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Contents

Federal Register

Vol. 78, No. 1

Wednesday, January 2, 2013

Agricultural Marketing Service
RULES
Irish Potatoes Grown in Colorado:
Modification of Handling Regulation for Area No. 2, 3–5
Soybean Promotion and Research:
Amend Order To Adjust Representation on United Soybean Board, 1–2
PROPOSED RULES
Paper and Paper-Based Packaging Promotion, Research and Information Order, 188–210
Pears Grown in Oregon and Washington:
Modification of Assessment Rate for Fresh Pears, 34–36
Referendum Procedures:
Paper and Paper-Based Packaging Promotion, Research and Information Order, 212–216

Agriculture Department
See Agricultural Marketing Service
See Food Safety and Inspection Service

Antitrust Division
NOTICES
Disclosures of Changes in Membership Pursuant to National Cooperative Research and Production Act:
DVD Copy Control Association, 118
Interchangeable Virtual Instruments Foundation, Inc., 117
PXI Systems Alliance, Inc., 117–118

Antitrust
See Antitrust Division

Centers for Medicare & Medicaid Services
NOTICES
Medicare and Medicaid Programs:
Hospital Requesting Waiver for Organ Procurement Service Area, 98–100

Coast Guard
RULES
Navigation Areas:
Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District; Extension of Stay, Suspension, 25–27

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Commodity Futures Trading Commission
RULES
Business Conduct and Documentation Requirements:
Swap Dealers and Major Swap Participants; Extension of Compliance Date, 17–22

Defense Department
NOTICES
Meetings:
Defense Intelligence Agency National Intelligence University Board of Visitors, 90–91

Department of Transportation
See Pipeline and Hazardous Materials Safety Administration

Energy Department
See Federal Energy Regulatory Commission
PROPOSED RULES
Energy Conservation Program:
Test Procedures for Residential Clothes Dryers, 152–185

Environmental Protection Agency
PROPOSED RULES
Approvals and Promulgations of Air Quality Implementation Plans:
Utah; Maintenance Plan for 1997 8-Hour Ozone Standard for Salt Lake County and Davis County, 37–45
Approvals and Promulgations of Implementation Plans:
Georgia; New Source Review–Prevention of Significant Deterioration, 45–51
Designations of Areas for Air Quality Planning Purposes:
California; Morongo Band of Mission Indians, 51–59
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
NSPS for Small Municipal Waste Combustors, 94–95
NSPS for Stationary Combustion Turbines, 93–94
Requests for Amendments To Delete Uses in Certain Pesticide Registrations, 95–97

Executive Office of the President
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness Directives:
Airbus Airplanes, 7–9, 15–17
Rolls-Royce plc Turbofan Engines, 5–7
The Boeing Company Airplanes, 9–15

Federal Communications Commission
RULES
Radio Broadcasting Services:
Westley, CA, 32
NOTICES
Meetings:
Emergency Access Advisory Committee, 97

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 97

Federal Emergency Management Agency
RULES
Final Flood Elevation Determinations, 27–32

Federal Energy Regulatory Commission
NOTICES
Combined Filings, 91–93

Federal Reserve System
NOTICES
Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company, 97

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
Listing Honduran Emerald Hummingbird, 59–72
NOTICES
Permits:
Endangered Species, 112–113
Endangered Species; Marine Mammals, 113–114

Food and Drug Administration
RULES
New Animal Drugs:
Meloxicam; Nicarbazin, 22–25
NOTICES
Guidance for Industry and Food and Drug Administration Staff; Availability:
Acceptance and Filing Reviews for Premarket Approval Applications, 101–102
eCopy Program for Medical Device Submissions, 102–104
Refuse to Accept Policy for 510(k)s, 100–101
Meetings:
Advisory Committees; 2013 Tentative Schedule, 104–105

Food Safety and Inspection Service
NOTICES
Meetings:
Codex Alimentarius Commission; Codex Committee on Food Import and Export Inspection and Certification Systems, 83–84

Foreign Assets Control Office
NOTICES
Blocking or Unblocking of Persons and Property:
Designation of Individuals Involved in Transnational Criminal Organizations, 148–149

Health and Human Services Department
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See National Institutes of Health
NOTICES
Determinations Concerning Petitions:
Add Classes of Employees to the Special Exposure Cohort, 98
Test Tools and Test Procedures Approved by National Coordinator; Availability:
ONC HIT Certification Program, 98

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency

Indian Affairs Bureau
NOTICES
Land Acquisitions:
Enterprise Rancheria of Maidu Indians of California, 114

Industry and Security Bureau
NOTICES
Orders Denying Export Privileges:
Boniface U. Ibe, 84–85
Emenike Charles Nwankwoala, 85–86
Henson Chua; Celltron Marketing Co., 86–88

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See National Park Service

Internal Revenue Service
PROPOSED RULES
Shared Responsibility for Employers Regarding Health Coverage, 218–253

International Trade Administration
NOTICES
Antidumping Duty Administrative Reviews; Results, Extensions, Amendments, etc.:
Polyethylene Retail Carrier Bags From People's Republic of China, 88
Antidumping Duty New Shipper Reviews; Results, Extensions, Amendments, etc.:
Fresh Garlic From People's Republic of China, 2011–2012, 88–89

International Trade Commission
NOTICES
Complaints:
Certain Cases for Portable Electronic Devices, 116
Certain Wireless Communications Equipment and Articles Therein, 115–116
Determinations:
Certain Reduced Folate Nutraceutical Products and L-Methylfolate Raw Ingredients Used Therein, 117

Justice Department
See Antitrust Division

National Archives and Records Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 118–119

National Institute of Standards and Technology
NOTICES
Meetings:
Information Security and Privacy Advisory Board, 89–90

National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Formative Research, Pretesting, and Customer Satisfaction of National Cancer Institute's Communication and Education Resources, 105–106
Calls for Committee Membership Nominations:
National Institute of Neurological Disorders and Stroke, Interagency Pain Research Coordinating Committee, 106
Meetings:
Center for Scientific Review, 107–110
National Human Genome Research Institute, 107
National Institute of Allergy and Infectious Diseases, 108
National Institute of Biomedical Imaging and Bioengineering, 107–108
Supplemental Records of Decisions:
Final Supplementary Risk Assessment; Boston University National Emerging Infectious Diseases Laboratories, 110–112

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Northeastern United States:
Summer Flounder Fishery; Quota Transfer, 33

PROPOSED RULES
Fisheries off West Coast States:
Pacific Coast Groundfish Fishery Management Plan; Trawl Rationalization Program; Reconsideration of Allocation of Whiting, 72–82

National Park Service
NOTICES
Meetings:
Fort Hancock 21st Century Advisory Committee, 114–115

Nuclear Regulatory Commission
NOTICES
Applications Containing Sensitive Unclassified Non-Safeguards Information:
Proposed Energy Future Holdings Corporation Internal Restructuring, 119–123
License Amendment Requests, etc.:
Diablo Canyon; Independent Spent Fuel Storage Installation, 123–127
Meetings; Sunshine Act, 127–128

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

Patent and Trademark Office
NOTICES
Calls for Nominations:
National Medal of Technology and Innovation, 90

Personnel Management Office
RULES
Prevailing Rate Systems:
Abolishment of Washington, DC, Special Wage Schedule; Printing Positions, 1

Pipeline and Hazardous Materials Safety Administration
NOTICES
Environmental Assessments; Availability, etc.:
Longhorn Pipeline Reversal Project, 146–147

Public Debt Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 149

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 128
Self-Regulatory Organizations; Proposed Rule Changes:
Boston Stock Exchange Clearing Corp.; NASDAQ OMX Group, Inc., 132–136
Chicago Board Options Exchange, Inc., 138–140
NASDAQ Stock Market LLC, 136–138
Options Clearing Corp., 140–142
Stock Clearing Corp. of Philadelphia, 128–132
Suspension of Trading Orders:
Desert Mining, Inc., et al., 143
Southridge Enterprises, Inc., 143

Social Security Administration
NOTICES
World Health Organization International Classification of Functioning, Disability and Health Standards:
Coding Functional Capability in Federal Programs, 143–144

State Department
NOTICES
Culturally Significant Objects Imported for Exhibition; Determinations:
Girl with a Pearl Earring, Dutch Paintings from Mauritshuis, 144
Presidential Permits To Operate and Maintain Pipeline Facilities on U.S. and Canada Border:
Enbridge Energy, LP; Application, 144–145
United States-Korea Environmental Cooperation Agreement, 145

Trade Representative, Office of United States
NOTICES
Determination of Trade Surplus in Certain Sugar and Syrup Goods and Sugar-Containing Products:
Chile, Morocco, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Peru, Colombia, and Panama; Correction, 146

Transportation Department
See Federal Aviation Administration
See Pipeline and Hazardous Materials Safety Administration

Treasury Department
See Foreign Assets Control Office
See Internal Revenue Service
See Public Debt Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 147–148

Separate Parts In This Issue

Part II
Energy Department, 152–185

Part III
Agriculture Department, Agricultural Marketing Service, 188–210

Part IV
Agriculture Department, Agricultural Marketing Service, 212–216

Part V
Treasury Department, Internal Revenue Service, 218–253

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.

5 CFR
532.....1

7 CFR
948.....3
1220.....1

Proposed Rules:
927.....34
1222 (2 documents) 188, 212

10 CFR

Proposed Rules:
429.....152
430.....152

14 CFR
39 (4 documents).....5, 7, 9, 15

17 CFR
23.....17

21 CFR
520.....22
558.....22

26 CFR

Proposed Rules:
1.....218
54.....218
301.....218

33 CFR
165.....25

40 CFR

Proposed Rules:
52 (2 documents) 37, 45
81.....51

44 CFR
67.....27

47 CFR
73.....32

50 CFR
648.....33

Proposed Rules:
17.....59
660.....72

Rules and Regulations

Federal Register

Vol. 78, No. 1

Wednesday, January 2, 2013

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AM59

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

AGENCY: U.S. Office of Personnel Management.

