition, the annual report would contain the following analysis of trading patterns in Expiration Friday, P.M.-settled S&P 500 Index option series in the pilot:

(1) A time series analysis of open interest; and

(2) an analysis of the distribution of trade sizes.

Also, for series that exceed certain minimum parameters, the annual report would contain the following analysis related to index price changes and underlying share trading volume at the close on Expiration Fridays:

(1) A comparison of index price changes at the close of trading on a given Expiration Friday with comparable price changes from a control sample. The data would include a calculation of percentage price changes for various time intervals and compare that information to the respective control sample. Raw percentage price change data as well as percentage price change data normalized for prevailing market volatility, as measured by the CBOE Volatility Index (VIX), would be provided; and

(2) a calculation of share volume for a sample set of the component securities representing an upper limit on share trading that could be attributable to expiring in-the-money series. The data would include a comparison of the calculated share volume for securities in the sample set to the average daily trading volumes of those securities over a sample period.

The minimum open interest parameters, control sample, time intervals, method for randomly selecting the component securities, and sample periods would be determined by the Exchange and the Commission.

The conditions for listing SPXPM on CBOE will be similar to those for SPX, which is already listed and trading on CBOE (with the one notable exception being that SPXPM will be P.M.-settled). As with SPX, bids and offers on complex orders in SPXPM options, except for box/roll spreads, shall be expressed in decimal increments no smaller than $0.05 or in any increment, as determined by the Exchange on a class-by-class basis and announced to the Trading Permit Holders (''TPHs'') via Regulatory Circular.[8]

As with SPX, in determining compliance with Rule 4.11 (Position Limits), there shall be no position limits for broad-based index option contracts (including reduced-value option contracts) in the SPXPM class.[9] As with SPX, each TPH (other than CBOE Market-Makers) or TPH organization that maintains a broad-based index option position on the same side of the market in excess of 100,000 contracts for SPXPM, for its own account or for the account of a customer, shall report information as to whether the positions are hedged and provide documentation as to how such contracts are hedged, in the manner and form required by the Division of Market Regulation.[10] As with SPX, whenever the Exchange determines, based on a report by the Department of Market Regulation or otherwise, that additional margin is warranted in light of the risks associated with an under-hedged SPXPM option position, the Exchange may consider imposing additional margin upon the account maintaining such under-hedged position pursuant to its authority under Exchange Rule 12.10.[11] As with SPX, there shall be no exercise limits for broad-based index options (including reduced-value option contracts) on SPXPM.[12]

As with SPX, the trading hours for SPXPM will be from 8:30 a.m. (Chicago time; all times in this proposed rule

[7] *See* Supplemental Rule (a) to C2 Chapter 24, and *also* Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55969 (September 9, 2011) (SR–C2–2011–008) and *also* Securities Exchange Act. Release No. 67939 (September 27, 2012), 77 FR 60504 (October 3, 2012) (SR–C2–2012–033).

[8] *See* CBOE Rule 6.42(4), in both the current and proposed forms.

[9] *See* CBOE Rule 24.4, in both the current and proposed forms.

[10] *See* CBOE Rule 24.4, Interpretation and Policy .03, in both the current and proposed forms.

[11] *See* CBOE Rule 24.4, Interpretation and Policy .04, in both the current and proposed forms.

[12] *See* CBOE Rule 24.5, in both the current and proposed forms.

change are Chicago time) to 3:15 p.m., with the exception being that trading in expiring SPXPM options will close at 3:00 p.m. on their last trading day (except for FLEX Options (as defined below) on SPXPM). SPXPM options will be priced in the market based on corresponding futures values. The primary listing markets for the component securities that comprise the S&P 500 close trading in those securities at 3:00 p.m. The primary listing exchanges for the component securities disseminate closing prices of the component securities, which are used to calculate the exercise settlement value of the S&P 500. CBOE believes that, under normal trading circumstances, the primary listing markets have sufficient bandwidth to prevent any data queuing that would cause any trades that are executed prior to the closing time from being reported after 3 p.m. Despite the fact that the exercise settlement value will be fixed at or soon after 3 p.m., if the Exchange did not close trading in expiring SPXPM options (except SPXPM FLEX Options) at 3:00 p.m. on their last trading day, trading in expiring PM-settled S&P 500 options would continue for an additional fifteen minutes until 3:15 p.m. and would not be priced on corresponding futures values, but rather the known cash value. At the same time, the prices of non-expiring PM-settled S&P 500 options series would continue to move and be priced in response to changes in corresponding futures prices.

A potential pricing divergence could occur between 3:00 and 3:15 p.m. on the final trading day in expiring PM-settled S&P 500 options (*e.g.,* switch from pricing off of futures to cash). Further, the switch from pricing off of futures to cash can be a difficult and risky switchover for liquidity providers. As a result, without closing expiring contracts at 3:00 p.m., it is foreseeable that Market-Makers would react by widening spreads in order to compensate for the additional risk. Therefore, the Exchange believes that, in order to mitigate potential investor confusion and the potential for increased costs to investors, it is appropriate to cease trading in expiring PM-settled S&P 500 options contracts at 3:00 p.m. The Exchange does not believe that the proposed change will impact volatility on the underlying cash market at the close on Expiration Friday. Further, the proposal to close trading on the last trading day for transactions in expiring SPXPM options at 3:00 p.m. is identical to a proposal already in effect on C2.[13]

Regarding SPXPM Flexible Exchange (''FLEX'') Options generally as well as SPXPM FLEX Options traded on the Exchange's FLEX Hybrid Trading System, there shall be no position limits (as with SPX FLEX Options). As with SPX FLEX Options, each Trading Permit Holder or TPH organization (other than CBOE Market-Makers) that maintains a FLEX broad-based index option position on the same side of the market in excess of 100,000 contracts for SPXPM, for its own account or for the account of a customer, shall report information as to whether the positions are hedged and provide documentation as to how such contracts are hedged, in the manner and form prescribed by the Exchange. In addition, whenever the Exchange determines that a higher margin is warranted in light of the risks associated with an under-hedged FLEX SPXPM option position, the Exchange may consider imposing additional margin upon the account maintaining such under-hedged position, pursuant to its authority under Exchange Rule 12.10 (as with SPX).[14] There shall be no exercise limits for broad-based FLEX Index Options (including reduced-value option contracts) on SPXPM (as with SPX).[15] These FLEX Options-related stipulations apply to SPXPM FLEX Options effected pursuant to the rules in Chapter XXIVA or on the FLEX Hybrid Trading System pursuant to the rules in Chapter XXIVB of the Exchange rules.

To explain the basic adoption of SPXPM, the Exchange proposes to add Interpretation and Policy .14 to Rule 24.9. This proposed new Interpretation and Policy would state that in addition to A.M.-settled Standard & Poor's 500 Stock Index options approved for trading on the Exchange pursuant to Rule 24.9, the Exchange may also list options on the S&P 500 Index whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (SPXPM). SPXPM options will be listed for trading for an initial pilot period ending twelve months from the date of Commission approval of this rule change proposal.

The Exchange also proposes to amend Rule 8.3 to specifically reference SPXPM options as having a Market-Maker tier appointment cost of 1.0. The Exchange notes that the new tier appointment cost for SPXPM options will be the initial tier appointment cost because this options class is not currently trading. Thus, to trade SPXPM, a Market-Maker will be required to obtain a dedicated Market-Maker permit. Among other reasons, the Exchange believes that the tier appointment cost for SPXPM is reasonable in light of the fact that it is a new product and the cost is comparable to the 1.0 tier appointment cost for SPX,[16] as well as the 1.0 appointment cost for SPXPM on C2.[17] The Exchange proposes to move all P.M.-settled S&P 500 Index options series that are part of the SPXPM options class and that have an expiration on any day other than the third Friday of every month (*e.g.,* Quarterly Index Options (''QIX''), End-of-Week (''EOW'') series, etc.) to the SPXPM class. The Exchange proposes to continue to allow such series to be traded under the appointment cost of the overarching class.

There exists precedent for P.M. settlement of broad-based index options. As previously stated, SPXPM is already traded on C2.[18] Further, OEX (an index option contract based on the Standard & Poor's 100 index) has been P.M.-settled since 1983.[19] Also, FLEX Options have P.M. settlements on any expiration day.[20] Similarly, CBOE recently established a pilot program that permits P.M.-settled options on broad-based indexes expiring on any Friday of the month, other than the third Friday of the month, as well as the last trading day of the month.[21] CBOE also trades Quarterly Option Series [22] that overlie exchange traded funds or indexes, and Quarterly Index Expirations [23] that are cash-settled options on certain broad-based indexes, both of which expire at the close of business on the last business day of a calendar quarter and are P.M.-settled. CBOE has experience with these special dated options and neither CBOE nor C2 have observed any market disruptions resulting from the P.M.-settlement feature of these options.

[13] *See* Securities Exchange Act Release No. 65630 (October 26, 2011), 76 FR 67510 (November 1, 2011) (SR–C2–2012–030).

[14] *See* CBOE Rules 24A.7 and 24B.7, in both the current and proposed forms.

[15] *See* CBOE Rules 24A.8 and 24B.8, in both the current and proposed forms.

[16] *See* CBOE Rule 8.3(c)(iii).

[17] *See* C2 Rule 8.2(d).

[18] *See* Supplemental Rule (a) to C2 Chapter 24, and *also* Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55969 (September 9, 2011) (SR–C2–2011–008).

[19] The Exchange notes that there are no futures or options on futures traded on the S&P 100 at this time.

[20] *See* Rule 24A.4(a)(2)(iv) and Rule 24B.4(a)(2)(iv) and Interpretation and Policy .01 to Rules 24A.4 and 24B.4.

[21] *See* Rule 24.9(e) and Securities Exchange Act Release No. 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (SR–CBOE–2009–075).

[22] *See* Rules 5.5(e) and 24.9(a)(2)(B).

[23] *See* Rule 24.9(c).

There are multiple primary listing and unlisted trading privilege (''UTP'') markets for the stocks underlying the index, and trading is widely dispersed among several stock exchanges and alternative trading systems. Many of these markets use closing cross procedures and employ closing order types to facilitate orderly closings.[24] Moreover, today stock order flow is predominantly electronic and the ability to smooth out openings and closings is greatly enhanced and market-on-close procedures work just as well as opening procedures. Bearing in mind these considerations as well as current SPXPM trading volume levels on C2, the Exchange does not believe that any market disruptions will be encountered with the introduction of P.M.-settled S&P 500 index options (especially given the fact that C2 has not experienced any such market disruptions due to its introduction of SPXPM). The Exchange will, of course, monitor for any such disruptions or the development of any factors that could cause such disruptions.

The Exchange also notes that P.M.-settled options predominate in the OTC market, and CBOE is not aware of any adverse effects in the stock market attributable to the P.M.-settlement feature. CBOE is merely proposing to offer a P.M.-settled product (similar to that which is already traded on C2) in an exchange environment which offers the benefit of added transparency, price discovery, and stability.

In response to any potential concerns that disruptive trading conduct could occur as a result of the concurrent listing and trading of two index option products based on the same index but for which different settlement methodologies exist (*i.e.,* one is A.M.-settled and one is P.M.–settled), the Exchange notes that for roughly five years (1987 to 1992) CBOE listed and traded an A.M.-settled S&P 500 index option called NSX at the same time it listed and traded a P.M.-settled S&P 500 index option called SPX and CBOE did not observe any market disruptions as a result of offering both products.

As proposed, the proposal would become effective on a pilot program basis for a period of twelve months. If the Exchange were to propose an extension of the program or should the Exchange propose to make the program permanent, then the Exchange would submit a filing proposing such amendments to the program. The Exchange notes that any positions established under the pilot would not be impacted by the expiration of the pilot. For example, a position in a P.M.-settled series that expires beyond the conclusion of the pilot period could be established during the 12-month pilot. If the pilot program were not extended, then the position could continue to exist. However, the Exchange notes that any further trading in the series would be restricted to transactions where at least one side of the trade is a closing transaction.

The adoption of trading of P.M.-settled options on the S&P 500 Index on the same exchange as A.M.-settled options on the S&P 500 Index would provide greater spread opportunities. For example, a market participant could trade in open outcry SPX (A.M.-settled) versus SPXPM as a spread.[25] This manner of trading in different products allows a market participant to take advantage of the different expiration times. This provides expanded trading opportunities. In the options market currently, market participants regularly trade similar or related products in conjunction with each other, which contributes to overall market liquidity.

The Exchange represents that it has sufficient capacity to handle additional traffic associated with this new listing, and that it has in place adequate surveillance procedures to monitor trading in these options thereby helping to ensure the maintenance of a fair and orderly market.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[26] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[27] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the introduction of P.M. settlement for the subject index option in the manner proposed does not raise any meaningful regulatory concerns. Further, the Exchange believes that the proposal will not adversely impact fair and orderly markets on expiration Fridays for the underlying stocks comprising the S&P 500 index. The Exchange believes that C2 has experienced no meaningful regulatory concerns, nor an adverse impact on fair and orderly markets, in connection with the C2 Pilot Program. Additionally, the proposed rule change would provide TPHs and investors with an opportunity to trade S&P 500 options with a P.M. settlement feature on CBOE subject to transparent exchange-based rules. Investors would also benefit from the opportunity to trade in association with this product on Expiration Fridays thereby removing impediments to a free and open market consistent with the Act.

The proposal to end trading at 3 p.m. on the last trading day for transactions in expiring SPXPM options will prevent continued trading on a product after the exercise settlement value has been fixed. This eliminates potential confusion and thereby protects investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE 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 neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[24] For example, *see* Nasdaq Rule 4754 (Nasdaq Closing Cross).

[25] *See* CBOE Rule 24.19.

[26] 15 U.S.C. 78f(b).

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2012–120 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–CBOE–2012–120. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2012–120 and should be submitted on or before January 14, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–30887 Filed 12–21–12; 8:45 am]

**BILLING CODE 8011–01–P**

[28] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68474; File No. SR–NYSEArca–2012–141]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Rule 6.65—Trading Halts and Suspensions

December 19, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 10, 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 Rule 6.65—Trading Halts and Suspensions. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend NYSE Arca Rule 6.65 by adopting a provision governing the nullification of trades that occur while the options class is subject to a trading halt. This proposal is based on and substantially similar to Rule 1092(c)(iv)(A) of NASDAQ OMX PHLX, LLC (''PHLX'').[4]

Specifically, the Exchange proposes to adopt Commentary .04 to Rule 6.65, which provides that any trade that occurs during a trading halt on the Exchange in a given option shall be nullified.

Rule 6.65 sets forth the circumstances when the Exchange may halt trading in an options contract or options series. Such trading halts are applicable to both electronic and open-outcry trading. Pursuant to Rule 6.65(a), NYSE Arca shall halt or suspend the trading of options whenever the Exchange deems such action appropriate in the interests of a fair and orderly market and to protect investors. Among the factors that may be considered are: (i) The trading in the underlying stock or Exchange Traded Funds (''ETF'') has been halted or suspended in the primary market; (ii) the opening of such underlying stock or ETF in the primary market has been delayed because of unusual circumstances; (iii) the Exchange has been advised that the issuer of the underlying stock or ETF is about to make an important announcement affecting such issuer; or (iv) other unusual conditions or circumstances are present. In addition, pursuant to Rule 6.65(b), the Exchange shall halt trading in any equity option (including options overlying ETFs), when the underlying security is paused.[5]

Notwithstanding a trading halt in an options security, the Exchange recognizes that there could be occurrences where an aberrant trade might still occur after the Exchange has halted trading in a given options class. For example, this could happen because of a temporary systems outage, a communications issue between the electronic and floor-based markets, or other type of in-flight messaging scenario where the Exchange's automatic execution system executed an order, even though the options had been halted prior to the time of execution. Because the Exchange would have already halted trading of the option class, either because it was warranted in the interest of a fair and orderly market and the protection of investors pursuant

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 57712 (April 24, 2008), 73 FR 24100 (May 1, 2008). Approval Order for SR-Phlx-2007–69, as amended.

[5] A trading pause in an underlying security is triggered when the price of the security falls or rises 10% or more in a rolling 5-minute window. Trading pauses are initiated by the primary market where the stock trades.

to Rule 6.65(a), or required pursuant to Rule 6.65(b) because the underlying security was paused, the Exchange does not believe that any trade that takes place after an options class that has been halted on the Exchange should stand. Proposed Commentary .04 will require the Exchange to nullify these aberrant trades. The Exchange notes that executions occurring prior to a trading halt in the options class, but not yet reported to the Exchange, will still be reported for dissemination to OPRA after the options have halted. Such trades would not be subject to nullification by the Exchange pursuant to proposed Commentary .04.

Under existing rules, the Exchange may only nullify a trade which occurred during a trading halt if, (i) pursuant to Rule 6.87 the trade qualifies as an Obvious or Catastrophic Error, or (ii) pursuant to Rule 6.77, a Trading Official determines that the execution of such trade was done in violation of certain Exchange rules governing open outcry trading.[6] The addition of proposed Commentary .04 will expand the Exchange's authority to nullify trades that may occur during a trading halt, which the Exchange believes is in keeping with the maintenance of a fair and orderly market and the protection of investors.

The Exchange notes that the PHLX Rule 1092(c)(iv) also includes other provisions related to trading halts and the nullification of trades. Paragraphs (B)–(C) of the PHLX rule deal with the nullification of an options trade whenever the underlying security or a certain percentage of the components of an underlying index have halted, regardless of whether the options themselves have halted. Exchange rules do not require that an options class be halted whenever the underlying security halts, therefore it would be inconsistent to nullify a trade simply because the underlying security or index components halted, if the Exchange had not also halted the trading of options overlying such security or index.[7] The Exchange only proposes to nullify a trade in the event the *options* have been halted by the Exchange, and therefore is not proposing to adopt PHLX Rule 1092(c)(iv)(B)–(D). Additionally, paragraph (D) of the PHLX rule deals with Treasury securities. The Exchange does not trade options on Treasury securities; therefore this provision is not relevant to this filing.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[8] in general, and furthers the objectives of Section 6(b)(5),[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule changes are consistent with the Act because permitting the Exchange to nullify trades that occur during a trading halt helps to ensure that NYSE Arca may continue to meet its obligation to maintain a fair and orderly market and protect investors. In particular, the Exchange believes that the proposal promotes just and equitable principles of trade because it will ensure that when the Exchange is halted for trading, no trades that mistakenly were executed during the halt will be permitted to stand, thereby assuring consistent treatment of orders during a trading halt. Furthermore, the proposal removes impediments to and perfects the mechanism of a free and open market and a national market system by assuring that when trading is halted, no executions may occur and any aberrant trades are nullified.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b-4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b—-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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–NYSEArca–2012–141 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–2012–141. 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

[6] A trade may also be nullified, without Exchange interaction, if all parties to the trade agree to the nullification.

[7] The Exchange notes that Rule 6.65(a) states that the Exchange may consider the halting of an underlying security as a factor to be taken into consideration when deciding whether to halt trading in the options overlying such security, and generally will do so and will halt an options class whenever an underlying security or index halts.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the NYSE Arca's principal office and on its Internet Web site at *www.nyse.com*. 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–2012–141, and should be submitted on or before January 16, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–31014 Filed 12–21–12; 4:15 pm]

**BILLING CODE 8011–01–P**

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68455; File No. SR–CHX–2012–14]**

## Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Telemarketing Rules

December 18, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on December 4, 2012, the Chicago Stock Exchange, Inc. (''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. CHX has filed this proposal pursuant to Exchange Act Rule 19b–4(f)(6)[3] which is effective upon filing with the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to amend its rules to adopt provisions that are substantially similar in all material respects to Financial Industry Regulatory Authority (''FINRA'') Rule 3230 (Telemarketing), which the Commission recently approved.[4] In turn, FINRA's rule was modeled after and is substantially similar to Federal Trade Commission (''FTC'') rules that prohibit deceptive and other abusive telemarketing acts or practices.[5] The text of this proposed rule change is available on the Exchange's Web site at (*www.chx.com*) and in the Commission's Public Reference Room.

[4] *See* Exchange Act Release No. 66279 (Jan. 30, 2012), 77 FR 5611 (Feb. 3, 2012) (SR–FINRA–2011–059) (approval order of proposed rule change to adopt telemarketing rule).

[5] 16 CFR 310.1-.9. The FTC adopted rules under the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994 (''Prevention Act'') in 1995. *See* Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995). Since the FTC rule is the model for the FINRA rule and the CHX rule, subsequent references will be to the FTC rule.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. CHX 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 Changes*

1. Purpose

The Exchange proposes to amend Article 8, Rule 13 (Advertising and Promotion) to adopt provisions that are substantially similar to FTC rules that prohibit deceptive and other abusive telemarketing acts or practices.[6]

The Prevention Act required, among other things, the Commission to promulgate, or direct any national securities exchange or registered securities associations to promulgate, rules substantially similar to the FTC rules[7] to prohibit deceptive and other abusive telemarketing acts or practices, unless the Commission determines either that the rules are not necessary or appropriate for the protection of investors or the maintenance of orderly markets or that existing federal securities laws or Commission rules already provide for such protection.[8] To this end, in May 2011, Commission staff directed the Exchange to conduct a review of its telemarketing rule and propose rule amendments that provide protections that are at least as strong as those provided by the FTC's telemarketing rules.[9]

[6] *See supra* note 5.

[7] *Id.*

[8] 15 U.S.C. 6102.

[9] *See* Letter from Robert W. Cook, Director, Division of Trading and Markets, Securities and Exchange Commission, to David A. Herron, Chief Executive Officer of CHX, Inc. (May 12, 2011).

Proposed CHX Article 8, Rule 13

Based on the aforementioned considerations, the proposed rule change to CHX Article 8, Rule 13, adopts new rule text that is substantially similar to the FTC's rules that prohibit deceptive and other abusive telemarketing acts or practices as described below.[10]

[10] *See supra* note 5.

General Telemarketing Restrictions

Proposed CHX Article 8, Rule 13(d) provides that no Participant or associated person therewith may initiate any outbound telephone call[11] to:

1. Any residence of a person before the hour of 8:00 a.m. or after 9:00 p.m. local time at the called person's

[11] An ''outbound telephone call'' is a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution from a donor. A ''customer'' is any person who is or may be required to pay for goods or services through telemarketing. A ''donor'' means any person solicited to make a charitable contribution. A ''person'' is any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity. ''Telemarketing'' means consisting of or relating to a plan, program, or campaign involving at least one outbound telephone call, for example cold-calling. The term does not include the solicitation of sales through the mailing of written marketing materials, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the marketing materials and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term ''further solicitation'' does not include providing the customer with information about, or attempting to sell, anything promoted in the same marketing materials that prompted the customer's call. *See* proposed CHX Article 8, Rule 13(p)(11), (14), (16), (17), and (20); *see also* FINRA Rule 3230(m)(11), (14), (16), (17), and (20); and 16 CFR 310.2(f), (l), (n), (v), (w), and (dd).

location, unless the Participant has an established business relationship [12] with the person pursuant to subparagraph (p)(12), the Participant has received that person's prior express invitation or permission, or the person called is a broker or dealer;

2. any person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the Participant; or

3. any person who has registered his or her telephone number on the FTC's national do-not-call registry.

The proposed rule change is substantially similar to the FTC's provisions regarding abusive telemarketing acts or practices.[13] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[14]

National Do-Not-Call List Exceptions

Proposed CHX Article 8, Rule 13(e) provides that the Participant making outbound telephone calls to any person who has registered his or her telephone number on the FTC's national do-not-call registry will not be liable for violating the prohibition in paragraph (d)(3) if:

1. The Participant has an established business relationship with the recipient of the call; [15]

2. the Participant has obtained the person's prior express invitation or permission; [16] or

3. the associated person making the call has a personal relationship [17] with the recipient of the call.

The proposed rule change is substantially similar to the FTC's provision regarding an exception to the prohibition on making outbound telephone calls to persons on the FTC's do-not-call registry.[18] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[19]

Safe Harbor Provision

Proposed CHX Article 8, Rule 13(f) provides that the Participant or person associated therewith making outbound telephone calls will not be liable for initiating any outbound telephone call to any person who has registered his or her telephone number on the FTC's national do-not-call registry if the Participant or person associated therewith demonstrates that the violation is the result of an error and that as part of the Participant's routine business practice, it meets the following standards:

1. The Participant has established and implemented written procedures to comply with the national do-not-call rules;

2. the Participant has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;

3. the Participant has maintained and recorded a list of telephone numbers that it may not contact; and

4. the Participant uses a process to prevent outbound telephone calls to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process.

The proposed rule change is substantially similar to the FTC's safe harbor to the prohibition on making outbound telephone calls to persons on the FTC's national do-not-call registry.[20] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[21]

Procedures

Proposed CHX Article 8, Rule 13(g) adopts procedures that Participants must institute to comply with Article 8, Rule 13 prior to engaging in telemarketing. Such procedures must meet the following minimum standards:

1. Participants must have a written policy for maintaining their firm-specific do-not-call lists.

2. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the Participant's firm-specific do-not-call list.

3. If the Participant receives a request from a person not to receive calls from that Participant, the Participant must record the request and place the person's name, if provided, and telephone number on the firm's do-not-call list at the time the request is made.[22]

4. The Participant or person associated therewith making an outbound telephone call must provide the called party with the name of the individual caller, the name of the Participant, an address or telephone number at which the Participant may be contacted, and that the purpose of the call is to solicit the purchase of securities or related service. The telephone number provided may not be a 900 number or any other number for

[12] An ''established business relationship'' is a relationship between a Participant and a person if (i) the person has made a financial transaction or has a security position, a money balance, or account activity with the Participant or at a clearing firm that provides clearing services to the Participant within the 18 months immediately preceding the date of an outbound telephone call; (b) the Participant is the broker-dealer of record for an account of the person within the 18 months immediately preceding the date of an outbound telephone call; or (c) the person has contacted the Participant to inquire about a product or service offered by the Participant within the three months immediately preceding the date of an outbound telephone call. A person's established business relationship with a Participant does not extend to the Participant's affiliated entities unless the person would reasonably expect them to be included. Similarly, a person's established business relationship with a Participant's affiliate does not extend to the Participant unless the person would reasonably expect the Participant to be included. The term ''account activity'' includes, but is not limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the Participant. The term ''broker-dealer of record'' refers to the broker or dealer identified on a customer's account application for accounts held directly at a mutual fund or variable insurance product issuer. *See* proposed CHX Article 8, Rule 13(p)(1), (4), and (12); *see also* 16 CFR 310.2(o) and FINRA Rule 3230(m)(1), (4), and (12).

[13] *See* 16 CFR 310.4(b)(1)(iii)(A) and (B) and (c); *see also* FINRA Rule 3230(a).

[14] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43855.

[15] A person's request to be placed on the firm-specific do-not-call list terminates the established business relationship exception to that national do-not-call list provision for that Participant even if the person continues to do business with the Participant.

[16] Such permission must be evidenced by a signed, written agreement (which may be obtained electronically under the E-Sign Act (*see* 15 U.S.C. 7001 et seq.) between the person and Participant which states that the person agrees to be contacted by the Participant and includes the telephone number to which the calls may be placed.

[17] The term ''personal relationship'' means any family member, friend, or acquaintance of the person making an outbound telephone call. *See* proposed CHX Article 8, Rule 13(p)(18); *see also* FINRA Rule 3230(m)(18).

[18] *See* 16 CFR 3l0.4(b)(1)(iii)(B); *see also* FINRA Rule 3230(b).

[19] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43854.

[20] *See* 16 CFR 310.4(b)(1)(iii)(B); *see also* FINRA Rule 3230(c).

[21] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43855.

[22] Participants must honor a person's do-not-call request within a reasonable time from the date the request was made, which may not exceed thirty (30) days from the date of such request. If such requests are recorded or maintained by a party other than the Participant on whose behalf the outbound telephone call is made, the Participant on whose behalf the outbound telephone call is made will be liable for any failures to honor the do-not-call request.

which charges exceed local or long distance transmission charges.[23]

5. In the absence of a specific request by the person to the contrary, a person's do-not-call request shall apply to the Participant making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

6. The Participant making outbound telephone calls must maintain a record of a person's request not to receive further calls.

Inclusion of this requirement to adopt these procedures will not create any new obligations on Participants, as they are already subject to identical provisions under the Federal Communications Commission's (''FCC'') telemarketing regulations.[24]

Wireless Communications

Proposed CHX Article 8, Rule 13(h) states that the provisions set forth under this Rule are applicable to Participants and persons associated therewith making outbound telephone calls to wireless telephone numbers.[25]

Outsourcing Telemarketing

Proposed CHX Article 8, Rule 13(i) states that if the Participant uses another entity or person to perform telemarketing services on its behalf, the Participant remains responsible for ensuring compliance with all provisions contained in this Rule 13. This proposed rule also clarifies that Participants must consider whether the entity or person that the Participant uses for outsourcing, must be appropriately registered or licensed, where required.[26]

Caller Identification Information

Proposed CHX Article 8, Rule 13(j) provides that any Participant that engages in telemarketing, as defined in subparagraph (p)(20) of this Rule, must transmit or cause to be transmitted the telephone number, and, when made available by the Participant's telephone carrier, the name of the Participant, to any caller identification service in use by a recipient of an outbound telephone call. The telephone number so provided must permit any person to make a do-not-call request during regular business hours. In addition, any Participant that engages in telemarketing, as defined in subparagraph (p)(20) of this Rule, is prohibited from blocking the transmission of caller identification information.[27]

The provisions are similar to the caller identification provisions in the FTC rules.[28] Inclusion of these caller identification provisions in this proposed rule change will not create any new obligations on Participants, as they are already subject to identical provisions under FCC telemarketing regulations.[29]

Unencrypted Consumer Account Numbers

Proposed CHX Article 8, Rule 13(k) prohibits Participant or persons associated therewith from disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing. The proposed rule change is substantially similar to the FTC's provision regarding unencrypted consumer account numbers.[30] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[31] In addition, the term ''unencrypted'' means not only complete, visible account numbers, whether provided in lists or singly, but also encrypted information with a key to its decryption. The proposed definition is substantially similar to the view taken by the FTC.[32]

Submission of Billing Information

Proposed CHX Article 8, Rule 13(l) requires, for any telemarketing transaction, a Participant or associated person therewith to obtain the express informed consent of the person to be charged and to be charged using the identified account. In addition, in any telemarketing transaction involving preacquired account information[33] and a free-to-pay conversion[34] feature, the Participant or person associated therewith must:

1. Obtain from the customer, at a minimum, the last four (4) digits of the account number to be charged;

2. obtain from the customer an express agreement to be charged and to be charged using the account number pursuant to subparagraph (l)(1)(A); and

3. make and maintain an audio recording of the entire telemarketing transaction.

In any other telemarketing transaction involving preacquired account information not described in paragraph (l)(1), the Participant or person associated therewith must:

1. identify the account to be charged with sufficient specificity for the customer to understand what account will be charged; and

2. obtain from the customer an express agreement to be charged and to be charged using the account number identified pursuant to subparagraph (l)(2)(A).

The proposed rule change is substantially similar to the FTC's provision regarding the submission of billing information.[35] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[36]

Abandoned Calls

Proposed CHX Article 8, Rule 13(m) prohibits a Participant or person associated with the Participant from abandoning[37] any outbound telemarketing call. The abandoned calls prohibition is subject to a ''safe harbor'' under proposed subparagraph (m)(2) if:

1. The Participant or person associated therewith employs technology that ensures abandonment of no more than three (3) percent of all telemarketing calls answered by a person, measured over the duration of a single calling campaign, if less than thirty (30) days, or separately over each successive 30-day period or portion thereof that the campaign continues;

2. the Participant or person associated therewith, for each telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

[23] *See* proposed CHX Article 8, Rule 13(g)(4); *see also* 47 CFR 64.1200(d)(4) and FINRA Rule 3230(d)(4).

[24] *See* 47 CFR 64.1200(d); *see also* FINRA Rule 3230(d).

[25] *See also* FINRA Rule 3230(e).

[26] *See also* FINRA Rule 3230(f).

[27] Caller identification information includes the telephone number and, when made available by the Participant's telephone carrier, the name of the Participant.

[28] *See* 16 CFR 310.4(a)(8); *see also* FINRA Rule 3230(g).

[29] *See* 47 CFR 64.1601(e).

[30] *See* 16 CFR 310.4(a)(6); *see also* FINRA Rule 3230(h).

[31] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4615.

[32] *See id.* at 4616.

[33] The term ''preacquired account information'' means any information that enables a Participant or person associated with a Participant to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged. *See* proposed CHX Article 8, Rule 13(p)(19).

[34] The term ''free-to-pay conversion'' means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period. *See* proposed CHX Article 8, Rule 13(p)(13).

[35] *See* 16 CFR 310.4(a)(7); *see also* FINRA Rule 3230(i).

[36] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4615.

[37] An outbound call is ''abandoned'' if a person answers it and the call is not connected to a person associated with the Participant within two (2) seconds of the person's completed greeting.

3. whenever a person associated with the Participant is not available to speak with the person answering the telemarketing call within two (2) seconds after the person's completed greeting, the Participant or person associated therewith promptly plays a recorded message that states the name and telephone number of the Participant or person associated with the Participant on whose behalf the call was placed; and

4. the Participant retains records establishing compliance with the ''safe harbor.''

The proposed rule change is substantially similar to the FTC's provisions regarding abandoned calls.[38] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[39]

Prerecorded Messages

Proposed CHX Article 8, Rule 13(n) prohibits the Participant or person associated therewith from initiating any outbound telemarketing call that delivers a prerecorded message without a person's express written agreement[40] to receive such calls. The proposed rule change also requires that all prerecorded telemarketing calls provide specified opt-out mechanisms so that a person can opt out of future calls. The prohibition does not apply to a prerecorded message permitted for compliance with the ''safe harbor'' for abandoned calls under proposed subparagraph (m)(2).

The proposed rule change is substantially similar to the FTC's provisions regarding prerecorded messages.[41] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[42]

Credit Card Laundering

Proposed CHX Article 8, Rule 13(o) prohibits credit card laundering, the practice of depositing into the credit card system[43] a sales draft that is not the result of a credit card transaction between the cardholder[44] and the Participant. Except as expressly permitted, the proposed rule change prohibits the Participant or associated person therewith from:

1. Presenting or depositing into, the credit card system for payment, a credit card sales draft[45] generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the Participant;

2. employ, solicit, or otherwise cause a merchant, or an employee, representative or agent of the merchant,[46] to present to or to deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

3. obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement[47] or the applicable credit card system.

The proposed rule change is substantially similar to the FTC's provisions regarding credit card laundering.[48] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[49]

Definitions

Proposed CHX Article 8, Rule 13(p) adopts the following definitions, which are substantially similar to the FTC's definitions of these terms: ''acquirer,'' ''billing information,'' ''caller identification service,'' ''cardholder,'' ''charitable contribution,'' ''credit,'' ''credit card,'' ''credit card sales draft,'' ''credit card system,'' ''customer,'' ''donor,'' ''established business relationship,'' ''free-to-pay conversion,'' ''merchant,'' ''merchant agreement,'' ''outbound telephone call,'' ''person,'' ''preacquired account information,'' and ''telemarketing.''[50]

Compliance with Other Requirements

Proposed CHX Article 8, Rule 13.01 states that this Rule does not affect the obligation of any Participant or person associated therewith that engages in telemarketing to comply with relevant state and federal laws and rules, including but not limited to the Telemarketing and Consumer Fraud and Abuse Prevention Act,[51] the Telephone Consumer Protection Act,[52] and the rules of the FCC relating to telemarketing practices and the rights of telephone consumers.[53]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, in particular Section 6(b) of the Act.[54] Specifically, the Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(5)[55] in that it is designed to promote just and equitable principles of

[38] *See* 16 CFR 310.4(b)(1)(iv); *see also* 16 CFR 310.4(b)(4).

[39] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4641.

[40] The express written agreement must: (a) Have been obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the Participant to place prerecorded calls to such person; (b) have been obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service; (c) evidence the willingness of the called person to receive calls that deliver prerecorded messages by or on behalf of the Participant; and (d) include the person's telephone number and signature (which may be obtained electronically under the E-Sign Act).

[41] *See* 16 CFR 310.4(b)(1)(v); *see also* FINRA Rule 3230(k).

[42] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 73 FR 51164 (Aug. 29, 2008) at 51165.

[43] The term ''credit card system'' means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system. The term ''credit card'' means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit. The term ''credit'' means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment. *See* proposed CHX Article 8, Rule 13(p)(7), (8), and (10).

[44] The term ''cardholder'' means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued. *See* proposed CHX Article 8, Rule 13(p)(6).

[45] The term ''credit card sales draft'' means any record or evidence of a credit card transaction. *See* proposed CHX Article 8, Rule 13(p)(9).

[46] The term ''merchant'' means a person who is authorized under written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution. The term ''acquirer'' means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value. A ''charitable contribution'' means any donation or gift of money or any other thing of value, for example a transfer to a pooled income fund. *See* proposed CHX Article 8, Rule 13(p)(2) and (14).

[47] The term ''merchant agreement'' means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or charitable contribution. *See* proposed CHX Article 8, Rule 13(p)(15).

[48] *See* 16 CFR 310.3(c); *see also* FINRA Rule 3230(l).

[49] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43852.

[50] *See* proposed CHX Article 8, Rule 13(p)(2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (19), and (20); and 16 CFR 310.2(a), (c), (d), (e), (f), (h), (i), (j), (k), (l), (n), (o), (p), (s), (t), (v), (w), (x), and (dd); *see also* FINRA Rule 3230(m)(2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (19), and (20). The proposed rule change also adopts definitions of ''account activity,'' ''broker-dealer of record,'' and ''personal relationship'' that are substantially similar to FINRA's definitions of these terms. *See* proposed CHX Article 8, Rule 13(p)(1), (4), and (18) and FINRA Rule 3230(m)(1), (4), and (18); *see also* 47 CFR 64.1200(t)(14) (FCC's definition of ''personal relationship'').

[51] 15 U.S.C. 6101–6108, as amended.

[52] 47 U.S.C. 227.

[53] 47 CFR 64.1200.

[54] 15 U.S.C. 78f(b).

[55] 15 U.S.C. 78f(b)(5).

trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest. More specifically, the Exchange believes that the proposed rule change supports the objective of the Act by providing greater harmonization between CHX Rules and rules of similar purpose of other self-regulatory organizations, such as FINRA, resulting in less burdensome and more efficient regulatory compliance. In particular, CHX Participants that are also FINRA members are subject to both CHX Article 8, Rule 13 and FINRA Rule 3230; CHX believes that harmonizing these two rules would promote just and equitable principles of trade by requiring a single standard for telemarketing. In addition, CHX believes that adopting the amendments to CHX Article 8, Rule 13 will assure that the Exchange's rules governing telemarketing meet the standards set forth in the Prevention Act. To the extent the Exchange has proposed changes that differ from the FINRA version of the CHX Rules, the Exchange believes that such changes are technical in nature and do not change the substance of the proposed CHX Rules. The Exchange also believes that the proposed rule change will update and clarify the requirements governing telemarketing, which will promote just and equitable principles of trade and help to protect investors.

*B. Self-Regulatory Organization's Statement of 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 Regarding the Proposed Rule Changes Received From Members, Participants or Others*

CHX neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [56] and Rule 19b–4(f)(6) [57] thereunder in that it effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

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.

*Solicitation of Comments*

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–CHX–2012–14 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–CHX–2012–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes 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 will also be available for inspection and copying at the principal office of the Exchange.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CHX–2012–14 and should be submitted on or before January 14, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[58]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–30886 Filed 12–21–12; 8:45 am]

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[56] 15 U.S.C. 78s(b)(3)(A).

[57] 17 CFR 240.19b–4(f)(6).

[58] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68460; File No. SR–NYSEMKT–2012–41]**

## Self-Regulatory Organizations; NYSE MKT LLC.; Order Granting Approval of Proposed Rule Change To Amend Commentary .04 to NYSE Amex Options Rule 903 To Permit the Exchange to List Additional Strike Prices Until the Close of Trading on the Second Business Day Prior to Monthly Expiration

December 18, 2012.

**I. Introduction**

On September 6, 2012, NYSE MKT LLC (''NYSE MKT'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Commentary .04 to NYSE Amex Options Rule 903 to permit the Exchange to list additional strike prices until the close of trading on the second business day prior to monthly expiration in unusual market conditions. The proposed rule change was published for comment in the **Federal Register** on September 20, 2012.[3] On November 1, 2012, the Commission designated a longer period to act on the proposed rule change, until December 19, 2012.[4] The Commission received no comment letters on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 67862 (September 14, 2012), 77 FR 58429 (''Notice'').