ACTION: Correcting amendment.

SUMMARY: The U.S. Office of Personnel Management published a final rule in the **Federal Register** on December 14, 2012, abolishing the Washington, DC, Federal Wage System special wage schedule for printing and lithographic positions. The final rule incorrectly listed the page number of the interim rule published on July 13, 2012, in the words of issuance. This document corrects this error.

DATES: Effective: January 2, 2013.

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

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** on December 14, 2012 (77 FR 74347), the U.S. Office of Personnel Management (OPM) incorrectly listed the page number of the interim rule published on July 13, 2012, as 41427 instead of 41247 in the words of issuance. The page number is correctly listed in the supplementary information of the interim rule. This document corrects the error.

Office of Personnel Management.

Jerome D. Mikowicz,

Deputy Associate Director for Pay and Leave.

[FR Doc. 2012–31521 Filed 12–31–12; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[Doc. No. AMS–LS–12–0022]

Soybean Promotion and Research: Amend the Order To Adjust Representation on the United Soybean Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adjusts the number of members on the United Soybean Board (Board) to reflect changes in production levels that have occurred since the Board was reapportioned in 2009. As required by the Soybean Promotion, Research, and Consumer Information Act (Act), membership is reviewed every 3 years and adjustments are made accordingly. This change results in an increase in Board membership for Mississippi, increasing the total number of Board members from 69 to 70. The change will be effective for the 2013 nomination and appointment process.

DATES: *Effective Date:* January 3, 2012.

FOR FURTHER INFORMATION CONTACT: Emily DeBord, Agricultural Marketing Specialist, Marketing Programs Division, Livestock, Poultry and Seed Program, AMS, USDA, Room 2628–S, STOP 0249, 1400 Independence Avenue SW., Washington, DC 20250–0249; Telephone 202/690–2611; Fax 202/720–1125; or email to *Emily.DeBord@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule was reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. The Soybean Promotion, Research, and Consumer Information Act (Act) provides that nothing in this subtitle may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1971 of the Act, a person subject to the Soybean Promotion, Research, and Consumer Information Order (Order) may file a petition with the Secretary of Agriculture (Secretary) stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district courts of the United States in any district in which such person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, if a complaint for this purpose is filed within 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act

The Agricultural Marketing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), because it only adjusts representation on the Board to reflect changes in production levels that have occurred since the Board was reapportioned in 2009. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened. As such, these changes will not impact on persons subject to the program.

There are an estimated 589,182 soybean producers and an estimated 10,000 first purchasers who collect assessments, most of whom would be considered small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR 121.201]. SBA defines small agricultural producers as those having annual receipts of less than $750,000, and small agricultural firms as those having annual receipts of less than $7,000,000.

Paperwork Reduction Act

In accordance with OMB regulations [5 CFR part 1320] that implement the Paperwork Reduction Act of 1995 [44

U.S.C. Chapter 35], the information collection and recordkeeping requirements contained in the Order and Rules and Regulations have previously been approved by OMB under OMB control number 0581–0093.

Background

The Act (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace, and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 percent of the net market price of soybeans sold by producers. Pursuant to the Act, an Order was made effective July 9, 1991. The Order established a Board of 60 members. For purposes of establishing the Board, the United States was originally divided into 30 geographic units. Representation on the Board from each unit was determined by the level of production in each unit. The Secretary appointed the initial Board on July 11, 1991. The Board is composed of soybean producers.

Section 1220.201(c) of the Order provides that at the end of each three (3) year period, the Board shall review soybean production levels in the geographic units throughout the United States. The Board may recommend to the Secretary modification in the levels of production necessary for Board membership for each unit.

Section 1220.201(d) of the Order provides that at the end of each three (3) year period, the Secretary must review the volume of production of each unit and adjust the boundaries of any unit and the number of Board members from each such unit as necessary to conform with the criteria set forth in § 1220.201(e): (1) To the extent practicable, States with annual average soybean production of less than 3,000,000 bushels shall be grouped into geographically contiguous units, each of which has a combined production level equal to or greater than 3,000,000 bushels, and each such group shall be entitled to at least one member on the Board; (2) units with at least 3,000,000 bushels, but fewer than 15,000,000 bushels shall be entitled to one Board member; (3) units with 15,000,000 bushels or more but fewer than 70,000,000 bushels shall be entitled to two Board members; (4) units with 70,000,000 bushels or more but fewer than 200,000,000 bushels shall be entitled to three Board members; and (5) units with 200,000,000 bushels or more shall be entitled to four Board members.

The Board was last reapportioned in 2009. The total Board membership increased from 68 to 69 members, with Ohio gaining one additional member. This change was effective with the 2010 appointments.

Currently, the Board has 69 members representing 30 geographical units. This membership is based on average production levels for the years 2004–2008 (excluding crops in years that production was the highest and that production was the lowest) as reported by the U.S. Department of Agriculture's (USDA) National Agricultural Statistics Service (NASS).

Comments

A proposed rule was published in the **Federal Register** (74 FR 27467) on July 10, 2012, with a 60-day comment period. USDA received one comment. The comment mainly addressed food production in the United States, which is not relevant to the rulemaking. The comment also asked that the Board be reduced from 70 members to five (5) members. Such a reduction in the number of members on the Board would not be consistent with the Act and Order. Accordingly, no change is made as a result of this comment.

The increase in representation on the Board, from 69 to 70 members, is based on average production levels for the years 2007–2011 (excluding the crops in years in which production was the highest and in which production was the lowest) as reported by NASS. The change does not affect the number of geographical units.

This final rule increases Board membership from 69 members to 70 members effective with 2013 nominations and appointments.

This final rule adjusts representation on the Board as follows:

State	Previous representation	Current representation
Mississippi	2	3

List of Subjects in 7 CFR Part 1220

Administrative practice and procedure; Advertising; Agricultural research; Marketing agreements; Soybeans and soybean products; and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Title 7, part 1220 is amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

■ 1. The authority citation for 7 CFR Part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311 and 7 U.S.C. 7401.

■ 2. In § 1220.201, paragraph (a), the table is revised to read as follows:

§ 1220.201 Membership of board.

(a) * * *

Unit	Number of members
Illinois	4
Iowa	4
Minnesota	4
Indiana	4
Nebraska	4
Ohio	4
Missouri	3
Arkansas	3
South Dakota	3
Kansas	3
Michigan	3
North Dakota	3
Mississippi	3
Louisiana	2
Tennessee	2
North Carolina	2
Kentucky	2
Pennsylvania	2
Virginia	2
Maryland	2
Wisconsin	2
Georgia	1
South Carolina	1
Alabama	1
Delaware	1
Texas	1
Oklahoma	1
New York	1

Unit	Number of members
Eastern Region (Massachusetts, New Jersey, Connecticut, Florida, Rhode Island, Vermont, New Hampshire, Maine, West Virginia, District of Columbia, and Puerto Rico)	1
Western Region (Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Arizona, Washington, Oregon, Nevada, California, Hawaii, and Alaska)	1

* * * * *

Dated: December 26, 2012.

David R. Shipman,

Administrator.

[FR Doc. 2012–31511 Filed 12–31–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Doc. No. AMS–FV–12–0043; FV12–948–1 IR]

Irish Potatoes Grown in Colorado; Modification of the Handling Regulation for Area No. 2

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule modifies the grade requirements for potatoes handled under the Colorado potato marketing order, Area No. 2 (order). The order regulates the handling of Irish potatoes grown in Colorado and is administered locally by the Colorado Potato Administrative Committee, Area No. 2 (Committee). This rule relaxes the minimum grade requirement for size B and 1-inch to 1¾-inch diameter round, red-skinned potatoes handled under the Colorado potato marketing order from U.S. No. 1 to U.S. Commercial. This change is expected to facilitate the handling and marketing of the Area No. 2 potato crop, provide producers and handlers with increased returns, and supply consumers with increased potato purchasing options.

DATES: Effective January 3, 2013; comments received by March 4, 2013 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov*. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Barry.Broadbent@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Laurel.May@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule modifies the minimum requirements for certain potatoes handled under the order's handling regulation. This rule relaxes the minimum grade requirement for all size B (1½-inch to 2¼-inch diameter) and 1-inch to 1¾-inch diameter round, red-skinned potatoes handled under the order to U.S. Commercial. Prior to this change, round, red-skinned potatoes in the above size ranges were required to meet or exceed the requirements of the U.S. No. 1 grade standard if such potatoes were to be shipped outside the State of Colorado. This rule is a relaxation of the handling regulation and will make the minimum grade requirements for round, red-skinned potatoes consistent with the current minimum grade requirements for all other varieties of similarly sized potatoes handled under the order. This change was unanimously recommended by the Committee at a meeting held on July 19, 2012.

Section 948.22 authorizes the issuance of grade, size, quality, maturity, pack, and container regulations for potatoes grown in the production area. Section 948.21 further authorizes the modification, suspension, or termination of regulations issued pursuant to § 948.22.

Under the Colorado potato marketing order, the State of Colorado is divided into three areas of regulation for marketing order purposes. These include: Area 1, commonly known as the Western Slope; Area 2, commonly known as San Luis Valley; and, Area 3, which consists of the remaining producing areas within the State of Colorado not included in the definition of Area 1 or Area 2. Currently, the order only regulates the handling of potatoes produced in Area 2 and Area 3. Regulation for Area 1 has been suspended.

The grade, size, and maturity regulations specific to the handling of potatoes grown in Area 2 are contained in § 948.386 of the order. The current handling regulation requires that all potatoes handled under the order must meet the minimum requirements of the U.S. No. 2 grade and be 2 inches or greater in diameter. Smaller size potatoes may be handled if such potatoes meet the requirements of certain higher grades. For all varieties, except round, red-skinned varieties, size B and 1-inch to 1¾-inch diameter potatoes may be handled if such potatoes meet the requirements of the U.S. Commercial grade. Round, red-skinned varieties of the above size profiles must meet the minimum requirements of the U.S. No. 1 grade standard to be handled under the order.

At the July 19 Committee meeting, industry participants indicated to the Committee that there is an emerging market for smaller size U.S. Commercial grade round, red-skinned potatoes for use in certain value added potato products. They further stated that the order's current U.S. No. 1 grade requirement for small-size, round, red-skinned potatoes precludes them from

supplying that market. Relaxing the minimum grade requirement for such potatoes will allow area handlers to compete with other domestic potato producing regions for this developing market segment.

Changing the handling regulations to allow small-size, round, red-skinned potatoes to meet or exceed U.S. Commercial grade, instead of the more stringent U.S. No. 1 grade, will make more small potatoes available to consumers and will allow Area 2 handlers to move more of the area's potato production into the fresh market. This change is expected to benefit producers, handlers, and consumers of round, red-skinned potatoes.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA)(5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 80 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 180 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

During the 2010–2011 marketing year, the most recent full marketing year for which statistics are available, 15,583,512 hundredweight of Colorado Area No. 2 potatoes were inspected under the order and sold into the fresh market. Based on an estimated average f.o.b. price of $12.75 per hundredweight, the Committee estimates that 71 Area No. 2 handlers, or about 89 percent, had annual receipts of less than $7,000,000. In view of the foregoing, the majority of Colorado Area No. 2 potato handlers may be classified as small entities.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Colorado fall potatoes for 2010–2011 was $9.37 per hundredweight. The average annual fresh potato revenue for each of the 180 Colorado Area No. 2 potato producers is therefore calculated to be approximately $811,208. Consequently, on average, many of the Area No. 2 Colorado potato producers may not be classified as small entities.

This rule relaxes the minimum grade requirement for size B and 1-inch to 1¾-inch diameter round, red-skinned potato varieties from U.S. No. 1 grade to U.S. Commercial. Authority for this action is contained in §§ 948.21 and 948.22.

This relaxation is expected to benefit the producers, handlers, and consumers of Colorado potatoes by allowing a greater quantity of fresh potatoes from the production area to enter the market. This anticipated increase in volume is expected to translate into greater returns for handlers and producers, and more purchasing options for consumers.

After discussing possible alternatives to this rule, the Committee determined that a relaxation in the grade requirement for small-size, round, red-skinned potatoes from U.S. No. 1 to U.S. Commercial would sufficiently meet the industry's current needs while maintaining the integrity of the order. During its deliberations, the Committee considered making no changes to the handling regulations as well as relaxing the minimum grade requirement for all small-size potatoes to U.S. No. 2. The Committee believes that a relaxation in the handling regulation for small potatoes is necessary to allow handlers to pursue new markets, but lowering the grade requirements for small-size potatoes to U.S. No. 2 would erode the quality reputation of the area's potatoes. The Committee, therefore, found that there were no other viable alternatives to the recommended relaxation of the minimum grade requirements for round, red-skinned potatoes handled under the order from U.S. No. 1 to U.S. Commercial.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Colorado potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the July 19, 2012, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on a modification of the grade and maturity requirement prescribed under the Colorado potato marketing order. Any comments received will be considered prior to the finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is hereby found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action is a relaxation of the current handling regulation; (2) handlers are already shipping potatoes from the 2012–2013 crop and may want to take advantage of this relaxation as soon as possible; (3) handlers are aware of this rule, which was initiated by the industry and unanimously

recommended by the Committee at a public meeting during which interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

■ 1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 948.386, paragraphs (a)(3) and (4) are revised to read as follows:

§ 948.386 Handling regulation.

* * * * *

(a) * * *

(3) *1½-inch minimum to 2¼-inch maximum diameter (Size B).* U.S. Commercial grade or better.

(4) *1-inch minimum diameter to 1¾-inch maximum diameter.* U.S. Commercial grade or better.

* * * * *

Dated: December 26, 2012.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2012–31513 Filed 12–31–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0482; Directorate Identifier 2012–NE–14–AD; Amendment 39–17290; AD 2012–25–09]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Rolls-Royce plc (RR) RB211–524G2–19; RB211–524G2–T–19; RB211–524G3–19; RB211–524G3–T–19; RB211–524H2–19; RB211–524H2–T–19; RB211–524H–36; RB211–524H–T–36; RB211–535E4–37; RB211–535E4–B–37; RB211–535E4–B–75; and RB211–535E4–C–37 turbofan engines. This AD was prompted by an investigation by RR concluding that certain intermediate-pressure (IP) turbine discs produced before 1997 by a certain supplier may contain steel inclusions. This AD requires removal of the affected IP turbine discs to inspect them for steel inclusions, and removal of the affected discs from service if they fail the inspection. This AD also requires removal from service of some IP turbine discs at reduced life limits. We are issuing this AD to prevent uncontained IP turbine disc failure, engine failure, and damage to the airplane.

DATES: This AD becomes effective February 6, 2013. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 6, 2013.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7143; fax: 781–238–7199; email: *alan.strom@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 11, 2012 (77 FR 40820). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> The inspection of several intermediate pressure (IP) turbine discs at past engine overhauls identified the presence of steel inclusions in these parts. Further investigation concluded that all affected parts were manufactured from billets produced before 1997 at a certain supplier who also melted steel in the same furnaces. Initial engineering evaluation concluded that the lives of the parts would not be affected by the presence of the said steel inclusions. This evaluation has been recently repeated, utilising improved structural analysis, and it is now concluded that the currently published lives of the components cannot be supported for some discs with a steel inclusion.

We are issuing this AD to prevent uncontained IP turbine disc failure, engine failure, and damage to the airplane.

Comments

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

Request To Provide Alternative to Inspection

One commenter, American Airlines, requested that we allow replacement of the removed IP turbine disc with a serviceable part as an alternative to the inspection mandated by paragraph (f) in the proposed AD. American noted that including this alternative would allow operators to avoid the added expense of an inspection of discs that are being removed from service.

We agree. We revised paragraph (f) of the Compliance section of the AD to allow replacement of an affected disc with a part eligible for installation.

Request To Redefine "Shop Visit"

One commenter, FedEx Express, requested that we redefine "shop visit" as any IP turbine disc exposed at shop visit, engine Level 3 (Refurbishment), Level 4 (Overhaul), or 05 Module Level 2 (Check and Repair). FedEx Express indicated that this change would align the AD with the current wording in RR Alert Service Bulletin (ASB) RB.211–72–AG493, dated October 12, 2012.

We do not agree. The terms 'Level 3' and 'Level 4' are not specific enough to be enforceable. Our definition of shop visit in the AD is consistent with the definition in MCAI AD No. 2012–0060, dated April 18, 2012. We did not change the AD based on this comment.

Request To Remove Reference to Demagnetization

Commenter Rolls-Royce requested that we remove the reference to demagnetization from Compliance paragraph (f). The disc does not need to be demagnetized as it will be magnetized as part of the Superconductive Quantitative Inductive Device (SQUID) inspection process required by paragraph (f).

We agree. We changed the references in Compliance paragraphs (f)(1) and (f)(2) from "clean, demagnetize, and perform * * *" to "clean and perform * * *". The first sentence in paragraph (f)(1) now reads: "If below the inspection threshold, clean and perform a Superconductive Quantitative Inductive Device (SQUID) inspection of the disc at the next shop visit or before the disc reaches the inspection

threshold, whichever is later.'' The first sentence in paragraph (f)(2) now reads: ''If above the inspection threshold, clean and perform a SQUID inspection of the disc if in the shop or, at the next shop visit, whichever occurs first.''

Request To Allow Full Life Limit for Parts That Pass Inspection

Commenter Rolls-Royce asked that we clarify in the AD that the new, lower life limits in Appendix 2 of ASB RB.211–72–AG493 do not apply to a part that has passed the SQUID inspection. Rolls-Royce noted that the maximum life as defined in Appendix 2 only limits the disc until it has had the SQUID inspection and been confirmed as inclusion-free. If the disc has successfully passed the inspection, then it can be returned to service for the remainder of its life as defined by the Time Limits Manual.

We agree. We changed the AD by adding the phrase ''unless it has passed the inspection required by paragraph (f) of the AD'' to paragraph (g)(3). This paragraph now reads: ''Do not return to service any disc that exceeds its maximum life (in cycles), as found in Appendix 2 of RR ASB No. RB.211–72–AG493, Revision 2, dated October 12, 2012, unless it has passed the inspection required by paragraph (f) of the AD.''

Conclusion

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

Costs of Compliance

We estimate that this AD will affect about 200 engines installed on airplanes of U.S. registry. We also estimate that it will take about 12.5 work-hours per engine to inspect an IP turbine disc. The average labor rate is $85 per work-hour. In addition, 77 discs must be removed earlier than the existing Airworthiness Limitation Section requires. A prorated replacement IP turbine disc would cost about $9,925 per engine. We also estimate the cost of replacing a disc if it fails the inspection is $225,000. Based on these figures, we estimate the cost of the AD on U.S. operators to be $976,725.

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.

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 provided 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:

2012–25–09 Rolls-Royce plc: Amendment 39–17290; Docket No. FAA–2012–0482; Directorate Identifier 2012–NE–14–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective February 6, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Rolls-Royce plc (RR) RB211–524G2–19; RB211–524G2–T–19; RB211–524G3–19; RB211–524G3–T–19; RB211–524H2–19; RB211–524H2–T–19; RB211–524H–36; RB211–524H–T–36; RB211–535E4–37; RB211–535E4–B–37; RB211–535E4–B–75; and RB211–535E4–C–37 turbofan engines with intermediate-pressure (IP) discs listed in Appendix 1 and Appendix 2 of RR Alert Service Bulletin (ASB) No. RB.211–72–AG493, Revision 2, dated October 12, 2012.