[4] Securities Exchange Act Release No. 68135, 77 FR 66896 (November 7, 2012).

proposal. This order approves the proposed rule change.

## II. Description of the Proposal

The Exchange proposes to amend Commentary .04 to NYSE Amex Options Rule 903 to permit the Exchange to add additional strikes until the close of trading on the second business day prior to the expiration of a monthly, or standard, option in the event of unusual market conditions. NYSE Amex Options Rule 903 currently permits the Exchange to open additional series of individual stock options until the first calendar day of the month in which the option expires or until the fifth business day prior to expiration if unusual market conditions exist.[5] The Exchange claims that, under its current rules, if unusual market conditions occur anytime from five to two days prior to expiration, then market participants are unable to obtain a contract tailored to manage their risk.[6] According to the Exchange, options market participants generally prefer to focus their trading in strike prices that immediately surround the price of the underlying security.[7] If, however, the price of the underlying stock moves significantly, the Exchange argues that there may be a market need for additional strike prices to adequately account for market participants' risk management in a stock.[8] Accordingly, the Exchange proposes to permit the listing of additional strikes until the close of trading on the second business day prior to expiration of a monthly option in unusual market conditions.

The Exchange represents that the proposal does not raise any capacity concerns on the Exchange because the proposed change presents no material difference in impact from the current rules.[9] The Exchange notes that the proposed change allows for new strikes that it would otherwise be permitted to add under existing rules either on the fifth day prior to or immediately after expiration. The Exchange further represents that it discussed the proposed change with the Options Clearing Corporation (''OCC'').[10] According to the Exchange, the OCC represented that it is able to accommodate the proposal and will have no operational concerns with adding new series on any day, except the last day of trading an expiring series.[11] The Exchange states that, since the implementation of the fifth business day restriction on listing additional strikes, improved communications and the adoption of the Streamline Options Series Adds by OCC allows notification of new strikes in real time throughout the industry.[12]

## III. Discussion and Commission Findings

After careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, 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 proposed change extends the timeframe during which the Exchange may list additional series of individual stock options in unusual market conditions. The Commission believes that the proposed change will provide the investing public and other market participants with additional opportunities to tailor their investment and hedging decisions, thus allowing investors to better manage their risk exposure with additional series.[15]

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NYSEMKT–2012–41) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–30890 Filed 12–21–12; 8:45 am]

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[5] The Exchange may make the determination to open additional series for trading when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when certain price movements take place in the underlying market. *See* Notice, *supra* note 3 at 58429.

[6] *See* Notice, *supra* note 3 at 58429.

[7] *See id.*

[8] *See id.*

[9] *See id.* at 58430. The Exchange also stated that any new strikes added under this proposal would be added in a manner consistent with the range limitations described in NYSE Amex Options Rule 903A.

[10] *See id.*

[11] *See id.*

[12] *See id.* at 58429 n 4.

[13] In approving this proposed rule change, the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] In approving this proposal, the Commission notes that the Exchange has stated that, although the four additional days to list additional strike prices in the event of unusual market circumstances may generate additional quote traffic, the Exchange believes that any increased traffic will not become unmanageable since the proposal remains limited to the narrow situations when an unusual market event occurs. *See* Notice, *supra* note 3 at 58430.

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

# SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68472; File No. SR–MSRB–2012–08]**

## Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving a Proposed Rule Change Consisting of Amendments To Streamline New Issue Information Submission Requirements Under MSRB Rules G–32 and G–34

December 19, 2012.

## I. Introduction

On October 23, 2012, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change consisting of amendments to Rule G–8 (books and records); Rule G–14 RTRS Procedures;[3] Rule G–32 (disclosures in connection with primary offerings); Rule G–34 (CUSIP numbers, new issue, and market information requirements); and the Electronic Municipal Market Access (''EMMA®'') system facility, to streamline the manner in which underwriters, in connection with new issues of municipal securities, satisfy certain of their submission requirements under Rule G–32. The proposed rule change was published for comment in the **Federal Register** on November 8, 2012.[4] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

## II. Description of the Proposed Rule Change

The MSRB proposes to amend Rules G–32 and G–34 to streamline certain

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''RTRS'' refers to the Real-time Transaction Reporting System, which is an MSRB facility for collecting and disseminating information about transactions in municipal securities.

[4] Securities Exchange Act Release No. 68134 (November 1, 2012), 77 FR 67047 (SR–MSRB–2012–08) (''Notice'').

new issue submission requirements. Rules G–32 and G–34 set forth the reporting requirements for new issues of municipal securities. Rule G–32 requires underwriters to submit certain information [5] about new issues of municipal securities to the MSRB on or prior to the date of first execution by completing electronic Form G–32 through EMMA's Primary Market Disclosure Service.[6] Information submitted pursuant to Rule G–32 becomes available to the public on the EMMA Web site immediately upon submission and typically by the end of the date of first execution.[7] Rule G–34 requires underwriters for most new issues to submit comprehensive information [8] to the New Issue Information Dissemination Service (''NIIDS''), operated by the Depository Trust and Clearing Corporation (''DTCC''), no later than two hours after the Time of Formal Award.[9] DTCC disseminates this information to its subscribers upon submission by underwriters.[10] The information that underwriters must submit to NIIDS under Rule G–34 is generally more extensive than the information that underwriters must submit to EMMA under Rule G–32 and includes many, but not all of, the same items.[11]

For any primary offering of municipal securities that is a new issue eligible for submission of information to NIIDS under Rule G–34(a)(ii)(C), the MSRB proposes to require that the underwriter submit all information required under Rule G–32(b)(i)(A) at such times and in such manner as required under Rule G–34(a)(ii)(C). The submission of information per Rule G–34(a)(ii)(C) in a full and timely manner shall be deemed to be in compliance with the submission requirement of Rule G–32(b)(i)(A)(1).[12] In addition, the revised Rule G–32(b)(i)(A)(1)(a) would require that any items of information required to be included on Form G–32, but for which no corresponding data element is then available through NIIDS, be submitted to EMMA at the times and in the manner prescribed by Rule G–32(b)(vi) and set forth in the EMMA Dataport Manual.[13]

For any primary offering of municipal securities that is not a new issue eligible for submission of information to NIIDS under Rule G–34(a)(ii)(C) or that is exempt from such submission requirement under Rule G–34(d), the underwriter will be required to initiate the submission of Form G–32 information on or prior to the date of first execution and complete the submission at such times and in such manner as required under Rule G–32(b)(vi) and set forth in the EMMA Dataport Manual.[14]

Rule G–34(a)(ii)(C) currently exempts certain types of short-term instruments from the NIIDS submission requirement. The MSRB is amending Rule G–34(a)(ii)(C) to remove exceptions for notes maturing in less than nine months, variable rate instruments, and auction rate products. Accordingly, underwriters for these types of issues will now be required to announce the Time of Formal Award and the Time of First Execution and to use NIIDS to disseminate information about new issues.[15] The MSRB is retaining the exception for commercial paper, and underwriters will continue to be able to use other means to announce relevant new issue information promptly in a manner reasonably designed to reach market participants that may trade the new issue.[16]

Rule G–34(a)(ii)(C) currently requires underwriters to designate a Time of First Execution that is no less than two hours after all information has been transmitted to NIIDS. Because the hours counted in determining the responsibilities of an underwriter include only the hours of 9:00 a.m. and 5:00 p.m. Eastern Time, in the event a dealer submits data to NIIDS to make an issue trade eligible between 3:00 p.m. and 5:00 p.m. on a trading day, the two-hour dissemination period carries through to the first hours of the following day. The MSRB proposes to amend Rule G–34(a)(ii)(C)(1)(b)(ii) to permit underwriters who submit information to NIIDS between 3:00 p.m. and 5:00 p.m. Eastern Time to designate a Time of First Execution as early as 9:00 a.m. Eastern Time on the next RTRS Business Day, regardless of whether two Business Hours have elapsed.[17] In addition, Rule G–34(a)(ii)(C)(1)(b)(ii) would permit underwriters for new issues of variable rate instruments with a planned settlement cycle of one day or less to designate a Time of First Execution any time after all information required by Rule G–34(a)(ii)(C) has been transmitted to NIIDS.[18]

The MSRB is also amending Rule G–8(a)(xiii)(C) to require underwriters to keep records of all documents, notices, and information required to be submitted under Rule G–32(b), but only to the extent that the information is not included in the information that is submitted through NIIDS in satisfaction of the requirements of Rule G–32(b) and properly maintained pursuant to Rule G–8(a)(xxiii). The proposed rule change also includes certain technical changes to Rule G–14 RTRS Procedures, Rule G–32, and Rule G–34.[19]

[5] This information includes, among other items, the issuer name and issue description for the new issue and, for each maturity of the new issue, the CUSIP numbers, principal amounts, and initial offering prices or yields.

[6] *See* MSRB Rule G–32(b)(vi)(C)(1). Rule G–32(d)(xi) defines ''date of first execution'' as ''the date on which the underwriter executes its first transactions with a customer or another broker, dealer or municipal securities dealer in any security offered in a primary offering; provided that, for offerings subject to Rule G–34(a)(ii)(C), 'date of first execution' shall mean the date corresponding to the Time of First Execution as defined in Rule G–34(a)(ii)(C)(1)(b); further provided that, solely for purposes of this rule, the date of first execution shall be deemed to occur by no later than the closing date.''

[7] *See* Notice, *supra* note 4, 77 FR at 67049.

[8] According to the MSRB, this information includes all of the information required for dealers to produce a ''when, as and if issued'' customer trade confirmation as well as many of the same items of information included in Form G–32. The term ''when, as and if issued'' refers to the time period in the life of a new issue of municipal securities from the original date of the sale by the issuer to the delivery of the securities to, and payment by, the underwriter. Sales made during the ''when, as and if issued'' period are subject to issuance of the securities. *See* Notice, *supra* note 4, 77 FR at 67048.

[9] The ''Time of Formal Award'' is defined in Rule G–34(a)(ii)(C)(1)(a) as ''for competitive issues, the later of the time the issuer announces the award or the time the issuer notifies the underwriter of the award, and for negotiated issues, the later of the time the contract to purchase the securities from the issuer is executed or the time the issuer notifies the underwriter of its execution. If the underwriter and issuer have agreed in advance on a Time of Formal Award, that time may be submitted to the new issue information dissemination system in advance of the actual Time of Formal Award.''

[10] *See* Notice, *supra* note 4, 77 FR at 67048.

[11] *See* Notice, *supra* note 4, 77 FR at 67048–49. Submissions to NIIDS provide a mechanism for underwriters to communicate the Time of Formal Award and Time of First Execution to market participants that trade in the new issue. *See id.* at 67048. Rule G–34(a)(ii)(C)(1)(b) defines ''Time of First Execution'' as ''the time the underwriter plans to execute its first transactions in the new issue.''

[12] *See* MSRB Rule G–32(b)(i)(A)(1). The MSRB is also revising the EMMA facility to add to the EMMA display and the EMMA primary market subscription the Time of First Execution and the Time of Formal Award. *See* Notice, *supra* note 4, 77 FR at 67049.

[13] Any corrections to data submitted pursuant to Rule G–34(a)(ii)(C) must be made promptly and, to the extent feasible, in the manner originally submitted. *See* MSRB Rule G–32(b)(i)(A)(1)(b).

[14] *See* MSRB Rule G–32(b)(i)(A)(2).

[15] *See* Notice, *supra* note 4, 77 FR at 67050.

[16] *See* MSRB Rule G–34(a)(ii)(C)–(D).

[17] *See* MSRB Rule G–34(a)(ii)(C)(1)(b)(ii)(B). The MSRB is revising Rule G–34(a)(ii)(C)(2) to define ''Business Hours'' to ''include only the hours from 9:00 a.m. to 5:00 p.m. Eastern Time on an RTRS Business Day.'' *See* MSRB Rule G–34(a)(ii)(C)(2)(a). ''RTRS Business Day'' shall have the meaning set forth in Rule G–14 RTRS Procedures section (d)(ii). *See* MSRB Rule G–34(a)(ii)(C)(2)(b).

[18] *See* Notice, *supra* note 4, 77 FR at 67049; and MSRB Rule G–34(a)(ii)(C)(1)(b)(ii)(A).

[19] The technical amendments to Rule G–14 RTRS Procedures clarify the types of securities that are not subject to the RTRS reporting requirement that

Continued

## III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.[20] In particular, the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the MSRB's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.[21]

The Commission believes that the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market in municipal securities by reducing the submission burden on underwriters and improving data quality on EMMA and in the municipal securities marketplace. The proposed rule change revises Rule G–32 to provide that an underwriter's obligations to submit data about a new issue under Rule G–32 would be fulfilled by submitting that data through NIIDS as required pursuant to Rule G–34, while data elements not included in NIIDS and data for certain types of offerings not required to use NIIDS would continue to be subject to existing Rule G–32 data submission requirements. Allowing underwriters to submit information to NIIDS in satisfaction of certain EMMA submission requirements should help to streamline the submission process and accelerate the availability of Form G–32 data on EMMA. In addition, the proposed rule change would require underwriters to announce the Time of Formal Award and the Time of First Execution and to use NIIDS to disseminate information about new issues of notes maturing in less than nine months, variable rate instruments, and auction rate products, which will provide market participants and the general public with enhanced access to primary market data for a broader scope of new issues of municipal securities.

The proposed rule change would permit underwriters of any issue that is made ''trade eligible'' between 3:00 p.m. and 5:00 p.m. Eastern Time to set a Time of First Execution for as early as 9:00 a.m. Eastern Time on the next RTRS Business Day without having to wait for the two Business Hour period to elapse. The Commission notes that dealers would still have sixteen hours between 5:00 p.m. Eastern Time and the earliest possible Time of Execution to integrate NIIDS data and prepare for the underwriter's announced Time of First Execution. The proposed rule change adds an exception from this requirement for variable rate instruments with a planned settlement cycle of one day or less. According to the MSRB, the two-hour advanced notification timeframe is not as important for these types of instruments as for other types of new issues. The Commission notes, however, that the requirement to announce the Time of Formal Award and the Time of First Execution and to use NIIDS to disseminate information would apply to these instruments.

## IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB and, in particular, Section 15B(b)(2)(C)[22] of the Act. The proposal will become effective no later than May 6, 2013, or such earlier date to be announced by the MSRB in a notice published on the MSRB Web site with at least a thirty day advance notification prior to the effective date.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–MSRB–2012–08) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

**Kevin M. O'Neill,**

*Deputy Secretary.*

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transactions be reported within 15 minutes of the time of trade and remove language describing auction rate securities as having a short ''effective maturity.'' The technical amendments to MSRB Rule G–32 include correcting a cross-reference to Rule 15c2–12 under the Act and a misnumbered paragraph containing the definition of the term ''obligated person,'' as well as removing certain transitional provisions that were operational during the period between the former pre-EMMA submission process and the EMMA-based submission process.

[20] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78*o*–4(b)(2)(C).

[22] 15 U.S.C. 78*o*-4(b)(2)(C).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68458; File No. SR–NYSEArca-2012–139]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade First Trust Preferred Securities and Income ETF Under NYSE Arca Equities Rule 8.600

December 18, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on December 6, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): First Trust Preferred Securities and Income ETF. 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,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 list and trade shares (''Shares'') of the First Trust Preferred Securities and Income ETF (''Fund'') under NYSE Arca Equities Rule 8.600,[3] which governs the listing and trading of Managed Fund Shares.[4] The Shares will be offered by First Trust Exchange-Traded Fund III (''Trust''), which is organized as a Massachusetts business trust and is registered with the Commission as an open-end management investment company.[5] The investment adviser to the Fund is First Trust Advisors L.P. (''Adviser'' or ''First Trust''). Stonebridge Advisors LLC will serve as investment sub-adviser to the Fund (''Sub-Adviser'') and will provide day-to-day portfolio management of the Fund. First Trust Portfolios L.P. (''Distributor'') will be the principal underwriter and distributor of the Fund's Shares. Brown Brothers Harriman & Co. (''Administrator'' or ''Custodian'') will serve as administrator, custodian, and transfer agent for the Fund.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio.[6] Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is affiliated with the Distributor, a broker-dealer, and the Sub-Adviser also is affiliated with a broker-dealer. The Adviser and Sub-Adviser each has implemented a fire wall with respect to its respective broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it 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.

According to the Registration Statement, the Fund's objective will be to provide current income and total return. Under normal market conditions,[7] the Fund will invest at least 80% of its net assets (including investment borrowings) in preferred securities (''Preferred Securities'') and income-producing debt securities (''Income Securities'').[8] The Adviser represents that initially at least 50% of the Fund's net assets invested in Preferred Securities and 50% of the Income Securities held by the Fund will be exchange-listed.[9] However, the Fund reserves the right to reduce the percentage of assets that are exchange-listed. Preferred Securities held by the Fund generally pay fixed or adjustable-rate distributions to investors and have preference over common stock in the payment of distributions and the

[3] The Commission previously approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving listing of Dent Tactical ETF); 62502 (July 15, 2010), 75 FR 42471 (July 21, 2010) (SR–NYSEArca–2010–57) (order approving listing of AdviserShares WCM/BNY Mellon Focused Growth ADR ETF); and 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving listing of Cambria Global Tactical ETF).

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index, or combination thereof.

[5] The Trust is registered under the 1940 Act. On September 23, 2011, the Trust filed with the Commission a registration statement on Form N–1A under the Securities Act of 1933 and under the 1940 Act relating to the Fund (File Nos. 333–176976 and 811–22245) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812–13795) (''Exemptive Order'').

[6] 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 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.

[7] The term ''under normal market conditions'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity 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] The risks and potential rewards of investing in the Fund may at times be similar to the risks and potential rewards of investing in both equity funds and bond funds. Certain of the Preferred Securities in which the Fund will invest will be traditional preferred stocks which issue dividends that qualify for the dividend received deduction under which ''qualified'' domestic corporations are able to exclude a percentage of the dividends received from their taxable income. Certain of the Preferred Securities in which the Fund will invest will be preferred stock that does not issue dividends that qualify for the dividends received deduction for eligible investors (''non-DRD preferred stock'') that do not qualify for the dividends received deduction or issue qualified dividend income. As described in the Registration Statement, hybrid preferred securities, another type of Preferred Securities, are typically junior and fully subordinated liabilities of an issuer or the beneficiary of a guarantee that is junior and fully subordinated to the other liabilities of the guarantor.

[9] The foreign equity securities, including preferred, hybrid-preferred, and contingent convertible capital, securities in which the Fund may invest will be limited to securities that trade in markets that are members of the Intermarket Surveillance Group (''ISG''), which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange. *See* note 25, *infra.*

liquidation of a company's assets, but are generally junior to all forms of the company's debt, including both senior and subordinated debt. For purposes of the 80% test set forth above, Income Securities consist of both foreign and domestic debt instruments, including corporate bonds, high yield bonds, convertible securities, and contingent convertible capital securities. In addition, for purposes of the 80% test set forth above, securities of other open-end funds, closed-end funds, or exchange-traded funds (''ETFs'') registered under the 1940 Act [10] that invest primarily in Preferred Securities or Income Securities will be deemed to be Preferred Securities or Income Securities, respectively. The Adviser represents that at least 80% of the Preferred Securities and Income Securities held by the Fund will have a minimum original principal amount outstanding of $100 million or more. In addition, the Fund's portfolio will be comprised of a minimum of 13 non-affiliated issuers.

As stated above, the Fund may invest in a variety of debt securities, including corporate debt securities.[11] The broad category of corporate debt securities includes debt issued by U.S. and non-U.S. companies of all kinds, including those with small-, mid-, and large-capitalizations.[12] Corporate debt may carry fixed or floating rates of interest.

Initially, the Fund will invest at least 80% of the Fund's net assets in Income Securities of an issuing firm when the issuing firm (''issuer'') has a long-term issuer credit rating of investment grade at the time of the investment. However, the Fund reserves the right to reduce the percentage of assets invested in investment grade issuers. ''Investment grade'' is defined as those issuers that have a long-term credit rating of ''BBB−'' or higher by Standard & Poor's Rating Group, a division of McGraw Hill Companies, Inc. (''S&P''), or ''Baa3'' or higher by Moody's Investors Service, Inc. (''Moody's''), or comparably rated by another nationally recognized statistical rating organization (''NRSRO''). The Fund may also invest in securities that are unrated by an NRSRO if such securities are of comparable credit quality. Comparable credit quality of securities that are unrated by an NRSRO will be determined by the Sub-Adviser based on fundamental credit analysis of the unrated issuer and comparable NRSRO rated peer issuers of the same industry sector. On a best efforts basis, the Sub-Adviser will attempt to make a rating determination based on publicly available data. Factors taken into consideration in determining the comparable credit quality of the unrated issuer will be company leverage, capital structure, liquidity, funding, sustainability of cash flows, earnings quality, market position, and asset quality. In the event that a security is rated by multiple NRSROs and receives divergent ratings, the Fund will treat the issuing firm as being rated in the highest rating category received from an NRSRO.

Initially, the Fund may invest up to 20% of the Fund's net assets in Income Securities issued by below-investment grade issuers if that security has acceptable credit quality and attractive relative value. However, the Fund reserves the right to increase the percentage of assets invested in below-investment grade securities. ''Below investment grade'' is defined as those issuers that have a long-term credit rating of ''BBB−'' or lower by ''S&P,'' or ''Baa3'' or lower by Moody's, or comparably rated by another NRSRO. The Fund may also invest in securities that are unrated by an NRSRO if such securities are of comparable credit quality as determined by the Sub-Adviser.

The Fund intends to invest at least 25% of its assets in securities of financial companies. Financial companies include, but are not limited to, companies involved in activities such as banking, mortgage finance, consumer finance, specialized finance, investment banking and brokerage, asset management and custody, corporate lending, insurance and financial investment, and real estate, including but not limited to real estate investment trusts (''REITs'').

Other Investments

While the Fund, under normal market conditions, will invest at least 80% of its net assets (including investment borrowings) in Preferred Securities and Income Securities, the Fund also may invest the remainder of its assets in other investments, as described below.

Normally, the Fund may invest up to 15% of its net assets in securities with maturities of less than one year or cash equivalents, or it may hold cash. The percentage of the Fund invested in such holdings will vary and depend on several factors, including market conditions. For temporary defensive purposes and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies and invest part or all of its assets in these securities or it may hold cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Sub-Adviser or the Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

The Fund may also invest in U.S. government securities [13] or short-term debt securities [14] to keep cash on hand

[10] For purposes of this filing, ETFs, which will be listed on a national securities exchange, include the following: Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act pursuant to exemptive orders obtained by certain ETFs and their sponsors from the Commission. The Fund will not invest in leveraged, inverse, or leveraged inverse ETFs.

[11] As described in the Registration Statement, corporate debt securities are fixed-income securities issued by businesses to finance their operations. Notes, bonds, debentures, and commercial paper are the most common types of corporate debt securities, with the primary difference being their maturities and secured or unsecured status. Certain debt securities held by the Fund may include debt instruments that are similar in many respects to preferred securities.

[12] Under normal market conditions, at least 80% of the Fund's investments in U.S. corporate bonds must have $100 million or more par amount outstanding to be considered as an eligible investment and a non-U.S. corporate bond must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment. Economic and other conditions may, from time to time, lead to a decrease in the average par amount outstanding of bond issuances.

[13] U.S. government securities include U.S. Treasury obligations and securities issued or guaranteed by various agencies of the U.S. government, or by various instrumentalities which have been established or sponsored by the U.S. government. U.S. Treasury obligations are backed by the ''full faith and credit'' of the U.S. government. Securities issued or guaranteed by federal agencies and U.S. government sponsored instrumentalities may or may not be backed by the full faith and credit of the U.S. government.

[14] Short-term debt securities are defined to include, without limitation, the following:

(1) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities.

(2) Certificates of deposit issued against funds deposited in a bank or savings and loan association. Such certificates are for a definite period of time, earn a specified rate of return, and are normally negotiable. If such certificates of deposit are non-negotiable, they will be considered illiquid securities and be subject to the Fund's 15% restriction on investments in illiquid securities.

(3) Bankers' acceptances, which are short-term credit instruments used to finance commercial transactions.

(4) Repurchase agreements, which involve purchases of debt securities. In such an action, at the time the Fund purchases the security, it simultaneously agrees to resell and redeliver the security to the seller, who also simultaneously agrees to buy back the security at a fixed price and time.

fully invested or for temporary defensive purposes. Short-term debt securities are securities from issuers having a long-term debt rating of at least A by S&P Ratings, Moody's, or Fitch, Inc. and having a maturity of one year or less. The use of temporary investments is not a part of the principal investment strategy of the Fund.

The Fund may also invest in senior loans, second lien loans, loan participations, payment-in-kind securities, zero coupon bonds, bank certificates of deposit, fixed-time deposits, bankers' acceptances, U.S. government securities, or fixed income securities issued by non-U.S. governments denominated in U.S. dollars.

The Fund may invest in warrants. Warrants acquired by the Fund entitle it to buy common stock from the issuer at a specified price and time. They do not represent ownership of the securities but only the right to buy them. Warrants are subject to the same market risks as stocks, but may be more volatile in price. The Fund's investment in warrants will not entitle it to receive dividends or exercise voting rights and will become worthless if the warrants cannot be profitably exercised before their expiration date.

The Fund may invest in other pooled investment vehicles and business development companies that are exchange listed and that invest primarily in securities of the types in which the Fund may invest directly.

Consistent with the Exemptive Order, the Fund will not invest in options contracts, futures contracts, or swap agreements.

The Fund will not take short positions in securities (''short sales'').

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 (1) non-negotiable certificates of deposit and master demand notes,[15] (2) Rule 144A securities, and (3) senior loans, second lien loans, and loan participation interests. 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.[16]

The Fund will be classified as ''non-diversified'' under the 1940 Act and as a result may invest a relatively high percentage of its assets in a limited number of issuers. The Fund will only be limited as to the percentage of its assets which may be invested in the securities of any one issuer by the diversification requirements imposed by the Internal Revenue Code of 1986, as amended (''Code'').[17]

Other than financial companies, the Fund may not invest 25% or more of the value of its total assets in securities of issuers in any one industry or group of industries. This restriction does not apply to obligations issued or guaranteed by the U.S. Government, its agencies, or instrumentalities.[18]

The Fund intends to qualify annually and to elect to be treated as a regulated investment company (''RIC'') under the Code.[19]

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[20] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value (''NAV'') per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Creation and Redemption of Shares

The Fund will issue and redeem Shares on a continuous basis, at NAV, only in large specified blocks each consisting of 50,000 Shares (each such block of Shares, a ''Creation Unit''). The consideration for purchase of Creation Unit aggregations of the Fund may consist of (i) cash in lieu of all or a portion of the Deposit Securities, as defined below, and/or (ii) a designated portfolio of securities determined by First Trust (''Deposit Securities'') per Creation Unit aggregation generally conforming to holdings of the Fund (''Fund Securities'') and generally an amount of cash (''Cash Component''). Together, the Deposit Securities and the Cash Component (including the cash in lieu amount) constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit aggregation of the Fund.

The Custodian, through the National Securities Clearing Corporation (''NSCC''), will make available on each business day, prior to the opening of business of the New York Stock Exchange (''NYSE'') (currently 9:30 a.m., Eastern Time (''E.T.'')), the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund.

Such Fund Deposit will be applicable, subject to any adjustments as described below, in order to effect creations of Creation Unit aggregations of the Fund until such time as the next-announced

(5) Bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest.

(6) Commercial paper, which are short-term unsecured promissory notes, including variable rate master demand notes issued by corporations to finance their current operations. Master demand notes are direct lending arrangements between the Fund and a corporation. There is no secondary market for the notes, and they will be considered illiquid securities and be subject to the Fund's 15% restriction on investments in illiquid securities. However, they are redeemable by the Fund at any time. The Fund's Sub-Adviser will consider the financial condition of the corporation (*e.g.,* earning power, cash flow, and other liquidity ratios) and will continuously monitor the corporation's ability to meet all of its financial obligations, because the Fund's liquidity might be impaired if the corporation were unable to pay principal and interest on demand. The Fund may only invest in commercial paper rated A–2 or higher by S&P Ratings, Prime-2 or higher by Moody's, or F2 or higher by Fitch, Inc.

[15] *See* note 14, *supra.*

[16] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); and Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[17] *See* 26 U.S.C. 851.

[18] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[19] 26 U.S.C. 851.

[20] 17 CFR 240.10A–3.

composition of the Deposit Securities is made available.

In order to be eligible to place orders with the Distributor and to create or redeem a Creation Unit aggregation of the Fund, an entity must be an authorized participant, and must have executed an agreement with the Distributor and transfer agent, with respect to creations and redemptions of Creation Unit aggregations, and have international operational capabilities.

Fund Shares may be redeemed only in Creation Unit aggregations at their NAV next determined after receipt of a redemption request in proper form by the Fund through the transfer agent and only on a business day. The Fund will not redeem Shares in amounts less than Creation Unit aggregations.

The Custodian, through the NSCC, will make available prior to the opening of business on the NYSE (currently 9:30 a.m., E.T.) on each business day, the identity of the Fund Securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. Fund Securities received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Unit aggregations.

All orders to create or redeem Creation Unit aggregations must be received by the transfer agent no later than the closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m., E.T.), in each case on the date such order is placed in order for creation or redemption of Creation Unit aggregations to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form.

The Fund's NAV will be determined as of the close of trading (normally 4:00 p.m., E.T.) on each day the NYSE is open for business. NAV will be calculated for the Fund by taking the market price of the Fund's total assets, including interest or dividends accrued but not yet collected, less all liabilities, and dividing such amount by the total number of Shares outstanding. The result, rounded to the nearest cent, will be the NAV per Share.

The Fund's investments will be valued at market value or, in the absence of market value with respect to any portfolio securities, at fair value in accordance with valuation procedures adopted by the Trust's Board of Trustees and in accordance with the 1940 Act.

Availability of Information

The Fund's Web site (*www.ftportfolios.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[21] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.[22]

On a daily basis, the Adviser will disclose for each portfolio security and other financial instrument of the Fund the following information on the Fund's Web site: Ticker symbol (if applicable), name of security and financial instrument, number of shares or dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the NSCC. The basket represents one Creation Unit of the Fund.

Information regarding the intra-day value of the Shares of the Fund (the ''indicative optimized portfolio value'' or ''IOPV''), which is the Portfolio Indicative Value (''PIV'') as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[23] The dissemination of the IOPV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day. The IOPV should not be viewed as a ''real-time'' update of the NAV per Share of the Fund because the IOPV may not be calculated in the same manner as the NAV, which is computed once a day, generally at the end of the business day. The price of a non-U.S. security that is primarily traded on a non-U.S. exchange shall be updated, using the last sale price, every 15 seconds throughout the trading day, provided, that upon the closing of such non-U.S. exchange, the closing price of the security, after being converted to U.S. dollars, will be used. Furthermore, in calculating the IOPV of the Fund's Shares, exchange rates may be used throughout the day (9:00 a.m. to 4:15 p.m., E.T.) that may differ from those used to calculate the NAV per Share of the Fund and consequently may result in differences between the NAV and the IOPV.

The Adviser represents that the Trust, First Trust, and BNY will not disseminate non-public information concerning the Trust and the Fund.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and the Trust's Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* 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. Quotation and last-sale information for the Shares will be available via the CTA high-speed line. The intra-day, closing, and settlement prices of the portfolio securities and other instruments will be also readily available from the national securities exchanges trading such securities,

[21] The Bid/Ask Price of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[22] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[23] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IOPVs taken from the Consolidated Tape Association (''CTA'') or other data feeds.

automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[24] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 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. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m., E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures 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.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the ISG from other exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[25] Initially, at least 50% of the Fund's net assets invested in Preferred Securities and Income Securities will be exchange-listed and such exchanges will be members of ISG or parties to a comprehensive surveillance sharing agreement with the Exchange.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., E.T. each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[26] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Under normal market conditions, the Fund will invest at least 80% of its net assets (including investment borrowings) in Preferred Securities and Income Securities. The Adviser represents that initially at least 50% of the Fund's net assets invested in Preferred Securities and 50% of the Income Securities held by the Fund will be exchange-listed. The foreign equity securities, including preferred, hybrid-preferred, and contingent convertible capital, securities in which the Fund may invest will be limited to securities that trade in markets that are members of the ISG. Initially, the Fund will invest at least 80% of the Fund's net assets in Income Securities of an issuing firm when the issuer has a long-term issuer credit rating of investment grade at the time of the investment. Under normal

[24] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[25] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. *See* note 9, *supra.*

[26] 15 U.S.C. 78f(b)(5).

market conditions, at least 80% of the Fund's investments in US corporate bonds must have $100 million or more par amount outstanding to be considered as an eligible investment and a non-U.S. corporate bond must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment. The intra-day, closing, and settlement prices of the portfolio securities and other instruments will be also readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services. The Fund may hold, in the aggregate, up to 15% of its net assets in: (1) Illiquid securities, including non-negotiable certificates of deposit and master demand notes,[27] (2) Rule 144A securities, and (3) senior loans, second lien loans, and loan participation interests. Consistent with the Exemptive Order, the Fund will not invest in options contracts, futures contracts, or swap agreements. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. The PIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the PIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. 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, and quotation and last-sale information will be available via the CTA high-speed line. The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last-sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last-sale information for the Shares.

*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–2012–139 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-2012–139. 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

[27] *See* note 14, *supra.*

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–NYSEArca–2012–139 and should be submitted on or before January 14, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–30888 Filed 12–21–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68461; File No. SR–NYSEArca–2012–94]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change To Amend Commentary .06 to NYSE Arca Options Rule 6.4 To Permit the Exchange To List Additional Strike Prices Until the Close of Trading on the Second Business Day Prior to Monthly Expiration

December 18, 2012.

### I. Introduction

On September 6, 2012, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Commentary .06 to NYSE Arca Options Rule 6.4 to permit the Exchange to list additional strike prices until the close of trading on the second business day prior to monthly expiration in unusual market conditions. The proposed rule change was published for comment in the **Federal Register** on September 20, 2012.[3] On November 1, 2012, the Commission designated a longer period to act on the proposed rule change, until December 19, 2012.[4] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

### II. Description of the Proposal

The Exchange proposes to amend Commentary .06 to NYSE Arca Options Rule 6.4 to permit the Exchange to add additional strikes until the close of trading on the second business day prior to the expiration of a monthly, or standard, option in the event of unusual market conditions. NYSE Arca Options Rule 6.4 currently permits the Exchange to open additional series of individual stock options until the first calendar day of the month in which the option expires or until the fifth business day prior to expiration if unusual market conditions exist.[5] The Exchange claims that, under its current rules, if unusual market conditions occur anytime from five to two days prior to expiration, then market participants are unable to obtain a contract tailored to manage their risk.[6] According to the Exchange, options market participants generally prefer to focus their trading in strike prices that immediately surround the price of the underlying security.[7] If, however, the price of the underlying stock moves significantly, the Exchange argues that there may be a market need for additional strike prices to adequately account for market participants' risk management in a stock.[8] Accordingly, the Exchange proposes to permit the listing of additional strikes until the close of trading on the second business day prior to expiration of a monthly option in unusual market conditions.

The Exchange represents that the proposal does not raise any capacity concerns on the Exchange because the proposed change presents no material difference in impact from the current rules.[9] The Exchange notes that the proposed change allows for new strikes that it would otherwise be permitted to add under existing rules either on the fifth day prior to or immediately after expiration. The Exchange further represents that it discussed the proposed change with the Options Clearing Corporation (''OCC'').[10] According to the Exchange, the OCC represented that it is able to accommodate the proposal and will have no operational concerns with adding new series on any day, except the last day of trading an expiring series.[11] The Exchange states that, since the implementation of the fifth business day restriction on listing additional strikes, improved communications and the adoption of the Streamline Options Series Adds by OCC allows notification of new strikes in real time throughout the industry.[12]

### III. Discussion and Commission Findings

After careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, 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 proposed change extends the timeframe during which the Exchange may list additional series of individual stock options in unusual market conditions. The Commission believes that the proposed change will provide the investing public and other market participants with additional opportunities to tailor their investment and hedging decisions, thus allowing investors to better manage their risk exposure with additional series.[15]

### IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[16] that the

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 67863 (September 14, 2012), 77 FR 58433 (''Notice'').

[4] Securities Exchange Act Release No. 68136, 77 FR 66896 (November 7, 2012).

[5] The Exchange may make the determination to open additional series for trading when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when certain price movements take place in the underlying market. *See* Notice, *supra* note 3 at 58434.

[6] *See* Notice, *supra* note 3 at 58434.

[7] *See id.* at 58433.

[8] *See id.* at 58434.

[9] *See id.* The Exchange also stated that any new strikes added under this proposal would be added in a manner consistent with the range limitations described in NYSE Arca Options Rule 6.4A.

[10] *See id.*

[11] *See id.*

[12] *See id.* at 58433 n. 4.

[13] In approving this proposed rule change, the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] In approving this proposal, the Commission notes that the Exchange has stated that, although the four additional days to list additional strike prices in the event of unusual market circumstances may generate additional quote traffic, the Exchange believes that any increased traffic will not become unmanageable since the proposal remains limited to the narrow situations when an unusual market event occurs. *See* Notice, *supra* note 3 at 58434.

[16] 15 U.S.C. 78s(b)(2).

proposed rule change (SR–NYSEArca–2012–94) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–30891 Filed 12–21–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68482; File No. SR–ICC–2012–24]**

## Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change To Add Rules Related to the Clearing of European Corporate Single-Name CDS

December 19, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 6, 2012, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. 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 purpose of the proposed rule change is to adopt new rules that will provide the basis for ICC to clear additional credit default swap contracts. Specifically, ICC is proposing to amend Chapters 20 and 26 and Schedule 401 and Schedule 502 of its rules as well as make corresponding changes to the applicable ICC Policies and Procedures to provide for the clearance of standard single-name CDS Contracts referencing European corporate reference entities (''European SN Contracts'').

ICC proposes to amend Chapter 20 of its rules to remove definitions that are included in Chapter 26E of the rules.

ICC proposes to amend Section 26E of its rules to include certain additional provisions relevant to the treatment of restructuring credit events under iTraxx Europe Index CDS (''iTraxx Contracts'') and European SN Contracts.

ICC proposes to add new Section 26G to provide for the clearance of European SN Contracts. As discussed in more detail in Item II.A below, new Section 26G provides for the definitions and certain specific contracts terms for cleared European SN Contracts.

ICC will update Schedule 401 of its Rules (Eligible Collateral & Thresholds), as applicable, with respect to Initial Margin and Guaranty Fund liquidity requirements for Non-Client and Client-Related positions for both US Dollar and Euro denominated products.