(d) Reason

This AD was prompted by an investigation by RR concluding that certain IP turbine discs produced before 1997 by a certain supplier may contain steel inclusions. We are issuing this AD to prevent uncontained IP turbine disc failure, engine failure, and damage to the airplane.

(e) Actions and Compliance

Unless already done, do the following actions.

(f) Disc Inspection

After the effective date of this AD, use Appendix 1 and Appendix 2 of RR ASB No. RB.211–72–AG493, Revision 2, dated October 12, 2012, to determine if the IP turbine disc is below or above the inspection threshold.

(1) If below the inspection threshold, clean and perform a Superconductive Quantitative Inductive Device (SQUID) inspection of the disc at the next shop visit or before the disc reaches the inspection threshold, whichever is later.

Use Appendix 4 of RR ASB No. RB.211–72–AG493, Revision 2, dated October 12, 2012, to perform the SQUID inspection.

(2) If above the inspection threshold, clean and perform a SQUID inspection of the disc if in the shop or, at the next shop visit, whichever occurs first. Use Appendix 4 of RR ASB No. RB.211–72–AG493, Revision 2, dated October 12, 2012, to perform the SQUID inspection.

(3) Do not return to service any disc that fails the inspection required by this AD.

(4) Instead of performing the inspection required by paragraph (f), you may replace an affected disc with a part eligible for installation. See Appendix 1 and Appendix 2 of RR ASB No. RB.211–72–AG493, Revision 2, dated October 12, 2012, to determine if you have an affected disc.

(g) Disc Life Intervals

(1) After the effective date of this AD, use Appendix 2 of RR ASB No. RB.211–72–AG493, Revision 2, dated October 12, 2012, to determine the maximum life (in cycles) of affected IP turbine disc(s).

(2) Remove from service any disc at the next shop visit or before it exceeds its maximum life (in cycles), whichever is later, as found in Appendix 2 of RR ASB No. RB.211–72–AG493, Revision 2, dated October 12, 2012.

(3) Do not return to service any disc that exceeds its maximum life (in cycles) as found in Appendix 2 of RR ASB No. RB.211–72–AG493, Revision 2, dated October 12, 2012, unless it has passed the inspection required by paragraph (f) of the AD.

(h) Definition of Shop Visit

For purposes of this AD, a shop visit is defined as induction into the shop where the IP and low pressure (LP) turbine module is removed from the engine, and any casing is removed from the IP and LP turbine module.

(i) Credit for Previous Actions

If you performed the actions required by paragraph (f) using RR ASB No. RB.211–72–AG493, Revision 1, dated November 11, 2011, you met the requirements of this AD.

(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 Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7143; fax: 781–238–7199; email: *alan.strom@faa.gov.*

(2) European Aviation Safety Agency AD 2012–0060, dated April 18, 2012 pertains to the subject of this AD.

(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 (RR) plc Alert Service Bulletin No. RB.211–72–AG493, Revision 2, dated October 12, 2012.

(ii) Reserved.

(3) 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 from *http://www.rolls-royce.com/contact/civil_team.jsp*, or download the publication from *https://www.aeromanager.com.*

(4) You may view this service information at FAA, 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.

(5) 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 7, 2012.

Colleen M. D'Alessandro,

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

[FR Doc. 2012–30383 Filed 12–31–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0939; Directorate Identifier 2011–NM–200–AD; Amendment 39–17298; AD 2012–26–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A330–202, –203, –223, –243, –302, –323, –342, and –343 airplanes; and Model A340–313 airplanes. This AD was prompted by reports that a specific batch of cargo doors might have deviations in quality related to door structure, such as irregular bore holes, improper application of sealant and paint, or uncleanliness. This AD requires inspecting to identify the part and serial numbers of the forward and aft cargo doors, and replacing the affected cargo doors. We are issuing this AD to prevent the degraded structural capability of the cargo door, a primary structure, from leading to failure of the door, which could lead to a breach through the door or the door detaching from the airplane, resulting in potential rapid decompression.

DATES: This AD becomes effective February 6, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 6, 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, Washington 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 20, 2012 (77 FR 58336). That NPRM proposed to correct an unsafe condition for the specified products. The Mandatory Continuing Airworthiness Information (MCAI) states:

> Investigations have shown that a specific batch of cargo doors might have deviations in quality, such as irregular bore holes, improper application of sealant and paint or cleanliness. These production deviations are related to the quality of the door structure.
>
> This condition, if not corrected, may degrade the structural integrity of the affected Forward (Fwd) and Aft cargo doors.
>
> For the reasons described above, this [European Aviation Safety Agency (EASA)] AD requires a one-time inspection to identify the [part and serial numbers of the] Fwd and Aft cargo doors, and replacement of the affected cargo doors.

* * * * *

The unsafe condition is the degraded structural capability of the cargo door, a primary structure, which could lead to failure of the door, which could detach from the airplane or have a breach through the door, resulting in potential rapid decompression. Required actions include contacting the FAA or EASA (or its delegated agent) for repair instructions for any door part/serial number that cannot be identified for a specified airplane. 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 58336, September 20, 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 58336, September 20, 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 58336, September 20, 2012).

Costs of Compliance

We estimate that this AD will affect about 6 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $1,020, or $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 52 work-hours and require parts costing $0, for a cost of $4,420 per product. The manufacturer has agreed to reimburse these labor costs. 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 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 58336, September 20, 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:

2012–26–03 Airbus: Amendment 39–17298. Docket No. FAA–2012–0939; Directorate Identifier 2011–NM–200–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective February 6, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus airplanes, certificated in any category, as identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model A330–202, –203, –223, –243, –302, –323, –342, and –343 airplanes, manufacturer serial numbers (MSN) 0796, 0832, 0840, 0845, 0849, 0853, 0855, 0861, 0862, 0866, 0868, 0871, 0873, 0876, 0879, 0882, 0885, 0887, 0889, 0891, 0892, 0896, 0898, 0899, 0903, 0904, 0905, 0907, 0913, 0927, 0930, 0935, 0936, 0937, 0940, 0943, 0944, 0946, 0949, 0952, 0954, 0964, 0971, 0975, 0982 through 0986 inclusive, 0988, 0989, 0990, 0992, 0994, 0995, 0997, 0998, 0999, 1001, 1002, 1003, 1006, 1007, 1009 through 1016 inclusive, 1018, 1020, 1022, 1023, 1026, 1028, 1029, 1037, 1045, 1049, 1052, 1053, 1055, 1058, 1060, 1061, 1065 through 1067 inclusive, 1071 through 1075 inclusive, 1077, 1080, and 1082.

(2) Model A340–313 airplanes, MSN 0955.

(d) Subject

Air Transport Association (ATA) of America Code 52: Doors.

(e) Reason

This AD was prompted by reports that a specific batch of cargo doors might have deviations in quality related to door structure, such as irregular bore holes, improper application of sealant and paint, or uncleanliness. We are issuing this AD to prevent the degraded structural capability of the cargo door, a primary structure, from leading to failure of the door, which could detach from the airplane or have a breach through the door, resulting in potential rapid decompression.

(f) Compliance

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

(g) Inspection

At the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD: Inspect to identify the part number and serial number of the airplane's forward and aft cargo doors, as applicable to MSN, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–52–3083, dated May 31, 2011 (for Model A330 airplanes); or Airbus Mandatory Service Bulletin A340–52–4093, dated May 31, 2011 (for Model A340 airplanes). A review of airplane maintenance records is acceptable in lieu of this inspection if the part number and serial number of the door can be conclusively determined from that review.

(1) Prior to the accumulation of 7,400 total flight cycles, or 72 months after the airplane's first flight, whichever occurs first.

(2) Within 60 days after the effective date of this AD.

(h) Replacement

If, during the inspection required by paragraph (g) of this AD, the part number and serial number of the airplane's forward and/or aft cargo doors, as applicable to airplane MSN, are identified in Airbus Mandatory Service Bulletin A330–52–3083, dated May 31, 2011 (for Model A330 airplanes); or Airbus Mandatory Service Bulletin A340–52–4093, dated May 31, 2011 (for Model A340 airplanes): Before further flight, replace the affected door with a new or serviceable door, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–52–3083, dated May 31, 2011 (for Model A330 airplanes); or Airbus Mandatory Service Bulletin A340–52–4093 (for Model A340 airplanes), dated May 31, 2011.

(i) Repair

If, during the inspection required by paragraph (g) of this AD, there is any discrepancy between the installed forward and/or aft cargo doors part/serial number and the airplane MSN, as that part/serial number and MSN are identified in Airbus Mandatory Service Bulletin A330–52–3083, dated May 31, 2011 (for Model A330 airplanes); or Airbus Mandatory Service Bulletin A340–52–4093, dated May 31, 2011 (for Model A340 airplanes): Within 10 days after accomplishing the inspection, contact the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the European Aviation Safety Agency (EASA) (or its delegated agent), for further instructions and time limits, and accomplish those instructions within the specified time limits.

(j) Parts Installation Prohibition

As of the effective date of this AD, no person may install on any airplane a forward or aft cargo door that was removed from any airplane as required by paragraph (h) of this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, 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, Washington 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.

(l) Related Information

Refer to MCAI EASA Airworthiness Directive 2011–0177, dated September 15, 2011 (corrected September 28, 2011), and the service information identified in paragraphs (l)(1) and (l)(2) of this AD, for related information.

(1) Airbus Mandatory Service Bulletin A330–52–3083, dated May 31, 2011.

(2) Airbus Mandatory Service Bulletin A340–52–4093, dated May 31, 2011.

(m) Material Incorporated by Reference

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

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

(i) Airbus Mandatory Service Bulletin A330–52–3083, dated May 31, 2011.

(ii) Airbus Mandatory Service Bulletin A340–52–4093, dated May 31, 2011.

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

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, 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 14, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–31026 Filed 12–31–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1419; Directorate Identifier 2010–NM–281–AD; Amendment 39–17297; AD 2012–26–02]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for certain The Boeing Company Model 737–300, –400, and –500 series airplanes. That AD currently requires repetitive inspections for cracking of the crown area of the fuselage skin, and corrective actions if necessary. This new AD adds repetitive inspections for cracking using different inspection methods and inspecting additional areas, and corrective actions if necessary. This new AD also requires additional repairs to previously repaired areas and repetitive inspections for loose fasteners and replacement if necessary in certain previously repaired areas. This AD also reduces certain compliance times and extends certain other compliance times. This AD was prompted by additional reports of

cracking at the horizontal chem-mill steps away from the lap joints over the entire crown area, and vertical chem-mill cracks adjacent to the butt joints. We are issuing this AD to detect and correct fatigue cracking of the fuselage skin, which could cause the fuselage skin to fracture and fail, and result in rapid decompression of the airplane.

DATES: This AD is effective February 6, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 6, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of August 1, 2005 (70 FR 36821, June 27, 2005).

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6447; fax: (425) 917–6590; email: *wayne.lockett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2005–13–27, Amendment 39–14164 (70 FR 36821, June 27, 2005). That AD applies to the specified products. The NPRM published in the **Federal Register** on January 19, 2012 (77 FR 2669). That NPRM proposed to continue to require repetitive inspections for cracking of the crown area of the fuselage skin, and corrective actions if necessary. That NPRM also proposed to add repetitive inspections for cracking using different inspection methods and would inspect additional areas, and corrective actions if necessary. That NPRM also proposed to require additional repairs to previously repaired areas and repetitive inspections for loose fasteners and replacement if necessary in certain previously repaired areas. That NPRM also proposed to reduce certain compliance times and extend certain other compliance times.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 2669, January 19, 2012) and the FAA's response to each comment.

Concurrence With NPRM (77 FR 2669, January 19, 2012)

The National Transportation Safety Board stated that it fully supports the NPRM (77 FR 2669, January 19, 2012).

Request To Correct References to Repair Instructions

Boeing asked that we revise the NPRM (77 FR 2669, January 19, 2012) to correct references to certain repair instructions. Boeing stated that paragraph (n)(2)(iii) of the NPRM specifies converting the time-limited repair into a permanent repair by doing the permanent repair specified in paragraph (n)(1) of the NPRM. Boeing noted that paragraph (n)(1) of the NPRM specifies installing a permanent repair in accordance with ''Part 2'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010; however, Part 2 does not give instructions for changing the time-limited repair to a permanent repair. Boeing stated that paragraph (t)(2) of the NPRM also incorrectly refers to converting the time-limited repair into a permanent repair by doing the permanent repair specified in paragraph (n)(1) of the NPRM.

Boeing stated that the correct instructions for converting the time-limited repair to a permanent repair are specified in Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, and added that paragraphs (n)(2)(iii) and (t)(2) of the NPRM (77 FR 2669, January 19, 2012) should specify doing the permanent repair in accordance with Part 4 of the Accomplishment Instructions of that service information.

We agree that the reference to paragraph (n)(1) of this AD for doing the permanent repair identified in paragraphs (n)(2)(iii) and (t)(2) of this AD is incorrect. We have changed paragraph (n)(2)(iii) of this AD to specify doing the permanent repair in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010. In addition, we have changed paragraph (t)(2) of this AD to refer to paragraph (t)(3) of this AD for the permanent repair. Paragraph (t)(3) of this AD specifies doing the permanent repair in accordance with paragraph 3.B.4. (i.e., Part 4) of the service information.

Request To Remove Certain Terminating Action

Boeing asked that we delete the last sentence in paragraph (t)(1) of the NPRM (77 FR 2669, January 19, 2012), which specified that installation of internal tear strap doublers would terminate the inspections required by paragraph (m) of the NPRM. Boeing stated that this sentence is not necessary because there are no inspection requirements in paragraph (m) of the NPRM for the areas covered by permanent repairs installed without tear strap doublers.

We agree with the commenter for the reason provided. We have deleted the referenced sentence in paragraph (t)(1) of this AD.

Request To Add Certain Terminating Action Language

Southwest Airlines (SWA) asked that we add language to paragraphs (n) and (s) of the NPRM (77 FR 2669, January 19, 2012), specifying that repairs installed in accordance with paragraphs (n) and (s) of the NPRM terminate the inspections required by paragraphs (m), (o), (p), and (q) of the NPRM.

We partially agree with the commenter's request. The repetitive inspections may be terminated after a time-limited or permanent repair has been installed, for the repaired area only. We note that paragraph (n) of this AD specifies that doing a permanent repair terminates the inspections specified in paragraph (m) of this AD for the repaired area only. We also note that paragraph (n) of this AD does not terminate paragraphs (o), (p), and (q) of this AD. Accomplishing paragraph (s) of this AD terminates the inspections

required by paragraphs (o), (p), and (q) of this AD. We have changed paragraph (s) of this AD accordingly.

Request To Include Additional Service Information

SWA asked that we include the internal inspection procedure specified in Boeing 737 Nondestructive Test (NDT) Manual, Part 6, Chapter 53–30–20, as an acceptable method for accomplishing the inspections in areas covered by non-terminating repairs as required by paragraphs (m), (o), (p), and (q) of the NPRM (77 FR 2669, January 19, 2012). SWA stated that the inspection procedure in the NDT manual has been previously approved as an alternative inspection method for paragraph (s) of AD 2005–13–27, Amendment 39–14164 (70 FR 36821, June 27, 2005), in areas covered by an existing repair that do not meet the terminating repair specified in the compliance tables in Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010.

We disagree with the commenter's request. Operators may submit a request for approval of an alternative method of compliance (AMOC) to use the inspection procedure specified in the NDT manual for accomplishing the inspections in areas covered by non-terminating repairs, as specified in paragraph (x) of this AD. We have not changed this AD in this regard.

Request To Change Compliance Time

SWA asked that we change the compliance time for the inspections proposed by paragraphs (g), (m), (o), (p), and (q) of the NPRM (77 FR 2669, January 19, 2012) from ''total flight cycles'' to ''flight cycles since panel replacement'' for airplanes on which fuselage crown skin panels that were replaced in accordance with Boeing Service Bulletin 737–53–1306, dated September 22, 2010; Revision 1, dated March 17, 2011; or Revision 2, dated October 25, 2011. SWA stated that this modification replaces crown skin panels with new skin panels, and the new skin panels should have a threshold ''from panel replacement,'' and not ''total airplane cycles.'' SWA added that accomplishing Boeing Service Bulletin 737–53–1306, original issue, Revision 1, or Revision 2 has been approved previously as an AMOC to certain requirements in multiple ADs; including AD 2005–13–27, Amendment 39–14164 (70 FR 36821, June 27, 2005), which is being superseded by the NPRM. SWA stated that the AMOC provides approval for changes in compliance time from total flight cycles to cycles since panel replacement.

We do not agree with the commenter's request to change paragraphs (g), (m), (o), (p), and (q) of this AD. The existing AMOC discussed by the commenter is approved for the restated requirements of this AD, including paragraph (g) of this AD. Due to the extent of the replacement specified in Boeing Service Bulletin 737–53–1306, dated September 22, 2010; Revision 1, dated March 17, 2011; or Revision 2, dated October 25, 2011, and the number of ADs that affect that replacement, we have determined that clarification of the AMOCs for all these ADs should be provided in a separate AMOC letter. This will ensure that multiple parties (e.g., Flight Standards, Maintenance Repair and Overhaul facilities (MROs), and operators) have access to the approval information for the replacement in one document. We have made no change to this AD in this regard.

Request for Alternate Option for Inspections

SWA asked that we revise the NPRM (77 FR 2669, January 19, 2012) to allow the inspections in paragraph (w) of the NPRM as an alternate option for the permanent repairs required by paragraph (t) of the NPRM for airplanes on which internal tear strap doublers were not installed. SWA stated that permanent repairs installed in accordance with Boeing Special Attention Service Bulletin 737–53–1234, dated June 13, 2001; or Revision 1, dated March 31, 2005; have been evaluated and determined to meet the damage tolerance requirements of part 26 of the Federal Aviation Regulations (14 CFR Part 26), as indicated in Figure 41 of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010. SWA added that accomplishing the post-repair inspections in accordance with Figure 41, at the time specified in Table 7 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, should be considered an alternate option to the requirements in paragraph (t) of the NPRM.

We do not agree with the commenter's request. The 60,000-flight-cycle threshold for the post-repair inspection addresses the critical outer fastener row installed with the repair doubler, and does not address the area of the tear strap doubler installed in accordance with paragraph (t)(1) of this AD. We have made no change to this AD in this regard.

Request To Provide Clarification

SWA asked that we provide clarification whether the notes in paragraph 3.B. of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, are applicable to paragraphs (m), (o), (p), and (q) of the NPRM (77 FR 2669, January 19, 2012).

We agree to provide clarification. The notes specified in paragraph 3.A., ''General Information,'' and paragraph 3.B., ''Work Instructions,'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, apply to all the sub-paragraphs of the Accomplishment Instructions, including the actions that correspond to the requirements of paragraphs (m), (o), (p), and (q) of this AD. We have made no change to this AD in this regard.

Explanation of Change to This AD

We have revised the heading for and the wording in paragraph (l) of this AD; this change has not changed the intent of that paragraph.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (77 FR 2669, January 19, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 2669, January 19, 2012).