ICC will also update Schedule 502 of its Rules (Cleared Products List) to incorporate the additional cleared products. Upon Commission approval, ICC plans to provide for the clearance of the following European SN Contracts: Centrica Plc; E.ON AG; ENEL S.P.A.; EDISON S.P.A.; EDP—Energias de Portugal S.A.; ELECTRICITE DE FRANCE; EnBW Energie Baden-Wuerttemberg AG; Fortum Oyj; Adecco S.A.; Aktiebolaget Volvo; ALSTOM; BRITISH TELECOMMUNICATIONS public limited company; COMPAGNIE DE SAINT–GOBAIN; Deutsche Telekom AG; FRANCE TELECOM; GAS NATURAL SDG, S.A.; GDF SUEZ; HELLENIC TELECOMMUNICATIONS ORGANISATION SOCIETE ANONYME; IBERDROLA, S.A.; Koninklijke KPN N.V.; NATIONAL GRID PLC; Portugal Telecom International Finance B.V.; RWE Aktiengesellschaft; TELECOM ITALIA SPA; TELEFONICA, S.A.; Telekom Austria Aktiengesellschaft; TELENOR ASA; TeliaSonera Aktiebolag; UNITED UTILITIES PLC; Vattenfall Aktiebolag; VEOLIA ENVIRONNEMENT; VIVENDI; VODAFONE GROUP PUBLIC LIMITED COMPANY; Deutsche Post AG; European Aeronautic Defence and Space Company EADS N.V.; FINMECCANICA S.P.A.; Holcim Ltd; ROLLS–ROYCE plc; Siemens Aktiengesellschaft; PostNL N.V.; REPSOL, S.A.; Bayerische Motoren Werke Aktiengesellschaft; BRITISH AMERICAN TOBACCO p.l.c.; Daimler AG; DANONE; DIAGEO PLC; Koninklijke Philips Electronics N.V.; LVMH MOET HENNESSY LOUIS VUITTON; Nestle S.A.; Svenska Cellulosa Aktiebolaget SCA; Unilever N.V.; VOLKSWAGEN AKTIENGESELLSCHAFT; ACCOR; Bertelsmann AG; CARREFOUR; CASINO GUICHARD–PERRACHON; COMPASS GROUP PLC; EXPERIAN FINANCE PLC; GROUPE AUCHAN; J SAINSBURY plc; Koninklijke Ahold N.V.; MARKS AND SPENCER p.l.c.; METRO AG; NEXT PLC; PEARSON plc; PPR; PUBLICIS GROUPE SA; REED ELSEVIER PLC; SAFEWAY LIMITED; SODEXO; TESCO PLC; Wolters Kluwer N.V.; WPP 2005 LIMITED; AKZO Nobel N.V.; Anglo American plc; ArcelorMittal; BASF SE; Glencore International AG; Henkel AG & Co. KGaA; Koninklijke DSM N.V.; LANXESS Aktiengesellschaft; Linde Aktiengesellschaft; Solvay; XSTRATA PLC; STMicroelectronics N.V.; Bayer Aktiengesellschaft; SANOFI; Aegon N.V.; Allianz SE; ASSICURAZIONI GENERALI—SOCIETA PER AZIONI; AVIVA PLC; AXA; BANCA MONTE DEI PASCHI DI SIENA S.P.A.; BANCO BILBAO VIZCAYA ARGENTARIA, SOCIEDAD ANONIMA; Banco Espirito Santo, S.A.; BANCO SANTANDER, S.A.; Bank of Scotland plc; INTESA SANPAOLO SPA; JTI (UK) FINANCE PLC; Swiss Reinsurance Company Ltd; Zurich Insurance Company Ltd; Compagnie Financiere Michelin; L'AIR LIQUIDE SOCIETE ANONYME POUR L'ETUDE ET L'EXPLOITATION DES PROCEDES GEORGES CLAUDE; BAE SYSTEMS PLC; BOUYGUES; BP P.L.C.; IMPERIAL TOBACCO GROUP PLC; KINGFISHER PLC; Suedzucker Aktiengesellschaft Mannheim/Ochsenfurt; Swedish Match AB; TECHNIP; IMPERIAL CHEMICAL INDUSTRIES LIMITED; ALTADIS SA; BRITISH SKY BROADCASTING GROUP PLC; Aktiebolaget Electrolux; THALES; Metso Oyj; Muenchener Rueckversicherungs-Gesellschaft Aktiengesellschaft in Muenchen; Syngenta AG; TATE & LYLE PUBLIC LIMITED COMPANY; and TOTAL SA.

ICC also updated its Policies and Procedures to provide for the clearance of European SN Contracts, specifically the ICC Treasury Operations Policies & Procedures, ICC Risk Management Framework and ICC End-of-Day (''EOD'') Price Discovery Policies and Procedures.

Consistent with the changes to Schedule 401 of the ICC Rules, the ICC Treasury Operations Policies & Procedures have been updated to include Initial Margin and Guaranty Fund liquidity requirements for Non-Client and Client-Related positions for both US Dollar and Euro denominated products. In order to accommodate the return of funds during London banking hours, the ICC Treasury Operations Policies & Procedures have been updated to require requests for Euro withdrawals to be submitted by 9:00 a.m. Eastern.

The ICC Risk Management Framework has been updated to account for Euro denominated portfolios. Specifically, updates have been made to the Guaranty Fund, Initial Margin and Mark-to-Market Methodologies to address: Foreign Exchange Risk, Liquidity Risk, Time Zone Risk, and Operational Risk.

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b 4.

The ICC EOD Price Discovery Policies and Procedures has been updated to provide that ICC will use ICE Clear Europe's EOD prices for European SN Contracts and rely on the ICE Clear Europe Firm Trade process to ensure the accuracy of price submissions. ICC will extend the risk time-horizon for European SN Contracts to account for the half-day difference, on average, between the EOD price discovery process timings. The extended risk horizon accounts for the fact that European markets close earlier and new financial information may be reflected only in the North American instrument prices and not reflected in the European SN Contracts, in general.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.[3]

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

ICC has identified European SN Contracts as products that have become increasingly important for market participants to manage risk and express views with respect to European corporate credit risk. ICC's clearance of these Contracts will facilitate the prompt and accurate settlement of swaps and contribute to the safeguarding of securities and funds associated with swap transactions. In addition, ICC notes that the Commodity Futures Trading Commission has determined that iTraxx Europe CDS contracts would be subject to mandatory clearing under Section 2(h) of the Commodity Exchange Act.

European SN Contracts have similar terms to the North American Corporate Single Name CDS Contracts (''North American SN Contracts'') currently cleared by ICC and governed by Section 26B of the Rules and the Latin American sovereign CDS contracts currently cleared by ICC and governed by Section 26D of the Rules. Accordingly, the proposed rules found in Section 26G largely mirror the ICC rules for North American SN Contracts in Section 26B, with certain modifications that reflect differences in terms and market conventions between European SN Contracts and North American SN Contracts. European SN Contracts will be denominated in Euro.

Rule 26G–102 (Definitions) sets forth the definitions used for the European SN Contracts. An ''Eligible SNEC Reference Entity'' is defined as ''each particular Reference Entity included from time to time in the List of Eligible Reference Entities,'' which is a list maintained, updated and published from time to time by the ICC Board of Managers or its designee, containing certain specified information with respect to each reference entity. The Eligible SNEC Reference Entities will initially consist of 121 European corporate reference entities specified in Schedule 502 to the ICC Rules. Certain substantive changes have also been made to the definition of ''List of Eligible SNEC Reference Entities'', due to the fact that certain terms and elections for North American SN Contracts are not applicable to European SN Contracts. These include (i) the need for an election as to whether ''Restructuring'' is an eligible ''Credit Event'' (it is by contract term and market convention applicable to all European SN Contracts, whereas it is generally not applicable to North American SN Contracts) and (ii) the applicability of certain ISDA supplements that may apply to North American SN Contracts but do not apply to European SN Contracts, including the 2005 Monoline Supplement, the ISDA Additional Provisions for a Secured Deliverable Obligation Characteristic and the ISDA Additional Provisions for Reference Entities with Delivery Restrictions. The remaining definitions are substantially the same as the definitions found in ICC Section 26B, other than certain conforming changes.

Rules 26G–203 (Restriction on Activity), 26G–206 (Notices Required of Participants with respect to SNEC Contracts), 26G–303 (SNEC Contract Adjustments), 26G–309 (Acceptance of SNEC Contracts by ICE Clear Credit), 26G–315 (Terms of the Cleared SNEC Contract), 26G–316 (Relevant Physical Settlement Matrix Updates), 26G–502 (Specified Actions), and 26G–616 (Contract Modification) reflect or incorporate the basic contract specifications for European SN Contracts and are substantially the same as under ICC Section 26B for North American SN Contracts, except as follows. In addition to various non-substantive conforming changes, the proposed rules differ from the existing North American SN Contracts in that the contract terms in Rule 26G–315 incorporate the relevant published ISDA physical settlement matrix terms for Standard European Corporate transactions, rather than Standard North American Corporate transactions, and, as noted in the preceding paragraph, certain elections and supplements used for North American SN Contracts are not applicable to European SN Contracts. In addition, the contracts reflect the fact that under the ISDA physical settlement matrix terms, the restructuring credit event and the related additional terms for ''Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation'' under the ISDA Credit Derivatives Definitions (commonly referred to as ''Mod Mod R'' terms) apply to European SN Contracts.

In addition, ICC proposes to make conforming changes in Section 26E of the Rules (the CDS Restructuring Rules), principally to address the particular restructuring terms that apply to iTraxx Contracts and European SN Contracts. Specifically, ICC proposes to modify the notice delivery procedures in Rule 26E–104 to include ''notices to exercise movement option'' under the Mod Mod R terms. In addition, the definition of ''Triggered Restructuring CDS Contract'' has been modified to reflect that under Mod Mod R terms a CDS contract may be triggered in part following a restructuring credit event.

Section 17A(b)(3)(F) of the Act[4] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F), because ICC believes that the clearance of European SN Contracts will facilitate the prompt and accurate settlement of swaps and contribute to the safeguarding of securities and funds associated with swap transactions.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition.

[3] The Commission has modified the text of the summaries prepared by ICE Clear Credit.

[4] 15 U.S.C. 78q–1(b)(3)(F).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**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–ICC–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–ICC–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, 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 filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's Web site at *https://www.theice.com/publicdocs/regulatory_filings/ICEClearCredit_120512a.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2012–24 and should be submitted on or before January 16, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–31021 Filed 12–21–12; 4:15 pm]

**BILLING CODE 8011–01–P**

[5] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68469; File No. SR–NYSEMKT–2012–70]**

## Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Section 140 of the NYSE MKT LLC Company Guide To Introduce an Initial Application Fee

December 19, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 6, 2012, NYSE MKT LLC (''NYSE MKT'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Section 140 of its Company Guide to introduce an Initial Application Fee. The Exchange proposes to immediately reflect the proposed changes in the Company Guide, but not to implement the proposed changes until January 1, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Section 140 of its Company Guide to introduce an Initial Application Fee. The Exchange proposes to immediately reflect the proposed changes in the Company Guide, but not to implement the proposed changes until January 1, 2013.[3]

The Exchange proposes to introduce an Initial Application Fee of $5,000 within Section 140 of the Company Guide, which would be effective January 1, 2013. An issuer would be required to pay an Initial Application Fee if it applied to list shares of common or preferred stock or common stock equivalents on the Exchange, including securities issued by non-U.S. companies, except that an issuer:

[3] The Exchange has proposed changes to the Company Guide, as reflected in the Exhibit 5 attached hereto, in a manner that would permit readers of the Company Guide to identify the changes that would be implemented on January 1, 2013. The Commission notes that the Exhibit 5 referenced in the previous sentence is attached to the filing, not to this Notice.

(i) Applying to transfer from a national securities exchange to list exclusively on the Exchange; or

(ii) Applying to list on the Exchange that is already listed on any other national securities exchange

would not be required to pay an Initial Application Fee in connection with its application for such listing or dual listing. Accordingly, issuers for which the Initial Application Fee waivers would be applicable would generally be the same as the issuers for which the Original Listing Fees would be waived, as provided in Section 140 of the Company Guide.[4] The Initial Application Fee would be non-refundable.

In accordance with Section 201 of the Company Guide, an issuer applying to list an equity security on the Exchange is subject to a preliminary confidential review by NYSE Regulation, Inc. (''NYSER'') in which NYSER determines the issuer's qualification for listing. If NYSER determines in connection with this preliminary confidential review that the issuer is qualified for listing, the issuer is informed that it has been cleared as eligible to list and that the Exchange will accept a formal Original Listing Application from the Issuer. It is the Exchange's practice to notify the issuer of its eligibility clearance and the conditions to its listing by means of a letter (the ''pre-clearance'' letter).

For an issuer subject to the Initial Application Fee, its payment would be a prior condition to eligibility clearance being granted. As a practical matter, the Exchange anticipates that an issuer would pay the Initial Application Fee after NYSER has completed its preliminary confidential review and has determined that the issuer is eligible to submit a formal Original Listing Application, but before the ''pre-clearance'' letter has been issued. Typically, the Exchange is in contact with an issuer prior to the issuance of a ''pre-clearance'' letter and provides oral confirmation of the issuer's eligibility clearance prior to the issuance of the ''pre-clearance'' letter.

The Initial Application Fee would be applied towards the applicable Original Listing Fees for an issuer that lists common or preferred stock or common stock equivalents on the Exchange. If an issuer paid an Initial Application Fee in connection with the application to list common or preferred stock or common stock equivalents but did not immediately list such security, the Issuer would not be required to pay a subsequent Initial Application Fee if it later listed such security so long as (i) the issuer had a registration statement regarding such security on file with the Commission, or, (ii) if the issuer withdrew its registration statement, the issuer refiled a registration statement regarding such security within 12 months of the date of such withdrawal. The Exchange is proposing the Initial Application Fee because it would allow the Exchange to recover, in part, the costs associated with processing and evaluating an issuer's application, irrespective of whether the relevant issuance qualifies for listing or whether such issuer decides to list on the Exchange. In addition, the Initial Application Fee would provide a disincentive for impractical applications by issuers. The proposed change is not otherwise intended to address any other matter, and the Exchange is not aware of any significant problem that issuers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[5] in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5) of the Act,[6] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed Initial Application Fee of $5,000 is reasonable because it would allow the Exchange to recover, in part, the costs associated with processing and evaluating an issuer's application, irrespective of whether the relevant issuance qualifies for listing or whether such issuer decides to list on the Exchange. In this regard, the Exchange believes that the Initial Application Fee of $5,000 is reasonably related to the amount of time, resources and cost associated with the Exchange's review of an initial application for listing common or preferred stock or common stock equivalents, including securities issued by non-U.S. companies.[7] Furthermore, the Exchange believes that the Initial Application Fee is reasonable because it would provide a disincentive for impractical applications by issuers.

The Exchange believes that the Initial Application Fee is equitable and not unfairly discriminatory because it would be charged to all issuers that apply for listing common or preferred stock or common stock equivalents on the Exchange, except, as proposed, those issuers that qualify for a waiver. In this regard, the Exchange believes that it is equitable and not unfairly discriminatory to charge an Initial Application Fee to issuers that apply to list common or preferred stock or common stock equivalents on the Exchange, but not to issuers of other types of securities. Specifically, while the Exchange conducts a comprehensive and thorough review of every listing application it receives, regardless of security type or issuer, the Exchange believes that its costs associated with processing and evaluating an issuer's application to list common or preferred stock or common stock equivalents on the Exchange are generally significantly higher than the costs associated with other types of securities, such that it is equitable and not unfairly discriminatory to charge the Initial Application Fee only to issuers of common or preferred stock or common stock equivalents. In this regard, the Exchange notes that the review that is required to be performed with respect to an issuer of common or preferred stock or common stock equivalents is more extensive than that required for the review of, for example, an issuer of a closed-end fund.

The Exchange also believes that it is reasonable to provide a waiver of the Initial Application Fee to an issuer applying to transfer from a national securities exchange to list exclusively on the Exchange or applying to list on the Exchange that is already listed on any other national securities exchange because the issuer would have already paid a listing fee and may have already paid an application fee to the other exchange for the initial application to list on that market.[8] Accordingly, it is

[4] *See* Section 140 of the Company Guide. *See also* Securities Exchange Act Release Nos. 68117 (October 26, 2012), 77 FR 66207 (November 2, 2012) (SR–NYSEMKT–2012–51), and 59560 (March 11, 2009), 74 FR 11392 (March 17, 2009) (SR–NYSEALTR–2009–02). The Initial Application Fee would only apply with respect to the listing of common or preferred stock or common stock equivalents. Original Listing Fees are not limited in this respect.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4) and 15 U.S.C. 78f(b)(5).

[7] The Exchange notes that NASDAQ charges a non-refundable $5,000 application fee to issuers on The NASDAQ Capital Market. *See* NASDAQ Rule 5920. *See also* Securities Exchange Act Release No. 59663 (March 31, 2009), 74 FR 15552 (April 6, 2009) (SR–NASDAQ–2009–018). NASDAQ also charges a non-refundable $25,000 application fee to issuers on The NASDAQ Global Market. *See* NASDAQ Rule 5910. *See also* Securities Exchange Act Release No. 61669 (March 5, 2010), 75 FR 11958 (March 12, 2010) (SR–NASDAQ–2009–081).

[8] *See Id.* [sic].

reasonable to not charge the Initial Application Fee so as to avoid double-charging issuers for the listing of their shares of common or preferred stock or common stock equivalents. It is also equitable and not unfairly discriminatory to waive the Initial Application Fee because all such issuers would be eligible for the waiver of the Initial Application Fee. It is also equitable and not unfairly discriminatory because such issuers would be under no obligation to transfer their listing to the Exchange or dually list on the Exchange and would be disincentivized to do so if they were subject to the Initial Application Fee. In this regard, the waiver would contribute to providing issuers with the ability to choose the listing market that best suits their needs and that is the ideal market for listing their shares of common or preferred stock or common stock equivalents.

Overall, the Exchange believes that instances of the Initial Application Fee waiver being granted to issuers that apply to list on the Exchange will be relatively rare. Accordingly, the Exchange does not anticipate that it will experience any meaningful diminution in revenue as a result of the proposed waiver and therefore does not believe that the proposed waiver would in any way negatively affect its ability to continue to adequately fund its regulatory program or the services that the Exchange provides to issuers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [9] of the Act and subparagraph (f)(2) of Rule 19b–4[10] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE MKT.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2012–70 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2012–70. 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 publicly available. All submissions should refer to File Number SR–NYSEMKT–2012–70 and should be submitted on or before January 16, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–30978 Filed 12–21–12; 4:15 pm]

**BILLING CODE 8011–01–P**

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

### New Generation Biofuels Holdings, Inc.; Order of Suspension of Trading

December 21, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of New Generation Biofuels Holdings, Inc. because it has not filed any periodic reports since the period ended June 30, 2011.

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 company.

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 company is suspended for the period from 9:30 a.m. EST, on December 21, 2012 through 11:59 p.m. EST, on January 7, 2013.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2012–31151 Filed 12–21–12; 4:15 pm]

**BILLING CODE 8011–01–P**

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions to and an extension of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden

estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers:

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*.

(SSA) Social Security Administration, DCRDP, Attn: Reports Clearance Director, 107 Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*.

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than February 22, 2013. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. *Application for Benefits Under the Italy-U.S. International Social Security Agreement—20 CFR 404.1925—0960–0445.* As per the November 1, 1978 agreement between the United States and Italian Social Security agencies, residents of Italy filing an application for U.S. Social Security benefits directly with one of the Italian Social Security agencies must complete Form SSA–2528. SSA uses the SSA–2528 to establish age, relationship, citizenship, marriage, death, military service, or to evaluate a family bible or other family record when determining eligibility for benefits. The Italian Social Security agencies assist applicants in completing Form SSA–2528, and then forward the application to SSA for processing. The respondents are individuals living in Italy who wish to file for U.S. Social Security benefits.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of responses | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| SSA–2528 | 300 | 1 | 20 | 100 |

2. *Internet Direct Deposit Application—31 CFR 210—0960–0634.* SSA requires all applicants and recipients of Social Security Old Age, Survivors, and Disability Insurance (OASDI) benefits, or Supplemental Security Income (SSI) payments to receive these benefits and payments via direct deposit at a financial institution. SSA receives Direct Deposit/Electronic Funds Transfer (DD/EFT) enrollment information from OASDI beneficiaries and SSI recipients to facilitate DD/EFT of their funds with their chosen financial institution. We also use this information when an enrolled individual wishes to change their DD/EFT information. For the convenience of the respondents, we collect this information through several modalities, including an Internet application, in-office or telephone interviews, and our automated telephone system. In addition to using the direct deposit information to enable DD/EFT of funds to the recipients' chosen financial institution, we also use the information through our Direct Deposit Fraud Indicator to ensure the correct recipient receives the funds. Respondents are OASDI beneficiaries and SSI recipients requesting that we enroll them in the Direct Deposit program or change their direct deposit banking information.

*Type of Request:* Extension of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| Internet DD | 188,129 | 1 | 10 | 31,355 |
| Non-Electronic Services (FO, 800#-ePath, MSSICS,SPS,MACADE,POS,RP) | 6,455,815 | 1 | 12 | 1,291,163 |
| Automated 800# Response System | 237,065 | 1 | 8 | 31,609 |
| Direct Deposit Fraud Indicator | 10,000 | 1 | 2 | 333 |
| Totals | 6,891,009 | ..... | ..... | 1,354,460 |

3. *Certification of Contents of Document(s) or Record(s)—20 CFR 404.715—0960–0689.* SSA established procedures for individuals to provide the evidence necessary to establish their rights to Social Security benefits. Examples of such evidence categories include age, relationship, citizenship, marriage, death, and military service. Form SSA–704 allows SSA employees, State record custodians, and other custodians of evidentiary documents to certify and record information from original documents and records under their custodial ownership to establish these types of evidence. SSA uses Form SSA–704 in situations where individuals cannot produce the original evidentiary documentation required to establish benefits eligibility. The respondents are State record custodians and other custodians of evidentiary documents.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of responses | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| SSA–704 | 4,800 | 1 | 10 | 800 |

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than January 23, 2013. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov*.

1. *Certificate of Support—20 CFR 404.370, 404.750, 404.408a—0960–0001.* A parent of a deceased, fully insured worker may be entitled to Social Security OASDI benefits based on the earnings record of the deceased worker under certain conditions. One of the conditions is the parent must have received at least one-half support from the deceased worker. The one-half support requirement also applies to a spousal applicant in determining whether OASDI benefits are subject to Government Pension Offset (GPO). SSA uses the information from Form SSA–760–F4 to determine if the parent of a deceased worker or a spouse applicant meets the one-half support requirement. Respondents are (1) parents of deceased workers and (2) spouses who may meet the GPO exception.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| SSA–760–F4 | 18,000 | 1 | 15 | 4,500 |

2. *Physician's/Medical Officer's Statement of Patient's Capability to Manage Benefits—20 CFR 404.2015 and 416.615—0960–0024.* SSA appoints a representative payee in cases where we determine beneficiaries are not capable of managing their own benefits. In those instances, we require medical evidence to determine the beneficiaries' capability of managing or directing their benefit payments. SSA collects medical evidence on Form SSA–787 to (1) determine beneficiaries' capability or inability to handle their own benefits, and (2) assist in determining the beneficiaries' need for a representative payee. The respondents are the beneficiaries' physicians, or medical officers of the institution in which the beneficiaries reside.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| SSA–787 | 120,000 | 1 | 10 | 20,000 |

3. *Pre-1957 Military Service Federal Benefit Questionnaire—20 CFR 404.1301–404.1371—0960–0120.* SSA may grant gratuitous military wage credits for active military or naval service (under certain conditions) during the period September 16, 1940 through December 31, 1956, if no other Federal agency (other than the Veterans Administration) credited the service for benefit eligibility or computation purposes. We use Form SSA–2512 to collect specific information about other Federal, military, or civilian benefits the wage earner may receive when the applicant indicates both pre-1957 military service and the receipt of a Federal benefit. SSA uses the data in the claims adjudication process to grant gratuitous military wage credits when applicable, and to solicit sufficient information to determine eligibility. Respondents are applicants for Social Security benefits on a record where the wage earner claims pre-1957 military service.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| SSA–2512 | 5,000 | 1 | 10 | 833 |

4. *Authorization for the Social Security Administration to Obtain Account Records from a Financial Institution and Request for Records—20 CFR 416.200, 416.203—0960–0293.* SSA collects and verifies financial information from individuals applying for SSI to determine if the applicant meets the SSI resource eligibility requirements. SSA contacts claimants' financial institutions to verify the existence, ownership, and value of the account owned when the claimants provide incomplete, unavailable, or seemingly altered records. Financial

institutions require individuals to sign Form SSA–461–U2 to authorize them to disclose records to SSA. The respondents are SSI applicants, recipients, and their deemors.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| SSA–4641 (paper) | 44,100 | 1 | 6 | 4,410 |
| e4641 (electronic) | 6,955,900 | 1 | 2 | 231,863 |
| Totals | 7,000,000 | | | 236,273 |

5. *Statement of Household Expenses and Contributions—20 CFR 416.1130–416.1148—0960–0456.* SSA bases eligibility for SSI on the needs of the recipient. In part, we assess need by determining the amount of income a recipient receives. This income includes in-kind support and maintenance in the form of food and shelter provided by others. SSA uses Form SSA–8011–F3 to determine whether the claimant or recipient receives in-kind support and maintenance. This is necessary to determine (1) the claimant or recipient's eligibility for SSI and (2) the SSI payment amount. SSA only uses this form in cases where SSA needs the householder's (head of household) corroboration of in-kind support and maintenance. Respondents are householders of homes in which an SSI applicant or recipient resides.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| SSA–8011–F3 | 428,100 | 1 | 15 | 107,025 |

6. *Notification of a Social Security Number (SSN) to An Employer for Wage Reporting—20 CFR 422.103(a)—0960–0778.* Individuals applying for employment must provide an SSN or indicate they have applied for one.

However, when an individual applies for an initial SSN, there is a delay between the assignment of the number and the delivery of the SSN card. At an individual's request, SSA uses Form SSA–132 to send the individual's SSN to an employer. Mailing this information to the employer (1) ensures the employer has the correct SSN for the individual; (2) allows SSA to receive correct earnings information for wage reporting purposes; and (3) reduces the delay in the initial SSN assignment and delivery of the SSN information directly to the employer. It also enables SSA to verify the employer as a safeguard for the applicant's personally identifiable information. The majority of individuals who take advantage of this option are in the United States with exchange visitor and student visas; however, we allow any applicant for an SSN to use the SSA–132. The respondents are individuals applying for an initial SSN who ask SSA to mail confirmation of their application or the SSN to their employers.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| SSA–132 | 249,000 | 1 | 2 | 8,300 |

Dated: December 19, 2012.

**Faye Lipsky,**

*Reports Clearance Director, Social Security Administration.*

[FR Doc. 2012–30949 Filed 12–21–12; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF STATE

**[Public Notice: 8134]**

## 30-Day Notice of Proposed Information Collection: Application for Consular Report of Birth Abroad of a Citizen of the United States of America

**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 directly to the Office of Management and Budget (OMB) up to January 25, 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 the

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 collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Derek A. Rivers, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/L), U.S. Department of State, SA–29, 4th Floor, Washington, DC 20520 or at *CA–OCS–L@state.gov.*

**SUPPLEMENTARY INFORMATION:** • *Title of Information Collection:* Application for Consular Report of Birth Abroad of a Citizen of the United States of America.

• *OMB Control Number:* 1405–0011.

• *Type of Request:* Extension.

• *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).

• *Form Number:* DS–2029.

*Respondents:* Parents or legal guardians of United States citizen children born overseas.

• *Estimated Number of Respondents:* 68,627.

• *Estimated Number of Responses:* 68,627.

• *Average Time Per Response:* 20 minutes.

• *Total Estimated Burden Time:* 22,876 hours.

• *Frequency:* On Occasion.

• *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this 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 information 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 DS–2029, Application for Consular Report of Birth Abroad of a Citizen of the United States of America, is used by citizens of the United States to report the birth of a child while overseas. The information collected on this form will be used to certify the acquisition of U.S. citizenship at birth of a person born abroad and can be used by that person throughout life. 22 CFR § 50.5–50.7 are important legal authorities that permit the Department to use this form.

### Methodology

The DS–2029 is currently available to download from the Internet. An application for a Consular Report of Birth is normally made in the consular district in which the birth occurred. The parent respondents will complete the form and present it to a United States Consulate or Embassy, who will examine the documentation and enter the information provided into the Department of State American Citizen Services (ACS) electronic database.

Dated: November 21, 2012.

**Michelle Bernier-Toth,**

*Managing Director, Bureau of Consular Affairs, Overseas Citizen Services, Department of State.*

[FR Doc. 2012–31110 Filed 12–21–12; 4:15 pm]

**BILLING CODE 4710–06–P**

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## DEPARTMENT OF STATE

**[Public Notice 8133]**

## Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 8:00 a.m. on Wednesday, January 23, 2013, in Room 5–1224 of the United States Coast Guard Headquarters Building, 2100 Second Street SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the seventeenth Session of the International Maritime Organization's (IMO) Subcommittee on Bulk Liquids and Gases (BLG) to be held at the IMO Headquarters, United Kingdom, February 4–8, 2013.

The agenda items to be considered include:

—Adoption of the agenda
—Decisions of other IMO bodies
—Evaluation of safety and pollution hazards of chemicals and preparation of consequential amendments
—Additional guidelines for implementation of the BWM Convention
—Production of a manual entitled ''Ballast Water Management—How to do it''
—Consideration of improved and new technologies approved for ballast water management systems and reduction of atmospheric pollution
—Development of international measures for minimizing the transfer of invasive aquatic species through biofouling of ships
—Development of international code of safety for ships using gases or other low-flashpoint fuels
—Development of a revised IGC Code
—Consideration of the impact on the Arctic of emission of Black Carbon from international shipping
—Development of relevant non-mandatory instruments as a consequence of the amended MARPOL Annex VI and $NO_X$ Technical Code
—Development of guidelines for replacement engines not required to meet the Tier III limit (MARPOL Annex VI)
—Development of guidelines pertaining to equivalents set forth in regulation 4 of MARPOL Annex VI and not covered by other guidelines
—Development of guidelines called for under paragraph 2.2.5.6 of the $NO_X$ Technical Code
—Development of a Code for the transport and handling of limited amounts of hazardous and noxious liquid substances in bulk on offshore support vessels
—Development of amendments to the provisions of SOLAS chapter II–2 relating to the secondary means of venting cargo tanks
—Consideration of IACS unified interpretations
—Casualty analysis
—Biennial agenda and provisional agenda for BLG 18
—Election of Chairman and Vice-Chairman for 2014
—Any other business
—Report to the Committees

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, LT Sean Peterson, by email at *Sean.M.Peterson@uscg.mil*, by phone at (202) 372–1403, by fax at (202) 372–1925, or in writing at Commandant (CG–ENG–5), U.S. Coast Guard, 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126, not later than January 16, 2013, seven days prior to the meeting. Requests made after January 16, 2013, might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The

Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited. Additional information regarding this and other IMO SHC public meetings may be found at: *www.uscg.mil/imo.*

Dated: December 18, 2012.

**Brian Robinson,**

*Executive Secretary, Shipping Coordinating Committee, Department of State.*

[FR Doc. 2012–30959 Filed 12–21–12; 8:45 am]

**BILLING CODE 4710–09–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Dispute No. WTO/DS444]**

## WTO Dispute Settlement Proceeding Regarding Argentina—Measures Affecting the Importation of Goods

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative (''USTR'') is providing notice that the United States has requested the establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* (''WTO Agreement''). That request may be found at *www.wto.org* contained in a document designated as WT/DS444/10. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before January 18, 2013 to be assured of timely consideration by USTR.

**ADDRESSES:** Public comments should be submitted electronically to *www.regulations.gov,* docket number USTR–2012–0023. If you are unable to provide submissions by *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

**FOR FURTHER INFORMATION CONTACT:** Greta Milligan Peisch, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508, (202) 395–3150.

**SUPPLEMENTARY INFORMATION:** Section 127(b) of the Uruguay Round Agreements Act (''URAA'') (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that a dispute settlement panel has been requested pursuant to the WTO Dispute Settlement Understanding (''DSU''). The panel will hold its meetings in Geneva, Switzerland.

### Major Issues Raised by the United States

The United States has requested the establishment of a panel to consider certain measures imposed by Argentina on the importation of goods into Argentina. In particular, Argentina subjects the importation of all goods to approval of a non-automatic import license through the *Declaración Jurada Anticipada de Importación* (''DJAI'') system. Argentina subjects the importation of certain categories goods into Argentina to other, product-specific, non-automatic import licenses, or *Licencias No Automáticas de Importación,* in the form of *Certificados de Importación* (''CIs''). The legal instruments through which Argentina maintains these measures are set out in the annexes to the panel request. The issuance of CIs and approval of DJAIs are systematically delayed or denied by Argentine authorities on non-transparent grounds.

In addition, Argentina often requires imports to undertake certain commitments including to limit imports, to balance imports with exports, to make or increase investments in production facilities in Argentina, to increase the local content of products manufactured in Argentina (and thereby discriminate against imported products), to refrain from transferring revenue or other funds abroad and/or to control the price of imported goods. The Argentine authorities often make the issuance of CIs and the approval of DJAIs conditional upon the importers undertaking to comply with the above-mentioned trade-restrictive commitments.

Through these measures, Argentina appears to have acted inconsistently with its obligations under the *General Agreement on Tariffs and Trade* (''GATT 1994'') and the *Agreement on Import Licensing Procedures* (''Import Licensing Agreement''). Specifically, by adopting and maintaining these measures, Argentina appears to have acted inconsistently with Articles III:4, X:1, X:3(a) and XI:1 of the GATT 1994, and Articles 1.3, 1.4(a), 1.6, 3.2, 3.3, 3.5(f), 5.1, 5.2, 5.3 and 5.4 of the Import Licensing Agreement.

### Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *www.regulations.gov* docket number USTR–2012–0023. If you are unable to provide submissions by *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *www.regulations.gov,* enter docket number USTR–2012–0023 on the home page and click ''search''. The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Submit a Comment.'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.)

The *www.regulations.gov* site provides the option of providing comments by filling in a ''Type Comments'' field, or by attaching a document using an ''upload file'' field. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''Type Comments'' field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding accessible to the public at *www.regulations.gov,* docket number USTR–2012–0023. The public file will include non-confidential comments received by USTR from the public with respect to the dispute. If a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute, will be made available to the public on USTR's Web site at *www.ustr.gov,* and the report of the panel, and, if applicable, the report of the Appellate Body, will be available on the Web site of the World Trade Organization, *www.wto.org.* Comments open to public inspection may be viewed on the *www.regulations.gov* Web site.

**Juan Millan,**

*Acting Assistant United States Trade Representative for Monitoring and Enforcement.*

[FR Doc. 2012–30965 Filed 12–21–12; 8:45 am]

**BILLING CODE 3290–F3–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–1998–3637; FMCSA–2000–7363; FMCSA–2000–8203; FMCSA–2002–12294; FMCSA–2006–24783 FMCSA–2006–26066]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 8 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective January 13, 2013. Comments must be received on or before January 25, 2013.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [FMCSA–1998–3637; FMCSA–2000–7363; FMCSA–2000–8203; FMCSA–2002–12294; FMCSA–2006–24783 FMCSA–2006–26066], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE. Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

### Exemption Decision

This notice addresses 8 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 8 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

David S. Brumfield (KY)

Robert R. Buis (KY)
Leon C. Flynn (TX)
Gerald R. Rietmann (MN)
Arthur A. Sappington (IN)
David W. Skillman (WA)
William H. Smith (AL)
Edward C. Williams (AL)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

**Basis for Renewing Exemptions**

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 8 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 30285; 63 FR 54519; 65 FR 45817; 65 FR 66293; 65 FR 77066; 67 FR 46016; 67 FR 57267; 67 FR 71610; 68 FR 1654; 69 FR 71098 71 FR 32183; 71 FR 41310; 71 FR 63379; 72 FR 1050; 72 FR 1054; 73 FR 75806; 73 FR 78421; 73 FR 78422; 75 FR 79079). Each of these 8 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

**Request for Comments**

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by January 25, 2013.

FMCSA believes that the requirements for a renewal of an exemption under

49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 8 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: December 12, 2012.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2012–31001 Filed 12–21–12; 4:15 pm]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2002–72844]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 8 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective January 17, 2013. Comments must be received on or before January 25, 2013.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [FMCSA–2002–12844], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a

comment. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

## Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

## Exemption Decision

This notice addresses 8 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 8 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Howard F. Breitkreutz (MN)
John E. Evenson (WI)
Steven C. Humke (IA)
Craig M. Landry (LA)
Richard E. Nordhausen, Jr. (ID)
Andrew H. Rusk (IL)
Kenneth E. Vigue, Jr. (WA)
Richard A. Winslow (MN)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

## Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 8 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (67 FR 68719; 68 FR 2629; 69 FR 71100; 72 FR 1053; 73 FR 76440; 75 FR 80887). Each of these 8 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

## Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by January 25, 2013.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 8 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: December 12, 2012.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2012–31000 Filed 12–21–12; 4:15 pm]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2012–0113]**

### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel AQUADISIAC; 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 23, 2013.

**ADDRESSES:** Comments should refer to docket number MARAD–2012–0113. 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 AQUADISIAC is:

*Intended Commercial Use of Vessel:* ''Private Charters, passengers only.''

*Geographic Region:* Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, California, Oregon, Washington, and Alaska (excluding waters in Southeastern Alaska and waters north of a line between Gore Point to Cape Suckling [including the North Gulf Coast and Prince William Sound]).

The complete application is given in DOT docket MARAD–2012–0113 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).

Dated: December 18, 2012.

By Order of the Maritime Administrator.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2012–30931 Filed 12–21–12; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. EP 290 (Sub-No. 5) (2013–1)]**

### Quarterly Rail Cost Adjustment Factor

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Approval of rail cost adjustment factor.

**SUMMARY:** The Board has approved the AAR's proposed rebasing calculations and the rebased first quarter 2013 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. A new base level for the index is calculated in the Board's decision, as the statute requires be done every five years. The first quarter 2013 RCAF (Unadjusted) is 0.997. The first quarter 2013 RCAF (Adjusted) is 0.435. The first quarter 2013 RCAF–5 is 0.411.

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

**FOR FURTHER INFORMATION CONTACT:** Pedro Ramirez, (202) 245–0333. Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Board's decision, which is available on our Web site, *http://www.stb.dot.gov.* Copies of the decision may be purchased by contacting the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238. Assistance for the hearing impaired is available through FIRS at (800) 877–8339.

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: December 19, 2012.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.

**Derrick A. Gardner,**

*Clearance Clerk.*

[FR Doc. 2012–31024 Filed 12–21–12; 4:15 pm]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Increase in Maximum Tuition and Fee Amounts Payable under the Post-9/11 GI Bill

**AGENCY:** Department of Veterans Affairs (VA).

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to inform the public of the increase in the Post-9/11 GI Bill maximum tuition and fee amounts payable and the increase in the amount used to determine an individual's entitlement charge for reimbursement of a licensing, certification, or national test for the 2012–2013 and 2013–2014 academic years.

**FOR FURTHER INFORMATION CONTACT:** Tiffany N. Jones, Management and Program Analyst (225C), Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420, (202) 461–9837.

**SUPPLEMENTARY INFORMATION:** For the 2011–2012 academic year, the Post-9/11 GI Bill allowed VA to pay the actual net cost of tuition and fees not to exceed the in-State amounts for students pursuing training at public schools; $17,500 for students training at private and foreign

schools; $10,000 for students training at flight schools; and $8,500 for students training at correspondence schools. Additionally, the entitlement charge for individuals in receipt of reimbursement for taking a licensing, certification, or national test was one month (rounded to the nearest whole month) for each $1,460.00 received.

Sections 3313, 3315, and 3315A of title 38, United States Code (U.S.C.), direct VA to increase the maximum tuition and fee and entitlement charge amounts each academic year (beginning August 1) based on the most recent increase determined under title 38 U.S.C. 3015(h). Increases determined under 38 U.S.C. 3015(h) are effective October 1 of each calendar year. As such, the increase determined under 38 U.S.C. 3015(h), which was effective October 1 of the previous calendar year, will be the most recent increase in rates at the beginning of each academic year.

**2012–2013 Academic Year Maximum Tuition and Fee Amounts**

As of August 1, 2012 (beginning of the 2012–2013 academic year), the most recent increase determined under 38 U.S.C. 3015(h) was a 3.3 percent increase, which was effective October 1, 2011. VA calculated the maximum tuition and fee and entitlement charge amounts listed below for training pursued under the Post-9/11 GI Bill that begins after July 31, 2012, and before August 1, 2013, using the 3.3 percent increase.

2012–2013 ACADEMIC YEAR

| Type of school | Actual net cost of tuition and fees not to exceed |
|---|---|
| **Post-9/11 GI Bill Maximum Tuition and Fee Amounts** | |
| Public | In-State/Resident Charges. |
| Private/Foreign | $18,077.50. |
| Vocational Flight | $10,330.00. |
| Correspondence | $8,780.50. |
| **Post 9/11 Entitlement Charge Amount for Tests** | |
| Licensing and Certification Tests. | VA will charge one month entitlement (rounded to the nearest whole month) for each $1,508.18 received. |
| National Tests | |

**2013–2014 Academic Year Maximum Tuition and Fee Amounts**

As of August 1, 2013 (beginning of the 2013–2014 academic year), the 6.2 percent increase determined under 38 U.S.C. 3015(h), which was effective October 1, 2012, will be the most recent increase. VA calculated the maximum tuition and fee and entitlement charge amounts listed below for training pursued under the Post-9/11 GI Bill that begins after July 31, 2013, and before August 1, 2014, using the 6.2 percent increase.

2013–2014 ACADEMIC YEAR

| Type of school | Actual net cost of tuition and fees not to exceed |
|---|---|
| **Post-9/11 GI Bill Maximum Tuition and Fee Amounts** | |
| Public | In-State/Resident Charges. |
| Private/Foreign | $19,198.31. |
| Vocational Flight | $10,970.46. |
| Correspondence | $9,324.89. |
| **Post 9/11 Entitlement Charge Amount for Tests** | |
| Licensing and Certification Tests. | VA will charge one month entitlement (rounded to the nearest whole month) for each $1,601.69 received. |
| National Tests | |

Approved: December 18, 2012.

**John R. Gingrich,**

*Chief of Staff, Department of Veterans Affairs.*

[FR Doc. 2012–30945 Filed 12–21–12; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### National Academic Affiliations Council, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that a meeting of the National Academic Affiliations Council (NAAC) will be held on January 10–11, 2013, in the Office of Academic Affiliations Conference Room 870, 1800 G Street NW., Washington, DC. The sessions will begin at 8:00 a.m. each day and adjourn at 5:00 p.m. on January 10 and at 1:00 p.m. on January 11.

The purpose of the Council is to advise the Secretary on matters affecting partnerships between VA and its academic affiliates.

On January 10, the Council will review the status of recommendations from its previous meetings; receive a report from the NAAC Joint Venture Task Force; hear from Veterans Health Administration (VHA) officials; and engage in discussions about mental health service enhancements and implications for mental health education. On January 11, the Council will hear from officials of the VHA Office of Research and Development and continue its discussion of opportunities and challenges in academic affiliation relationships. The Council will receive public comments at 12:30 p.m.

A sign-in sheet for those who want to give comments will be available at the meeting. Individuals who speak are invited to submit a 1–2 page summary of their comments at the time of the meeting for inclusion in the official meeting record. Oral presentations will be limited to five minutes or less, depending on the number of participants. Interested parties may also provide written comments for review by the Council to Gloria J. Holland, Ph.D., Special Assistant for Policy and Planning, Office of Academic Affiliations (10A2D), VA, 810 Vermont Avenue NW., Washington, DC 20420 or by email to *Gloria.Holland@va.gov.* Any member of the public wishing to attend or seeking additional information should contact Dr. Holland by email or by phone at (202) 461–9490.

Dated: December 18, 2012.

By Direction of the Secretary.

**Vivian Drake,**

*Committee Management Officer.*

[FR Doc. 2012–30864 Filed 12–21–12; 8:45 am]

BILLING CODE P

## DEPARTMENT OF VETERANS AFFAIRS

### Presumption of Exposure to Herbicides for Blue Water Navy Vietnam Veterans Not Supported

**ACTION:** Notice.

**SUMMARY:** On May 20, 2011, at the request of the Department of Veterans Affairs (VA), the Institute of Medicine (IOM) of the National Academy of Sciences issued a report titled, ''Blue Water Navy Vietnam Veterans and Agent Orange Exposure.'' The IOM reviewed a wide range of data sources including peer-reviewed literature, exposure and transport modeling, interviews with veterans, ship deck logs, and other government documents, and concluded that there is insufficient evidence to determine whether Blue Water Navy Veterans were exposed to Agent Orange-associated herbicides during the Vietnam War. After careful review of the IOM report, the Secretary determines that the evidence available

at this time does not support establishing a presumption of exposure to herbicides for Blue Water Navy Vietnam Veterans. VA will continue to accept and review all Blue Water Navy Vietnam Veteran claims based on herbicide exposure on a case-by-case basis.

**FOR FURTHER INFORMATION CONTACT:** Dr. Terry Walters, Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420, telephone (202) 461–1020. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** During the Vietnam War, the U.S. military used various tactical herbicides as defoliants to help military personnel identify enemy transportation and communication routes and camps, reduce cover for enemy forces, and kill crops that might be used by the enemy. The best known and most widely used herbicide was Agent Orange. Agent Orange was contaminated with the highly toxic chemical 2, 3, 7, 8-Tetrachlorodibenzo-p-Dioxin (TCDD). Numerous adverse health effects in veterans who served in Vietnam have been attributed to exposure to Agent Orange. The Agent Orange Act of 1991, Public Law 102–4, 105 Stat. 11, established a presumption of herbicide exposure for veterans who had served in Vietnam and who developed a disease associated with Agent Orange exposure. The presumption applies to those who served in the Republic of Vietnam on the ground (ground troops) or on its inland waterways (Brown Water Navy Veterans). Veterans who served in deep-water naval vessels off the coast of Vietnam during the Vietnam War are referred to as Blue Water Navy Veterans. Claims filed by veterans who served on only Blue Water Navy vessels based on herbicide exposure are accepted and reviewed on a case-by-case basis.

On May 20, 2011, the Institute of Medicine (IOM) of the National Academy of Sciences issued a report titled, ''Blue Water Navy Vietnam Veterans and Agent Orange Exposure.'' The report was issued and the underlying study was conducted at the request of the Department of Veterans Affairs (VA) and neither was required by law. VA requested the study in response to veteran concerns and the recommendations in the IOM report ''Veterans and Agent Orange: Update 2008.'' VA tasked the IOM with establishing a committee to determine whether Blue Water Navy Vietnam Veterans experienced exposures to herbicides and their contaminants (focusing on dioxin) comparable to those of ground troops and Brown Water Navy Vietnam Veterans.

For the study, the IOM reviewed a wide range of data sources including peer-reviewed literature, exposure and transport modeling, interviews with veterans, ship deck logs, and other government documents. After reviewing and analyzing available data, the IOM concluded that ground troops and Brown Water Navy Veterans had qualitatively more pathways of exposure to Agent Orange-associated TCDD than did Blue Water Navy Veterans. The IOM found that a paucity of scientific data concerning potential exposures for Blue Water Navy Veterans made it impossible to determine whether these veterans were exposed to Agent Orange-associated TCDD and, therefore, that exposure of Blue Water Navy Vietnam Veterans to Agent Orange-associated TCDD cannot be reasonably determined.

After careful review of the IOM report, ''Blue Water Navy Vietnam Veterans and Agent Orange Exposure,'' the Secretary has determined that the evidence available at this time does not support establishing a presumption of exposure to herbicides for Blue Water Navy Vietnam Veterans. VA will continue to accept and review all Blue Water Navy Vietnam Veteran claims based on herbicide exposure on a case-by-case basis. The Secretary's determination not to establish a presumption of exposure does not in any way preclude VA from granting service connection on a case-by-case basis for diseases and conditions associated with Agent Orange exposure, nor does it change any existing rights or procedures.

## Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on December 19, 2012, for publication.

Dated: December 19, 2012.

**Robert C. McFetridge,**

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

[FR Doc. 2012–30909 Filed 12–21–12; 8:45 am]

BILLING CODE 8320–01–P

# FEDERAL REGISTER

Vol. 77 Wednesday,

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Part II

## Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; State of Washington; Regional Haze State Implementation Plan; Federal Implementation Plan for Best Available Retrofit Technology for Alcoa Intalco Operations and Tesoro Refining and Marketing; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R10–OAR–2010–1071, FRL–9760–6]**

## Approval and Promulgation of Implementation Plans; State of Washington; Regional Haze State Implementation Plan; Federal Implementation Plan for Best Available Retrofit Technology for Alcoa Intalco Operations and Tesoro Refining and Marketing

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to partially approve and partially disapprove a Washington Regional Haze Implementation Plan (SIP) submitted by the State of Washington on December 22, 2010, that addresses regional haze for the first implementation period. This plan was submitted to meet the requirements of Clean Air Act (CAA) sections 169A and 169B that require states to prevent any future and remedy any existing man-made impairment of visibility in mandatory Class I areas. EPA is proposing to: (1) Approve portions of this SIP submittal as meeting most of the requirements of the regional haze program, (2) propose a limited approval and limited disapproval of the $SO_2$ Best Available Retrofit Technology (BART) determination for Intalco Aluminum Corp. (Intalco) potline operation and propose a federal ''Better than BART'' alternative, and (3) propose to disapprove the NOx BART determination for five BART emission units at the Tesoro Refining and Marketing refinery (Tesoro) and propose a federal Better than BART alternative. This combined rule package of proposed SIP approved elements and proposed federal elements will meet the requirements of CAA sections 169A and 169B. On August 20, 2012, EPA approved those provisions of the Washington SIP addressing the BART determination for TransAlta Centralia Generation L.L.C. coal fired power plant (TransAlta).

**DATES:** *Comments:* Written comments must be received at the address below on or before February 15, 2013.

*Public Hearing:* A public hearing is offered to provide interested parties the opportunity to present information and opinions to EPA concerning our proposal. Interested parties may also submit written comments, as discussed below. If you wish to request a hearing and present testimony, you should notify Mr. Steve Body on or before January 10, 2013 and indicate the nature of the issues you wish to provide oral testimony during the hearing. Mr. Body's contact information is found in **FOR FURTHER INFORMATION CONTACT** below. At the hearing, the hearing officer may limit oral testimony to 5 minutes per person. The hearing will be limited to the subject matter of this proposal, the scope of which is discussed below. EPA will not respond to comments during the public hearing. When we publish our final action we will provide a written response to all written or oral comments received on the proposal. EPA will not be providing equipment for commenters to show overhead slides or make computerized slide presentations. A transcript of the hearing and written statements will be made available for copying during normal working hours at the address listed for inspection of documents, and also included in the Docket. Any member of the public may provide written or oral comments and data pertaining to our proposal at the hearing. Note that any written comments and supporting information submitted during the comment period will be considered with the same weight as any oral comments presented at the public hearing. If no requests for a public hearing are received by close of business on January 10, 2013, a hearing will *not* be held; please contact Mr. Body at (206) 553–0782 to find out if the hearing will actually be held or if it will be cancelled for lack of any request to speak.

**ADDRESSES:** *Public Hearing:* A public hearing, if requested, will be held January 16, 2013, beginning at 6:00 p.m. at the Washington Department of Ecology Offices, Room #ROA–32, 300 Desmond Drive, Lacey, WA 98503.

*Comments:* Submit your comments, identified by Docket ID No. EPA–R10–OAR–2010–1071 by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Email: *R10-Public_Comments@epa.gov*.
- Mail: Steve Body, EPA Region 10, Suite 900, Office of Air, Waste and Toxics, 1200 Sixth Avenue, Seattle, WA 98101.
- Hand Delivery: EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Steve Body, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R10–OAR–2010–1071. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means 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.

*Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available (e.g., CBI or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at www.regulations.gov or in hard copy at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101. EPA requests that if at all possible, you contact the individual listed below to view a hard copy of the docket.

**FOR FURTHER INFORMATION CONTACT:** Steve Body at telephone number (206) 553–0782, *body.steve@epa.gov,* or the above EPA, Region 10 address.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. Information is organized as follows:

**Table of Contents**

I. Overview and Summary of EPA's Proposed Action
II. Background for EPA's Proposed Action
A. Definition of Regional Haze
B. Regional Haze Rules and Regulations
C. Roles of Agencies in Addressing Regional Haze
III. Requirements for the Regional Haze SIP
A. The CAA and the Regional Haze Rule
B. Determination of Baseline, Natural, and Current Visibility Conditions
C. Consultation With States and Federal Land Managers
D. Best Available Retrofit Technology
E. Determination of Reasonable Progress Goals (RPGs)
F. Long Term Strategy (LTS)
G. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment (RAVI)
H. Monitoring Strategy and Other Implementation Requirements
IV. EPA's Analysis of the Washington Regional Haze SIP
A. Affected Class I Areas
B. Baseline and Natural Conditions and Uniform Rate of Progress
C. Washington Emissions Inventories
D. Sources of Visibility Impairment in Washington Class I Areas
E. Best Available Retrofit Technology
1. BART-Eligible Sources in Washington
2. Sources Subject to BART
3. Washington Source Specific BART Analysis
a. British Petroleum, Cherry Point Refinery
b. Intalco Aluminum Corp.
c. Tesoro Refining and Marketing
d. Port Townsend Paper Company
e. Lafarge North America
f. TransAlta Centralia Generation, LLC
g. Weyerhaeuser Company-Longview
F. Determination of Reasonable Progress Goals
G. Long Term Strategy
H. Monitoring Strategy and Other Implementation Requirements
I. Consultation With States and Federal Land Managers
J. Periodic SIP Revisions and 5-Year Progress Reports
V. What action is EPA proposing?
VI. Washington Notice
VII. Scope of Action
VIII. Statutory and Executive Order Reviews

## I. Overview and Summary of EPA's Proposed Action

In this action, EPA proposes to approve the following provisions of Washington's Regional Haze SIP submittal: Washington's identification of Class I areas and determination of baseline conditions, natural conditions and uniform rate of progress (URP) for each of these Class I areas. We also propose to approve Washington's emission inventories, sources of visibility impairment in Washington Class I areas, monitoring strategy, consultation with other states and Federal Land Managers (FLMs), reasonable progress goals (RPGs), and long term strategy (LTS).

EPA previously approved Washington's BART determination for the TransAlta power plant in Centralia, Washington. In today's action we are proposing to approve BART determinations for all other sources subject to BART with the exception of certain BART emission units at two sources subject to BART. Specifically EPA is proposing to approve the BART determinations for the British Petroleum (BP) Cherry Point Refinery, Port Townsend Paper Company, LaFarge North America, and Weyerhaeuser Longview and portions of the BART determinations for Intalco and Tesoro. EPA is proposing a limited approval and limited disapproval of Washington's $SO_2$ BART determination for the potlines at Intalco in Ferndale, Washington. EPA proposes an alternative 'Better than BART'' Federal Implementation Plan (FIP) for $SO_2$ BART for the potlines with an annual limit on $SO_2$ emissions of 80% of baseyear emissions. EPA is proposing to disapprove Washington's $NO_X$ BART determination for 5 BART units at the Tesoro refinery in Anacortes, Washington. EPA proposes a Better than BART alternative FIP for these 5 BART units.

## II. Background for EPA's Proposed Action

In the CAA Amendments of 1977, Congress established a program to protect and improve visibility in national parks and wilderness areas. See CAA section 169A. Congress amended the visibility provisions in the CAA in 1990 to focus attention on the problem of regional haze. See CAA section 169B. EPA promulgated regulations in 1999 to implement sections 169A and 169B of the Act. These regulations require states to develop and implement plans to ensure reasonable progress toward improving visibility in mandatory Class I Federal areas [1] (Class I areas). 64 FR 35714 (July 1, 1999); see also 70 FR 39104 (July 6, 2005) and 71 FR 60612 (October 13, 2006).

### *A. Definition of Regional Haze*

Regional haze is impairment of visual range or colorization caused by emission of air pollution produced by numerous sources and activities, located across a broad regional area. The sources include but are not limited to, major and minor stationary sources, mobile sources, and area sources including non-anthropogenic sources. Visibility impairment is primarily caused by fine particulate matter, particles with an aerodynamic diameter of less than 2.5 micrometers, ($PM_{2.5}$) or secondary aerosol formed in the atmosphere from precursor gasses (e.g., sulfur dioxide, nitrogen oxides, and in some cases, ammonia and volatile organic compounds). Atmospheric fine particulate reduces clarity, color, and visual range of visual scenes. Visibility reducing fine particulate is primarily composed of sulfate, nitrate, organic carbon compounds, elemental carbon, and soil dust, and impairs visibility by scattering and absorbing light. Fine particulate can also cause serious health effects and mortality in humans, and contributes to environmental effects such as acid deposition and eutrophication.[2]

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national parks and wilderness areas. Average visual range in many Class I areas in the Western United States is 100–150 kilometers, or about one-half to two-thirds the visual range that would exist without anmade air pollution.[3] Visibility impairment also varies day-to-day and by season depending on variation in meteorology and emission rates.

### *B. Regional Haze Rules and Regulations*

In section 169A of the 1977 CAA Amendments, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in Class I areas which impairment results from manmade air

[1] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

[2] See 64 FR at 35715.

[3] *Id.*

pollution.'' CAA section 169A(a)(1). On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, i.e., ''reasonably attributable visibility impairment''. 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35713) (the Regional Haze Rule or RHR). The RHR revised the existing visibility regulations to integrate into the regulation, provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in section III of this notice. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia and the Virgin Islands.[4] 40 CFR 51.308(b) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

### *C. Roles of Agencies in Addressing Regional Haze*

Successful implementation of the regional haze program will require long-term regional coordination among states, tribal governments and various federal agencies. As noted above, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to effectively address the problem of visibility impairment in Class I areas, states need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze impairment can originate from across state lines, even across international boundaries, EPA has encouraged the states and Tribes to address visibility impairment from a regional perspective. *Five regional planning organizations* (RPOs) were created nationally to address regional haze and related issues. One of the main objectives of the RPOs is to develop and analyze data and conduct pollutant transport modeling to assist the States or Tribes in developing their regional haze plans.

The Western Regional Air Partnership (WRAP), one of the five RPOs nationally, is a voluntary partnership of state, Tribal, federal, and local air agencies dealing with air quality in the West. WRAP member states include: Alaska, Arizona, California, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. WRAP Tribal members include Campo Band of Kumeyaay Indians, Confederated Salish and Kootenai Tribes, Cortina Indian Rancheria, Hopi Tribe, Hualapai Nation of the Grand Canyon, Native Village of Shungnak, Nez Perce Tribe, Northern Cheyenne Tribe, Pueblo of Acoma, Pueblo of San Felipe, and Shoshone-Bannock Tribes of Fort Hall.

## II. Requirements for the Regional Haze SIPs

### *A. The CAA and the Regional Haze Rule*

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and EPA's implementing regulations require states to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail below.

### *B. Determination of Baseline, Natural, and Current Visibility Conditions*

The RHR establishes the deciview (dv) as the principal metric for measuring visibility. This visibility metric expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility is determined by measuring the visual range (or deciview), which is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky. The deciview is a useful measure for tracking progress in improving visibility, because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one deciview.[5]

The deciview is used in expressing reasonable progress goals (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions, and tracking changes in visibility. The regional haze SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by manmade air pollution by reducing anthropogenic emissions that cause regional haze. The national goal is a return to natural conditions, i.e., manmade sources of air pollution would no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437), and as part of the process for determining reasonable progress, states must calculate the degree of existing visibility impairment at each Class I area at the time of each regional haze SIP submittal and periodically review progress every five years midway through each 10-year implementation period. To do this, the RHR requires states to determine the degree of impairment (in deciviews) for the average of the 20% least impaired (''best'') and 20% most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, states must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. EPA has provided guidance to states regarding how to calculate baseline, natural and current visibility conditions in documents titled, EPA's *Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule,* September 2003, (EPA–454/B–03–005 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf*), (hereinafter referred to as ''EPA's 2003 Natural Visibility Guidance''), and

[4] Albuquerque/Bernalillo County in New Mexico must also submit a regional haze SIP to completely satisfy the requirements of section 110(a)(2)(D) of the CAA for the entire State of New Mexico under the New Mexico Air Quality Control Act (section 74–2–4).

[5] The preamble to the RHR provides additional details about the deciview. 64 FR 35714, 35725 (July 1, 1999).

*Guidance for Tracking Progress Under the Regional Haze Rule* (EPA–454/B–03–004 September 2003 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf*)), (hereinafter referred to as ''EPA's 2003 Tracking Progress Guidance'').

For the first regional haze SIPs that were due by December 17, 2007, ''baseline visibility conditions'' were the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20% least impaired days and 20% most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress made. In general, the 2000–2004 baseline time period is considered the time from which improvement in visibility is measured.

*C. Consultation With States and Federal Land Managers*

The RHR requires that states consult with Federal Land Managers (FLMs) before adopting and submitting their SIPs. 40 CFR 51.308(i). States must provide FLMs an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of visibility impairment in any Class I area and to offer recommendations on the development of the reasonable progress goals and on the development and implementation of strategies to address visibility impairment. Further, a state must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

*D. Best Available Retrofit Technology*

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources [6] built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' as determined by the state. States are directed to conduct BART determinations for such sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at appendix Y to 40 CFR part 51 (hereinafter referred to as the ''BART Guidelines'') to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. In making a BART applicability determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts, a state must use the approach set forth in the BART Guidelines. A state is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility-impairing pollutants are sulfur dioxide, nitrogen oxides, and fine particulate matter. EPA has indicated that states should use their best judgment in determining whether volatile organic compounds or ammonia compounds impair visibility in Class I areas.

Under the BART Guidelines, states may select an exemption threshold value to determine those BART eligible sources not subject to BART. A BART-eligible source with an impact below the threshold would not be expected to cause or contribute to visibility impairment in any Class I area. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Generally, an exemption threshold set by the state should not be higher than 0.5 deciview.

In their SIPs, states must identify BART sources, (BART-eligible sources), as well as those BART eligible sources that have a visibility impact in any Class I area above the ''BART subject'' exemption threshold established by the state and thus, subject to BART. States must document their BART control analysis and determination for all sources subject to BART.

The term ''BART-eligible source'' used in the BART Guidelines means the collection of individual emission units at a facility that together comprises the BART-eligible source. In making a BART determination, section 169A(g)(2) of the CAA requires that states consider the following factors: (1) The costs of compliance, (2) the energy and non-air quality environmental impacts of compliance, (3) any existing pollution control technology in use at the source, (4) the remaining useful life of the source, and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance to be assigned to each factor.

The regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a state has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than 5 years after the date EPA approves the regional haze SIP. CAA section 169A(g)(4)). 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source. States have the flexibility to choose the type of control measures they will use to meet the requirements of BART.

*E. Determination of Reasonable Progress Goals (RPGs)*

The vehicle for ensuring continuing progress towards achieving the natural

[6] The set of ''major stationary sources'' potentially subject to BART is listed in CAA section 169A(g)(7).

visibility goal is the submission of a series of regional haze SIPs from the states that establish two RPGs (i.e., two distinct goals, one for the ''best'' and one for the ''worst'' days) for every Class I area for each (approximately) 10-year implementation period. The RHR does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for ''reasonable progress'' toward achieving natural (i.e., ''background'') visibility conditions. In setting RPGs, states must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period.

States have significant discretion in establishing RPGs, but are required to consider the following factors established in section 169A of the CAA and in EPA's RHR at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. States have considerable flexibility in how they take these factors into consideration, as noted in EPA's *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program,* (''EPA's Reasonable Progress Guidance''), July 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (pp. 4–2, 5–1). In setting the RPGs, states must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to as the ''uniform rate of progress'' or the ''glidepath'') and the emission reduction measures needed to achieve that rate of progress over the 10-year period of the SIP. Uniform progress towards achievement of natural conditions by the year 2064 represents a rate of progress which states are to use for analytical comparison to the amount of progress they expect to achieve. In setting RPGs, each state with one or more Class I areas (''Class I state'') must also consult with potentially ''contributing states,'' i.e., other nearby states with emission sources that may be affecting visibility impairment at the Class I state's areas. 40 CFR 51.308(d)(1)(iv).

*F. Long Term Strategy (LTS)*

Consistent with the requirement in section 169A(b) of the CAA that states include in their regional haze SIP a 10 to 15 year strategy for making reasonable progress, section 51.308(d)(3) of the RHR requires that states include a LTS in their regional haze SIPs. The LTS is the compilation of all control measures a state will use during the implementation period of the specific SIP submittal to meet applicable RPGs. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or affected by emissions from, the state. 40 CFR 51.308(d)(3).

When a state's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another state, the RHR requires the impacted state to coordinate with the contributing states in order to develop coordinated emissions management strategies. 40 CFR 51.308(d)(3)(i). In such cases, the contributing state must demonstrate that it has included, in its SIP, all measures necessary to obtain its share of the emissions reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums for significant interstate consultation, but additional consultations between states may be required to sufficiently address interstate visibility issues. This is especially true where two states belong to different RPOs.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources. At a minimum, states must describe how each of the following seven factors listed below are taken into account in developing their LTS: (1) Emissions reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; and (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. See 40 CFR 51.308(d)(3)(v).

*G. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment (RAVI)*

As part of the RHR, EPA revised 40 CFR 51.306(c) regarding the LTS for RAVI to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the state's first plan addressing regional haze visibility impairment, which was due December 17, 2007, in accordance with 40 CFR 51.308(b) and (c). On or before this date, the state must revise its plan to provide for review and revision of a coordinated LTS for addressing RAVI and regional haze, and the state must submit the first such coordinated LTS with its first regional haze SIP. Future coordinated LTS's, and periodic progress reports evaluating progress towards RPGs, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic review of a state's LTS must report on both regional haze and RAVI impairment and must be submitted to EPA as a SIP revision.

*H. Monitoring Strategy and Other Implementation Requirements*

Section 51.308(d)(4) of the RHR includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I Federal areas within the state. The strategy must be coordinated with the monitoring strategy required in section 51.305 for RAVI. Compliance with this requirement may be met through ''participation'' in the IMPROVE network, i.e., review and use of monitoring data from the network. The monitoring strategy is due with the first regional haze SIP, and it must be reviewed every five years. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met.

The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a state with mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas both within and outside the state;
- Procedures for using monitoring data and other information in a state with no mandatory Class I areas to determine the contribution of emissions from within the state to regional haze

visibility impairment at Class I areas in other states;

• Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state, and where possible, in electronic format;

• Developing a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. A state must also make a commitment to update the inventory periodically; and

• Other elements, including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

The RHR requires control strategies to cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every 10 years thereafter. Periodic SIP revisions must meet the core requirements of section 51.308(d) with the exception of BART. The requirement to evaluate sources for BART applies only to the first regional haze SIP. Facilities subject to BART must continue to comply with the BART provisions of section 51.308(e), as noted above. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

## III. EPA's Analysis of the Washington Regional Haze SIP

### *A. Affected Class I Areas*

There are eight mandatory Class I areas within Washington: Olympic National Park, North Cascades National Park, Glacier Peak Wilderness Area, Alpine Lakes Wilderness Area, Mt. Rainier National Park, Goat Rocks Wilderness Area, Mt. Adams Wilderness Area, and Pasayten Wilderness Area. See 40 CFR 81.434. The Washington SIP submittal addresses all eight Class I areas.

### *B. Baseline and Natural Conditions and Uniform Rate of Progress*

Washington, using data from the IMPROVE monitoring network, identified baseline and natural visibility conditions for all eight Class I areas in Washington. Baseline visibility was calculated from monitoring data collected by IMPROVE monitors for the 20% most-impaired (20% worst) days and the 20% least-impaired (20% best) days. Washington used the WRAP derived natural visibility conditions. In general, WRAP based their estimates on EPA guidance, ''Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Program'' (EPA–45/B–03–0005 September 2003), (*http://www.epa.gov/ttn/caaa/t1/memoranda/rh_envcurhr_gd.pdf*), but incorporated refinements which EPA believes provides results more appropriate for western states than the general EPA default approach. See section 2.E of the WRAP Technical Support Document (WRAP TSD).

*Olympic National Park:* An IMPROVE monitor is located northeast of the Park boundary at the extreme northeast corner of the Olympic Peninsula near Sequim, Washington. Based on baseline data from the years 2000 to 2004, the average 20% worst days visibility is 16.7 dv and the average 20% best days visibility is 6.0 dv. Natural visibility for the average 20% worst days is 8.4 dv.

*North Cascades National Park and Glacier Peak Wilderness Areas:* The North Cascades National Park and Glacier Peak Wilderness Area are both represented by an IMPROVE monitor located near Ross Lake on the Skagit River just outside the eastern boundary of the northern section of North Cascades National Park. Based on baseline data from the years 2000 to 2004, the average 20% worst days visibility is 16.0 dv and the average 20% best days visibility is 3.37 dv. Natural visibility for the average 20% worst days is 8.39 dv.

*Alpine Lakes Wilderness Area:* Alpine Lakes Wilderness Area visibility is represented by an IMPROVE monitor located southwest of the wilderness area at Snoqualmie Pass in the Cascade Mountains. Based on baseline data from the years 2000 to 2004, the average 20% worst days visibility is 17.8 dv and the average 20% best days visibility is 5.5 dv. Natural visibility for the Alpine Lakes Wilderness Area average 20% worst days is 8.4 dv.

*Mt. Rainier National Park:* Mt. Rainier National Park visibility is represented by an IMPROVE monitor located at Park headquarters at Tahoma Woods. Based on baseline data from the years 2000 to 2004, the average 20% worst days visibility is 18.2 dv and the average 20% best days visibility is 5.5 dv. Natural visibility for the Mt. Rainier National Park average 20% worst days is 8.5 dv.

*Goat Rocks and Mt. Adams Wilderness Areas:* The Goat Rocks and Mt. Adams Wilderness Area's visibility are both represented by an IMPROVE monitor located at White Pass in the Cascade Mountain Range. Based on baseline data from the years 2000 to 2004, the average 20% worst days visibility is 12.7 dv and the average 20% best days visibility is 1.7 dv for both areas. Natural visibility for the Goat Rocks and Mt. Adams Wilderness Areas average 20% worst days is 8.35 dv.

*Pasayten Wilderness Area:* The Pasayten Wilderness Area visibility is represented by an IMPROVE monitor located 50 km south and east of the wilderness boundary. Based on baseline data from the years 2000 to 2004, the average 20% worst days visibility is 15.2 dv and the average 20% best days visibility is 2.7 dv. Natural visibility for the Pasayten Wilderness Area average 20% worst days is 8.3 dv.

Based on our evaluation of the Washington's baseline and natural conditions analysis, EPA is proposing to find that Washington has appropriately determined the baseline visibility for the average 20% worst and 20% best days, and natural conditions for the average 20% worst days in each Class I area in Washington.

### *C. Washington Emissions Inventories*

There are three main categories of air pollution emission sources: Point sources, area sources, and mobile sources. Point sources are larger stationary sources. Area sources are large numbers of small sources that are widely distributed across an area, such as residential heating units, wildfire, re-entrained dust from unpaved roads, or windblown dust from agricultural fields. Mobile sources are sources such as motor vehicles, locomotives, and aircraft.

The RHR requires a statewide emission inventory of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any mandatory Class I area. 40 CFR 51.308(d)(4)(v). The WRAP, with data supplied by Washington, compiled emission inventories for all major source categories in Washington for the 2002 baseline year and estimated emissions for 2018. Emission estimates for 2018 were generated from anticipated population growth, growth in industrial activity, and emission reductions from implementation of expected control measures, e.g., implementation of BART limitations and motor vehicle tailpipe emissions. Chapter 6 of the SIP submittal discusses how emission estimates were determined and contains the emission inventory. Detailed estimates of the emissions, used in the modeling conducted by the WRAP and Washington, can be found at the WRAP Web site: *http://vista.cira.colostate.edu/TSS/Results/Emissions.aspx*.

There are a number of emission inventory source categories identified in

the Washington SIP submittal. The source categories vary with type of pollutant but include: Point, area, on-road mobile, off-road mobile, anthropogenic fire (prescribed forest fire, agricultural field burning, and residential wood combustion), natural fire, biogenic, road dust, fugitive dust and windblown dust. The 2002 baseline and 2018 projected emissions, as well as the net changes of emissions between these two years, are presented in Tables 6–1 through 6–8 of the SIP submittal for sulfur dioxide ($SO_2$), oxides of nitrogen ($NO_X$), volatile organic carbon (VOC), organic carbon (OC), elemental carbon (EC), $PM_{2.5,}$ and ammonia. The methods that WRAP used to develop these emission inventories are described in more detail in the WRAP TSD. As explained in the WRAP TSD, emissions were calculated using best available data and approved EPA methods. See WRAP TSD section 12.

Sulfur dioxide emissions in Washington come mostly from one coal fired power plant, oil refineries, aluminum plants, pulp and paper mills, and a cement plant. $SO_2$ emission estimates for point sources come either from source test data (where available) or calculations based on the quantity and type of fuel burned. These industrial point sources contribute 64% of total statewide $SO_2$ emissions. The second largest source category contributing to $SO_2$ emissions in Washington is off-road mobile sources which contribute 17%. The remainder of $SO_2$ emissions is from a variety of area sources including anthropogenic and natural fire. See Table 6–1 of the SIP submittal.

Washington projects a 29% statewide reduction in point source $S0_2$ emissions by 2018 due to implementation of BART emission limitations and other Washington State and federal emission reduction actions. Washington projects total 2018 statewide $SO_2$ emissions to be reduced by 40% below 2002 levels as a result of BART and additional reductions from mobile sources.

$NO_X$ emissions in Washington come mostly from mobile sources, both on-road and off-road, which contribute 76% of total statewide $NO_X$ emissions. The second largest source category of $NO_X$ emissions is point source emissions which accounts for 11% of statewide $NO_X$ emissions. Area source emissions account for less than 5% of statewide $NO_X$ emissions.

Washington projects that 2018 total statewide emissions of $NO_X$ will be 46% lower than 2002 levels. Washington also projects on-road and off-road mobile source emissions to be reduced by 72% and 45% respectively by 2018, due to new federal motor vehicle emission standards and fleet turnover. Washington projects area source $NO_X$ emissions to increase by 29% due to population growth. See Table 6–2 of the SIP submittal.

Volatile organic compounds in Washington come mostly from biogenic emissions from forests, agriculture, and urban vegetation. The second largest source category in VOC emissions is on-road and off-road mobile sources. Washington projects 2018 statewide VOC emissions to increase by only 1% over 2002 levels. This very minor change is due to anticipated increases in area and point source emissions that would offset anticipated decreases in mobile sources and anthropogenic fire. See Table 6–3 of the SIP submittal.

Organic carbon in Washington comes almost equally from wildfire at 35% and other area sources at 33%. Anthropogenic fire accounts for 20% of statewide organic carbon emissions. Washington projects 2018 statewide organic carbon emissions to decrease 4% from 2002. Large reductions in emissions from mobile sources and anthropogenic fire are expected to be offset by increases in emissions from point and area sources due to population growth. See Table 5–4 of the SIP submittal.

The largest source categories of elemental carbon are mobile sources, natural fire and area sources. Washington projects 2018 statewide elemental carbon emissions to decrease by 25% from 2002 emission levels. These projected reductions are the result of anticipated emission reductions in on-road mobile and off-road mobile emissions of 76% and 60% respectively. See Table 6–5 of the SIP submittal.

Fine particulate is emitted from a variety of area sources which account for 95% of statewide fine particulate. Fugitive dust, from agriculture, mining, construction and roads, is the largest source category contributing 31% of total fine particulate. Anthropogenic and natural fire only account for 12% of the statewide fine particulate emissions. Point sources account for only 5% of statewide fine particulate. Washington projects that 2018 fine particulate emissions will increase by 20% over 2002 emission levels due to population and industrial growth. Emissions increases are projected from point, area, and fugitive dust at 16%, 36%, and 34% respectively. See Table 6–6 of the SIP submittal.

Ammonia does not directly impair visibility but can be a precursor to the formation of particulate in the atmosphere through chemical reaction with $SO_2$ and $NO_X$ to form a ''secondary aerosol'' of ammonium sulfate and ammonium nitrate. Area sources are the primary source category contributing to ammonia emissions and account for 77% of total ammonia emissions. Washington projects ammonia emissions in 2018 to increase by 8% over 2002 emission levels with increasing emissions in all categories except for anthropogenic fire which Washington projects to decrease by 30%. See Table 6–8 of the SIP submittal.

EPA believes Washington's inventory of baseline emissions is accurate and comprehensive as Washington used the most current and appropriate methods at the time it was developed. We note that additional emission reductions may occur between the baseline year and 2018 that are not accounted for in the 2018 inventory. For example, no emission reductions from the new regulations relating to the International Maritime Organization Emission Control Area (ECA) on the west coast of the United States and Canada were taken into account in the 2018 emission estimates (ECA Amendments to MARPOL Annex VI). These emissions are outside the modeling domain but may impact the visibility in the Class I areas. Washington's projected 2018 emissions inventory also did not account for the now anticipated $NO_X$ emission reductions from the TransAlta $NO_X$ BART determination recently approved into the SIP.

The federal Better than BART determination proposed today for Tesoro identifies $SO_2$ emission reductions of 1068 t/y that were not included in the 2018 emission inventory. Also, the proposed federal Better than BART emission limits for Alcoa's Intalco operations, if finalized, are expected to reduce $SO_2$ emissions from the baseline year emission inventory by 1310 t/y. The sum total of the expected $NO_X$ reductions from the TransAlta BART determination and the proposed FIP actions for Tesoro and Intalco are: 3688 t/y $NO_X$ from TransAlta and 2378 t/y $SO_2$ Tesoro and Intalco.

*D. Sources of Visibility Impairment in Washington Class I Areas*

Each pollutant species has its own visibility impairing property; 1 $\mu g/m^3$ of sulfate, for example, is more effective in scattering light than 1 $\mu g/m^3$ of organic carbon and therefore impairs visibility more than organic carbon. Following the approach recommended by the WRAP and as explained more fully below, Washington used a two-step process to identify the contribution of each source or source category to existing visibility

impairment. First, ambient pollutant concentration by species (sulfate, nitrate, organic carbon, fine particulate, etc.) was determined from the IMPROVE sampler in each Class I area. These concentrations were then converted into light extinction values to distribute existing impairment among the measured pollutant species. This calculation used the ''improved IMPROVE equation'' (See section 2.C of the WRAP TSD) to calculate extinction from each pollutant specie concentration. Total extinction, in inverse megameters, was then converted to deciview using the equation defining deciview.

After considering the available models, the WRAP and western states selected two source apportionment analysis tools. The first source apportionment tool was the Comprehensive Air Quality Model with Extensions ($CAM_X$) in conjunction with PM Source Apportionment Technology (PSAT). This model uses emission source characterization, meteorology and atmospheric chemistry for aerosol formation to predict pollutant concentrations in the Class I area. The predicted results are compared to measured concentrations to assess accuracy of model output. $CAM_X$ PSAT modeling was used to determine source contribution to ambient sulfate and nitrate concentrations. Thus, the WRAP used state-of-the-science source apportionment tools within a widely used photochemical model. EPA has reviewed the PSAT analysis and considers the modeling, methodology, and analysis acceptable. See section 6.A of the WRAP TSD.

The second tool was the Weighted Emissions Potential (WEP) model, used primarily as a screening tool to decide which geographic source regions have the potential to contribute to haze at specific Class I areas. WEP does not account for atmospheric chemistry (secondary aerosol formation) or removal processes, and thus is used for estimating inert particulate concentrations. The model uses back trajectory wind flow calculations and resident time of an air parcel over each area source to determine source area and source category and location for ambient organic carbon, elemental carbon, $PM_{2.5}$, and coarse PM concentrations. These modeling tools were the state-of-the-science and EPA has determined that these tools were appropriately used by WRAP for regional haze planning. Description of these tools and our evaluation of them are described in more detail in section 6 of the WRAP TSD.

Chapter 8 of the Washington Regional Haze SIP submittal presents the light extinction for the base year at each Class I area by visibility impairing pollutant species for the average of the 20% worst days and the 20% best days. The most significant visibility impairing pollutant species identified for all Class I areas are: sulfate, nitrate, and organic carbon mass. For the Pasayten Wilderness area elemental carbon is also presented. See chapter 8 of the SIP submittal.

Tables 8–1 and 8–2 of the SIP submittal provides the percent contribution of ''in state'' sources to impairment in each Class I area on the 20% worst and best days for sulfate and nitrate for both 2002 and 2018. In the discussion below of each Class I area, the source category with the greatest impact will be identified.

**Olympic National Park**

Visibility at Olympic National Park is represented by the OLYM1 IMPROVE monitoring site. On the 20% most impaired days at Olympic National Park, sulfate accounts for 39%, nitrate accounts for 19%, and organic carbon accounts for 28% of impairment. On the 20% least impaired days, sulfate accounted for 36%, nitrate accounted for 17%, and organic carbon accounted 26% of impairment. See section 8.1 of the SIP submittal.

Sulfate on the 20% most impaired days at Olympic National Park: 37% is from outside the modeling domain, 21% originates from offshore Pacific offshore sources, and 21% from Canadian sources. Only 25% of the sulfate originates from sources in Washington. Washington point sources account for 15%, mobile sources 7%, and area sources 3% of sulfate impairment on the 20% most impaired days. Sulfate on the 20% least impaired days at Olympic National Park: 37% of the sulfate originates from outside the modeling domain, 34% from sources in Washington, 21% from sources in Canada, and 15% from Pacific offshore sources. Washington point sources account for 18% of the sulfate impairment on the 20% least impaired days.

Nitrate on the 20% most impaired days at Olympic National Park: 53% of the nitrate originates from sources in Washington, 21% originates in Canada, and 15% from the Pacific offshore. See Figure 8–5 of the SIP submittal. Of the sources in Washington, 40% is attributed to mobile sources, 9% to point sources, and 3% to area sources. Nitrate on the 20% least impaired days at Olympic National Park: 45% of the nitrate is from mobile sources, 8% from point sources, and 4% from area sources in Washington. See Table 8–2 of the SIP submittal.

Organic carbon is the second most significant pollutant impairing visibility in Olympic National Park. Most of the organic carbon originates in the Puget Sound area from area sources including aerosol formation from volatile organic compounds, natural and anthropogenic fire, and mobile sources. See section 8.1.3 of the SIP submittal.

**North Cascades National Park and Glacier Peak Wilderness Area**

These two Class I areas are represented by one IMPROVE monitor (NOCA1) located in the upper Skagit Valley. On the 20% most impaired days, sulfate accounts for 26%, nitrate accounts for 5%, and organic carbon accounts for 58% of impairment. On the 20% least impaired days, sulfate accounted for 45%, nitrate accounted for 14%, and organic carbon accounted to 21% of impairment. See section 8.2 of the SIP submittal.