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

Costs of Compliance

We estimate that this AD affects 109 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Cost per product	Cost on U.S. operators
Inspection (retained actions from AD 2005–13–27, Amendment 39-14164 (70 FR 36821, June 27, 2005)).	94 work-hours × $85 per hour = $7,990.	$7,990 per inspection cycle ..	$870,910
New NDI (non-destructive inspection) Inspections (medium frequency eddy current, magneto optical imaging, C-scan, or ultrasonic phased array).	Up to 390 work-hours × $85 per hour = $33,150.	Up to $33,150 per inspection cycle.	Up to $3,613,350.
Install internal tear strap doublers (for airplanes on which permanent repair was already done).	Up to 30 work-hours × $85 per hour = $2,550.	Up to $2,550	Up to $277,950.
Inspection for loose fasteners (for airplanes on which temporary repair was already done)[1].	1 work-hour × $85 per hour = $85.	$85	$9,265.
Install permanent repair (for airplanes on which temporary repair was already done)[1].	Up to 48 work-hours × $85 per hour = $4,080.	Up to $4,080	Up to $444,720.
Inspection adjacent to lap joint repair[1]	3 work-hours × $85 per hour = $255.	$255	$27,795.

[1] The cost for this action is for one typical repair only.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair[1]	209 work-hours × $85 per hour = $17,765	None	$17,765.

[1] Repair cost estimate is for one typical repair only.

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 have 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 DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2005–13–27, Amendment 39–14164 (70 FR 36821, June 27, 2005), and adding the following new AD:

2012–26–02 The Boeing Company: Amendment 39–17297; Docket No. FAA–2011–1419; Directorate Identifier 2010–NM–281–AD.

(a) Effective Date

This airworthiness directive (AD) is effective February 6, 2013.

(b) Affected ADs

This AD supersedes AD 2005–13–27, Amendment 39–14164 (70 FR 36821, June 27, 2005).

(c) Applicability

This AD applies to The Boeing Company Model 737–300, −400, and −500 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of cracking at the horizontal chem-mill steps away from the lap joints over the entire crown area, and vertical chem-mill cracks adjacent to the butt joints. We are issuing this AD to detect and correct fatigue cracking of the fuselage skin, which could cause the fuselage skin to fracture and fail, and result in rapid decompression of the airplane.

(f) Compliance

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

(g) Retained Initial Inspections

This paragraph restates the requirements of paragraph (g) of AD 2005–13–27, Amendment 39–14164 (70 FR 36821, June 27, 2005). At the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD, perform detailed and eddy current inspections for cracking of the crown area of the fuselage skin in accordance with Part 1, including the ''Note,'' of the Work Instructions of Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, dated March 31, 2005, except as provided by paragraph (j) of this AD. Doing the inspections required by paragraph (m) of this AD terminates the inspections required by this paragraph for the corresponding inspection areas.

(1) Before the accumulation of the applicable total flight cycles specified in the ''Threshold'' column of Table 1 of Figure 1 of Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, dated March 31, 2005.

(2) Within 4,500 flight cycles after August 1, 2005 (the effective date of AD 2005–13–27, Amendment 39–14164 (70 FR 36821, June 27, 2005).

(h) Retained Repetitive Inspections

This paragraph restates the requirements of paragraph (h) of AD 2005–13–27, Amendment 39–14164 (70 FR 36821, June 27, 2005). Repeat either the detailed or eddy current inspections specified in paragraph (g) of this AD at the applicable intervals specified in paragraph (h)(1) or (h)(2) of this AD until paragraph (i)(1) or (i)(2) of this AD has been done, as applicable. Doing the inspection required by paragraph (m) of this AD terminates the inspections required by this paragraph for the corresponding inspection area.

(1) Repeat the detailed inspections thereafter at intervals not to exceed 1,200 flight cycles.

(2) Repeat the eddy current inspections thereafter at intervals not to exceed 3,000 flight cycles.

(i) Retained Permanent or Time-Limited Repair for Cracking Found During Inspections

This paragraph restates the requirements of paragraph (i) of AD 2005–13–27, Amendment 39–14164 (70 FR 36821, June 27, 2005). If any cracking is found during any inspection required by paragraph (g) or (h) of this AD, do the actions specified in paragraph (i)(1) or (i)(2) of this AD, in accordance with Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, dated March 31, 2005, except as provided by paragraphs (j) and (k) of this AD.

(1) Before further flight, do a permanent repair (including related investigative actions and applicable corrective actions) in accordance with Part 2 of the Work Instructions of Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, dated March 31, 2005. Doing a permanent repair ends the repetitive inspections required by paragraph (h) of this AD for the repaired area only.

(2) Do the actions specified in paragraphs (i)(2)(i) and (i)(2)(ii) of this AD at the time specified in the applicable paragraph. Doing a time-limited repair ends the repetitive inspections required by paragraph (h) of this AD for the repaired area only.

(i) Before further flight, do a time-limited repair (including related investigative actions and applicable corrective actions) in accordance with Part 3 of the Work Instructions of Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, dated March 31, 2005.

(ii) At the times specified in Figure 8 of Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, dated March 31, 2005, do the related investigative and corrective actions in accordance with Part 3 of the Work Instructions of Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, dated March 31, 2005.

(j) Retained Provision for Repair per FAA

This paragraph restates the requirements of paragraph (j) of AD 2005–13–27, Amendment 39–14164 (70 FR 36821, June 27, 2005). Where Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, dated March 31, 2005, specifies to contact Boeing for appropriate action: Before further flight, repair according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or according to data meeting the certification basis of the airplane approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings; or using a method approved in accordance with the procedures specified in paragraph (x) of this AD. For a repair method to be approved, the approval must specifically reference this AD.

(k) Retained Provision, Reporting Not Required

This paragraph restates the provisions of paragraph (k) of AD 2005–13–27, Amendment 39–14164 (70 FR 36821, June 27, 2005). Although Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, dated March 31, 2005, specifies reporting certain information to Boeing, this AD does not require that action.

(l) Retained Credit for Previous Actions

This paragraph restates the requirements of paragraph (l) of AD 2005–13–27, Amendment 39–14164 (70 FR 36821, June 27, 2005). Actions done before August 1, 2005, in accordance with Boeing Special Attention Service Bulletin 737–53–1234, dated June 13, 2002 (which is not incorporated by reference in this AD), are acceptable for compliance with the corresponding actions required by paragraphs (g), (h), and (i) of this AD.

(m) New Fuselage Skin Inspections at Chem-Mill Steps Common to Lap Joints

Except as provided by paragraph (v)(1) of this AD, at the applicable time specified in Tables 1 and 2 of paragraph 1.E, ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010: Do a non-destructive inspection (NDI) (medium frequency eddy current, magneto optical imaging, C-scan, or ultrasonic phased array) for horizontal chem-mill cracking above the S–4 and S–10 lap joints, in accordance with paragraph 3.B.1.a. of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, except as provided by paragraph (r) of this AD. Repeat the applicable inspections thereafter at intervals not to exceed those specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010. Accomplishment of the inspections required by this paragraph terminates the requirements of paragraphs (g) and (h) of this AD for the corresponding inspection areas.

Note 1 to paragraph (m) of this AD: Option 1 of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, specifies doing one of the following NDI: Medium frequency eddy current inspection, magneto optical imaging inspection, or C-scan inspection. Option 2 specifies doing one NDI—an external ultrasonic phased array inspection. These options have different compliance times after the initial inspection.

(n) New Permanent or Time-Limited Repair for Cracking Found During Inspections Required by Paragraph (m) of This AD

If any cracking is found during any inspection required by paragraph (m) of this AD, do the actions specified in paragraph (n)(1) or (n)(2) of this AD.

(1) Before further flight, do a permanent repair, including related investigative actions and applicable corrective actions, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, except as provided by paragraph (v)(2) of this AD. Doing a permanent repair ends the repetitive inspections required by paragraph (m) of this AD for the repaired area only.

(2) Do the actions specified in paragraphs (n)(2)(i), (n)(2)(ii), and (n)(2)(iii) of this AD at the time specified in the applicable paragraph. Doing a time-limited repair ends the repetitive inspections required by paragraph (m) of this AD for the repaired area only.

(i) Before further flight, do a time-limited repair, including related investigative actions and applicable corrective actions, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, except as provided by paragraph (v)(2) of this AD.

(ii) Within 3,000 flight cycles after the time-limited repair was installed as specified in paragraph (n)(2)(i) of this AD, or within 500 flight cycles after the effective date of this AD, whichever occurs later, do a detailed inspection for loose fasteners, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles until the permanent repair required by paragraph (n)(2)(iii) of this AD is done. If any loose fasteners are found, before further flight, replace the fasteners with new fasteners of the same type and size, as specified in Figures 6, 35, and 36 of Boeing

Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010.

(iii) Within 6,000 flight cycles after the time-limited repair was installed, as specified in paragraph (n)(2)(i) of this AD, do the permanent repair, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, except as provided by paragraph (v)(2) of this AD.

(o) New Fuselage Skin Inspections at Chem-Mill Steps Common to Shear Wrinkle Areas

Except as provided by paragraph (v)(1) of this AD, at the applicable time specified in Table 3 of paragraph 1.E, ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010: Do an NDI (medium frequency eddy current, magneto optical imaging, C-scan, or ultrasonic phased array) for horizontal chem-mill cracking in the shear wrinkle areas, in accordance with paragraph 3.B.1.b of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010. Repeat the applicable inspections thereafter at intervals not to exceed those specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010.

(p) New Fuselage Skin Inspections at Specified Vertical Chem-Mill Step Locations

Except as provided by paragraph (v)(1) of this AD, at the applicable time specified in Table 4 of paragraph 1.E, ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010: Do an NDI (medium frequency eddy current, magneto optical imaging, C-scan, or ultrasonic phased array) for vertical chem-mill cracking at locations specified in, and in accordance with paragraph 3.B.1.c. of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010. Repeat the applicable inspections thereafter at intervals not to exceed those specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010.

(q) New Fuselage Skin Inspections at Chem-Mill Steps in General Pocket-to-Pocket Areas

Except as provided by paragraph (v)(1) of this AD, at the applicable time specified in Tables 5 and 6 of paragraph 1.E, ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010: Do an NDI (medium frequency eddy current, magneto optical imaging, C-scan, or ultrasonic phased array) for horizontal chem-mill cracking in general pocket-to-pocket areas at specified locations in and in accordance with paragraphs 3.B.1.d., 3.B.1.e., and 3.B.1.f., as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010. Repeat the applicable inspections thereafter at intervals not to exceed those specified in Tables 5 and 6 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010.