Sulfate on the 20% most impaired: 32% of the sulfate originates from outside the modeling domain, 29% originates from sources in Washington, and 28% originates in Canada. See Figure 8–12 of the SIP submittal. Point sources in Washington contribute 20%, mobile sources contribute 5%, and area sources contribute 3% of the sulfate in these two areas. See Table 8–1 of the SIP submittal. Sulfate on the 20% least impaired days: 40% of the sulfate originates from outside the modeling domain, and 39% originates from sources in Washington. Of the sources in Washington, 23% comes from point sources, 10% from mobile sources, 5% from area sources (excluding fire), and 2% from fire. See Table 8–1 and Figure 8–15 of the SIP submittal.

Nitrate on the 20% most impaired days: 46% of the nitrate originates from sources in Washington, 27% from Canada, 16% from outside the modeling domain, and 7% from Pacific offshore sources. Of the sources in Washington, 34% is from mobile sources, 6% from point sources, 3% from fire, and 2% from area sources. See Table 8–2 and Figure 8–16 of the SIP submittal. Nitrate on the 20% least impaired days: 63% of the nitrate originates from sources in Washington, 13% from sources in Oregon and 10% originates from sources outside the modeling domain. Of the sources in Washington, 51% comes from mobile sources, 6% from point sources, 3% from area sources, and 2% from fire. See Table 8–2 and Figure 8–18 of the SIP submittal.

Organic carbon accounts for 56% of the impairment on the 20% most impaired days. Figure 8–21 shows that

most organic carbon originates in Washington with a smaller fraction originating in Canada. Most of the organic carbon originates in the Puget Sound area from area sources including aerosol formation from volatile organic compounds, natural and anthropogenic fire, and mobile sources.

**Alpine Lakes Wilderness Area**

Alpine Lakes Wilderness Area is represented by the SNPA1 IMPROVE monitoring site. On the 20% most impaired days, sulfate accounts for 34%, nitrate accounts for 23% and organic carbon accounts for 30% of impairment. On the 20% least impaired days, sulfate accounted for 40%, nitrate accounted for 18% and organic carbon accounted for 16% of impairment. See section 8.3 of the SIP submittal.

Sulfate on the 20% most impaired days: 38% of the sulfate originates from outside the modeling domain, 32% from sources in Washington, 17% from Canada, and 8% from Pacific offshore. Of the sources in Washington, 16% is from point sources, 10% from mobile sources, and 5% from area sources. See Table 8–1 and Figure 8–23 of the SIP submittal. Sulfate on the 20 least impaired days: 42% of the sulfate originates from sources in Washington, 38% from outside the modeling domain, and 8% from Pacific offshore. Of the sources in Washington, 26% is from point sources, 11% from mobile sources, and 5% from area sources. See Table 8–1 and Figure 8–25 of the SIP submittal.

Nitrate on the 20% most impaired days: 68% of the nitrate originates from sources in Washington, 9% from outside the modeling domain, and 5% from Canada. Of the sources in Washington, 56% is from mobile sources, 5% from point sources and 3% from area sources and 3% from fire. See Table 8–2 and Figure 8–27 of the SIP submittal. Nitrate on the 20% least impaired days: 65% of the nitrate originates from sources in Washington, 15% from sources in Oregon, 9% from outside the modeling domain, and 7% from offshore Pacific sources. Of the sources in Washington, 52% is from mobile sources, 7% from point sources, 3% from area sources, and 1% from fire. See Table 8–2 of the SIP submittal.

Organic carbon on the 20% most impaired days is dominated by area sources in Washington. See Figure 8.2.3 and Table 8–3 of the SIP submittal. Organic carbon on the 20% least impaired days is dominated by area sources in Washington. See Table 8–3 of the SIP submittal.

**Mount Rainier National Park**

In Mount Rainier National Park, as monitored at the MORA1 IMPROVE monitoring site, sulfate is the largest contributor to visibility impairment on the most impaired days, as well as on the least impaired days. On the 20% most impaired days, sulfate accounts for 46%, nitrate accounts for 10%, and organic carbon accounts for 29% of impairment. On the 20% least impaired days, sulfate accounted for 40%, nitrate accounted for 10%, and organic carbon accounted to 23% of impairment. See section 8.4 of the SIP submittal.

Sulfate on the 20% most impaired days: 42% originates from sources in Washington, 31% originates from outside the modeling domain, 12% from Canada, and 12% from Pacific offshore. See Figure 8–34 of the SIP submittal. Of the sources in Washington, 25% is from point sources, 11% from mobile sources, and 6% from area sources. See Table 8–1 of the SIP submittal. Sulfate on the 20% least impaired days: 36% of the sulfate originates from sources in Washington, 38% from outside the modeling domain, 16% from sources in Oregon, and 8% from Pacific offshore. Of the sources in Washington, 25% is from point sources, 7% from mobile sources, and 3% from area sources. See Table 8–1 and Figure 8–36 of the SIP submittal.

Nitrate on the 20% most impaired days: Washington sources account for 78% of nitrate impairment. Of the Washington sources, 62% is from mobile sources, 9% from point sources, 5% from area sources, and 1% from fire. Nitrate on the 20% least impaired days: Washington sources account for 42% and sources in Oregon accounts for 35% of nitrate impairment. Of the sources in Washington, 32% is from mobile sources, 7% from point sources, 2% from area sources, and 1% from fire.

On the 20% most impaired days, almost all the organic carbon originates from sources located in Washington. See Figure 8–43 of the SIP submittal. On the 20% least impaired days, almost all the organic carbon originates from sources in Washington with some contribution from sources in Oregon. See Figure 8–44 of the SIP submittal.

**Goat Rocks and Mount Adams Wilderness Areas**

Both wilderness areas are represented by one IMPROVE monitoring site WHPA1. On the 20% most impaired days at these areas, sulfate accounts for 37%, nitrate accounts for 13%, and organic carbon accounts for 36% of impairment. On the 20% least impaired days, sulfate accounts for 49%, nitrate accounts for 13%, and organic carbon accounts for 14% of impairment. See section 8.5 of the SIP submittal.

Sulfate on the 20% most impaired days: 39% originates from sources outside the modeling domain, 29% originates from sources in Washington, and 18% from Canada. See Figure 8–45 of the SIP submittal. Of the sources in Washington, 16% is from point sources, 8% from mobile sources, and 4% from area sources. See Table 8–1 of the SIP submittal. Sulfate on the 20 least impaired days: 44% of the sulfate originates from sources in Washington, 29% from outside the modeling domain, 16% from sources in Oregon, and 8% from Pacific offshore. Of the sources in Washington, 30% is from point sources, 9% from mobile and 4% from area sources.

Nitrate on the 20% most impaired days: 64% originates from sources in Washington and 13% from sources outside the modeling domain. Of the sources in Washington, 52% is from mobile sources, 6% from point sources, 4% from area sources, and 2% from fire. See Table 8–2 and Figure 8–49 of the SIP submittal. Nitrate on the 20% least impaired days: 49% originates from sources in Washington, and 29% from sources in Oregon. Of the sources in Washington, 38% is from mobile sources, 7% from point sources, 2% from area sources, and 1% from fire. See Table 8–2 and Figure 8–51 of the SIP submittal.

On the 20% most impaired days, organic carbon is the second largest contributor to impairment in the Goat Rocks and Mt. Adams Wilderness Areas. Most of the OMC originates in Washington, with Oregon sources contributing minor amounts. See Figure 8–54 of the SIP submittal. On the 20% least impaired days, organic carbon sources in Washington, and Oregon contribute almost equally. See Figure 8–55 of the SIP submittal.

**Pasayten Wilderness Area**

The Pasayten Wilderness Area is monitored by the PASA1 IMPROVE monitor. On the 20% most impaired days, 20% is due to sulfate, nitrate accounts for 8%, and organic carbon accounts for 56% of impairment. On the 20% least impaired days, sulfate accounts for 49%, nitrate accounts for 17%, and organic carbon accounts for 17% of impairment. See section 8.6 of the SIP submittal.

Sulfate on the 20% most impaired days: 50% originates from outside the modeling domain, 22% from Canada, and 18% from Washington. Of the Washington sources, 8% is from point sources, 4% is from mobile sources, 4%

from fire and 2% from area sources. See section 8.6 and Table 8–1 of the SIP submittal. Sulfate on the 20% least impaired days: 40% originates from outside the modeling domain, 36% from Washington sources, and 10% from Canadian sources. Of the sources in Washington, 21% is from point sources, 10% from mobile sources, and 5% from area sources.

Nitrate on the 20% most impaired days: 48% originates from sources in Washington, 17% from outside the modeling domain, and 13% from Canadian sources. Of the sources in Washington, mobile sources contribute 36%, natural fire and biogenic sources 8%, and 3% point sources. Nitrate on the 20% least impaired days: 62% originates from sources in Washington, 15% from Oregon, and 85 from outside the modeling domain. Of the sources in Washington, 49% is from mobile sources, 6% from point sources, and 4% from natural and biogenic sources.

On the 20% most and least impaired days, organic carbon is responsible for over half of the total impairment. Natural fire in Washington is responsible for almost all the organic carbon and a small portion due to Washington area sources. See Figure 8–65 of the SIP submittal.

EPA is proposing to find that Washington, using the WRAP analysis, appropriately identified the pollutant species and source categories contributing to impairment to the Class I areas in Washington. See WRAP TSD.

*E. Best Available Retrofit Technology*

1. BART-Eligible Sources in Washington

The first phase of a BART evaluation is to identify all the BART-eligible sources within the Washington's boundaries. Table 11–1 in the SIP submission presents the list of all BART-eligible sources located in Washington. These sources and their source categories are:

| Source | Category |
|---|---|
| Graymont Western US INC (Tacoma) | Lime plants. |
| TransAlta Centralia Generation, LLC | Fossil fuel-fired steam electric plants with a heat input greater than 250 MMBtu per hour. |
| Longview Fibre Co—Longview | Kraft Pulp Mills. |
| Weyerhaeuser Co—Longview | Kraft Pulp Mills. |
| Fort James Camas LLC (now Georgia Pacific Corporation—Camas) | Kraft Pulp Mills. |
| Goldendale Aluminum | Primary Aluminum Ore Reduction Plants. |
| Port Townsend Paper Co | Kraft Pulp Mills. |
| Simpson Tacoma Kraft | Kraft Pulp Mills. |
| Lafarge North America (Seattle) | Portland Cement Plants. |
| Intalco (Ferndale) | Primary Aluminum Ore Reduction Plants. |
| Alcoa Wenatchee Works | Primary Aluminum Ore Reduction Plants. |
| BP Cherry Point Refinery (Ferndale) | Petroleum Refineries. |
| Tesoro Refining and Marketing (Anacortes) | Petroleum Refineries. |
| Puget Sound Refining Company | Petroleum Refineries. |
| Conoco-Philips Company (Ferndale) | Petroleum Refineries. |

2. Sources Subject to BART

The second phase of the BART determination process is to identify those BART-eligible sources that may reasonably be anticipated to cause or contribute to any impairment of visibility at any Class I area and are, therefore, subject to BART. As explained above, EPA has issued guidelines that provide states with guidance for addressing the BART requirements. 40 CFR part 51 appendix Y; see also 70 FR 39104 (July 6, 2005). The BART Guidelines describe how states may consider exempting some BART-eligible sources from further BART review based on dispersion modeling showing that the sources contribute to visibility impairment below a certain threshold. Washington conducted dispersion modeling for all the BART-eligible sources to determine the visibility impacts on Class I areas.

The BART Guidelines advises states to set a contribution threshold to assess whether the impact of a single BART-eligible source is sufficient to cause or contribute to visibility impairment at a Class I area. Generally, states may not establish a contribution threshold that exceeds 0.5 dv impact. 70 FR 39161. Washington established a contribution threshold of 0.5 dv. The 0.5 dv threshold is consistent with the threshold used by all other states in the WRAP. Any BART-eligible source with an impact of greater than 0.5 dv in any mandatory Class I area, including Class I areas in other states, would be subject to a BART analysis and BART emission limitations.

To determine those sources exceeding this contribution threshold and thus subject to BART, Washington used the CALPUFF dispersion modeling. The dispersion modeling was conducted in accord with the ''Washington, Oregon, Idaho BART Modeling Protocol''. This Protocol was jointly developed by the states of Idaho, Washington, Oregon and EPA and has undergone public review. The Protocol was used by all three states in determining which BART-eligible sources are subject to BART. See appendix H of the SIP submittal for details of the modeling protocol, its application and results.

The SIP submittal contained no rationale for adopting a 0.5 dv threshold for determining whether a BART-eligible source may be reasonably anticipated to cause or contribute to any visibility impairment in a mandatory Class I area. Although a number of stakeholders may have agreed that a 0.5 dv threshold is appropriate, and other states in the Region may have adopted such a threshold, such agreement does not provide sufficient basis for concluding that such a threshold was appropriate in the case of Washington. Based on EPA's review of the BART-eligible sources in Washington, however, and for the reasons discussed below, EPA is proposing to find that a 0.5 dv threshold is appropriate, given the specific facts in Washington.

Relying on modeling that each source conducted using the ''Idaho-Oregon-Washington BART Modeling Protocol'' that was reviewed by Washington, the visibility impact of each source was determined on all Class I areas within 300 km of all but one of the BART-eligible sources. See Table 11–3 of the SIP submittal for those sources with less than a 0.5 dv impact. The BART-eligible sources are generally widely distributed across the Washington. Given the relatively limited impact on visibility from these sources, Washington could have reasonably concluded that a 0.5 dv threshold was appropriate for capturing

those BART-eligible sources with significant impacts on visibility in Class I areas. For these reasons, EPA is proposing to approve the 0.5 dv threshold adopted by Washington in its Regional Haze SIP.

In the BART Guidelines, EPA recommended that states ''consider the number of BART sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. In general, a larger number of BART sources causing impacts in a Class I area may warrant a lower contribution threshold.'' 70 FR 39104, 39161 (July 6, 2005). In developing its Regional Haze SIP, Washington requested 14 of the 15 BART-eligible sources to model their respective impact on the Class I areas within a 300 km radius. For Goldendale Aluminum, Washington relied on modeling conducted by EPA, rather than requesting the source to model its impact because the facility has not operated since 2001.

Below is the list of sources that Washington determined were subject to BART and the Class I area for which the source has the greatest visibility impact (average of the three annual 8th highest daily value over 2003–2005 baseline):

| | |
|---|---|
| BP Cherry Point Refinery, Blaine Wa | 0.9 dv at Olympic National Park |
| Intalco Aluminum Corp. Ferndale | 2.4 dv at Olympic National Park. |
| Tesoro Refining and Marketing Co | 1.7 dv at Olympic National Park. |
| Port Townsend Paper Co | 1.2 dv at Olympic National Park. |
| Lafarge North America | 3.16 dv at Olympic National Park. |
| TransAlta Centralia Generation LLC | 5.5 dv at Mt. Rainier National Park. |
| Weyerhaeuser Longview | 1.0 dv at Mt. Rainier National Park. |

3. Washington Source Specific BART Analyses

A BART determination was conducted for each of the sources subject to BART. At Washington's request, each source conducted its own BART analysis and prepared a report which Ecology then reviewed and used to make a case-by-case BART determination. In conducting the BART analysis, Washington considered all five BART factors. Washington explained that in order for it to select a specific control technology as BART, it must be technically feasible, cost effective, provide a visibility benefit, and have minimal potential for adverse non-air quality impacts. Washington further explained that normally visibility improvement is only one of the factors but if two available and technically feasible controls are essentially equivalent in cost effectiveness and collateral impacts then visibility may become the deciding factor. See e.g. Washington Regional Haze SIP submittal L–13. The BART determination, including controls, emission limits and compliance deadlines are reflected in an enforceable Order issued to each source. The BART Orders are included in the SIP submittal. Below is a table of compliance dates for each BART Order.

| Facility | Compliance date |
|---|---|
| BP Cherry Point Refinery: Compliance for all PM, $NO_X$, and $SO_2$ emission limits. | July 7, 2010. |
| Intalco Aluminum Corp. Compliance with all PM, $NO_X$, and $SO_2$ emission limits. | November 15, 2010. |
| Tesoro Refining and Marketing Company | |
| Compliance for all PM and $SO_2$ emission limits | July 7, 2010. |
| Compliance with $NO_X$ emission limits (unit F–103) | September 30, 2015. |
| Port Townsend Paper Corp. | |
| Compliance with emission limits for PM, $NO_X$, and $SO_2$ | October 20, 2010. |
| Lafarge North America, Inc. | |
| Compliance with all PM emission limits | July 28, 2010. |
| Compliance with $SO_2$ emission limits | No than April 30, 2011, or 90 days after the kiln is restarted if the kiln is in temporary cessation on February 1, 2011. |
| Compliance with $NO_X$ emission limits | No later than the date Lafarge completes optimization of the $NO_X$ control system per specified criteria. |
| Weyerhaeuser Corp. | |
| Compliance with emission limits for PM, $NO_X$, and $SO_2$ | July 7, 2010. |

Below is a summary of Washington's BART analysis and determination for each of the seven sources subject to BART. Additional detail regarding the analysis for each source, unit and pollutant may be found in the Washington Regional Haze SIP submittal, appendix L.

a. British Petroleum, Cherry Point Refinery

The BP Cherry Point Refinery located near Ferndale, Washington, is a BART-eligible source subject to BART. Its maximum visibility impact of 0.9 dv is at Olympic National Park. Impacts at all other Class I areas within 300 km are less than 0.5 dv. See Table 11–4 of the SIP submittal. As summarized below, Washington and BP completed a BART analysis for all BART-eligible units at the refinery. Washington's BART determination, issued to BP as BART Compliance Order No. 7836 (BP Cherry Point BART Compliance Order), is included in the Washington's Regional Haze SIP submission. See Washington Regional Haze SIP submittal, page L–47. Additionally, the operating permit No. 7836 included with the SIP submittal contains emission control requirements for non-BART units beyond those required for BART.

As a component of a national consent decree between BP and the EPA, (United States District Court for the Northern District of Indiana, Hammond Division; Civil No. 2:96CV 095RL) most of the refinery's heaters and boilers have been evaluated for upgraded and retrofit control technology. As required under the consent decree, many heaters had been retrofitted with low-$NO_X$ burners (LNBs) or ultra-low-$NO_X$ burners (ULNBs). Washington considered these federally enforceable upgrades as existing control in the BART analysis.

One general consideration in determining the cost effectiveness of all potential BART control technologies for BP is the ability to install the retrofit technology during a regularly scheduled turnaround or maintenance period at the facility. Turnaround is the term used to describe when the refinery is shutdown periodically, on approximately 5 year intervals, for routine maintenance and process equipment upgrades. A retrofit during a routine turnaround would not incur the extra costs associated with loss of revenues during shutdown. Washington determined the cost effectiveness values of installing controls both during routine turnaround and outside the normal turnaround period.

Table 1–1 of the BP Cherry Point BART determination of appendix L of the SIP submittal identifies all emitting units at the facility and indicates whether the units are BART-eligible. Twenty-one of the refinery's emission units were determined to be BART-eligible and subject to BART. These units are as follows:

Heaters and Boilers: [7]

- Crude Charge Heater
- South Vacuum Heater
- Naphtha Hydrodesulfuriztion (HDS) Charge Heater
- Naphtha HDS Stripper Reboiler
- #1 Reformer Heaters
- Coker Charge Heater (#1 North)
- Coker Charge Heater (#2 South)
- 1st Stage Hydrocracker (HC) Fractionator Reboiler
- 2nd Stage HC Fractionator Reboiler
- R–1 HC Reactor Heater
- R–4 HC Reactor Heater
- #1 Diesel HDS Charge Heater
- Diesel HDS Stabilizer Reboiler
- Steam Reforming Furnace #1
- Steam Reforming Furnace #2

**Sulfur Recovery Systems**

- Two Sulfur Recovery Units (SRUs) and one of the associated Tail Gas Units (TGU)

**Flares**

- High Pressure Flare
- Low Pressure Flare

**Material Handling**

- Green Coke Load Out equipment

**General Discussion of $NO_X$ Control Technologies Considered for Heaters and Boilers at BP**

BP conducted a source category evaluation of all available control technologies for this source category to eliminate those that are infeasible. All available $NO_X$ control technologies identified for further evaluation were based on the EPA RACT/BACT/LAER Clearinghouse (RBLC). See appendix L of the SIP submittal at L–29. The table below identifies those $NO_X$ control technologies and indicates which were determined to generally be technically feasible:

| Technology | Sources to which they would potentially be applicable | Is it technically Feasible? |
|---|---|---|
| Selective Catalytic Reduction (SCR) | All Heaters | Yes. |
| Low-$NO_X$ Burners (LNB) or Ultra Low $NO_X$ Burners (ULNB). | All Heaters | Yes. |
| Selective non-catalytic Reduction (SNCR) | All Heaters | No. Exhaust gas temperatures vary too much and temperatures not in range for SNCR operation. |
| External Flue Gas Recirculation (FGR) | All Heaters and Boilers | No—Potential safety Issues. |
| Low Excess Air Operation—CO Control | All Units | No—Potential safety issues and small operating range. |
| Steam Injection | All Units | Not feasible except 1st Stage HC Fractionator Reboiler. |
| Lower Combustion Air Preheat | Units with air preheat | No. cooler air is introduced into the heater as combustion air, the heater has to utilize additional fuel to heat the air for the combustion process which ends up negating any $NO_X$ reductions generated. |
| CETEK—Descale & Coat Tubes | Units with externally scaled tubes | No. This technique is only applicable to units where the heat transfer tubes are externally scaled. |
| Modify Existing Burners to Improve $NO_X$ emissions. | All | Yes. |

*Evaluation of Technically Feasible $NO_X$ Controls for specific heaters and boilers Crude Charge Heater ($NO_X$):* The Crude Charge Heater currently uses conventional burners. Washington determined that a LNB is technically infeasible for this specific emission unit due to the high flame temperatures and heat density needed for the process. LNB would lower the flame temperature below that needed for the process and flame impingement from LNB would derate the heater and reduce throughput. Washington determined that while SCR is technically feasible for the Crude Charge Heater, it is not cost effective at $14,658/ton during scheduled turnaround and $32,000/ton during non-scheduled turnaround. Washington determined BART for $NO_X$ for the Crude Heater is existing conventional burners.

*South Vacuum Heater ($NO_X$):* The South Vacuum Heater currently has ultra low-$NO_X$ burners. These burners were installed in 2005 in accordance with the national consent decree. Washington determined that SCR is not cost effective for the South Vacuum Heater regardless of whether it was installed during a scheduled turnaround or not. Cost effectiveness during a scheduled turnaround or outside turnaround is $54,551/ton and $82,643/ton respectively. Washington determined BART for this unit is the existing ULNB. The $NO_X$ emission limit is 0.08 lb/MMBtu.

*Naphtha HDS Charge Heater & Naphtha HDS Stripper Reboiler ($NO_X$):* Both of these boilers currently employ conventional burners in relatively small fire boxes. LNB is deemed infeasible on

[7] Power Boiler #1 and Power Boiler #3 were replaced in 2009 by Boilers #6 and #7. Boilers #6 and #7 were not considered in the BART determination as they are not BART-eligible and were permitted under PSD. The BART Order 7836 issued to BP July 7, 2010, Finding C and Condition 7 ''Other Requirements'' requires decommissioning of Boilers #1 and #3 no later than March 27, 2010.

both of these units due to small size of the heater and because, with LNBs, flame impingement on the boiler tubes would cause premature failure. SCR is not cost effective at $46,667/ton during turnaround and $31,467/ton during non-turnaround. Washington determined BART for $NO_X$ is the existing conventional burners.

*#1 Reformer Heater ($NO_X$):* The #1 Reformer Heater has a complex design with four independent fire boxes and two stacks. It is currently fitted with conventional burners. LNB is infeasible due to small size of firebox and because the longer flame length of LNB would cause flame impingement on the heater tubes and lead to premature failure. SCR is not cost effective at $15,253/ton during turnaround and $17,299/ton during non-turnaround. Washington determined BART for $NO_X$ is the current conventional burners.

*Coker Charge Heater (#1 North) and Coker Charge Heater (#2 South) ($NO_X$):* The Coker Heaters are both currently using early design (1999) LNB which incorporate staged air combustion and flue gas recirculation. LNB of a newer design is not cost effective at $31,301/ton for the #1 North Heater and $30,762/ton for the #2 South Heater. SCR is not cost effective at $35,202/ton for the #1 North Heater and $34,597/ton for the #2 South Heater. Washington found that BART for $NO_X$ is the existing LNB with staged air combustion and flue gas recirculation. The $NO_X$ emission limit for these units is 0.08 lb/MMBtu

*#1 Diesel HDS Charge Heater and Diesel HDS Stabilizer Reboiler ($NO_X$):* The heater and reboiler are currently fitted with ULNBs to comply with the consent decree. SCR is not cost effective at $192,585/ton for the #1 Diesel HDS Charge Heater and $145,094/ton for the Diesel HDS Stabilizer Reboiler. Washington determined BART for $NO_X$ for the Diesel HDS Charge Heater is the existing ULNB with an emission limit of 0.040 lb/MMBtu.

Washington determined BART for $NO_X$ for the Stabilizer Reboiler Heater is existing ULNBs with an emission limit of 26 ppmv (dry basis corrected to 7% $O_2$) based on a 24-hour rolling average. If this concentration is exceeded, a secondary limit to demonstrate compliance is 2.2 lb/hour based on a 24-hour rolling average.

*Steam Reforming Furnace #1 (North H2 Plant) and Steam Reforming Furnace #2 (South H2 Plant) ($NO_X$):* These units currently use conventional burners. LNB is not cost effective for these two furnaces at $21,234/ton for the North H2 Plant and $21,682/ton for the South H2 Plant. SCR is not cost effective at $28,378/ton for the North Plant and $28,900/ton for the South Plant. LNB with SCR is not cost effective at $29,555/ton and $30,104/ton. Washington determined that BART for $NO_X$ for these units is the existing conventional burners.

*R–1 HC Reactor Heater ($NO_X$):* This heater currently operates with ULNB in accord with consent decree. In the general evaluation of control technologies for heaters and boilers BP determined that the only feasible technology with greater control efficiency than ULNB is SCR. SCR is not cost effective at $214,726/ton $NO_X$ removed. Washington determined BART is the existing ULNB with a $NO_X$ emission limit of 26 ppm by volume dry basis corrected to 7% $O_2$ on a 24-hour rolling average. Should the concentration limit be exceeded, the mass emission limit is 3.6 lb/hr on a 24-hour rolling average.

*R–4 HC Reactor Heater ($NO_X$):* The R–4 HC Reactor Heater is currently operating with conventional burners. LNBs are not technically feasible due to high heat density, flame impingement, and flame shape that would exceed the American Petroleum Institute (API) guidelines for burner spacing. SCR is not cost effective at $36,620/ton. Washington determined that BART is the current burners.

*1st Stage HC Fractionator Reboiler ($NO_X$ BART):* The 1st stage HC Fractionator Reboiler is currently operating with conventional burners. The BART cost effectiveness analysis to install ULNBs is estimated by BP to be $12,044/ton. Washington determined this value to not be cost effective, however BP volunteered to install ULNB on this unit to achieve 0.05 lb $NO_X$/MMBtu. Washington did not propose ULNB as BART, but rather said in the BART analysis report the emission reductions would be considered in a future SIP submittal as further reasonable progress. (appendix L, at L–41) SCR is determined to be not cost effective at $19,470/ton. Washington determined BART to be the current conventional burners. The BART Order for BP, submitted with the Plan, includes a $NO_X$ emission limit for this emission unit of 0.07 lb/MMBtu monthly average, or 56.2 tons per calendar year.

*2nd Stage HC Fractionator Reboiler:* This reboiler is currently fitted with LNBs. Washington found that ULNB is not cost effective at $36,395/ton and SCR is not cost effective at $37,810/ton. LNB with SCR is not cost effective at $40,768/ton. Washington determined BART to be the existing LNBs with an emission limit for $NO_X$ of 0.07 lb/MMBtu based on a 24-hour average not to exceed 56.2 t/y on a calendar year rolling average.

**General Discussion of $SO_2$ Control Technologies Considered and Those Technically Feasible for Heaters and Other Combustion Devices**

Washington and BP identified four add-on $SO_2$ control technologies from the RBLC as described below; Emerachem EMX, Dry Scrubbing, Fuel Gas Conditioning (sulfur content reduction), and wet flue gas desulfurization (wet-FGD). In addition, the combination of fuel gas conditioning and wet flue gas desulfurization (wet-FGD) was considered. See SIP submittal, appendix L at L–28.

*Emerachem EMX (previously known as $SCONO_X$):* This technology has not been proven to run longer than one year without major maintenance. It has only been used on a small number of natural gas combustion turbines for $NO_X$ control, and to date has not been used on oil refinery heaters to reduce $SO_2$ emissions. BP requires the refinery heaters to be able to operate five years between turnarounds. This technology is technically infeasible for use on the refinery heaters. Therefore, Washington agreed with BP that the technology is considered technically infeasible at this facility.

*Dry Scrubbing:* This technology requires a maintenance turnaround approximately every two years due to equipment plugging and wear. This level of needed maintenance is inconsistent with the refinery's turnaround schedule of every 5 years. Therefore, Washington agreed with BP that the technology is considered technically infeasible at this facility.

*Fuel Gas Conditioning:* This technology would reduce the concentration of sulfur in the refinery fuel gas from the current NSPS Subpart J limit of 162 ppmv hydrogen sulfide ($H_2S$) to 50 ppmv and this would reduce the average sulfur concentration in the fuel gas combusted by BART-eligible units by 89%. Cost effectiveness to upgrade the fuel gas treatment system to meet a 50 ppmv concentration limit is $22,282/ton when the costs are applied only to the BART units. Because fuel gas conditioning would be used for all the combustion sources at the refinery (both BART and non-BART), the technology would also reduce emissions from the non-BART units. When cost effectiveness calculations are applied to all emission units at the BP refinery the cost effectiveness is $14,428/ton. Washington determined this technology to not be cost effective.

*Wet FGD:* The cost effectiveness of wet flue gas desulfurization is

calculated to be between $29,982/ton and $102,068/ton because the fuel gas already meets the existing fuel gas limit of 162 ppm$H_2S$. Washington has determined this technology is not cost effective.

*Fuel Gas Conditioning and Wet FGD:* The cost effectiveness of combined fuel gas conditioning and wet flue gas desulfurization is $49,743/ton and $179,151/ton. Washington has determined this technology is not cost effective.

*Conclusions for $SO_2$ BART:* Washington determined that the existing fuel gas sulfur removal system is BART for $SO_2$ for the refinery heaters.

*Particulate Matter Control Technologies Considered for Heaters:* BP reviewed information in EPA's RBLC database and control technology literature to find available technologies to control particulate emissions from refinery heaters. The most promising and thus those considered for further evaluation were fuel gas conditioning and wet electrostatic precipitators (WESP).

*Fuel Gas conditioning:* This control technology is discussed above in the BART determination for $SO_2$ and was determined to be not cost effective for PM control at this facility.

*WESP:* Using this technology would require a wet electrostatic precipitator (WESP) to be added to each heater and boiler. The cost effectiveness is determined to be $24,280/ton and determined to not be cost effective.

Since there are no technically or economically feasible PM control measures, Washington found that BART for PM for the heaters is good operating practices and the current refinery fuel gas treatment system.

*Control Technologies Considered for $NO^X$, $SO^2$ and PM and Those Technically Feasible for High and Low Pressure Flares:*

BP currently operates both a high pressure and low pressure flare. After a review of the RBLC, no add-on control technologies were identified. Currently both flares meet the applicable NSPS requirements for flares which emit $NO_X$, $SO_2$, and $PM_{2.5}$ (40 CFR 60.18 General control device and work practice requirements). Both flares are of smokeless design and steam assisted. A flare gas recovery system was installed in 1984 that significantly decreased the total volume of gas routinely sent to the flare. In addition, a coker blow down vapor recovery system was installed in 2007 that further reduced both the volume and sulfur content of the routinely flared gas. According to BP's analysis, as relied on by Washington, no add-on control technologies for flares were identified or known to be in commercial use for additional control of $NO_X$, $SO_2$, or PM.

Washington determined and required by BART Order 7836, BART for $NO_X$, $SO_2$, and PM control is the continued operation and maintenance of the existing high and low pressure flares, including the continued use of the flare gas recovery system, limiting pilot light fuel to pipeline grade natural gas, operating in accordance with 40 CFR 60.18, and conversion from steam assisted to air assisted flares. Additionally, sources using flares to comply with Refinery MACT equipment leak provisions shall monitor flares to assure they are maintained and operated properly to reduce the emissions of organic HAPS from miscellaneous process vents by 98% or to 20 ppmv. Flares shall be operated at all times when emissions may be vented to them.

$SO_2$ emissions from the high and low pressure flares shall not exceed 1000 ppm corrected to 7% $O_2$ averaged over a 60-minute period.

**All Control Technologies Considered and Those Technically Feasible for Sulfur Recovery Systems**

The sulfur recovery units (SRU) convert hydrogen sulfide ($H_2S$) to $SO_2$ and elemental sulfur. BP operates two SRUs in parallel with their exhaust gas streams combined and distributed to two tail gas units (TGU). One TGU utilizes the Shell Claus Off-gas Treating Process (SCOT) technology, a patented technology, and the other utilizes the CANSOLV (registered trademark of Cansolv Technologies Inc.) technology to assist in further collection of sulfur compounds and reducing the quantity of $SO_2$ discharged via the ''incinerator stack.'' The primary pollutant from the sulfur recovery unit is $SO_2$. The SRUs are subject to the requirements of 40 CFR 63 Subpart UUU, which specifies 40 CFR 60, Subpart J compliance as a control option. The SRUs are currently controlled to this MACT standard.

BP and Washington's analysis found that the RBLC database and control technology literature lists available technologies to control $NO_X$ emissions from the SRUs and the TGU. In the RBLC, 24 entries were found regarding $NO_X$ control for SRUs and TGUs at refineries. Two categories of control methods for $NO_X$ were listed:

- Good Operating Practices (e.g., ''proper equipment design and operation, good combustion practices, and use of gaseous fuels'', ''optimized air-fuel ratio'', and ''good operating practices'')
- LNBs: LNBs can be installed either within the SRU itself (usually only as part of the initial design) or in the TGU. Replacing the existing burner in the SRU with a LNB would increase the flame length causing flame impingement and possible damage to the SRU. Because of the flame impingement issues, a LNB within the SRU is technically infeasible.

The original TGU at the refinery was installed in 1977 and utilizes natural draft burners which are not suitable for the direct installation of a LNB. The natural draft design would require addition of fans to supply air to the LNBs. The cost to install LNBs and additional fans would not be cost effective.

Washington determined that the continued operation of the existing SRUs and TGUs is BART for $NO_X$, $SO_2$ and $PM_{10}/PM_{2.5}$. The BART Order 7836 for BP, included in the SIP submittal, requires that $SO_2$ emitted from the SRU not exceed 135 tons during each consecutive 12-month rolling period. Supplemental fuel gas combusted in the No. 1 TGU is limited to a composition of $H_2S$ <230 mg/dscm (0.10 gr/dscf) which is equivalent to 162 ppm$H_2S$, 3 hour rolling average. $NO_X$ emissions from No. 2 TGU Stack are limited to 2.5 lbs/hr. $SO_2$ emissions from No. 2 TGU Stack are limited to 24.0 lbs/hr. In accordance with NSPS Subpart J, $SO_2$ emissions from the TGU stacks is limited to 250 ppm dry basis corrected to 0% $O_2$ based on a 12-hour rolling average or 1500 ppm dry basis corrected to 0% $O_2$ based on a 1-hour average.

**Control Technologies Considered and Those Technically Feasible for Green Coke Load Out**

The Green Coke Load Out system was constructed as part of the original refinery. The equipment was functionally replaced in 1978 by installation of the #1 & #2 calciners and a new coke load out system. However, the old equipment still physically exists at the refinery as back up during an emergency because there is no storage capability at the facility. Washington recognizes that continued ability to use the Green Coke Load Out system in an emergency is appropriate. Due to the limited use of the Green Coke Load Out system, the cost of any control would result in a high cost effectiveness value and limited visibility improvement. Washington's BART determination allows its limited emergency usage.

*Cooling Tower:* Cooling towers produce particulate from water droplet drift away from the towers. Washington evaluated droplet and particulate drift from cooling towers in the past and found that they produce relatively large particulate that does not drift far from

the tower. Washington has made a qualitative review of BART for the control of particulate from this cooling tower and determined that the existing drift controls satisfy BART for this unit.

**Visibility Improvement Expected From BART**

BP modeled the visibility improvement expected to result from the implementation of BART determinations for the #1 Diesel HDS Charge Heater, HDS Stabilizer Reboiler, R–1 HC Reactor Heater, and 1st Stage HC Fractionator Reboiler. Visibility at the most impacted Class I area, Olympic National Park, using the metric of the 3-year combined 98% value (22nd high), improved from 0.84 dv to 0.79 dv, and the 98% value (max annual 8th high) improved from 0.9 dv to 0.83 dv. EPA is proposing to approve the BART Order with emission limitations on $SO_2$, $NO_X$, and $PM_{2.5}$ for the BART-eligible units at BP as they are reasonable.

The Table summarizes the proposed BART determination technology for each BART emission unit:

| Emission unit | Technology |
|---|---|
| Crude Charge Heater | Current burners and operations. |
| South Vacuum Heater | Existing ULNB. |
| Naphtha HDS Charge Heater | Current burners and operations. |
| Naphtha HDS Stripper Reboiler | Current burners and operations. |
| #1 Reformer Heaters | Current burners and operations. |
| Coker Charge Heater (#1 North) | Current burners and operations. |
| Coker Charge Heater (#2 South) | Current burners and operations. |
| #1 Diesel HDS Charge Heater | Existing ULNB and operations. |
| Diesel HDS Stabilizer Reboiler | Existing ULNB and operations. |
| Steam Reforming Furnace #1 (North H2 Plant) | Current burners and operations. |
| Steam Reforming Furnace #2 (South H2 Plant) | Current burners and operations. |
| R–1 HC Reactor Heater | Existing ULNB and operations. |
| R–4 HC Reactor Heater | Current burners and operations. |
| 1st Stage HC Fractionator Reboiler | Current burners and operations. |
| 2nd Stage HC Fractionator Reboiler | Existing ULNB and operations. |
| Refinery Fuel Gas (hydrogen sulfide) | Currently installed fuel gas treatment system. |
| SRU & TGU (Sulfur Incinerator) | Current burners and operations. |
| High and Low Pressure Flares | $NO_X$: Good operation and maintenance including use of the flare gas recovery system and limiting pilot light fuel to pipeline grade natural gas.<br>$SO_2$: Good operating practices, use of natural gas for pilot.<br>PM.<br>Good operating practices, use of a steam-assisted smokeless flare design, use of flare gas recovery system. |
| Green Coke Load-out | Maintain as unused equipment for possible emergency use. |
| Power Boilers 1 and 3 | Replacement with new Power Boilers 6 and 7. |

b. Intalco Aluminum Corp.

The Alcoa, Intalco Works (Intalco) is a primary aluminum smelter utilizing the prebake process located at Cherry Point near Ferndale, Washington. The visibility impairing pollutants from the facility are PM, $NO_X$ and $SO_2$. The major sources of these pollutants at the facility are the potlines and to a lesser extent, the anode bake furnace.

Base year $SO_2$ emissions from the potlines are 6550 t/y from sulfur in anode coke that is consumed in the smelting process. Particulate emissions from the potlines and the anode bake oven are well controlled. The primary air pollution control system employed by Intalco for control of potline emissions consists of dry alumina injection followed by fabric filtration which effectively controls PM. Emissions of $NO_X$ from the potlines are insignificant because the potlines are electrically heated (versus combustion of fossil fuels) and none of the raw materials contain significant quantities of nitrogen.

Modeled visibility impacts of baseline emissions were over 2.0 dv at Olympic National Park. Impacts of greater than 0.5 dv were shown for six other Class I areas. The modeling also showed that $SO_2$ emissions from the exit of the existing dry alumina baghouse potline emission control system as being responsible for 94% of the facility's total visibility impact and these emissions are the focus of EPA's evaluation of Washington's BART determination.

**$SO_2$ BART Determination for Potlines**

Eight different $SO_2$ add-on control options, along with pollution prevention, were identified in the SIP submittal as potential control measures. Six of the control options use wet scrubbing and two use dry scrubbing technology. Pollution prevention, by limiting the sulfur content of the coke used in the furnace anodes, along with the amount of carbon consumed in the process, was also evaluated.

Wet Scrubbing Technologies:

- Limestone slurry scrubbing with forced oxidation (LSFO)
- Conventional lime wet scrubbing
- Seawater scrubbing
- Dual alkali sodium/lime scrubbing (dilute mode)
- Conventional sodium scrubbing

Dry Scrubbing Technologies:

- Dry sorbent injection
- Semi-dry scrubbing (spray dryer)

*Limestone Slurry Forced Oxidation (LSFO):* Spray nozzles inject limestone slurry droplets into the exhaust gas stream from a spray tower. The limestone reacts with $SO_2$ to form calcium sulfite. Liquor is collected at the bottom of the tower and sparged with air to oxidize the calcium sulfite to calcium sulfate to enhance the settling properties. Recirculation pumps circulate the scrubbing liquor to the spray nozzles. Sulfur dioxide removal efficiencies of 90% or greater have been achieved. The bleed containing calcium sulfate is sent to a dewatering system to remove excess moisture. For an aluminum smelter, the process will produce either solid gypsum waste or commercial-grade gypsum suitable for reuse as a cement additive. Only a very small purge or blowdown stream is required. A more detailed evaluation of LSFO for the Intalco facility is discussed below following the short evaluation of other control technologies that were rejected.

*Conventional Lime Wet Scrubbing:* Conventional lime wet scrubbing is similar to LSFO except that the raw material is hydrated lime or quick lime that is either slaked on-site or purchased in the slaked form. The system typically uses forced oxidation, although natural oxidation is possible. The process produces either solid gypsum waste or commercial-grade gypsum suitable for possible reuse as a cement additive.

*Seawater Scrubbing:* Seawater scrubbing is used in Europe for control of $SO_2$ emissions from primary aluminum smelters similar to Intalco. As with other wet scrubbing technologies, an alkaline solution (in this case seawater) is sprayed into the exhaust gas stream within one or more vertical towers and the seawater is used to absorb the $SO_2$ in the exhaust gases. More specifically, by encouraging contact between the $SO_2$ containing gas stream and the slightly alkaline seawater, $SO_2$ is removed from the gas stream via absorption. The seawater is then discharged as wastewater.

*Dual Alkali/Lime Scrubbing:* Dual alkali sodium/lime scrubbing (dilute mode) uses a caustic sodium solution in the scrubber tower. A portion of the scrubbing liquid is discharged to a neutralization stage where lime slurry is used to regenerate the caustic, which is returned to the scrubber. The bleed from the scrubber is sent to a dewatering system to produce a gypsum byproduct. The process will produce either solid gypsum waste or commercial-grade gypsum suitable for reuse as a cement additive. Dual alkali sodium/lime scrubbing (dilute mode) is not currently marketed by major FGD vendors because the system is too complicated and expensive. Washington found that due to lack of availability and anticipated excessive cost, dual alkali sodium/lime scrubbing is not technically feasible.

*Conventional Sodium Scrubbing:* Sodium scrubbing is another wet scrubbing technology using scrubber liquor containing a sodium reagent. The infrastructure and associated capital costs for a sodium scrubber would be similar to that of LSFO, although sodium-based reagents are generally much more expensive than limestone or lime. Based on these factors, and the similarity to the equipment necessary for LSFO, further evaluation of sodium scrubbing is unnecessary.

*Dry Sorbent Injection:* In dry injection, a reactive alkaline powder is injected into a furnace, ductwork, or a dry reactor. Typical removal efficiencies with calcium adsorbents are 50 to 60% and up to 80% with sodium base adsorbents. However, as with wet scrubbing, disposal of waste using sodium adsorbents must consider their high solubility in water compared to those from calcium adsorbents. The temperature range over which scrubbing has been used is 300 to 1,800 °F; the minimum temperature is 300 to 350 °F. Dry systems are rarely used and only 3% of FGD systems installed in the U.S. are dry systems. The dry waste material is removed using particulate control devices such a fabric filter or an electrostatic precipitator (ESP).

**Analysis of the Available Control Options**

*Seawater Scrubbing:* As described by Washington, although technically feasible, seawater scrubbing was eliminated from consideration as BART due to water quality discharge concerns. See SIP submittal pages L–81 to L–83. Unlike aluminum plants in Europe, wastewater discharge from primary aluminum smelters in the United States must comply with specific limits on fluorides, among other pollutants (see 40 CFR 421, Subpart B). Washington found that the necessary wastewater treatment facilities would not be cost-effective, and would produce a large amount of wastewater treatment sludge. Treatment of seawater would produce significantly more sludge than freshwater since precipitation of the natural salts would be necessary in order to remove target pollutants.

EPA conducted further analysis of non-air related environmental impacts of seawater scrubbing. The offshore aquatic area immediately surrounding the Intalco smelter has recently been designated as an environmental aquatic reserve for the protection of herring. The Cherry Point Environmental Aquatic Reserve Management Plan expressly prohibits new saltwater intake structures, which would be necessary for seawater scrubbing. See Cherry Point Environmental Aquatic Reserve Management Plan p. 54. Thus, seawater scrubbing is not a viable control option.

*Dry Sorbent Injection:* Intalco's potline exhaust gas stream, downstream of the existing baghouses is low temperature (less than 205 °F) with low $SO_2$ concentrations of less than 105 ppm. Washington's analysis found that dry sorbent scrubbing is not effective at gas stream temperatures below 250 °F. Thus, due to the low temperatures in the Intalco potline exhaust gas stream, Washington determined dry scrubbing is not technically feasible.

EPA conducted a literature review which generally supports this finding. In addition, EPA contacted a vendor of dry scrubbing technology who confirmed the importance of exhaust gas stream temperature, and stated that its dry scrubbing technology could successfully control $SO_2$ emissions for gas stream temperatures down to approximately 250–260 °F.

Upstream of the existing baghouses, the exhaust gas temperature would be in the temperature range that is technically feasible for DSI. However, injection of the alkaline reagent may render the baghouse catch unsuitable for recycling to the potlines which is the current practice for reclamation of the alumina and control of fluorides.

Based on this research, we agree with Washington's determination that with a flue gas temperature of ~205 °F, dry scrubbing is technically infeasible for control of $SO_2$.

We did not conduct further analyses regarding Conventional Wet Lime Scrubbing, and Dual Alkali Sodium/Lime Scrubbing because we agree with Washington's determination that these technologies either had no advantages over LSFO, had clear disadvantages, or were likely to be more costly when compared with LSFO.

*Low Sulfur Anode Coke:* Washington discussed the current levels of sulfur in petroleum coke used by other aluminum smelters to determine whether a pollution prevention option using lower sulfur content coke would be a feasible BART option for Intalco. See Washington SIP submittal appendix L at L–68 to 69. This analysis indicated that some smelters currently utilize coke with sulfur contents as low as two 2%. An analysis was also done by Washington to determine whether coke with sulfur levels below 3% can be anticipated to be available into the future. The primary conclusions from Washington's analysis indicate that there will be a continuing increase in the sulfur content of available anode grade coke. The aluminum smelters that currently have sulfur limits below 3% are requesting the regulating agencies to relax this limit due to lack of available low sulfur coke.

Coke is a relatively small, low revenue component of a refinery's product profile. It is a low value product made from the thick, tar-like refinery wastes left over after all of the more valuable components have been removed from the petroleum crude. The aluminum industry has little influence in controlling the quantity, quality, and price of the coke produced by refineries.

Washington also found that low sulfur crude oil supplies are becoming less available and more expensive for petroleum refineries. In the future, refineries with coking capacity are expected to minimize their raw material costs by using more of the higher sulfur

crude oils and oil sands. Washington further explained that as oil fields age, the sulfur content of the crude oil is known to increase and the crude oil in the fields becomes more viscous and harder to extract. This effect is expected to increase the sulfur content of the petroleum materials available to produce anode grade coke.

Global primary aluminum production is expected to grow, resulting in a commensurate growth in demand for anode grade coke. Growth in aluminum production will continue to outpace the growth in coke production. Coke providers are blending imported, high cost, lower sulfur coke with domestically sourced coke in attempts to meet the current specification requirements for coke. Removal or reduction of the sulfur content of the coke once it has been received is not feasible. It is the Washington's and EPA's conclusion that coke with a sulfur content of less than 3% is not a viable option due to its limited availability.

*LSFO:* LSFO technology was selected by Intalco and Washington as the best option among the technically feasible wet scrubbing technologies. EPA agrees that LSFO is the best $SO_2$ control technology for this facility and with Washington's rationale for that selection. LSFO is estimated to achieve a 95% control for $SO_2$ at Intalco.

Alcoa evaluated the estimated cost of LSFO, based on quotes from two separate vendors that were prepared for Alcoa for their Tennessee facility that were then scaled to the Intalco facility.[8] Both preliminary designs were based on a central scrubbing center as the lowest cost approach, where exhaust from all dry scrubbing systems would be ducted to a centralized scrubbing system. Both vendor quotes were based on systems that would provide 100% availability of emissions control on each day of the year, given that potlines cannot be easily shutdown and restarted for control system maintenance outages. In other words, the proposed designs include two scrubber towers; one primary tower which would operate most of the time and a second tower which could be used when the primary tower needed repair or maintenance.

Washington's cost effectiveness value for the proposed two-absorption tower design was $6,574/ton of $SO_2$ removed. The capital and total annual operating costs were estimated to be $208.5 million and $40.9 million per year respectively. Washington determined the cost effectiveness for the two-tower scrubber to be unreasonable.

*Washington's BART Determination for Intalco Potlines:* Washington determined that BART for $SO_2$ from the potlines is the existing pollution prevention measures, including the use of less than 3% sulfur in the anode coke.

EPA's Determination of Cost Effectiveness and Visibility Impacts

EPA independently estimated the cost effectiveness of LSFO. A memorandum, ''Intalco BART Technical Review Memo,'' November 16, 2012, describes EPA's BART evaluation and analysis, and is included in the docket to this action. EPA's cost effectiveness calculations are based on the lower of two site-specific vendor quotes for the primary aluminum smelter located in Alcoa, Tennessee. The costs estimates were scaled to reflect the differences between the Alcoa Tennessee smelter and the Alcoa Intalco operations, including smelter size, economy of scale, limestone consumption and gypsum production (waste disposal).

EPA's primary concern with Washington's cost estimates and the changes EPA made to the Washington's analysis are: (1) Single tower design, eliminating the cost of a backup tower; (2) the lower of the two vendor quotes is used rather than the average; (3) the scrubber equipment life is assumed to be 30 years rather than 15; and (4) assumption that the gypsum by-product is re-used rather than landfilled.

*Single Tower Design:* As explained above, Alcoa and Washington based the cost effectiveness calculation for LSFO on the assumption that two scrubber towers would be required so that the facility would have a back up scrubber available for use whenever the primary scrubber was off line for maintenance. In EPA's view the redundant, second tower, is not necessary. Building one scrubber tower would reduce the capital and annual maintenance costs associated with LSFO. The BART emission limit could be written to account for periods of time with higher emissions such as during maintenance of the scrubber tower.

*Low Bid:* Capital equipment quotes, used by both Alcoa and Washington, were obtained from two vendors of LSFO systems for the Alcoa Tennessee smelter and were provided to EPA. The Alcoa and Washington analysis averaged these two quotes in estimating these capital costs for the Intalco potlines. This approach is unacceptable based on the EPA Air Pollution Control Cost Manual and is not in accord with standard contracting procedures. The Control Cost Manual clearly supports the use of the low bid. Specifically, the manual states that ''[s]ignificant savings can be had by soliciting multiple quotes and discusses the ability to compare to other bids.'' See *EPA Air Pollution Control Cost Manual, Sixth Edition.* Our cost effectiveness analysis uses the lower of the two capital equipment quotes, scaled from the Tennessee smelter to Intalco.

*Equipment Life:* The Alcoa and Washington analysis used an expected equipment lifetime of 15 years for the LSFO system. Washington provided no basis for using a 15 year lifetime. Based on our review of available information, 30 years rather than 15, is an appropriate equipment life. The expected service life of wet flue gas desulfurization (FGD) systems such as LSFO is cited in the literature as 30 years. The actual life of wet FGD scrubbers installed at coal fired power plants has been demonstrated to be 30 years or more for many plants. Industry reports establish scrubber longevity near or exceeding 30 years. See Intalco BART Technical Review Memo.

*Gypsum Reuse:* Alcoa and Washington assumed the gypsum produced as a by-product from LSFO would be disposed of in a landfill at a cost of about $4 million per year. However, based on the information in Alcoa's contractor BART analysis report and equipment vendor information, it appears that the gypsum produced as a by-product of LSFO would be suitable for re-use. EPA conducted an internal economic analysis to evaluate the potential for beneficial reuse of the gypsum by-product from LSFO[9]. Our analysis identified several applications for so-called FGD gypsum in addition to market factors which suggest the likely presence of a market for the gypsum produced by Intalco. Specifically, we found that a significant price differential exists between FGD gypsum and natural (mined) gypsum favoring the former.

Based on the design specification establishing that the gypsum by-product would be suitable for commercial reuse, the information suggests a likely market for the gypsum. A considerable financial incentive would exist for Intalco to sell, or even give away the FGD gypsum, rather than dispose of it in a landfill. We do not agree that it is reasonable to assume that Intalco will need to pay to dispose of the gypsum from the LSFO process in a landfill. Our cost effectiveness analysis therefore eliminates the gypsum disposal costs

[8] These cost quotes have been reviewed and analyzed by EPA but Alcoa has claimed the cost quotes as confidential business information (CBI). Given Alcoa's claim of CBI, the actual quotes are not included in the public portion of the docket for this proposed action.

[9] *Market Review for Intalco Produced FGD Gypsum.* Elliot Rosenberg, Senior Economist. EPA Region 10. March 23, 2012.

and assumes that Intalco gives the gypsum away ''Free on Board'' [10] from the facility in Ferndale. Any proceeds from the sale of the gypsum would further improve the LSFO scrubber cost effectiveness.

*Conclusion of Cost Effectiveness for LSFO at the Intalco facility:* EPA estimates the cost effectiveness of an LSFO system in the range of $3875/ton to $4363/ton. See Intalco BART Technical Review Memo.

**Visibility Impacts**

EPA considered the visibility impact of the potline $SO_2$ emissions and the resulting improvement of visibility in Class I areas surrounding Intalco expected to result from installation and operating LSFO. Two modeling efforts were conducted by an Intalco contractor; one analysis used 4 kilometer (km) grid cells and the other used 1 km grid cells. The analysis using 4 km grid cells considered only the baseline case. The analysis using 1 km grid cells considered both the baseline and the control case. The use of 1 km grid cells for Intalco underestimates visibility impacts compared to results using 4 km grid cells. However, modeling of visibility impacts after installation of LSFO was only conducted using 1 km grid cells. EPA believes that the 1 km grid cell results may provide informative insight into the relative visibility improvements that could be achieved by implementing LSFO.

Both modeling results show significant $SO_2$ visibility impacts from Intalco in several Class I areas, with the greatest impact at Olympic National Park. The tables below show these impacts and the expected visibility improvement of greater than 75% in all Class I areas after implementation of LSFO:

*Modeling With 1 km grid cells:*

| Class I area | Current impact (98th percentile dv, # of days >0.5 dv) | Impact with LSFO (98th percentile dv, # of days >0.5 dvdays) | Percent improvement in visibility (%) |
|---|---|---|---|
| Alpine Lakes | 0.742, 18 days | 0.158, 0 days | 79 |
| Glacier Peak | 0.916, 24 days | 0.190, 0 days | 79 |
| Mount Rainier | 0.660, 11 days | 0.108, 0 days | 83 |
| North Cascades | 0.986, 35 days | 0.212, 0 days | 78 |
| Olympic | 1.527, 41 days | 0.355, 2 days | 77 |

*Modeling With 4 km grid cells:*

| Class I area | Current impact | |
|---|---|---|
| | dv | # days >0.5 dv |
| Alpine Lakes Wilderness | 1.0 | 32 |
| Goat RocksWilderness | 0.5 | 7 |
| Glacier Peak Wilderness | 1.0 | 33 |
| Mount Adams Wilderness | 0.4 | 5 |
| Mount Rainier NP | 0.8 | 21 |
| North Cascades NP | 1.3 | 51 |
| Olympic NP | 2.1 | 52 |
| Pasayten Wilderness | 0.8 | 25 |

EPA believes these are significant impacts, not only based on the maximum impact at Olympic National Park, but also the number of days over 0.5 dv at several Class I areas and the number of Class I areas with impacts greater than 0.5 dv. Installation and operation of LSFO would significantly improve visibility in several Class I areas in Washington.

**EPA's Conclusion Regarding Washington's BART Determination for Intalco**

EPA disagrees with Washington's BART analysis for Intalco because the cost of compliance was improperly determined and proposes to disapprove their analysis. As discussed above, EPA calculated a different cost effectiveness value based on eliminating the cost of a backup tower; using the lower of the two vendor quotes rather than the average; assuming the equipment life is 30 years rather than 15, and assuming the gypsum by-product is re-used rather than landfilled. EPA believes based on a cost effectiveness value in the range of $3875/ton to $4363/ton and the facts presented above and considering the following factors that LSFO would be BART:

- While the cost effectiveness is relatively high in the range of $3875 to $4363/ton, it is in the range of other EPA promulgated BART determinations. e.g. Four Corners Power Plant (77 FR 51619),
- A 95% reduction in $SO_2$ emissions will result in visibility improvement over 1 deciview at Olympic National Park and over 0.5 deciview at 5 other Class I areas,
- There is insignificant non-air environmental and energy impacts,
- The source is anticipated to remain in operation for the foreseeable future, assuming no requirement to install new controls,
- The current control for $SO_2$ on the potlines are the pollution prevention measures, including the 3% sulfur limit for incoming coke.

However as discussed below, at the request of Alcoa, EPA considered whether Alcoa would be able to afford LSFO and remain a viable entity.

*Affordability:* The BART Guidelines provide that even if a control technology is cost effective there may be some cases where installing the controls would affect the viability of continued plant operations. Specifically, the rule explains that there may be unusual situations that justify taking into consideration the condition of the plant and the economic effects of requiring the use of a given control technology. The economic effects could include effects on product prices, market share, and profitability of the source. See 40 CFR 51 appendix Y, IV.D.4.k. Alcoa indicated to EPA that it cannot afford installation and operation of an LSFO control system and requested that affordability be considered. As summarized below EPA conducted a thorough ''affordability assessment'' of Alcoa and the Intalco operations. Based on that analysis, EPA proposes to conclude that Alcoa cannot afford to install LSFO at Intalco at this time. See ''Intalco BART $SO_2$ Affordability Assessment'' (Affordability Assessment) in the docket for this action for

[10] Free on Board, defined here where the buyer pays for all loading, transportation, and unloading costs.

additional detail regarding EPA's affordability analysis.

**Summary of Affordability Analysis**

In June 2012, Alcoa provided EPA an analysis (claimed as Confidential Business Information) of the financial health of the Intalco Operations from 2008 through 2013. Their analysis included financial information for both Alcoa as a whole, and the Intalco operations specifically, indicating that Intalco has not been a profitable operation in recent years and that the projected profits for this year and next are less than the annualized cost of LSFO. Their analysis concluded that during this time frame, there was insufficient after tax income to afford the annualized cost (capital and O&M) for LSFO of $26 million.

EPA conducted an independent analysis of the financial status of the Alcoa Intalco operations, considering the current and future trends in the cost of raw materials, operating expenses (labor and electricity), revenue income, and increasing supply and anticipated demand for aluminum in the future. Intalco is currently operating at less than full capacity and is operating only two of its three potlines. Operating the third potline is not economical given existing market prices for aluminum and electricity, limited availability of reasonably priced power and potline production costs. If Intalco were to install the LFSO control technology, the annual cost of installing and operating the equipment would represent approximately 8–10% of the facility's sales revenue over the 30 year lifetime of the equipment at current utilization at the facility. We recognize that the cost/sales ratios may be higher or lower depending on plant utilization and future aluminum prices, but they are substantial in even the most optimistic cases.

Alcoa is unlikely to be able to pass these costs along to consumers, as shown by its historical inability to pass through higher electricity prices, and is also unlikely to operate its third potline to increase production in the near future. Additionally, as mentioned in the Affordability Assessment, Alcoa's credit rating and low cash reserves may limit its ability to obtain resources to purchase pollution control equipment. Finally, the installation and operating cost of LSFO would represent a significant initial and long-term expenditure and a decision by Alcoa to close the facility rather than incur the pollution control equipment expense could be consistent with the findings of the independent affordability analysis. See Affordability Assessment for additional detail.

Based on this analysis EPA concludes that the Alcoa Intalco operations cannot afford LSFO at the Intalco facility and remain a viable operation.

**Summary of Other, Less Costly Control Options for Potlines**

EPA also considered less costly control of partial scrubbing of the potline emissions. There are six baghouses, each with multiple exhaust stacks, controlling particulate from the three potlines. EPA considered controlling $SO_2$ from two of the six, and four of the six baghouses. Under this scenario, the capital costs are reduced, however the cost effectiveness values would increase due to the economies of scale. At the same time, visibility improvement would decrease as overall $SO_2$ emission reduction decreases proportionally. Thus, in light of the increased cost effectiveness values and decreased visibility improvement, we determined partial scrubbing is not reasonable.

**EPA $SO_2$ BART Determination for Potlines**

Based on all the considerations summarized above, EPA believes that while LSFO is cost effective and would significantly improve visibility, it is not affordable at this facility. Therefore, EPA proposes to find that the pollution prevention measure of limiting the sulfur content of anodes to 3% is BART for Intalco.

**Regional Haze Rule Provision for Alternative BART Programs**

Pursuant to the RHR, a state may choose to implement measures as an alternative to BART so long as the alternative measures can be demonstrated to achieve greater reasonable progress toward the national visibility goal than would be achieved through the installation and operation of BART. See 40 CFR 51.308(e)(2). The demonstration must include, among other things, a requirement that all necessary emission reductions take place during the first long term strategy period and a demonstration that the emissions reductions resulting from the alternative measures will be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP.

**Better Than BART Proposal for the Intalco Potlines**

In the letter dated June 22, 2012, from Alcoa to EPA, Alcoa proposed an alternative that would be Better than BART. This alternative consists of implementing pollution prevention measures, primarily the requirement of 3% or less sulfur in the anode coke, and limiting $SO_2$ emissions from the potlines to 80% of the base year emissions of 6550 t/y. For the reasons explained, EPA is proposing to accept this Better than BART alternative and proposes a 5240 t/y annual $SO_2$ emission limit on the potlines.

**Better Than BART Visibility Impact**

Alcoa modeled the visibility difference between base year $SO_2$ emissions of 6550 t/y and a 20% reduction in emissions to 5240 t/y from the Intalco facility. The modeled results are summarized below for Olympic National Park. The deciview metric is the 98th percentile value for the year.

BASE YEAR $SO_2$

[6550 t/y]

| Metric | 2003 | 2004 | 2005 |
|---|---|---|---|
| 98th Percentile. | 2.36 dv | 1.86 dv | 2.14 dv |
| Days above 0.5 dv. | 59 ..... | 53 ..... | 42 |
| Days above 1.0 dv. | 29 ..... | 21 ..... | 24 |

20% REDUCTION OF $SO_2$ EMISSIONS

[5240 t/y]

| Metric | 2003 | 2004 | 2005 |
|---|---|---|---|
| 98th Percentile. | 1.20 dv | 1.56 dv | 1.82 dv |
| Days above 0.5 dv. | 50 ..... | 48 ..... | 41 |
| Days above 1.0 dv. | 23 ..... | 19 ..... | 21 |

The 80% $SO_2$ emissions cap, limiting the $SO_2$ emission to 5240 t/y, will prevent visibility from degrading on the worst days (represented by the 98th percentile) and will also reduce the number of days with impairment greater than 0.5 dv and 1.0 dv.

**Anode Bake Ovens**

Intalco manufactures its own anodes from an on-site facility using calcined coke and pitch. Green anodes are baked to remove volatile organic impurities and hardened for use in the aluminum potlines. During the baking process, some of the sulfur in the coke is released as sulfur dioxide and emitted to the atmosphere. The Anode Bake Ovens are fueled with natural gas and emit visibility impairing pollutants of particulate matter, $SO_2$, and $NO_X$. Emissions are currently controlled with an alumina scrubber to remove hydrogen fluoride and volatile organics

and then the outflow from the scrubber is ducted to baghouses to remove particulate. The baghouses provide 99% control of particulate matter.

Washington evaluated $SO_2$ scrubbers for the anode bake oven exhaust using information from its evaluation of potline $SO_2$ control. Costs determined for LSFO for the potlines were scaled to the lower gas flow rate of the bake oven. A 95% control efficiency for $SO_2$ was assumed. The cost effectiveness of LSFO scrubbing was estimated to be $36,400/ton and the visibility improvement would be 0.02 dv at Olympic National Park. Washington determined, based on the high cost and small visibility improvement that the petroleum coke sulfur limit of 3% is BART for anode bake furnace $SO_2$ emissions.

Washington also determined that the existing level of particulate matter control (based on baghouses on the alumina dry scrubbers) is BART for particulate emissions.

Washington rejected using an advanced firing system for reduced energy use as BART for $NO_X$ because the technology would result in a negligible emission reduction and visibility improvement. Similarly, Washington rejected LoTOx™ as BART because the cost of the technology would be excessive and it has not been demonstrated in practice on aluminum plant anode bake ovens.

Washington determined that BART for anode bake furnace $NO_X$ emissions is no controls. After review of available control technologies, EPA agrees with Washington's BART determination for this source and is proposing to approve the BART determinations for the anode bake ovens.

**Aluminum Holding Furnaces**

The aluminum holding furnaces are fueled with natural gas and emit $NO_X$. The emissions from the furnaces are small and result in negligible visibility impairment in any Class I area. Washington determined that BART for the aluminum holding furnaces is no controls. Washington rejected additional controls as BART because any visibility improvement would be negligible due to the low level of emissions from the natural gas-fired burners. EPA agrees that no additional control of emissions from the aluminum holding furnaces is BART.

**Material Handling and Transfer Operations**

The PM emissions from the BART-eligible material handling and transfer operations are all controlled using fabric filter technology, and these operations are a negligible source of $NO_X$ and $SO_2$ emissions. Additional control of these pollutants would provide negligible visibility improvement. Therefore, Washington determined that the existing level of emissions control, fabric filters, is BART for these material handling and transfer operations.

EPA agrees that fabric filter (baghouse) is the appropriate control technology and all emission units must meet 40 CFR part 63, Subpart RRR, and emissions of PM shall not exceed 0.01 grains per dscf.

**Summary of Intalco BART Determination and EPA's Proposed Action**

EPA is proposing to approve Washington's BART determination for Intalco with the exception of the $SO_2$ BART determination for the Intalco potlines. EPA is proposing a limited disapproval of Washington's BART analysis for $SO_2$ because, as explained above, Washington did not properly calculate the cost effectiveness value. Washington determined a cost effectiveness value of greater than $6000/ton for LSFO and consequently dismissed LSFO as BART. EPA is proposing a Better than BART FIP for control of $SO_2$ emissions off the potlines.

As described above, EPA revised some of the cost inputs and assumptions and calculated a cost effectiveness value in the range of $3875/ton to $4363/ton for LSFO. When considered in light of the visibility improvement in Olympic National Park and several other Class I areas surrounding Intalco, LSFO likely would be considered BART. However, as also explained above, Alcoa claimed it cannot afford LSFO at Intalco and still have it remain a viable entity. After investigating the affordability claim, including an analysis of Alcoa's financial status, market conditions, and electricity availability, EPA agrees and thus rejects LSFO as BART for this facility.

Washington issued Intalco a BART Order, (Order No. 7837, Revision 1) on July 7, 2010, that establishes Washington's determined BART control technology, pollution prevention measures, emission limits, compliance dates, monitoring, and recordkeeping requirements. EPA is simultaneously issuing a limited approval of Washington's $SO_2$ BART Order for the potlines, as a SIP strengthening measure. Intalco can afford to continue to implement of the pollution prevention measures and limiting the sulfur content of anodes in the furnace to 3% as required under the Washington's BART Order. Intalco is currently operating the potlines with $SO_2$ emissions below the proposed Better than BART alternative. The Better than BART alternative makes Washington's pollution prevention requirements, including a 3% limit on anode coke federally enforceable. The proposed alternative imposes a 5240 t/y annual $SO_2$ emission limit, makes the 20% $SO_2$ emission reduction from baseline permanent and federally enforceable, and prevents any future visibility degradation should Intalco decide to increase production in the future. Compliance with the annual $SO_2$ emission limit will be demonstrated using the same information that Intalco is required to collect under existing Washington requirements. So while the proposed alternative would impose additional recordkeeping and reporting obligations related to the annual cap, it would not impose any additional monitoring requirements.

The table below summarizes the proposed BART determination and Better than BART FIP for each BART emission unit:

| Emission unit | BART technology |
|---|---|
| Potlines | $SO_2$: 80% emission cap from baseyear (5,240 tons for any calendar year) and pollution prevention limit of 3% sulfur in the coke used to manufacture anodes.<br>PM: Use of the current level of control, which is the use of baghouses to control PM emissions from the alumina dry scrubbers, and wet roof scrubbers to control secondary PM emissions from the potroom roofs.<br>$NO_X$: no control. |
| Anode Bake Furnace | $SO_2$: pollution prevention limit of 3% sulfur in the coke used to manufacture anodes.<br>PM: The current baghouse. |

| Emission unit | BART technology |
|---|---|
| Aluminum Holding Furnace | No control. |
| Material Handling and Transfer | PM Use of the current level of control, which is use of fabric filters. |

c. Tesoro Refining and Marketing

The Tesoro refinery (Tesoro) near Anacortes, Washington, processes crude oil into refined oil products, including ultra low sulfur diesel oil, jet fuel, #6 fuel oil, and gasoline. Modeling of visibility impairment was done following the Oregon-Idaho-Washington Region 10 BART modeling protocol. Modeled visibility impacts of baseline emissions show impacts on the 8th highest day in any year (the 98th percentile value) of greater than 0.5 dv at five Class 1 areas. The highest impact was 1.72 dv at Olympic National Park.

Ten process heaters, one flare, one boiler, and two cooling towers at the plant are BART-eligible. The primary emission units of concern are the process heaters, boiler, and flares which have significant emissions of $SO_2$ and $NO_X$. Direct PM emissions from the BART-eligible units are low because almost all burn either refinery fuel gas or natural gas. Only one BART-eligible unit subject to BART, the crude oil distillation heater (unit F–103), is currently permitted to burn fuel oil. Tesoro reported 3 tons of $PM_{2.5}$ emissions from this unit in 2009.

Eleven of the 74 storage tanks at Tesoro emit VOCs and meet the 1962–1977 timeframe for BART-eligibility. Washington considers VOCs as visibility impairing pollutants (see appendix L, page 104 of the SIP submittal), but since the CALPUFF model, which is used to evaluate visibility impairment from single sources, cannot effectively model VOCs, Washington decided that VOC emissions from BART-eligible storage tanks and other units would not be evaluated for BART. Note that the facility's reported total VOC emissions in 2008 were 1,082 tons. The BART determination for the Tesoro refinery focuses only on $SO_2$, $NO_X$, and PM. EPA agrees that it is not necessary to further evaluate visibility impacts from VOCs for this planning period since, in addition to the modeling uncertainties, the majority of VOC emissions already have controls in place (for example to meet the applicable NSPS, MACT, and VOC fugitive emission control regulations). In addition, not all of the VOC emitted will convert to light scattering particles, so visibility impact due to VOC emissions is expected to be minimal.

The following are units at Tesoro subject to BART:

F–103 Crude Oil Distillation
F–104 Gasoline Splitter/Reboiler
F–304 CO Boiler No. 2
F–654 Catalytic Feed Hydrotreater
F–6600 Naphtha Hydrotreater
F–6601 Naphtha Hydrotreater
F–6602 Naphtha Hydrotreater
F–6650/6651 Catalytic Reformer
F–6652/6653 Catalytic Reformer
F–6654 Catalytic Reformer
F–6655 Catalytic Reformer
X–819 Flare
CWT #2 Cooling Water Tower
CWT #2a Cooling Water Tower

**$NO_X$ Controls Evaluated for All Combustion Units**

Tesoro evaluated available $NO_X$ control technologies generally applicable to combustion units. Unit-specific evaluations were completed based on technologies found generally feasible.

*Flue Gas Recirculation:* Flue gas recirculation was determined to be unacceptable due to safety factors.

*Low $NO_X$ burners:* LNB and ULNB retrofits are commonly installed on combustion units, often as a result of BACT or LAER determinations and could be feasible at Tesoro depending on the specific unit application. Emission limits from EPA's RACT/BACT/LAER Clearinghouse range from 0.08 to 0.1 lb/MMBtu ($NO_X$) for LNBs and ULNBs.

*Staged Air Low $NO_X$ Burners:* For this burner design, retrofitting heaters with less than three feet between the burner and the opposite wall of the firebox may not be practical due to potential flame impingement on the firebox refractory materials or heat transfer tubes. Emission reductions achieved by staged-air LNBs range from 30 to 40 percent below emissions from conventional burners. Tesoro used a 40 percent $NO_X$ reduction for its initial cost analysis review.

*Staged-fuel, low-$NO_X$ burners:* Staged-fuel LNBs have several advantages over staged-air LNBs. First, the improved fuel/air mixing reduces the excess air necessary to ensure complete combustion. The lower excess air both reduces $NO_X$ formation and improves heater efficiency. Second, for a given peak flame temperature, staged-fuel LNBs have a more compact (shorter) flame than staged-air LNBs. Up to 72 percent $NO_X$ emissions reductions for staged-fuel LNBs have been reported over conventional burners based on vendor test data. Tesoro used a 60 percent average $NO_X$ reduction for its initial cost analysis review.

*Ultra Low $NO_X$ Burners:* Tesoro used a 75% average $NO_X$ reduction for its initial cost analysis based on EPA methods. After receiving vendor guaranteed average $NO_X$ emission reductions ranging from 60 to 73.5 percent for specific units, Tesoro developed a vendor cost factor analysis for each unit based on the vendor guarantee and the unit-specific emission rate.

*Selective Non-Catalytic Reduction (SNCR):* Vendor $NO_X$ reduction guarantees ranged from 35 to 40% based on Tesoro's fuel gas compositions and measured bridgewall temperatures. EPA's RACT/BACT/LAER Clearinghouse lists an emission limit of 127 ppmdv $NO_X$ at seven percent oxygen for a SNCR used to control emissions from a Fluid Catalytic Cracking Regenerator unit followed by a CO Boiler.

*$NO_X$ tempering (steam or water injection):* To date, $NO_X$ tempering has only been used on large utility boilers and was not considered for further analysis.

*Selective Catalytic Reduction (SCR):* Typical SCR $NO_X$ removal efficiencies range from 70 to 90+ percent removal, depending on the unit being controlled. Tesoro used a 90 percent $NO_X$ removal in its cost analyses.

**$SO_2$ Controls Evaluated for All Combustion Units**

*Plant-Wide $SO_2$ Control:* Plant-wide $SO_2$ control is accomplished by reducing the sulfur content of fuel burned in various combustion units. Requiring the use of ''low sulfur fuel'' is the most common $SO_2$ control technique applied to oil refinery process units. ''Low sulfur fuel'' is usually defined as refinery fuel gas meeting the New Source Performance Standard (NSPS) requirements of 40 CFR part 60, Subpart J. This NSPS limits the $H_2S$ in fuel gas to 0.1 gr/dscf.

Tesoro has already implemented improvements at the facility to reduce the $H_2S$ concentration in the flue gas; any additional reduction in refinery fuel gas sulfur content will require construction of a new sulfur recovery unit (SRU). Tesoro evaluated the construction of a new 50 ton/day SRU and refinery modifications to route sulfur streams to the new unit. The

capital cost is estimated to be $58 million to continuously treat all refinery gas to the level of the NSPS standard (162 ppm of $H_2S$). Attributing all the cost to the $SO_2$ reductions to all combustion units (not just the BART eligible units) results in a plant wide reduction from the 2003 to 2005 average emissions of 395 tons of $SO_2$ with a cost effectiveness of $16,100/ton of $SO_2$ (not including O&M costs). Tesoro also evaluated the cost effectiveness of continuously meeting a limit of 50 ppm of $H_2S$ (a plant wide annual decrease of 451 tons per year), with the use of a new SRU. To meet a 50 ppm $H_2S$ concentration would increase the cost effectiveness value to $14,100/ton (also not including O&M costs).

Washington determined that the construction of a new SRU to meet either 162 ppm $H_2S$ or 50 ppm $H_2S$ is not cost effective and that $SO_2$ BART for combustion units burning refinery fuel gas is the current $H_2S$ limit of 0.10 percent by volume (1000 ppm) . See Washington's BART Compliance Order 7838.

**PM Controls Evaluated for All Combustion Units**

With the exception of emissions from unit F–304 (which primarily burns carbon monoxide from the fluid catalytic cracking unit and emits negligible amounts of PM), PM controls applicable to the process heaters at this facility are tied directly to the use of combustion fuel. Using low sulfur refinery fuel gas reduces potential particulate emissions. The refinery gas system includes process steps to remove particulates and some heavier hydrocarbons from the refinery gas prior to being sent to the various fuel burning units.

Washington determined PM BART is the curtailment of fuel oil for combustion with the substitution of refinery fuel gas. The specific emission limit for unit F–304 is 0.11 gr/dscf, corrected to 7% $O_2$. Particulate matter BART for all other BART units is 0.05 gr/dscf, corrected to 7% $O_2$.

**Unit Specific BART Determinations for $NO_X$**

*Unit F–103, Crude Oil Distillation Heater:* ULNB, SCR, SNCR, ULNB plus SCR, and ULNB plus SNCR were evaluated for cost effectiveness. Only ULNB, with a control efficiency of 75% had a reasonable cost effectiveness value at $3398/ton, using EPA calculation methods, and. All others cost effectiveness values exceeded $6374/ton. Washington determined ULNB to be BART for Unit F–103.

*Unit F–104, Gasoline Splitter Reboiler:* This reboiler currently has ULNB installed. The next more efficient control technology would be the addition of SCR with a cost effectiveness of $100,000/ton. See Table 2.1 of appendix L, Tesoro BART determination. Washington determined this cost to be unreasonable.

*Unit F–6650, Catalytic Reformer Feed Heater; Unit F–6651, Catalytic Reformer Inter-Reactor Heater; Unit F–6652, Catalytic Reformer Inter-Reactor Heater; Unit F–6653, Catalytic Reformer Inter-Reactor Heater:* These four heater units are ducted into two common exhaust stacks. However, the BART evaluations regarding burner design (e.g. LNB vs ULNB) and add on control (e.g. SCR) were made separately for each unit by the State, and are presented below.

*Unit F–6650:* The SIP submittal analyzed LNB, ULNB, SCR, SCR with LNB, and SCR with ULNB. ULNB is not technically feasible since there is insufficient space to install it. LNB is estimated to achieve a 60% reduction in $NO_X$, is cost effective at $3349/ton if installed during turnaround and over $10,000/ton outside normal turnaround. All of the SCR combinations are not cost effective with costs exceeding $10,000/ton during turnaround and even greater during non-scheduled turnaround refinery maintenance. Washington determined BART for $NO_X$ emissions to be existing control.

*Unit F–6651:* The SIP submittal analyzes LNB, ULNB, SCR, SCR with LNB and SCR with ULNB. There is insufficient space to install ULNB thus it is not technically feasible. The cost of installing SCR on the common exhaust duct in addition to LNB is not reasonable with a cost effectiveness of greater than $10,000/ton. LNB with 60% control efficiency and a cost effectiveness of $3349/ton within the routine maintenance turnaround was determined to be reasonable. Washington found that the cost effectiveness increases to over $10,000/ton if the controls were required to be installed during non-routine turnaround and stated that the routine turnaround will be outside the BART implementation window requirement. However, as explained below this is no longer the case.

Washington determined BART for $NO_X$ emissions to be existing control.

*Unit F–6652:* The SIP submittal analyzes LNB, ULNB, SCR, SCR with LNB and SCR with ULNB. Cost effectiveness of SCR options exceed $10,000/ton and thus these options are not reasonable. LNB and ULNB are cost effective and technically feasible. ULNB with a control efficiency of 75% and cost effectiveness of $3349/ton was determined to be BART for $NO_X$ emissions, if installed during routine turnaround. Washington found that the cost effectiveness values increase to over $10,000/ton if installed outside routine turnaround, and stated that the routine turnaround will be outside the BART implementation window requirement. However, as explained below this is no longer the case. Washington determined BART for $NO_X$ emissions to be existing control.