(r) New Inspection Exception

For inspections required by paragraph (m) of this AD: It is not necessary to inspect the chem-mill steps under an existing repair installed using Boeing Special Attention Service Bulletin 737–53–1234, dated June 13, 2002 (which is not incorporated by reference in this AD); or Revision 1, dated March 31, 2005.

(s) New Repair of Cracking Found During Inspections Required by Paragraphs (o) Through (q) of This AD

If any crack is found during any inspection required by paragraph (o), (p), or (q) of this AD, before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (x) of this AD. Doing this repair ends the repetitive inspections required by paragraphs (o), (p), and (q) of this AD for the repaired area only.

(t) New Actions for Airplanes on Which Repairs Have Been Done Using Previous Service Information

(1) For airplanes on which permanent repairs have been done as specified in Boeing Special Attention Service Bulletin 737–53–1234, dated June 13, 2002 (which is not incorporated by reference in this AD); or Revision 1, dated March 31, 2005; except airplanes on which internal tear strap doublers were previously installed using a repair plan approved using the procedures specified in paragraph (x) of this AD: Within 6,000 flight cycles after the effective date of this AD, install internal tear strap doublers, in accordance with paragraph 3.B.3. of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, except as provided by paragraph (v)(2) of this AD.

(2) For airplanes on which time-limited repairs have been installed as specified in Boeing Special Attention Service Bulletin 737–53–1234, dated June 13, 2002 (which is not incorporated by reference in this AD); or Revision 1, dated March 31, 2005; except airplanes on which the permanent repair has been installed before the effective date of this AD as specified in Boeing Special Attention Service Bulletin 737–53–1234, dated June 13, 2002 (which is not incorporated by reference in this AD); or Revision 1, dated March 31, 2005: Within 3,000 flight cycles after the time limited repair is installed, or within 500 flight cycles after the effective date of the AD, whichever occurs later, do a detailed inspection for loose fasteners, in accordance with paragraph 3.B.4. of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles until the permanent repair is installed in accordance with paragraph (t)(3) of this AD. If any loose fasteners are found, before further flight, replace the fasteners with new fasteners of the same type and size, as specified in Figures 6, 35, and 36, as applicable, of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010.

(3) For airplanes on which time-limited repairs have been installed as specified in Boeing Special Attention Service Bulletin 737–53–1234, dated June 13, 2002 (which is not incorporated by reference in this AD); or Revision 1, dated March 31, 2005; except airplanes on which the permanent repair has been installed before the effective date of this AD as specified in Boeing Special Attention Service Bulletin 737–53–1234, dated June 13, 2002, or Revision 1, dated March 31, 2005; before the effective date of this AD: Within 6,000 flight cycles after the time-limited repair is installed, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later, make the repair permanent by replacing the blind fasteners in the time-limited repair with solid rivets, and install internal tear strap doublers, in accordance with paragraph 3.B.4. of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, except as provided by paragraph (v)(2) of this AD.

(u) New Action Not in Accomplishment Instructions of Service Information

If any crack is found after the time-limited or permanent repair is installed, and Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (x) of this AD.

(v) Exceptions to Boeing Alert Service Bulletin 737–53A1234, Revision 2, Dated November 24, 2010

(1) Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, specifies a compliance time relative to the ''release of Revision 2 of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, specifies to contact Boeing for appropriate action: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (x) of this AD.

(3) Although Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, specifies reporting certain information to Boeing, this AD does not require that action.

(w) Post-Repair Inspections Not Required

The post-repair inspection specified in Table 7 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, is not required by this AD.

Note 2 to paragraph (w) of this AD: The damage tolerance inspections specified in Table 7 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, may be used in support of compliance with section 121.1109(c)(2) or 129.109(c)(2) of the Federal Aviation Regulations (14 CFR 121.1109(c)(2) or 14 CFR 129.109(c)(2)). The corresponding actions specified in the Accomplishment Instructions and Figures 40 and 41 of Boeing Alert Service Bulletin 737–53A1234,

Revision 2, dated November 24, 2010, are not required in this AD.

(x) 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 manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

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

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

(4) AMOCs approved previously in accordance with AD 2005–13–27, Amendment 39–14164 (70 FR 36821, June 27, 2005), are approved as AMOCs for the corresponding requirements in this AD.

(y) Related Information

(1) For more information about this AD, contact Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6447; fax: (425) 917–6590; email: *wayne.lockett@faa.gov*.

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

(z) 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 on February 6, 2013.

(i) Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010.

(ii) Reserved.

(4) The following service information was approved for IBR on August 1, 2005 (70 FR 36821, June 27, 2005).

(i) Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, dated March 31, 2005.

(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, Washington 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, Washington. 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 12, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–30924 Filed 12–31–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0999; Directorate Identifier 2012–NM–049–AD; Amendment 39–17300; AD 2012–26–05]

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 Freighter series airplanes, Model A330–200 series airplanes, Model A330–300 series airplanes, Model A340–200 series airplanes, and Model A340–300 series airplanes. This AD was prompted by a report of an in-flight turn back after the nose landing gear (NLG) did not retract after take-off. This AD requires repetitive overhaul of the NLG retraction actuator. We are issuing this AD to prevent failure of the retraction actuator, which could cause collapse of the NLG after touchdown and possible injury to flightcrew and passengers.

DATES: This AD becomes effective February 6, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 6, 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 24, 2012 (77 FR 58789). That NPRM proposed to correct an unsafe condition for the specified products. The Mandatory Continuing Airworthiness Information (MCAI) states:

> An A330 aeroplane experienced an in-flight turn back due to inability to retract the NLG [nose landing gear] after take-off.
>
> The subsequent technical investigations revealed that the NLG retraction actuator eye-end fitting was detached from the retraction actuation rod, that both the eye-end male threads and piston rod female threads were almost completely stripped, and that there was evidence of significant corrosion on these parts. Further investigations have shown that corrosion caused the retraction actuator eye failure.
>
> This condition, if not corrected, could lead to NLG collapse after touchdown, potentially resulting in damage to the aeroplane and injury to its occupants.
>
> For the reasons described above, this [European Aviation Safety Agency (EASA)] AD requires accomplishment of an overhaul of the NLG retraction actuator. This [EASA] AD also defines the Time Between Overhaul (TBO) for the NLG retraction actuator to be 10 years.

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 58789, September 24, 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 58789, September 24, 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 58789, September 24, 2012).

Costs of Compliance

We estimate that this AD will affect 65 products of U.S. registry. We also estimate that it will take about 16 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $88,400 or $1,360 per product.

Should an operator elect to accomplish an optional replacement instead, we estimate that any optional replacement action would take about 16 work-hours and require parts costing $94,000 for a cost of $95,360 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 58789, September 24, 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:

2012–26–05 Airbus: Amendment 39–17300. Docket No. FAA–2012–0999; Directorate Identifier 2012–NM–049–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective February 6, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes, certificated in any category, identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Airbus Model A330–201, A330–202, A330–203, A330–223, A330–223F, A330–243, A330–243F, A330–301, A330–302, A330–303, A330–321, A330–322, A330–323, A330–341, A330–342, and A330–343 airplanes, all manufacturer serial numbers (MSN).

(2) Airbus Model A340–211, A340–212, A340–213, A340–311, A340–312, and A340–313 airplanes, all MSN.

(d) Subject

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

(e) Reason

This AD was prompted by a report of an in-flight turn-back after the nose landing gear (NLG) did not retract after take-off. We are issuing this AD to prevent failure of the retraction actuator, which could cause collapse of the NLG after touchdown and possible injury to flightcrew and passengers.

(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

At the applicable compliance time specified in paragraph (g)(1) or (g)(2) of this AD, whichever occurs later: Do an overhaul of the NLG retraction actuator, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–32–3255, dated October 13, 2011 (for Model A330 series airplanes); or Airbus Mandatory Service Bulletin A340–32–4291, dated October 13, 2011 (for Model A340 series airplanes). Repeat the overhaul thereafter at intervals not to exceed 10 years.

(1) Prior to the accumulation of 10 years since the NLG retraction actuator's first flight on an airplane, or from its first flight following its last overhaul.

(2) At the applicable time specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) If, on the effective date of this AD, the NLG retraction actuator has accumulated more than 8 years, and less than 14 years, from its first flight on an airplane: Within 24 months after the effective date of this AD, or prior to the accumulation of 15 years since the NLG retraction actuator's first flight on an airplane, whichever occurs first.

(ii) If, on the effective date of this AD, the NLG retraction actuator has accumulated 14 years or more since its first flight on an airplane: Within 12 months after the effective date of this AD.

(h) Parts Installation Limitation

As of the effective date of this AD, no person may install on an airplane any NLG retraction actuator, unless it has been overhauled in accordance with the requirements 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 European Aviation Safety Agency Airworthiness Directive 2012–0034, dated February 29, 2012, and the service information identified in paragraphs (j)(1) and (j)(2) of this AD, for related information.

(1) Airbus Mandatory Service Bulletin A330–32–3255, dated October 13, 2011.

(2) Airbus Mandatory Service Bulletin A340–32–4291, dated October 13, 2011.

(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) Airbus Mandatory Service Bulletin A330–32–3255, dated October 13, 2011.

(ii) Airbus Mandatory Service Bulletin A340–32–4291, dated October 13, 2011.

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

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, 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 17, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–31004 Filed 12–31–12; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

RIN 3038–AC96

Business Conduct and Documentation Requirements for Swap Dealers and Major Swap Participants; Extension of Compliance Date

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of compliance dates; request for comment.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is changing the compliance dates for certain rules in the Commission's regulations governing business conduct standards for swap dealers (''SDs'') and major swap participants (''MSPs''), and certain rules requiring SDs and MSPs to engage in portfolio reconciliation and to have certain documentation with their swap counterparties. The Commission is extending the compliance date for certain rules by four months, and up to six months for others. The extended compliance dates are intended to provide SDs and MSPs with additional time to achieve compliance with certain regulations.