*Unit F–304:* The cost effectiveness of LNB, SCR, SNCR, LNB plus SCR, and LNB plus SNCR was evaluated. LNB with SNCR, with a control efficiency of 39% and cost effectiveness of $4592/ton when installed during turnaround was determined to be reasonable Washington calculated the cost effectiveness to be over $10,000/ton if the installation was conducted outside of the regularly scheduled turnaround. SNCR without LNB has a 35% control efficiency at a cost of $4534/ton and was not considered further as the control efficiency is less than LNB with SNCR. All other options are not cost effective. See Table 2–3 of the Tesoro BART Determination, appendix L of the SIP submittal.

Washington's $NO_X$ BART determination for unit F–304 (CO Boiler No. 2) indicated that an emission limit, representative of the installation of LNB plus SNCR, would be reasonable if the controls could be installed during routine maintenance ''turnaround'' at Tesoro. Turnarounds are the only occasion when process units are intentionally taken out of operation, and during a turnaround, major maintenance occurs on all process units that are shut down. During a routine turnaround, low-$NO_X$ burners or other appropriate controls could be installed and loss of production would not be included in the cost-effectiveness calculations. However, for the analysis contained in the SIP submittal, Washington assumed that the date for EPA's action to approve or disapprove the SIP submittal, plus the time allowed to comply with BART (i.e., as expeditiously as practicable, but no later than five years after SIP approval), would occur prior to the next scheduled turnaround. More specifically, Tesoro informed Washington that the next scheduled turnaround would not occur until 2017, which Washington had estimated would be after the date the BART controls would need to be installed. Consequently, Washington estimated costs for BART to include lost production, since, in order to comply within BART timeframe, the facility would be required to install the controls

well before the 2017 turnaround. Including lost production into the costs, results in most cases in a cost effectiveness figure well in excess of $10,000/ton and the controls are not cost-effective. As a result, Washington determined that no additional control was required for BART for $NO_X$ for boiler F–304.

However, as it turns out, the BART compliance time frame (which is now estimated to be no later than mid-2018) is much later than Washington originally estimated and now could indeed accommodate the 2017 turnaround cycle. When calculating cost-effectiveness without considering lost production, Washington concluded that controls for BART would in fact be reasonable. For example, see appendix L–3, Table 2–3, page L–125 of the SIP submittal showing a vendor cost estimate of $4,592/ton for installation of LNB plus SNCR for the boiler F–304. Therefore, Washington would have concluded that, except for the costs associated with taking units offline outside of the turnaround cycle, BART for $NO_X$ for unit F–304, would be an emission limit associated with installation of LNB plus SNCR. Yet, because of the added costs estimated for lost production, Washington proposed no add on controls in the SIP submittal.

A similar circumstance applies to heaters F–6650, F–6651, F–6652, and F–6653. The SIP submission indicates that LNB would be cost-effective for F–6650 and F–6651, while ultra-LNB would otherwise be cost-effective for F–6652 and F–6653, except for the added costs due to lost production. Again, Washington determined BART was no add-on controls on these units, due to costs of lost production because of the assumption that Tesoro would need to take the units offline outside of the normal turnaround schedule in order to comply with BART. It is now evident however, that the BART compliance deadline could be structured to include time for the scheduled turnaround. Thus, Washington's BART determination of no controls for these units is not appropriate since the controls are cost effective if installation is conducted during a scheduled turnaround period.

In today's action, we are proposing to disapprove Washington's BART determinations for $NO_X$ for units F–304, F–6650, F–6651, F–6652, and F–6653. We are proposing to approve Washington's BART determinations for $SO_2$ and PM for all of Tesoro's BART subject units, and for $NO_X$ for units F–103, F–104, F–654, F–6600, F–6601, F–6602, F6654, and F–6655.

**Tesoro Request for Alternative BART Program**

As discussed above under the Intalco BART section, a state may choose to implement measures as an alternative to BART, so long as the alternative measures can be demonstrated to achieve greater reasonable progress toward the national visibility goal than would be achieved through the installation and operation of BART. See 40 CFR 51.308(e)(2).

In light of the currently expected date estimated for EPA's final action on the SIP submittal, EPA does not consider Washington's BART determination for $NO_X$ for several units at the facility to be approveable. Tesoro submitted a request to EPA on November 5, 2012, for an alternative to BART for $NO_X$ for units F–304, F–6650, F–6651, F–6652, and F–6653. Based on the analysis described below, EPA agrees that the alternative proposed by Tesoro is Better than BART, and because we are proposing to disapprove Washington's BART determination for $NO_X$ for those units, we are also proposing a FIP as an alternative to BART, that results in greater reasonable progress than BART would for units, F–304, F–6650, F–6651, F–6652, and F–6653. We believe that the proposed Tesoro $NO_X$ BART alternative meets the requirements for an alternative measure.

**Tesoro $NO_X$ BART Alternative**

EPA is proposing a BART alternative for the $NO_X$ emissions from the CO boiler #2 (unit F–304) and the four heaters, units F–6650, F–6651, F–6652, and F–665. This BART alternative achieves greater visibility progress than BART would for those units. 40 CFR 51.308(e)(2) and 40 CFR 51.308(e)(3) of the regional haze rule specify the requirements that a state must meet to show that an alternative measure or alternative program achieves greater reasonable progress than would be achieved through the installation and operation of BART. Pursuant to those requirements, Tesoro has identified seven non-BART units at the facility that achieve substantially more $SO_2$ emission reductions compared to their baseline emissions than the $NO_X$ emission reductions that would be achieved from BART on the five BART subject units compared to their baseline emissions. The facility has requested $SO_2$ emission limitations on those non-BART units as an alternative to emission limits for $NO_X$ on the BART-subject units. EPA believes it is appropriate to consider $SO_2$ reductions as a substitute for $NO_X$ reductions for the alternative BART scenario since the $SO_2$ reductions, which are more than twice the $NO_X$ reductions, will likely result in proportionately more sulfate than nitrate removed from the atmosphere. Accordingly, visibility improvement would be greater under the alternative than under BART. The table below shows the seven non-BART eligible units for which Tesoro is requesting $SO_2$ emission limits under the proposed alternative.

$SO_2$ UNITS REGULATED UNDER THE PROPOSED BART ALTERNATIVE

| Unit | Description |
|---|---|
| F–101 ..... | Crude Heater, 120 MMBtu/hr. |
| F–102 ..... | Crude Heater, 120 MMBtu/hr. |
| F–201 ..... | Vacuum Flasher Heater, 96 MMBtu/hr. |
| F–301 ..... | Catalytic Cracker Feed Heater, 128 MMBtu/hr. |
| F–652 ..... | Heater, 67 MMBtu/hr. |
| F–751 ..... | Main Boiler, 268 MMBtu/hr. |
| F–752 ..... | Boiler, 268 MMBtu/hr. |

In 2007, Tesoro made a major capital investment to improve the sulfur removal capability of the Anacortes refinery fuel gas (RFG) system and accepted a limit on $H_2S$ in the fuel gas of 0.10 percent by volume, or 1,000 parts per million (ppm). This resulted in a significant reduction in $SO_2$ emissions as the average $H_2S$ concentration of the fuel gas in 2006 was 2,337 ppm. A requirement to combust only pipeline quality natural gas or RFG meeting the 1,000 ppm limit was established on a number of units at the facility, including eleven BART-subject units as part of Washington's BART determination for those units. Tesoro requested that the same requirement be extended to the seven additional non-BART units shown in the table above. In Washington Class I areas, sulfates contribute significantly more than nitrates to visibility impairment (see SIP Submittal chapter 5) and it is likely that for the Class I areas impacted by Tesoro's $SO_2$ and $NO_X$ emissions, more $SO_2$ converts to sulfate than $NO_X$ does to nitrate. Limiting the $SO_2$ emissions from these seven units would thereby result in greater reasonable progress than would requiring BART for $NO_X$ on the CO boiler #2 and four process heaters.

In Washington Class I areas, sulfates contribute significantly more than nitrates to visibility impairment (see SIP Submittal chapter 5) and it is likely that more $SO_2$ converts to sulfate than $NO_X$ does to nitrate. Applying the $SO_2$ limit to these 7 units would result in greater reasonable progress than would requiring BART for $NO_X$ on the CO boiler #2 and four process heaters.

Pursuant to 40 CFR 51.308(e)(2)(i)(D), a summary of the emission reductions expected from the BART alternative compared to emissions reductions that would be achieved by the application of Washington's estimated limits for $NO_X$ for five BART-subject units is shown in the tables below.

$SO_2$ EMISSIONS UNDER THE BART ALTERNATIVE

| Unit | 2006* $SO_2$ Baseline emissions (tpy), pre-RFG as reported by Tesoro | BART alternative: 2007 post-RFG $SO_2$ emissions as reported by Tesoro | Reduction in $SO_2$ emissions (tpy) |
|---|---|---|---|
| F–101 | 193 | 42 | 151 |
| F–102 | 178 | 48 | 130 |
| F–201 | 232 | 51 | 181 |
| F–301 | 58 | 11 | 47 |
| F–652 | 77 | 25 | 52 |
| F–751 | 291 | 54 | 237 |
| F–752 | 326 | 56 | 270 |
| Total | 1,355 | 287 | 1,068 |

*The baseline year of 2006 was used because it was the last year preceding installation of the RFG improvements and representative of operating conditions at the refinery at that time.

$NO_X$ EMISSIONS WITH WASHINGTON'S DETERMINATION OF BART

| Unit | 2006* $NO_X$ Baseline emissions (tpy) as reported by Tesoro | Washington's estimated emissions based on BART analysis in SIP submittal (appendix L) | Projected reduction in $NO_X$ emissions from BART controls (tpy) |
|---|---|---|---|
| F–304 | 717 | 437 | 280 |
| F–6650 | 151 | 60 | 91 |
| F–6651 | 114 | 46 | 68 |
| F–6652 | 24 | 6 | 18 |
| F–6653 | 12 | 3 | 9 |
| Total | 1,018 | 552 | 466 |

*The baseline year of 2006 for $NO_X$ corresponds with the year the emissions were estimated for $SO_2$.

The projected $NO_X$ emissions are based on Washington's estimates of appropriate control efficiencies applied to the 2006 emission rates. Washington's estimates are: SNCR plus LNB for F–304 with 39% reduction in $NO_X$; LNB for F–6650 and F–6651 with 60% reduction in $NO_X$; ULNB for F–6652 and F–6653 with 75% reduction in $NO_X$. EPA believes that for purposes of estimating the $NO_X$ BART emission benchmark for 2006, Washington's estimates are adequate.

As the tables show, the 1,068 tpy reductions in $SO_2$ from the seven non-BART units are greater than the 466 tpy emissions reductions expected from BART for $NO_X$ for the five BART-subject units. The reductions are surplus because they occurred during the first planning period, after the 2002 SIP baseline date and were not necessary to meet any other CAA requirements. As a final check, we note that $SO_2$ emissions from the seven units, if calculated assuming that the plant is operating at full capacity, would be 10,147 tpy prior to the refinery fuel gas improvements in 2007 and 1,127 tpy after applying the 1000 ppm $H_2S$ limit. The net $SO_2$ emission reduction is estimated to be 9,020 tons, compared to 683 tons of $NO_X$ reductions assuming BART level controls for $NO_X$ were installed and the plant were operating at full capacity. For these reasons, EPA is proposing a BART alternative FIP that achieves greater reasonable progress than BART.

The proposed emission limit for the seven units being considered for the alternative to BART is the same limit as the other 11 BART-subject units for which we are proposing to approve. Specifically, the refinery fuel gas may not contain greater than 0.10 percent by volume $H_2S$ on a 365-day rolling average basis. Setting the limit based on the concentration of $H_2S$ in the fuel is consistent with the Standards of Performance for Petroleum Refineries (See 40 CFR part 60—Subpart J) and 51.308(e)(iii) for establishing BART. Since the proposed alternative would utilize the same requirement for monitoring refinery fuel gas combusted in the non-BART units that Washington has imposed for the BART-subject units, the proposed alternative would not impose any additional monitoring requirements. It would impose additional recordkeeping and reporting requirements related to the fuel combusted in the non-BART units.

Tesoro's November 5, 2012, letter actually included two options for a Better than BART alternative. The other option involved $SO_2$ emission reductions from another non-BART unit, CO boiler #1 (Unit F–302). However, we did not choose that option for the proposed Better than BART FIP because CO boiler #1 shares a common exhaust stack with CO boiler #2 (Unit F–304) which is a BART-eligible unit and the Washington BART order establishes an $SO_2$ limit for the combined emissions from both boilers. Even though Washington has not relied

on the $SO_2$ reductions since baseline from CO boiler #1 in its regional haze plan, EPA is obliged to approve that limit as shown in the BART order and cannot use those same reductions in a Better than BART alternative FIP. However, EPA does want to point out that, when approved, the BART order will actually result in greater visibility improvements than projected in the regional haze reasonable progress demonstration.

*Summary of Tesoro BART*

The Table below is a summary of the proposed BART and Proposed Better than BART Technology for Tesoro.

| Emission unit | BART technology |
|---|---|
| F–103 | PM: End routine use of fuel oil. Use of refinery fuel gas or natural gas as primary fuel.<br>$SO_2$: End routine use of fuel oil. Use of refinery fuel gas or natural gas as primary fuel.<br>$NO_X$: Ultra-low-$NO_X$ burners. |
| F–304, F–6650, F–6651, F–6652, F6653 | $SO_2$ & PM: End routine use of fuel oil. Use of refinery fuel gas or natural gas as primary fuel.<br>Proposed Better than BART Alternative Federal Implementation Plan: $SO_2$ limitations on units F–101, F–102, F–201, F–301, F–652, F–751, F–752 fuel gas of 1000 ppmv $H_2S$. |
| F–104, F–654, F–6600, F–6601, F–6602, F–6654, F–6655, Flare X–819, Cooling Towers 2 and 2a. | PM: End routine use of fuel oil. Use of refinery fuel gas or natural gas as primary fuel.<br>$SO_2$: End routine use of fuel oil. Use of refinery fuel gas or natural gas as primary fuel. |

d. Port Townsend Paper Company

Port Townsend Paper Company (PTPC) operates a kraft pulp and paper mill in Port Townsend, Washington that manufactures kraft pulp, kraft papers, and lightweight liner board. The four BART eligible emission units at the facility are: the recovery furnace, smelt dissolving tank, No. 10 power boiler, and lime kiln. PTPC visibility impacts are greatest at Olympic National Park. The 98th percentile impact during 2003 to 2005 at Olympic National Park is 1.9 dv. Impacts at all other Class I areas within 300 km of PTPC were less than 0.5 dv.

An electrostatic precipitator (ESP) currently controls PM from the recovery furnace, a wet scrubber currently controls PM and $SO_2$ from the smelt dissolving tank, a multiclone and wet scrubber control PM emissions from the No. 10 power boiler, and a wet venturi scrubber controls PM and $SO_2$ from the lime kiln. On October 20, 2010, Washington issued PTPC BART Order 7839 Revision 1 which establishes emission limits for these existing controls for the emission units subject to BART.

*Recovery Furnace:* The recovery furnace primarily burns black liquor solids with some recycled fuel oil. It emits $SO_2$, $NO_X$, and PM. The recovery furnace is intended to recover sulfur for use in the pulping process and the loss of sulfur through emissions of $SO_2$ is a loss of process chemical and therefore is undesirable for business reasons. The recovery furnace operations are optimized to minimize sulfur loss. Particulate matter is currently controlled with three dry electrostatic precipitators (ESPs). Current $SO_2$ and PM emissions are regulated by NESHAPS Subpart MM, and a PSD permit. $NO_X$ emissions from recovery furnaces are generally low. Currently, there is no emission limit for $NO_X$.

*$NO_X$:* The recovery furnace inherently uses staged combustion to optimize combustion of black liquor (mostly lignins) to recover the sulfur. Also due to the unique nature of the recovery process, special safety precautions must be considered as explosion can occur. Washington and PTPC evaluated alternative $NO_X$ control technologies and found them technically infeasible. See SIP submittal pages L–206 and L–207. Washington determined that the existing level of control provided by the existing staged combustion system is BART for $NO_X$ for the recovery furnace.

*$SO_2$*: Washington and PTPC considered the Wet FGD, Dry FGD and low sulfur fuel as possible control technologies for the recovery furnace $SO_2$ emissions. Wet FGD is considered cost prohibitive by the National Council for Air and Stream Improvement (NCASI). *See Information on Retrofit Control Measures for Kraft Pulp Mill Sources and Boilers for $NO_X$, $SO_2$, and PM Emissions*, June 4, 2006. Additionally, due in part to the nature of the $SO_2$ emissions from a kraft recovery furnace, and related technical difficulties, this technology is considered technically infeasible for control of $SO_2$ emissions at this facility. Table 2–4, PTPC BART determination, appendix L of the SIP submittal.

Dry FGD is also not technically feasible as injection of a sorbent material disrupts the chemical reactions in the furnace and the sulfur content of the gas stream is too low for effective control of $SO_2$. The analysis also found that low sulfur fuel is not an option as the main fuel source is the black liquor from which sulfur is recovered. In essence, the recovery furnace is a control device to recover sulfur from the black liquor. Supplemental fuel oil is currently limited to a maximum of 0.75% sulfur content. Switching to a lower sulfur content fuel oil would cost $15,702/ton of $SO_2$ removed and is deemed not cost effective. Washington determined that the current level of controls provided by the existing staged combustion system and regulated by the PSD permit is BART for $SO_2$, with an emission limit of 200 ppm at 8% $O_2$.

*PM:* The PM emissions from the recovery furnace are currently controlled by an ESP. The existing ESP at the furnaces reduces actual PM emissions to an average of less than 50% of the MACT limit of 0.044 gr/dcsf, at 8% $O_2$. The BART Guidelines, section IV, states that ''Unless there are new technologies subsequent to the MACT Standards which would lead to cost effective increases in the level of control, [state agencies] may rely on MACT standards for purposes of BART.'' No new control technologies have been identified for recovery furnaces, thus Washington determined that the dry ESP meeting MACT limits is BART. Thus, the BART limit is the NESHAP Subpart MM limit of 0.044 gr/dscf at 8% oxygen.

**Smelt Dissolving Tank**

*$NO_X$ control:* There are no $NO_X$ emissions from the smelt dissolving

tank thus a BART determination for $NO_X$ is not necessary.

*$SO_2$ Control:* Sulfur dioxide emissions are currently controlled by a wet scrubber. The only other available control option is either semi-dry or dry FGD. However, due to the very low exhaust flow rate, semi-dry or dry FGD with a dry ESP is technically infeasible. Adding an alkaline solution to the exhaust gas stream could provide additional $SO_2$ control. Washington's analysis found cost effectiveness of adding the alkaline solution to both is $16,247/ton and is not cost effective. Washington found BART for $SO_2$ is the existing wet scrubber for PM control.

*PM Control:* PM emissions are currently controlled by a dry ESP. Washington evaluated the cost of upgrading the current ESP to reduce existing PM emission by 50%. The cost effectiveness of this upgrade is $5,100/ton with a visibility improvement of 0.07 dv. In light of the cost and minimal visibility improvement, Washington determined the upgrades are not reasonable. The BART emission limit for PM is the NESHAP Subpart MM limit of 0.20 lb $PM_{10}$ per ton black liquor solids (BLS).

*No. 10 Power Boiler:* The No. 10 power boiler currently burns a variety of fuels from wood waste to fuel oil and uses overfire air to reduce $NO_X$ emissions. A multiclone followed by a wet scrubber reduces PM emissions.

*$NO_X$:* The design of the No. 10 power boiler which primarily burns wood waste results in a low flame temperature and minimal $NO_X$ formation. Appendix C of the PTPC BART Determination report (appendix L of the SIP submittal) contains a lengthy discussion of why alternative control technologies are not technically feasible including; flue gas recirculation, LNBs, fuel staging, SNCR, and SCR. Washington determined that the existing $NO_X$ emission limit of 0.80 lb/MMBtu (current NSPS Subpart D limit) is BART for this unit.

*PM control:* PM emissions from the No. 10 power boiler are currently controlled with a multiclone followed by a wet scrubber. The BART analysis evaluated fabric filters and the substitution of a wet ESP for the wet scrubber. The evaluation found that installation of a baghouse is technically infeasible for wood fired boilers due to the potential fire hazard. The addition of a wet ESP is technically feasible for this facility but is not cost effective at $11,249/ton of $PM_{10}$ removed. The substitution of a wet ESP was also evaluated and it was found that due to the low emission rate and the small potential visibility improvement from upgrading to a wet ESP did not justify further study. Washington determined BART is the existing level of control as provided by the wet scrubber with a PM emission limit of 0.10 lb/MMBtu (the current NSPS Subpart D limit).

*$SO_2$ Control:* PTPC analysis found that FGD technology with wet injection using a wet scrubber would reduce $SO_2$ emissions but would also require the addition of alkaline chemicals which would change the chemical characteristics of the effluent and render it classified under Washington as 'Dangerous Waste' and as a hazardous waste under the federal Resource Conservation and Recovery Act, thus raising the cost and complexity of disposal. Fly ash from the boiler already aids in scrubbing $SO_2$ and adding an alkaline solution would only provide a small increment of control, but with increased problems with sludge disposal. The analysis concluded that implementation of wet FGD on the No. 10 power boiler is considered technically infeasible. Lowering the sulfur content of the fuel oil burned to 0.5%, while technically feasible, would cost $15,702/ton of $SO_2$ reduced. This was determined to not be cost effective. Washington determined that BART for $SO_2$ control on the No. 10 power boiler is the continued operation of the existing wet scrubber, continued use of the current low sulfur fuel and implementing good combustion practices aimed at minimizing recycled fuel oil firing as BART. The existing $SO_2$ emission limit is 0.30 lb/MMBtu.

**Lime Kiln**

*PM:* Currently the lime kiln uses wet venturi scrubber to capture PM emissions to meet the PM emission limits as specified in 40 CFR 63, Subpart MM. No new control technologies have been developed since the rule was promulgated therefore as explained above, Washington determined that wet venturi scrubber is BART. BART for PM is the same as 40 CFR 63, Subpart MM, with an emission limit of 0.064 gr/dscf at 10% $O_2$.

*$NO_X$:* The lime kiln is operated using a minimum of excess air. Washington's review determined that no add-on control technology was indicated for lime kilns in the EPA RBLC which lists ''good combustion'' and ''proper kiln design'' as BACT for lime kilns. However, as described in the SIP submittal, PTPC investigated ten other possible control options. Each of these control options were determined to be infeasible. See Washington Regional Haze SIP submittal L–190. Therefore Washington determined that BART for $NO_X$ for the lime kiln is proper kiln design and good operating practices.

*$SO_2$:* The existing wet venturi scrubber captures lime dust and thereby also reduces $SO_2$ emissions. Washington and PTPC considered several additional $SO_2$ control technologies including increasing the alkalinity. See SIP submittal Table 2–3. However, the visibility improvement from increasing the alkalinity of the wet scrubber was estimated to be only 0.004 dv and did not warrant further consideration. As for other units in the facility, lower sulfur fuel oil was determined to not be cost effective due to the increased fuel cost and resulting cost effectiveness value of $15,702/ton. As documented in the SIP submittal each of the other technologies considered was rejected due to technical difficulties. See Washington Regional Haze SIP submittal L–213. Washington determined that BART for $SO_2$ for the lime kiln is the current level of control provided by the wet venturi scrubber. The $SO_2$ emission limit is continued use of the existing wet scrubber with inherently alkaline scrubber solution and 500 ppm at 10% $O_2$ (current Washington limit).

For of the reasons summarized above, Washington determined that the existing controls, techniques and emission limits constitute BART for $NO_X$, $SO_2$, and PM at the facility. The SIP submittal includes BART Compliance Order No. 7839, Revision 1, issued to Port Townsend Paper Corporation on October 20, 2010.

EPA finds after review of the SIP submittal that the BART determination and BART compliance order for PTPC is reasonable and proposes to approve it.

**Summary of Port Townsend Paper Company BART**

The table below summarizes the proposed BART technology for PTPC:

| Emission Unit | BART Technology |
|---|---|
| Recovery Furnace | PM: Existing ESP.<br>$NO_X$: Existing staged combustion system.<br>$SO_2$: Good Operating Practices and limit of 200 ppm at 8% $O_2$. |

| Emission Unit | BART Technology |
|---|---|
| Smelt Dissolving Tank | PM: Existing wet scrubber NESHAP Subpart MM limit of 0.20 lb $PM_{10}$ per ton BLS.<br>$SO_2$: Existing wet scrubber. |
| No. 10 Power Boiler | $PM_{10}$: Existing multiclone and wet scrubber NSPS Subpart D limit of 0.10 lb/MMBtu.<br>$NO_X$: Existing staged combustion system NSPS Subpart D limit of 0.30 lb/MMBtu.<br>$SO_2$ Good Operating Practices NSPS Subpart D limit of 0.80 lb/MMBtu. |
| Lime Kiln | $PM_{10}$: Existing venturi wet scrubber NESHAP Subpart MM limit of 0.064 gr/dscf at 10% $O_2$.<br>$NO_X$: Good Operating Practices.<br>$SO_2$: Existing wet scrubber 500 ppm at 10% $O_2$. |

e. Lafarge North America

Lafarge North America is located in Seattle, Washington and produces Portland cement by the wet kiln process. The facility consists of 18 emission units of which 16, in combination, meet the requirements as eligible for BART. Dispersion modeling of these16 emission units show emissions from these units exceed the visibility threshold of 0.5 dv for being subject to BART and thus are subject to BART. The largest sources of concern that are subject to BART are the rotary kiln and the clinker cooler. The other BART units include raw material handling, finished product storage bins, finish mill conveying system, bagging system, and bulk loading/unloading system baghouses, with a total of just 480 t/y emissions of PM.

Lafarge North America is subject to the terms and conditions specified in a consent decree resolving alleged Clean Air Act violations. *United States* v. *LaFarge North American Inc,* Civ. 3:10–cv–00044–JPG–CJP (S.D. Ill.). This consent decree established emission limitations and compliance dates for a number of cement plants owned and operated by Lafarge North America, including the Seattle plant.

**Rotary Wet Process Kiln**

*$SO_2$:* There is currently no control for $SO_2$ from the kiln at the Lafarge facility. The alkaline nature of the clinker formed in the kiln reduces $SO_2$ emissions to some extent. Additional control options evaluated were: dry sorbent injection (lime or sodium), semi-dry FGD, wet limestone forced oxidation, wet lime, ammonia forced oxidation, and alternative fuels and raw materials. See SIP Submittal appendix L, L–231,Table 2–2, Lafarge BART determination. The analysis found that dry sorbent injection (DSI) is technically feasible with a 25% removal efficiency for $SO_2$ at an estimated the cost effectiveness of $4034/ton. See Table 2–3 of appendix L, Lafarge BART determination. Washington determined that while the cost effectiveness value for DSI at this facility is relatively high compared to other cost effectiveness values that are considered BART, the visibility improvement at Olympic National Park is significant (0.8 dv) and warrants this control as BART. Washington determined dry sorbent injection with emission limit of not to exceed 8620 lb/day as BART.

Limestone slurry forced oxidation (LSFO) is a technically feasible control option with a control efficiency of 95% for $SO_2$. Cost effectiveness is $32,920/ton and is considered not reasonable for this facility. Lafarge considered, but rejected, wet lime scrubbing, which is similar to LSFO, but uses lime instead of limestone. The resulting waste product cannot be recycled into the process and would incur the additional cost to landfill. Also the cost of lime is considerably more than limestone. Both these factors would increase the cost effectiveness values even higher than LSFO.

*$NO_X$:* Currently $NO_X$ emissions from the kiln are controlled by combustion control. As explained in greater detail in the Washington Regional Haze Submittal appendix L, Washington evaluated additional control options. In summary its analysis found that LNB with indirect firing is a technically feasible control option with a 15% control efficiency and cost effectiveness of $19,246/ton of $NO_X$ reduced. The analysis determined that SCR has not proven effective in other wet process kiln cement plants that have used SCR. Thus SCR is not considered an available technology for this unit.

Washington found that SNCR is technically feasible at the facility with a 40% control efficiency and cost effectiveness value of $1409/ton. Washington has determined SNCR to be one option available to comply with BART at this facility. As part of their BART analysis, Washington also considered mid-kiln firing with whole used tires. Mid-kiln firing changes the combustion characteristics and provides a 40% control of $NO_X$. As Lafarge has already installed, but currently does not use the equipment for mid-kiln firing with whole tires, the cost effectiveness is low. Washington has determined that mid-kiln firing with whole tires is an available option to comply with BART. Finally, low $NO_X$ burners with indirect firing and SNCR were evaluated. LNB with SNCR is technically feasible with a control efficiency of 55%. Cost effectiveness is determined by Washington to be $6247/ton. The incremental cost of adding LNB to SNCR is $14,900/ton. Washington determined that the incremental cost of adding LNB to SNCR is not cost effective. Thus, Washington determined that BART for $NO_X$ to be either SNCR or mid-kiln firing of whole tires with an emission limit of 22,960 lb/day.

*PM:* The initial design of the Lafarge facility was for two kilns, but only one was built. Two ESPs were constructed, assuming a second kiln would be built. Currently, the exhaust gasses are ducted to both ESPs which decreases the flow rate by half and increases the control efficiency to 99.95%. This control efficiency is equal to that of a baghouse. Washington determined the existing ESPs are BART for PM with an emission limit of 0.05 g/dscf.

*Clinker Cooler:* There are no $SO_2$ or $NO_X$ emissions from the Clinker Cooler and a BART determination for these pollutants was not conducted. Currently PM emissions from the clinker cooler are controlled by baghouses. The current baghouses control 99.8% of PM emissions, which is equal to an ESP. While other controls such as wet scrubbers or wet venture scrubbers are available, the analysis completed by Lafarge found that these other technologies did not control PM emissions as well as the baghouses currently in use at the facility. Therefore, Washington determined the existing primary and backup baghouses

and the emissions limitations for these units contained in Regulation 1, section 9.09 (as in effect on June 30, 2008) and Order of Approval No. 5627 as BART.

*All other sources:* Existing baghouses were determined to be BART for PM with an emission limit of 0.005 g/dscf. Washington on July 28, 2010 issued Lafarge a revised BART Order No. 7841 requiring compliance with BART, including monitoring, recordkeeping and reporting requirements. See appendix L of the SIP submittal, Lafarge BART determination. Washington's BART determination and required controls for Lafarge is expected to result in approximately 1.1 dv visibility improvement in Olympic National Park and 0.2 to 0.8 dv improvement at the other affected Class I areas.

**Summary of Proposed Lafarge BART Technology**

The table below summarizes the proposed BART technology for Lafarge.

| Emission unit | BART technology |
|---|---|
| Clinker Cooler | $PM/PM_{10}/PM_{2.5}$: Existing baghouses 0.025 g/dscf for the primary baghouse 0.005 g/dscf for backup baghouse. |
| Rotary Kiln | $PM/PM_{10}/PM_{2.5}$: Existing electrostatic precipitators 0.05 g/dscf.<br>$NO_X$: SNCR or Mid-kiln firing of whole tires not to exceed 22960 lb/day.<br>$SO_2$: Dry sorbent injection with lime plus currently permitted fuels and the cement kiln process not to exceed 8620 lb/day. |
| All Other $PM_{10}$ Sources at Plant | $PM_{10}$: Existing baghouses 0.005 g/dscf. |

f. TransAlta Centralia Generation, LLC

TransAlta Centralia Generation LLC, located in Centralia, Washington operates a two unit coal-fired power plant rated at 702.5 megawatt each, when burning coal from the Centralia coalfield as originally designed. These units are BART eligible and subject to BART as described in the SIP submittal, Supplement to appendix L. The units now burn Powder River Basin coal and are each rated at 670 MW. On June 11, 2003, EPA approved a revision to the Washington Visibility SIP which included controls for $NO_X$, $SO_2$, and PM. In the action approving these provisions of the Visibility SIP, EPA determined the controls to be BART for $SO_2$ and PM but not for $NO_X$. The $NO_X$ controls included in the November 1999 Visibility SIP revision, which EPA approved into the SIP, were Alstrom concentric low $NO_X$ burners with overfire air. TransAlta continues to be a BART eligible source for $NO_X$.

Washington's December 22, 2010 Regional Haze SIP submittal included a BART determination for TransAlta which was updated on December 29, 2011. EPA approved the updated TransAlta $NO_X$ BART determination on August 20, 2012. The SIP approved BART determination imposes a $NO_X$ emission limitation of 0.21 lb/MMBtu for each unit based on the installation of SNCR on both coal-fired units plus Flex Fuel. It also requires a one year performance optimization study and lowering the emission limits based on the study results. Additionally, the BART determination requires one unit to cease burning coal by December 31, 2020 and the second unit by December 31, 2025 unless Washington determines that state or federal law requires SCR to be installed on either unit.

g. Weyerhaeuser Company-Longview

Weyerhaeuser operates a Kraft pulp and paper mill in Longview, Washington. The facility has three emission units subject to BART: the No. 10 recovery furnace, No. 10 smelt dissolver tank and No. 11 power boiler. The recovery furnace currently controls PM emissions with an ESP. It also employs tertiary over fire air to control combustion and maximize chemical recovery. The recovery furnace currently is regulated by a PSD permit requiring BACT and 40 CFR part 63 Subpart MM. The smelt dissolver tank emits PM controlled with a high efficiency wet scrubber which was permitted as BACT in 1993 and is subject to 40 CFR part 63 Subpart MM.

The No. 11 power boiler provides steam for electricity generation and plant operations. It burns a combination of wood waste, dewatered waste water treatment sludge, and supplemental low sulfur coal (<2% sulfur by weight). Emissions from the No.11 power boiler are subject to BACT in the facility's New Source Review (NSR) permit and 40 CFR part 60 Subpart D NSPS and are controlled by: 1) a multiclone to remove large particulate, 2) dry trona injection to remove $SO_2$, and 3) a dry ESP for additional particulate control. $NO_X$ emissions are controlled with good combustion practices.

*Recovery Furnace BART Options*

*PM:* Washington evaluated two technically feasible control options for increased PM control: wet ESP and venturi scrubber. A wet ESP would not provide any additional reduction in PM over the current dry ESP. A venturi scrubber added after the dry ESP would cost $28,000/ton of PM removed and is not cost effective. Additionally this cost effectiveness calculation did not include impacts of increased waste water to the treatment system which if included would only increase the cost. Adding an additional field to the existing dry ESP is not cost effective at $122,000/ton. Washington determined that PM BART is the existing BACT dry ESP with an emission limit of 0.027 gr/dscf at 8% $O_2$, and 0.020 gr/dscf at 8% $O_2$ annual average.

*$NO_X$:* The analysis of $NO_X$ controls for this unit found that SCR and SNCR do not appear to be technically feasible due to the nature and purpose of the recovery boiler. As particulate matter captured from the exhaust gas stream is used in creating green liquor, the addition of ammonia upsets the delicate chemical make-up of the recovered salts. The catalyst used in SCR would be ''poisoned'' by the alkaline salts in the exhaust gas stream. Washington determined that $NO_X$ BART for this furnace is the current staged combustion system with an emission limit of 140 ppm at 8% $O_2$.

*$SO_2$:* Wet and dry sorbent injection systems were considered as control options for $SO_2$. However, since the recovery furnace is intended to recover sodium and sulfur for reuse in the pulping process, the recovery furnace is designed to capture these chemical compounds and thus emits little $SO_2$ emissions. Weyerhaeuser and Washington's analysis found that

neither a wet lime scrubber, a limestone scrubber nor semi-dry or dry sorbent injection system are likely to reduce much $SO_2$ from this unit. Washington determined that BART is the current operation of the furnace using a tertiary air system, use of good operating practices and meeting the emission limitation in PSD permit 92–03 Amendment 4, of 75 ppm at 8% $O_2$.

*No. 10 Smelt Dissolver Tank*

The smelt tank only emits PM and is currently regulated by the most stringent BACT emission limit in the EPA RBLC, which is more stringent than the MACT standard. Because this unit is not a source of $NO_X$ emission and only a negligible source of $SO_2$ emissions no additional controls are necessary for these pollutants. Washington determined that PM BART for this unit is current level of control provided by the existing wet scrubber and an emission limit of 0.12 lb/ton black liquor.

**No. 11 Power Boiler**

This power boiler currently uses overfire air to provide efficient combustion, a multiclone followed by an ESP for control of PM, and trona injection after the multiclone and before the ESP to control $SO_2$.

*PM:* Alternative control options were considered for PM control on the power boiler. Fabric filters are not feasible due to the fire hazard from burning wood chips. Wet ESPs are no more efficient than the existing dry ESP. Washington also found that space constraints on the No. 11 power boiler would prevent or require expensive infrastructure modifications to provide the space necessary for modifications to either the PM or $SO_2$ controls currently in place. Washington determined that BART for PM at the No. 11 power boiler is the existing multiclone followed by dry ESP with an emission limit of 0.10 lb/MMBtu.

*$NO_X$:* SCR and SNCR were evaluated for $NO_X$ control. SCR with a control efficiency of 75% is not cost effective at $13,000/ton. SNCR with a control efficiency of 25% is not cost effective at $6686/ton. As described in the SIP submittal, Washington agreed with Weyerhaeuser's analysis finding that there is no other $NO_X$ reduction technology that is technically and economically feasible for this unit. Washington determined that BART is the existing combustion system with an emission limit of (0.30x + 0.70y)/(x + y) lb per MMBtu (derived from solid fossil fuel, liquid fossil fuel and wood residue) where 40 CFR 60.44(b) defines the variables.

*$SO_2$:* The current dry sorbent (trona) injection system has a control efficiency of 25%. Additional control options including low sulfur fuel oil or coal and wet calcium scrubbing were evaluated. Due to the limited use of either oil or coal, emission reductions from changing to low sulfur coal would provide negligible $SO_2$ reductions and limited improvement in visibility. Hydrated lime injection is technically infeasible due to lime build-up on the ID fan blades causing potential fan failure and unsafe explosion conditions. LSFO and lime spray dryer control technologies are not cost effective at over $17,000/ton. Washington determined $SO_2$ BART for the No. 11 power boiler is the continued use of low sulfur fuels and dry trona sorbent injection with an emission limit of 1000 ppm at 7% $O_2$, 1-hour average, (0.8y +1.2z)/(y +z) lb per MMBtu. (derived from burning a mixture of liquid and solid fossil fuel) where 40 CFR 60.43(b) defines the variables).

*Summary and Conclusion for Weyerhaeuser BART:*

In conclusion for the Weyerhaeuser Company, Longview, for all of the reasons summarized above, Washington determined that the existing controls, techniques and emission limits constitute BART for $NO_X$, $SO_2$, and PM at the facility. On July 7, 2010, Washington issued Weyerhaeuser Company Order No. 7840 containing the BART requirements. After review of the SIP submittal, EPA proposes to find that the BART determination and BART compliance order for Weyerhaeuser is reasonable and proposes to approve it.

**Summary of Weyerhaeuser Proposed BART Technology**

The table below summarizes the proposed BART technology for Weyerhaeuser.

| Emission unit | BART technology |
|---|---|
| No. 11 Power Boiler | PM: Existing ESP 0.050 grain/dscf at 7% $O_2$ (current limit).<br>$NO_X$: Existing Combustion System (0.30x + 0.70y)/(x + y) lb per MMBtu (derived from solid fossil fuel, liquid fossil fuel and wood residue) (40 CFR 60.44(b) which also defines the variables)<br>$SO_2$: Fuel mix and trona injection system 1000 ppm at 7% $O_2$, 1-hour average, (0.8y + 1.2z)/(y + z) lb per MMBtu (derived from burning a mixture of liquid and solid fossil fuel) (40 CFR 60.43(b) which also defines the variables). |
| No. 10 Recovery Furnace | PM: Existing ESP 0.027 gr/dscf, per test, and 0.020 grain/dscf, annual average (current BACT limits in PSD 92–03, Amendment 4).<br>$NO_X$: Existing Staged Combustion System 140 ppm at 8% $O_2$ (current BACT limit in PSD 92–03, Amendment 4).<br>$SO_2$: Good Operating Practices 75 PPM at 8% $O_2$ (current BACT limit in PSD 92–03, Amendment 4). |
| Smelt Dissolver Tank | PM: Existing High Efficiency Wet Scrubber 0.120 lb/BLS (current BACT limit in PSD 92–03, Amendment 4).<br>$NO_X$: No limit required.<br>$SO_2$: No limit required. |

*F. Determination of Reasonable Progress Goals*

The RHR requires states to show ''reasonable progress'' toward natural visibility conditions over the time period of the SIP, with 2018 as the first milestone year. The RHR also requires that the state establish an RPG, expressed in deciviews (dv), for each Class I area within the state that provides for reasonable progress towards achieving natural visibility conditions by 2064. As such, the state must establish a Reasonable Progress Goals (RPGs) for each Class I area that provides for visibility improvement for the most-impaired (20% worst) days and ensures no degradation in visibility for the least-impaired (20% best) days in 2018.

RPGs are estimates of the progress to be achieved by 2018 through implementation of the LTS which includes anticipated emission

reductions from all state and federal regulatory requirements implemented between the baseline and 2018, including but not limited to BART and any additional controls for non-BART sources or emission activities including any federal requirements that reduce visibility impairing pollutants. As explained above, the rate needed to achieve natural conditions by 2064 is referred to as the uniform rate of progress or URP.

If the state establishes a reasonable progress goal that provides for a slower rate of improvement than the rate that would be needed to attain natural conditions by 2064, the state must demonstrate, based on the factors in 40 CFR 51.308(d)(l)(i)(A), that the rate of progress for the implementation plan to attain natural conditions by 2064 is not reasonable; and the progress goal adopted by the state is reasonable. The state must provide to the public for review as part of its implementation plan an assessment of the number of years it would take to attain natural conditions if visibility continues at the rate of progress selected by the state. 40 CFR 51.308(d)(B)(ii).

Washington identified the visibility improvement by 2018 in each of the mandatory Class I areas as a result of implementation of the SIP submittal BART emission limits, using the results of the Community Multi-Scale Air Quality (CMAQ) modeling conducted by WRAP. CMAQ modeling identified the extent of visibility improvement for each Class I area by pollutant specie. The WRAP CMAQ modeling predicted visibility impairment by Class I area based on 2018 projected source emission inventories, which included federal and state regulations already in place (''on the books'') and BART limitations. A more detailed description of the CMAQ modeling performed by the WRAP can be found in the WRAP TSD. The modeling projected that statewide emissions of $SO_2$ will decline by almost 40% between the baseline period and 2018 attributable to a 29% reduction in point source emissions and a 95% reduction in on and off-road mobile sources. See e.g. SIP submittal at 9–3. Additionally, the WRAP's Particulate Matter Source Apportionment Technology (PSAT) analysis for 2018 indicates that sources beyond the control of the state that are outside the modeling domain, Canada or Pacific offshore that will contribute about two-thirds or more of the sulfate concentrations in many of the Class I areas. The modeling projected that nitrate concentrations will decrease by 46% between the baseline and 2018 primarily due to reductions in $NO_X$ emissions from on-road and off-road mobile sources. Again, the PSAT analysis indicates the majority of the remaining nitrate in 2018 will come from sources in Canada, Pacific offshore or outside the modeling domain. See e.g. SIP submittal 9–4.

Chapter 9 of the SIP submittal discusses the establishment of the RPGs for 2018 for each Class I area in Washington. Table 9–4 of the SIP submittal presents the RPG's for each Class I area in Washington. These goals provide for modest improvement in visibility on the 20% most impaired days, but not to the level of 2018 URP in any of the Class I areas. The goals also provide for no degradation on the 20% least impaired days.

Washington relied on the regional modeling conducted by the WRAP in establishing the RPGs. The WRAP ran several emission scenarios representing base case and 2018 emissions. Washington elected to use the model run with emissions in the ''Preliminary Reasonable Progress'' emission estimates for 2018 (PRP18a). The WRAP modeling for the 2018 RPGs does not account for a number of changes in projected emissions that occurred subsequent to completion of the model runs including reductions that are expected to occur as a result of the proposed FIP. These include:

- Emission reductions resulting from final SIP and FIP BART determinations
- Emission reductions from International Maritime Organization Emission Control Area for the west coast of the U.S. and Canada
- Reductions in $SO_2$ emissions from $SO_2$ control measures on three oil refineries: TSEORO, Shell (Puget Sound Refining) and Conoco-Phillips
- Proposed Better than BART alternative federal emission limitations on Intalco
- Proposed Better than BART alternative federal program for Tesoro
- Additional $NO_X$ emission reductions of 8022 t/y from the TransAlta BART determination

Therefore, the RPGs established by Washington are conservative and do not account for the above additional emission reductions that have already been, or are expected to be achieved by 2018.

As part of its reasonable progress analysis, Washington conducted a generalized four-factor analysis on those source categories that have the greatest visibility impact and determined that it should focus on the $SO_2$ and $NO_X$ emissions and the source categories that emit more than 1000 t/y. Specific analysis was completed on the following three source categories: (1) Industrial processes, (2) external combustion boilers, and (3) stationary internal combustion engines.

Industrial processes account for 22,112 t/y of $SO_2$ emissions, primarily from aluminum smelting, petroleum processing (process heaters, catalytic cracking units, and flares), sulfate (Kraft) pulping, and wet process cement manufacturing. Of these industrial processes, external combustion boilers account for 13,783 t/y of $SO_2$ emissions primarily from burning process gas, wood waste, residual oil, and bituminous and sub-bituminous coal for electricity generation. Stationary internal combustion engines fueled by natural gas account for 911 t/y of $SO_2$ emissions.

Other industrial processes account for 19,070 t/y $NO_X$ emissions primarily from wet and dry process cement manufacturing, glass manufacturing, sulfate (Kraft) pulping, sulfite pulping, and petroleum process heaters. External combustion boilers account for 26,895 t/y $NO_X$ emissions primarily from burning bituminous and sub-bituminous coal for electricity generation, wood waste, process gas, and natural gas. Internal combustion engines account for 2,544 t/y $NO_X$ emissions fueled by natural gas.

There are five crude oil refineries located in Washington. Process heaters are fueled with waste refinery gas, using natural gas as back-up. Two of the five refineries are subject to BART (BP Cherry Point and Tesoro) and BART determinations were made for them. See the previous BART discussion. The three other meet the NSPS limit for sulfur in refinery fuel gas.

Washington also considered the significant visibility impact caused by natural fire in three of the Class I Areas: North Cascades National Park, Glacier Peak Wilderness Area, and Pasayten Wilderness Area. The WRAP's analysis found that emissions attributable to natural fire are not expected to significantly change between the baseline and 2018. Washington found that if these projections are correct, the impact of natural fire is so great in these three areas that they will not be able to achieve the estimated natural conditions.

Washington's reasonable progress analysis found that emissions, particularly $SO_2$ and $NO_X$, from Canada result in significant impact on visibility in the Class I areas. Additionally, Pacific offshore emissions are significant in all areas except the Pasayten Wilderness Area. Of the sulfate impairment in Olympic National Park on the most impaired days, 73% originates from a

combination of sources located outside the modeling domain, Canada, and Pacific offshore. Of the nitrate impairment in Olympic National Park on the most impaired days, 43% originates from sources in these areas. Similar impairment profiles exist in the other Class I areas in Washington. In Washington's view, Washington's mandatory Class I areas will not be able to attain natural conditions without further controls on Canadian and Pacific offshore emissions and the lack of controls inhibits these Class I areas' ability to achieve the URP and lengthens the time it will take to achieve natural conditions.

In establishing the 2018 RPGs, Washington did not account (or take credit) for almost 10,000 tons of $SO_2$ reductions that occurred in the 2003 to 2005 timeframe from implementation of various control technologies from the Tesoro, ConocoPhillips, and Shell refineries. Tesoro installed wet FGD on the CO Boiler (Fluidized Catalyst Cracker) in 2005 for a reduction of 4740 t/y $SO_2$ and is considered BART in Washington's BART determination. Conoco-Phillips installed wet-FGD on its CO boiler for a reduction of 2041 t/y $SO_2$ which was not included in the WRAP modeling for RPGs. Shell Puget Sound Refining installed wet-FGD on their CO boiler for a reduction of 3045 t/y $SO_2$ which was not included in the WRAP modeling. Washington relied on the WRAP modeling in establishing the RPG's, thus the goals of the SIP submittal underestimate actual improvement that is anticipated.

EPA proposes to find that the Washington Regional Haze SIP submittal meets the requirements of 40 CFR 51.308(d)(1). As discussed above, the RPGs established by Washington are conservative and do not account for a significant amount of additional emission reductions that have already been, or are anticipated to be achieved by 2018. These include the emission reductions expected from the BART determinations and Better than BART determinations proposed today and the almost 10,000 t/y $SO_2$ emission reductions from three refineries in northwest Washington.

As explained in EPA's RPG Guidance, the 2018 URP estimate is not a presumptive target and the Washington's RPGs may be lesser, greater or equivalent to the glide path. The glide path to 2064 represents a linear rate of progress to be used for analytical comparison to the amount of progress expected to be achieved. EPA believes that the RPGs established by Washington for the Class I areas in Washington, although not achieving the URP, are reasonable when considering the additional emission reductions expected to result from the BART controls, additional reductions on refineries not included in the reasonable progress demonstration and the significant contributions to visibility impairment from natural fire and from sources beyond Washington's regulatory jurisdiction. Additional controls on point sources or other source categories at this time is not likely to result in substantial visibility improvement in the first planning period due to the significant contribution from emissions from natural fire, the Pacific offshore, Canada, and outside the modeling domain.

EPA believes that actual visibility improvement in all Class I areas by 2018 will be significantly better than the RPGs established in the SIP submittal would suggest. The RPG's established in the SIP for the Class I areas in Washington meet the federal requirements by showing visibility improvement on the 20% worst days and no degradation on the 20% best days. EPA is proposing to find that Washington has demonstrated that its 2018 RPGs are reasonable for the first planning period and meet the requirements of 40 CFR 51.308(d)(1).

*G. Long Term Strategy*

The Long Term Strategy required by 40 CFR 51.308(d)(3) is a compilation of all existing and anticipated new air pollution control measures (both those identified in this SIP submittal as well as measures resulting from other air pollution requirements.) The LTS must include ''enforceable emission limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within or affected by emissions from the state. 40 CFR 51.308(d)(3). In developing a LTS, Washington identified existing programs and rules, and additional new controls that may be needed for other CAA requirements.

The Regional Haze Rule requires that states consider seven topics: (1) Ongoing air pollution control programs including measures to address RAVI, (2) measures to mitigate impacts of construction activities, (3) emission limitations and schedules for compliance, (4) source retirement and replacement schedules, (5) smoke management techniques for agricultural and forestry burning, (6) enforceability of emission limitations and control measures, and (7) the anticipated net effects on visibility due to projected changes in point, area and mobile source emissions over the first planning period which ends in 2018. 40 CFR 50.308(d)(3). In their reasonable progress analysis, Washington addressed each of these topics and added two additional factors; commercial marine shipping and residential wood combustion.

1. Emission reductions due to ongoing air pollution control programs. Washington discussed a number of current federal, state, and local permit programs and regulations that limit visibility impairing emissions from point, area, on-road and non-road mobile sources. The programs and requirements include for example the New Source Review and Washington's Reasonable Available Control technology (RACT) permitting requirements, the BART requirements and Washington's Smoke Management Plan.

2. Measures to mitigate impacts of construction activities. Washington explained that due to the location of the Class I areas relative to the urban areas in Washington, construction activities have not been identified as contributing to visibility impairment in the Class I areas. Washington also explained however, that construction activities are regulated under Washington or under local air quality authority rules and policies governing mitigation of air pollution from construction activities.

3. Emission limitations and schedules for compliance. The submission states that in addition to current state and federal rules, the BART requirements are important to achieving the estimated emission reductions necessary to meet the 2018 RPG. To this end, Washington issued enforceable BART Orders containing compliance schedules to each source subject to BART. The BART Orders are included as part of the SIP submittal.

4. Source retirement and replacement schedules. Washington is not aware of any scheduled and documented retirement or replacement of point sources emitting visibility impairing pollutants so source retirement and replacement schedules are not included as part of Washington's long term strategy. However, if Washington receives notice of source retirement or replacement in the future it commits to including the emission reductions into the long term strategy in its periodic updates.

5. Smoke management techniques for agricultural and forestry burning. In Washington agricultural burning is regulated by Washington and local agencies which establish controls for agricultural burning to minimize adverse health effects and environmental effects, including visibility. Washington's silvicultural

Smoke Management Plan was incorporated into the Washington RAVI SIP on June 11, 2003. See 68 FR 3482.

6. Enforceability of emission limitations and control measures. Emission limits on stationary sources are enforceable as a matter of state law under chapter 173–400 Washington Administrative Code, General Regulations for Air pollution Sources. Additionally, as mentioned above, Washington issued enforceable BART Orders to each BART source which will later be incorporated into the source's Title 5 permit.

7. Anticipated net effects on visibility due to projected changes in point, area and mobile source emissions over the first planning period. Washington relied on modeling results from the WRAP projecting the anticipated visibility improvement in 2018 for the LTS. See SIP submittal, Table 10–3. As explained above, in the discussion regarding the reasonable progress demonstration, due to the fact that the WRAP modeling was conducted prior to many emission reduction activities that have, or will occur, the projections in Table 10–3 of the SIP submittal are conservative. Thus, the actual visibility improvement is likely to be better than projected.

In addition to the seven factors discussed above, Washington also included two additional elements in their long term strategy; residential wood combustion program and woodstove change-outs and controls on emissions from commercial marine shipping. EPA acknowledges these additional measures, but it is not necessary to take these specific activities into account at this time in evaluating whether the enforceable measures contained in Washington's LTS satisfy the RHR requirements.

Washington consulted with surrounding states through participation in the WRAP to ensure that Washington would achieve its fair share of reductions so that Class I areas in other states can meet their RPGs. No state specifically requested Washington for emission reductions beyond those assumed by the WRAP when it completed its modeling of 2018 visibility conditions. Additionally, Washington commits to updating its comprehensive LTS on the schedule set by the RHR for the Regional Haze SIP updates.

EPA is proposing to find that Washington adequately addressed the RHR requirements in developing its LTS because it includes all the control measures that were anticipated at the time of the SIP development. The SIP submittal contains sufficient documentation to ensure that Washington's LTS will enable it to achieve the RPGs established for the mandatory Class I areas in Washington as well as the RPGs established by other states for the Class I areas where Washington sources are reasonably anticipated to contribute to visibility impairment.

Washington's analysis included consideration of all anthropogenic sources of visibility impairment including major and minor stationary sources, mobile sources and area sources. The anticipated net effect on visibility over the first planning period due to changes in point, area and mobile source emissions is an improvement in visibility in all Class I areas in Washington on the worst 20% days and no degradation of visibility on the 20% best days. EPA proposes to approve the Long Term Strategy (LTS) contained in the SIP submittal because it includes all the control measures that were anticipated at the time of the SIP development and the LTS as a whole provides sufficient measures to ensure that Washington will meet its emission reduction obligations.

*H. Monitoring Strategy and Other Implementation Requirements*

The primary monitoring network for regional haze in Washington is the IMPROVE network. As discussed previously, there are currently IMPROVE sites that represent conditions for all mandatory Class I areas in Washington.

IMPROVE monitoring data from 2000–2004 serves as the baseline for the regional haze program, and is relied upon in the Washington SIP submittal. In the SIP submittal, Washington commits to rely on the IMPROVE network for complying with the regional haze monitoring requirement in EPA's RHR for the current and future regional haze implementation periods. See chapter 12 of the SIP submittal. Washington will also rely on the continued existence of the WRAP and on the WRAP's work to provide adequate technical support to meet its commitment to conduct the analyses required under the 40 CFR 51.308(d)(4) and will collaborate with the WRAP members to ensure the continued operation of the technical support tools. Data produced by the IMPROVE monitoring network will be used for preparing the 5-year progress reports and the 10-year SIP revisions, each of which relies on analysis of the preceding 5 years of data. Washington also commits to updating its statewide emissions inventory periodically.

*I. Consultation With States and Federal Land Managers*

Through the WRAP, member states and Tribes worked extensively with the FLMs from the U.S. Departments of the Interior and Agriculture to develop technical analyses that support the regional haze SIPs for the WRAP states. Washington provided the proposed Regional Haze plan for Washington to the FLMs for comment in March 2010. See appendix B of the SIP submittal. Washington also consulted with the states of Idaho and Oregon, and all WRAP member states and Tribes.

*J. Periodic SIP Revisions and 5-Year Progress Reports*

Section 51.308(f) of the RHR requires that the regional haze plans be revised and submitted to EPA by July 31, 2018 and every 10 years thereafter. 40 CFR 51.308(g) requires the state to submit a progress report to EPA every 5 years evaluating the progress made towards the reasonable progress goals for each Class I area in the state and each Class I area located outside the state which may be affected by emissions from within the state. Washington commits to evaluate and assess each of the elements required under 40 CFR 51.308(f) and to submit a comprehensive Regional Haze SIP revision to EPA by July 31, 2018, and every 10 years thereafter. Washington also commits to submitting a report on its reasonable progress to EPA every 5 years to evaluate the progress made towards the RPGs and to address each of the elements specified in 40 CFR 51.308(g). See chapter 12 of the SIP submission.

*V. What action is EPA proposing?*

EPA is proposing a partial approval for most elements of the Washington Regional Haze SIP submittal. EPA is proposing a limited approval and limited disapproval of the State's $SO_2$ BART determinations for the Intalco potlines, and proposes a Better than BART alternative. The limited approval of the State's BART Order for Intalco is strengthening the SIP and the Better than BART FIP limiting annual $SO_2$ emissions to 5240 t/y is a BART alternative. This Better than BART alternative, as offered by Alcoa, will incur no cost to Alcoa as it currently operates within this emission limit. EPA is also proposing to disapprove the Tesoro $NO_X$ BART determinations for emission units F–304, F–6650, F–6651, F–6652, and F–6653 and proposes a FIP for an alternative Better than BART. This Better than BART alternative, as offered by Tesoro, will incur no cost to

Tesoro as they currently operate within these emission limits.

## VI. Washington Notice

Washington's Regulatory Reform Act of 1995, codified at chapter 43.05 Revised Code of Washington (RCW), precludes ''regulatory agencies'', as defined in RCW 43.05.010, from assessing civil penalties under certain circumstances. EPA has determined that chapter 43.05 of the RCW, often referred to as ''House Bill 1010,'' conflicts with the requirements of CAA section 110(a)(2)(A) and (C) and 40 CFR 51.230(b) and (e). Based on this determination, Ecology has determined that chapter 43.05 RCW does not apply to the requirements of chapter 173–422 WAC. See 66 FR 35115, 35120 (July 3, 2001). The restriction on the issuance of civil penalties in chapter 43.05 RCW does not apply to local air pollution control authorities in Washington because local air pollution control authorities are not ''regulatory agencies'' within the meaning of that statute. See 66 FR 35115, 35120 (July 3, 2001).

In addition, EPA is relying on the State's interpretation of another technical assistance law, RCW 43.21A.085 and .087, to conclude that the law does not impinge on the State's authority to administer Federal Clean Air Act programs. The Washington Attorney Generals' Office has concluded that RCW 43.21A.085 and .087 do not conflict with Federal authorization requirements because these provisions implement a discretionary program. EPA understands from the State's interpretation that technical assistance visits conducted by the State will not be conducted under the authority of RCW 43.21A.085 and .087. See 66 FR 16, 20 (January 2, 2001); 59 FR 42552, 42555 (August 18, 1994).

## VII. Scope of Action

This proposed SIP approval does not extend to sources or activities located in ''Indian Country'' as defined in 18 U.S.C. 1151.[11] Consistent with previous Federal program approvals or delegations, EPA will continue to implement the Act in Indian Country because Washington did not adequately demonstrate authority over sources and activities located within the exterior boundaries of Indian reservations and other areas of Indian Country. The one exception is within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area.

## VIII. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). The proposed FIP applies to only two facilities and is not a rule of general applicability.

### *B. Paperwork Reduction Act*

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under the Paperwork Reduction Act, a ''collection of information'' is defined as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *.'' 44 U.S.C. 3502(3)(A). Because the proposed FIP applies to just two facilities, the Paperwork Reduction Act does not apply. *See* 5 CFR 1320(c). Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers for our regulations in 40 CFR are listed in 40 CFR part 9.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of this proposed action on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. The FIP for the two Washington facilities being proposed today does not impose any new requirements on small entities. The proposed partial approval of the SIP, if finalized, merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. *See Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327 (DC Cir. 1985).

### *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

[11] ''Indian country'' is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation.

inflation) in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 of UMRA do not apply when they are inconsistent with applicable law. Moreover, section 205 of UMRA allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Under Title II of UMRA, EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of $100 million by state, local, or Tribal governments or the private sector in any 1 year. In addition, this proposed rule does not contain a significant Federal intergovernmental mandate as described by section 203 of UMRA nor does it contain any regulatory requirements that might significantly or uniquely affect small governments.

*E. Executive Order 13132: Federalism*

*Federalism* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct-effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation. This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely addresses the state not fully meeting its regional haze SIP obligations established in the CAA. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

Executive Order 13175, Entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175 because the SIP and FIP do not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials. Consistent with EPA policy, EPA nonetheless provided a consultation opportunity to Tribes in Idaho, Oregon and Washington in letters dated January 14, 2011. EPA received one request for consultation, and we have followed-up with that Tribe. On September 20, 2012, EPA provided an additional consultation opportunity to 7 Tribes in Washington specific to the Washington regional haze plan. We received no requests for consultation.

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

Executive Order 13045: *Protection of Children From Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. EPA interprets EO 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it implements specific standards established by Congress in statutes. However, to the extent this proposed rule will limit emissions of $NO_X$, $SO_2$, and $PM_{10}$ the rule will have a beneficial effect on children's health by reducing air pollution.

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

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

*I. National Technology Transfer and Advancement Act*

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

The EPA believes that VCS are inapplicable to the proposed partial approval of the SIP that if finalized, merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. The FIP portion

of this proposed rulemaking involves technical standards. EPA proposes to use American Society for Testing and Materials (ASTM) Methods and generally accepted test methods previously promulgated by EPA. Because all of these methods are generally accepted and are widely used by State and local agencies for determining compliance with similar rules, EPA believes it would be impracticable and potentially confusing to put in place methods that vary from what is already accepted. As a result, EPA believes it is unnecessary and inappropriate to consider alternative technical standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

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

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. We have determined that this proposed rule, if finalized, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low income populations. This proposed FIP limits emissions of $SO_2$ from two facilities in Washington. The partial approval of the SIP, if finalized, merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law.

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

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

Dated: November 30, 2012.

**Dennis J. McLerran,**

*Regional Administrator, Region 10.*

40 CFR part 52 is proposed to be 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 WW—Washington

2. Section 52.2498 is amended by adding paragraph (c) to read as follows:

### § 52.2498 Visibility protection.

* * * * *

(c) The requirements of sections 169A and 169B of the Clean Air Act are not met because the plan does not include approvable provisions for protection of visibility in mandatory Class I Federal areas, specifically the Best Available Retrofit Technology (BART) requirement for regional haze visibility impairment (§ 51.308(e)). The EPA BART regulations are found in §§ 52.2500 and 52.2501.

* * * * *

3. Add §§ 52.2500 and 52.2501 to read as follows:

### § 52.2500 Best available retrofit technology requirements for the Intalco Aluminum Corporation (Intalco Works) primary aluminum plant—Better than BART Alternative.

(a) *Applicability.* This section applies to the Intalco Aluminum Corporation (Intalco Works) primary aluminum plant located in Ferndale, Washington and to its successors and/or assignees.

(b) *Better than BART Alternative—Sulfur dioxide ($SO_2$) emission limit for potlines.* Starting January 1, 2014, $SO_2$ emissions from all pot lines in aggregate must not exceed a total of 5,240 tons for any calendar year.

(c) *Compliance demonstration.* (1) Intalco shall determine on a calendar month basis, $SO_2$ emissions using the following formula:

$SO_2$ emissions in tons per calendar month = (carbon consumption ratio) × (% sulfur in baked anodes/100) × (% sulfur converted to $SO_2$/100) × (2 pounds of $SO_2$ per pound of sulfur) × (tons of aluminum production per calendar month).

(i) Carbon consumption ratio is the calendar month average of tons of baked anodes consumed per ton of aluminum produced as determined using the baked anode consumption and production records required in paragraph (e)(2) of this section.

(ii) % sulfur in baked anodes is the calendar month average sulfur content as determined in paragraph (d) of this section.

(iii) % sulfur converted to $SO_2$ is 95%.

(2) Calendar year $SO_2$ emissions shall be calculated by summing the 12 calendar month $SO_2$ emissions for the calendar year.

(d) *Emission monitoring.* (1) The % sulfur of baked anodes shall be determined using ASTM Method D6376 or an alternative method approved by EPA Region 10.

(2) Intalco shall collect at least four anode core samples during each calendar week.

(3) Calendar month average sulfur content shall be determined by averaging the sulfur content of all samples collected during the calendar month.

(e) *Recordkeeping.* (1) Intalco shall record the calendar month $SO_2$ emissions and the calendar year $SO_2$ emissions determined in paragraphs (c)(1) and (c)(2) of this section.

(2) Intalco shall maintain records of the baked anode consumption and aluminum production data used to develop the carbon consumption ratio used in paragraph (c)(i) of this section.

(3) Intalco shall retain a copy of all calendar month carbon consumption ratio and potline $SO_2$ emission calculations.

(4) Intalco shall record the calendar month net production of aluminum and tons of aluminum produced each calendar month. Net production of aluminum is the total mass of molten metal produced from tapping all pots in all of the potlines that operated at any time in the calendar month, measured at the casthouse scales and the rod shop scales.

(5) Intalco shall record the calendar month average sulfur content of the baked anodes.

(6) Records are to be retained at the facility for at least five years and be made available to EPA Region 10 upon request.

(f) *Reporting.* (1) Intalco shall report the calendar month $SO_2$ emissions and the calendar year $SO_2$ emissions to EPA Region 10 at the same time as the annual compliance certification required by the Part 70 operating permit for the Intalco Works is submitted to the Title V permitting authority.

(2) All documents and reports shall be sent to EPA Region 10 electronically, in a format approved by the EPA Region 10, to the following email address: *R10-AirPermitReports@epa.gov*.

**§ 52.2501 Best available retrofit technology (BART) requirement for the Tesoro Refining and Marketing Company oil refinery—Better than BART Alternative.**

(a) *Applicability.* This section applies to the Tesoro Refining and Marketing Company oil refinery located in Anacortes, Washington and to its successors and/or assignees.

(b) *Better than BART alternative.* The Sulfur dioxide ($SO_2$) emission limitation for non-BART eligible process heaters and boilers (Units F–101, F–102, F–201, F–301, F–652, F–751, and F–752) follows.

(1) *Compliance date.* Starting no later than [60 DAYS AFTER PUBLICATION OF THE FINAL RULE], Units F–101, F–102, F–201, F–301, F–652, F–751, and F–752 shall only fire refinery gas meeting the criteria in paragraph (b)(2) of this section or pipeline quality natural gas.

(2) *Refinery fuel gas requirements.* In order to limit $SO_2$ emissions, refinery fuel gas used in the units from blend drum V–213 shall not contain greater than 0.10 percent by volume hydrogen sulfide ($H_2S$), 365-day rolling average, measured according to paragraph (d) of this section.

(c) *Compliance demonstration.* Compliance with the $H_2S$ emission limitation shall be demonstrated using a continuous emissions monitoring system as required in paragraph (d) of this section.

(d) *Emission monitoring.* (1) A continuous emissions monitoring system (CEMS) for $H_2S$ concentration shall be installed, calibrated, maintained and operated measuring the outlet stream of the fuel gas blend drum subsequent to all unmonitored incoming sources of sulfur compounds to the system and prior to any fuel gas combustion device. The monitor shall be certified in accordance with 40 CFR part 60 appendix B and operated in accordance with 40 CFR part 60 appendix F.

(2) Record the calendar day average $H_2S$ concentration of the refinery fuel gas as measured by the CEMS required in paragraph (d)(1) of this section. The daily averages shall be used to calculate the 365-day rolling average.

(e) *Recordkeeping.* Records of the daily average $H_2S$ concentration and 365-day rolling averages are to be retained at the facility for at least five years and be made available to EPA Region 10 upon request.

(f) *Reporting.* (1) Calendar day and 365-day rolling average refinery fuel gas $H_2S$ concentrations shall be reported to EPA Region 10 at the same time that the semi-annual monitoring reports required by the Part 70 operating permit for the Tesoro oil refinery are submitted to the Title V permitting authority.

(2) All documents and reports shall be sent to EPA Region 10 electronically, in a format approved by the EPA Region 10, to the following email address: *R10-AirPermitReports@epa.gov*.

[FR Doc. 2012–30090 Filed 12–21–12; 4:15 pm]

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# FEDERAL REGISTER

Vol. 77 Wednesday,

No. 247 December 26, 2012


Part III

## The President

Presidential Determination No. 2013–03 of December 7, 2012—Presidential Determination Pursuant to Section 1245(d)(4)(B) and (C) of the National Defense Authorization Act for Fiscal Year 2012

Federal Register
Vol. 77, No. 247
Wednesday, December 26, 2012

# Presidential Documents

**Title 3—**

## The President

**Presidential Determination No. 2013–03 of December 7, 2012**

## Presidential Determination Pursuant to Section 1245(d)(4)(B) and (C) of the National Defense Authorization Act for Fiscal Year 2012

**Memorandum for the Secretary of State[,] the Secretary of the Treasury[, and] the Secretary of Energy**

By the authority vested in me as President by the Constitution and the laws of the United States, after carefully considering the report submitted to the Congress by the Energy Information Administration on October 25, 2012, and other relevant factors, including global economic conditions, increased oil production by certain countries, the level of spare capacity, and the availability of strategic reserves, I determine, pursuant to section 1245(d)(4)(B) and (C) of the National Defense Authorization Act for Fiscal Year 2012, Public Law 112–81, and consistent with my determinations of March 30, 2012, and June 11, 2012, that there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the volume of petroleum and petroleum products purchased from Iran by or through foreign financial institutions.

I will closely monitor this situation to ensure that the market can continue to accommodate a reduction in purchases of petroleum and petroleum products from Iran.

The Secretary of State is authorized and directed to publish this memorandum in the **Federal Register**.

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

[FR Doc. 2012–31133
Filed 12–21–12; 8:15 am]
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**Federal Register**

Vol. 77, No. 247

Wednesday, December 26, 2012

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## FEDERAL REGISTER PAGES AND DATE, DECEMBER

71483–71686 ..... 3
71687–72194 ..... 4
72195–72680 ..... 5
72681–72912 ..... 6
72913–73262 ..... 7
73263–73540 .....10
73541–73896 .....11
73897–74102 .....12
74103–74340 .....13
74341–74554 .....14
74555–74774 .....17
74775–75006 .....18
75007–75360 .....19
75361–75506 .....20
75507–75822 .....21
75823–76214 .....26

## CFR PARTS AFFECTED DURING DECEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
8909 .....72195
8910 .....72675
8911 .....72677
8912 .....72679
8913 .....72911
8914 .....73891
8915 .....74345
8916 .....75357
8917 .....75359
8918 .....75505
8919 .....75821

**Executive Orders:**
13630 .....73893
13631 (See EO 13544 of 6/10/2010; continued by EO 13591) .....74101
13632 .....74341

**Administrative Orders:**
Presidential Determinations:
No. 2013-02 of December 4, 2012 .....74553
No. 2013-03 of December 7, 2012 .....76213
Memorandums:
Memorandum of December 22, 2010 .....75507

**5 CFR**

532 .....74347
870 .....71687
Ch. XCVIII .....74347

**Proposed Rules:**
532 .....75589

**6 CFR**

**Proposed Rules:**
115 .....75300

**7 CFR**

319 .....75007
457 .....75509
915 .....71688
922 .....72681
923 .....72683
927 .....72197

**Proposed Rules:**
905 .....73961
927 .....72245
3201 .....72654

**8 CFR**

100 .....75823

**9 CFR**

98 .....74555
417 .....72686

**Proposed Rules:**
94 .....74787

**10 CFR**

171 .....72199
430 .....74559
710 .....71689

**Proposed Rules:**
50 .....74788
51 .....75065
61 .....72997
429 .....72763
430 .....74616
431 .....72763, 74616, 75400

**11 CFR**

**Proposed Rules:**
110 .....74121

**12 CFR**

25 .....75521
195 .....75521
228 .....75521
308 .....74573
345 .....75521
390 .....74573
615 .....75362
703 .....74103
704 .....74103
709 .....74103
713 .....74112
741 .....74103
905 .....73263
1090 .....72913
1200 .....73263
1282 .....75361
1700 .....73263

**Proposed Rules:**
Ch. X .....74625
1209 .....72247

**13 CFR**

117 .....75362
121 .....72691, 72702

**Proposed Rules:**
121 .....72766

**14 CFR**

21 .....71691
39 .....71483, 71485, 71487, 71489, 71491, 72200, 72203, 72913, 73265, 73268, 73270, 73273, 73279, 73282, 73897, 73902, 73906, 73908, 74579, 75825, 75827, 75831, 75833
71 .....71492, 71493, 75836
73 .....75837
91 .....72766, 72778
97 .....71494, 71495, 71497, 71499
117 .....73911
119 .....73911
121 .....73911

**Proposed Rules:**
25 .....75066, 75071

39 .....71723, 71729, 71731, 72250, 72252, 72766, 72778, 73340, 73343, 73557, 74123, 74125, 74126, 74628, 75073, 75402, 75590, 75906, 75908, 75911
71 .....71734, 75593, 75594, 75596, 75597, 75598
91.....72998, 75600
121 .....71735, 72998, 75600
125 .....71735, 72998, 75600
135 .....71735, 72998, 75600

**15 CFR**

6.....72915
744.....72917
748.....75011
774.....72917
902.....71501
950.....75014
**Proposed Rules:**
922.....75601
1400.....72254

**16 CFR**

455.....73912
681.....72712
1107.....72205
1500.....73286, 73289
1700.....73294
**Proposed Rules:**
240.....71741
455.....74746
1112.....73345, 73354
1222.....73345
1225.....73354

**17 CFR**

1.....74351, 75523
39.....74284
50.....74284
240.....73302, 74775
249.....73302
**Proposed Rules:**
Ch. II.....71743
240.....71568

**18 CFR**

40.....75838
**Proposed Rules:**
806.....75915

**19 CFR**

4.....73306
10.....72715
24.....72715, 73306
101.....73306, 75823
102.....72715, 73306
122.....73310
123.....72715
127.....73306
128.....72715
141.....72715
143.....72715
145.....72715
148.....72715
159.....73306
161.....73306
177.....73306

**21 CFR**

1.....74582
173.....71695
**Proposed Rules:**
150.....71746
500.....72254
520.....72254
522.....72254
524.....72254
529.....72254
556.....72254
558.....72254
573.....71750
1300.....75784
1301.....75784
1304.....75784
1305.....75784
1307.....75784
1308.....75075
1317.....75784
1321.....75784

**24 CFR**

203.....72219
232.....72920
1000.....71513

**25 CFR**

162.....72240

**26 CFR**

1 .....72923, 74583, 75016, 75844
40.....72721
46.....72721
48.....72924
602.....72721
**Proposed Rules:**
1 .....72268, 72612, 73965
31.....72268
301.....74798

**27 CFR**

25.....72939
**Proposed Rules:**
25.....72999

**28 CFR**

**Proposed Rules:**
811.....73558

**29 CFR**

9.....75780
1206.....75543
1612.....75362
4022.....74353
4044.....75549
**Proposed Rules:**
18.....72142
1910.....72781
1926.....72781
2520.....74063
2550.....74063
2578.....74063

**30 CFR**

**Proposed Rules:**
926.....73965
944.....73966
1206.....71751

**31 CFR**

515.....71530
560.....75845
**Proposed Rules:**
356.....72278
1010.....72783

**32 CFR**

68.....72941
706.....72736, 74113
**Proposed Rules:**
157.....72788

**33 CFR**

100 .....71531, 72956, 72957, 73311, 75550
117 .....72737, 74586, 74775, 75553, 75554, 75556
165 .....71697, 72957, 73541, 73916, 74587, 74777, 74781, 74784, 75016, 75017, 75556, 75557, 75559, 75850, 75853
**Proposed Rules:**
117.....73967, 75917
165 .....74814, 75079, 75602

**34 CFR**

685.....72960
**Proposed Rules:**
Subtitle A .....74407
75.....74392
77.....74392

**36 CFR**

7.....73919

**37 CFR**

1.....75019
**Proposed Rules:**
201.....72788
203.....72788

**38 CFR**

51.....72738
53.....73312
**Proposed Rules:**
3.....73366
17.....75918

**39 CFR**

20.....72960
111.....75362
3020.....75377

**40 CFR**

9.....75390, 75566
52 .....71533, 71551, 71700, 72512, 72742, 72966, 72968, 73313, 73316, 73320, 73322, 73544, 73923, 73924, 73926, 74115, 74355, 74372, 74590, 75035, 75380, 75383, 75384, 75386, 75388, 75862, 75865
55.....72744
63.....75740
80 .....72746, 74592, 75868
81.....75862, 75865
82.....74381
122.....72970
180 .....71555, 72223, 72232, 72747, 72975, 72984, 73934, 73937, 73940, 73945, 73951, 74116, 75037, 75039, 75560, 75561, 75855, 75859
716.....71561
721.....75390, 75566
**Proposed Rules:**
51.....75704
52 .....71568, 71751, 72284, 72287, 72291, 73005, 73369, 73386, 73387, 73391, 73392, 73560, 73570, 73575, 74129, 74421, 74817, 74820, 75933, 76174
60.....72294, 73968
63.....72294, 73968
81.....73560, 73575
82.....74435
131 .....74449, 74924, 74985
180.....75082
721.....75085

**42 CFR**

8.....72752
70.....75880
71.....75885
73.....71702
438.....74381
441.....74381
447.....74381
495.....72985
**Proposed Rules:**
70.....75936
71.....75939

**44 CFR**

64.....74607, 75891
67 .....71702, 73324, 74610
**Proposed Rules:**
67 .....73393, 73394, 73396, 73398, 74142

**45 CFR**

170.....72985
**Proposed Rules:**
153.....73118
155.....73118
156.....73118
157.....73118
158.....73118
800.....72582

**46 CFR**

8.....73334
**Proposed Rules:**
10.....74630

**47 CFR**

0.....71711
54.....71711, 71712
64.....75894
73 .....71713, 72237, 73545
101.....73956
300.....75567
**Proposed Rules:**
1.....73586, 73969
20.....72294
27.....73969
73.....73969, 75946
76.....72295
79.....75404
90.....74822

**48 CFR**

Ch. 1.....73516, 73520, 75766, 75780
1.....75766
2.....75766
4.....73516
22.....75766
25.....73516
52.....73516, 75766
2401.....73524
2402.....73524
2403.....73524
2404.....73524
2406.....73524
2407.....73524
2409.....73524

2415 ....73524
2416 ....73524
2417 ....73524
2419 ....73524
2426 ....73524
2427 ....73524
2428 ....73524
2432 ....73524
2437 ....73524
2439 ....73524
2442 ....73524
2452 ....73524
908 ....74382
945 ....74382
952 ....74382
970 ....74382

**Proposed Rules:**

12 ....75089
32 ....75089
52 ....75089
538 ....74631
552 ....74631

**49 CFR**

219 ....75896
229 ....75045
567 ....71714
571 ....71717

**Proposed Rules:**

234 ....73589
235 ....73589
236 ....73589
571 ....71752, 72296, 74144
665 ....74452

**50 CFR**

17 ....71876, 72070, 73740, 73770, 75266
300 ....71501
622 ....72991, 73338, 73555, 74119, 74389, 75568
635 ....72993, 74612, 75896
648 ....71720, 72242, 72762, 72994, 73556, 73957, 74390, 75057, 75569
679 ....72243, 72995, 75399, 75570

**Proposed Rules:**

17 ....71757, 71759, 73828, 75091, 75947
223 ....73220
224 ....73220
300 ....73969
622 ....75093
635 ....73608
648 ....72297, 74159
660 ....73005, 75101
679 ....72297, 72791, 75966
680 ....74161

## LIST OF PUBLIC LAWS

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**H.R. 6156/P.L. 112–208**
Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountabilty Act of 2012 (Dec. 14, 2012; 126 Stat. 1496)

**H.R. 3187/P.L. 112–209**
March of Dimes Commemorative Coin Act of 2012 (Dec. 18, 2012; 126 Stat. 1510)

**H.R. 6582/P.L. 112–210**

American Energy Manufacturing Technical Corrections Act (Dec. 18, 2012; 126 Stat. 1514)

**S. 3486/P.L. 112–211**

Patent Law Treaties Implementation Act of 2012 (Dec. 18, 2012; 126 Stat. 1527)

**Last List December 11, 2012**

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