DATES: *Compliance Dates:* The compliance date for the regulations at 17 CFR 23.201(b)(3)(ii), 23.402; 23.410(c); 23.430; 23.431(a) through (c); 23.432; 23.434(a)(2), (b), and (c); 23.440; 23.450, and 23.505 is extended until May 1, 2013; the compliance date for the regulations at 17 CFR 23.502 and 23.504 is extended until July 1, 2013.

Comment Date: The Commission will, however, consider any comments received on or before February 1, 2013 and may revise the modified compliance dates, if warranted.

ADDRESSES: You may submit comments, identified by RIN number 3038–AC96 and Business Conduct and Documentation Requirements for Swap Dealers and Major Swap Participants, by any of the following methods:

- Agency Web site, *www.cftc.gov,* via its Comments Online process at *http://comments.cftc.gov/PublicComments/ReleasesWithComments.aspx.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in § 145.9 of the Commission's regulation, 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Frank Fisanich, Chief Counsel, 202–418–5949, *ffisanich@cftc.gov,* Jason A. Shafer, Attorney-Advisor, 202–418–5097, *jshafer@cftc.gov*, Division of Swap Dealer and Intermediary Oversight, or Sayee Srinivasan, Research Analyst, 202–418–5309, *ssrinivasan@cftc.gov*, Office of the Chief Economist, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Act.[1] Title VII of

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act

Continued

the Dodd-Frank Act [2] amended the Commodity Exchange Act (''CEA'') [3] to establish a comprehensive regulatory framework to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of SDs and MSPs; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating rigorous recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to all registered entities and intermediaries subject to the Commission's oversight.

In the two years since its enactment, the Commission has finalized 41 rules to implement Title VII of the Dodd-Frank Act. Earlier this year, the Commission, jointly with the Securities and Exchange Commission, finalized the main foundational elements of the Dodd-Frank regulatory framework by adopting regulations further defining the terms ''swap dealer'' and ''major swap participant,'' [4] as well as the regulations further defining the term ''swap.'' [5] The Commission also adopted regulations setting forth a comprehensive scheme for the registration process for SDs and MSPs.[6] Other finalized rules include various substantive requirements applicable to SDs and MSPs under CEA section 4s,[7] which address reporting and recordkeeping,[8] business conduct standards,[9] documentation standards,[10] duties,[11] and designation of chief compliance officers.[12]

Among other things, upon registration, an SD or MSP must submit documentation demonstrating its compliance with any Commission regulation issued pursuant to section 4s(e), (f), (g), (h), (i), (j), (k), or (l) of the CEA that is applicable to it and for which the compliance date has passed. Such Commission regulations include business conduct standards under subpart H of part 23 of the Commission's regulation promulgated under section 4s(h) of the CEA, documentation standards under subpart I of part 23 of the Commission's regulations promulgated under section 4s(i) of the CEA, and reporting and recordkeeping requirements under subpart F of part 23 of the Commission's regulations promulgated under section 4s(f) of the CEA.

With respect to business conduct standards with counterparties, section 4s(h) of the CEA provides the Commission with both mandatory and discretionary rulemaking authority to impose business conduct standards on SDs and MSPs in their dealings with counterparties, including Special Entities, and section 4s(i) of the CEA establishes swap documentation standards for SDs and MSPs.

Pursuant to section 4s(h) of the CEA, on December 22, 2010, the Commission published in the **Federal Register** proposed subpart H of part 23 of the Commission's regulations.[13] There was a 60-day period for the public to comment on the proposing release. On May 4, 2011, the Commission published in the **Federal Register** a notice to re-open the public comment period for an additional 30 days, which ended on June 3, 2011.[14] On February 17, 2012, the Commission adopted as final rules subpart H to part 23, which set forth business conduct standards for swap dealers and major swap participants in their dealings with counterparties.[15] A number of the Commission's rules under subpart H of part 23 require SDs and MSPs to provide or obtain specific information from their counterparties prior to entering into (or in some cases, offering to enter into) a swap with such counterparties.[16] Subpart H of part 23 permits SDs and MSPs to rely on written representations from their counterparties and standardized disclosures, each of which may require amendments or supplements to an SD's or MSP's relationship documentation with such counterparties prior to entering into a swap with such counterparties.[17]

SDs and MSPs are required to comply with the requirements found in subpart H to part 23 by January 1, 2013.[18]

Section 4s(i)(1) of the CEA requires SDs and MSPs to ''conform with such standards as may be prescribed by the Commission by rule or regulation that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.'' Under section 4s(i)(2), the Commission is required to adopt rules ''governing documentation standards for swap dealers and major swap participants.'' The Commission proposed the regulations on swap confirmation, portfolio reconciliation, and portfolio compression on December 28, 2010.[19] In a separate rulemaking, on February 8, 2011, the Commission proposed regulations governing swap documentation, including what documentation would be required to be kept by the SD or MSP when it transacts with a counterparty that exercises its rights under the end-user clearing exception from the mandatory clearing requirement under section 2(h)(7) of the CEA.[20] There was a 60-day comment period for both proposals. On September 11, 2012, the Commission issued final rules governing swap

may be accessed at *http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm.*

[2] Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the ''Wall Street Transparency and Accountability Act of 2010.''

[3] 7 U.S.C. 1 *et seq.*

[4] *See* Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant,'' and ''Eligible Contract Participant,'' 77 FR 30596 (May 23, 2012).

[5] *See* Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 FR 48208 (Aug. 13, 2012).

[6] *See* Registration of Swap Dealers and Major Swap Participants, 77 FR 2613 (Jan. 19, 2012).

[7] 7 U.S.C 6s.

[8] *See* Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 FR 20128 (Apr. 3, 2012).

[9] *See* Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties, 77 FR 9734 (Feb. 17, 2012).

[10] *See* Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 FR 55904 (Sept. 11, 2012).

[11] *See supra* note 8.

[12] *Id.*

[13] Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties, 75 FR 80638 (proposed Dec. 22, 2010).

[14] Reopening and Extension of Comment Periods for Rulemakings Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act, 75 FR 25274 (May 4, 2011).

[15] *See supra* note 9.

[16] *See, e.g.,* § 23.402(b) (requiring SDs to obtain essential facts about their counterparty prior to execution of a transaction); § 23.430(a) (requiring SDs and MSPs to verify that a counterparty meets the eligibility standards for an eligible contract participant before offering to enter into or entering into a swap with such counterparty); and § 23.431(a) (requiring SDs and MSPs to provide material information concerning a swap to its counterparty at a reasonably sufficient time prior to entering into the swap).

[17] *See* § 23.402(d), (e), and (f).

[18] The external business conduct standards final rule required that swap dealers and major swap participants must comply with the rules in subpart H of part 23 on the later of 180 days after the effective date of these rules or the date no which swap dealers or major swap participants are required to apply for registration pursuant to Commission rule 3.10. However, in a subsequent rulemaking, the compliance date for §§ 23.402; 23.410(c); 23.430; 23.431(a)–(c); 23.432; 23.434(a)(2), (b), and (c); 23.440; and 23.450 was deferred until January 1, 2013. *See* Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 FR 55904, 55942 (Sept. 11, 2012).

[19] Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants, 75 FR 8519 (proposed Dec. 28, 2010).

[20] Swap Trading Relationship Documentation for Swap Dealers and Major Swap Participants, 76 FR 6715 (proposed Feb. 8, 2011).

confirmation (§ 23.501), portfolio reconciliation (§ 23.502), portfolio compression (§ 23.503), and swap trading relationship documentation (§ 23.504), and end user exception documentation (§ 23.505).[21] Among other things, § 23.502 requires SDs and MSPs to agree in writing with each counterparty on the terms of conducting portfolio reconciliation.[22] Section 23.504 requires that an SD or MSP execute swap trading relationship documentation meeting the requirements of the rule with a counterparty prior to or contemporaneously with entering into a swap transaction with such counterparty.[23] Section 23.505 requires, with an exception, that SDs and MSPs, when transacting with market participants claiming the exception to clearing under 2(h)(7) of the CEA, obtain documentation sufficient to provide a reasonable basis on which to believe that its counterparty meets the statutory conditions required for the exception.[24]

With regard to the portfolio reconciliation requirements found in § 23.502, the Commission staggered the compliance dates by providing extended compliance dates for those SDs and MSPs that have not been previously regulated by a prudential regulator, and thus are least likely to have the infrastructure in place to begin regular reconciliation with their counterparties.[25] SDs and MSPs that have been previously regulated by a prudential regulator need not comply with § 23.502 until December 11, 2012. SDs and MSPs that have not been previously regulated need not comply with § 23.502 until March 11, 2013. The earliest that an SD or MSP would be required to comply with the swap trading relationship documentation requirements found in § 23.504 is January 1, 2013.[26] Additionally, the earliest that an SD or MSP would be required to comply with the documentation requirements found in § 23.505 is December 31, 2012.

Section 4s(f)(1) of the CEA requires SDs and MSPs to ''make such reports as are required by the Commission by rule or regulation regarding the transactions and positions and financial condition of the registered swap dealer or major swap participant.'' Under section 4s(f)(1)(B)(i) and (ii) of the CEA, the Commission was authorized to prescribe the books and records requirements of ''all activities related to the business of swap dealers and major swap participants.'' On December 9, 2010, the Commission proposed § 23.201, which set forth the records SDs and MSPs must maintain.[27] After a 60-day period for the public to comment on the proposal, the Commission published a **Federal Register** notice that re-opened the comment period for an additional 30 days ending on June 3, 2011.[28] On April 3, 2012, the Commission adopted final rules governing, among other requirements, general records requirements for SDs and MSPs (§ 23.201).[29] The earliest that an SD or MSP would be required to comply with § 23.201 is December 31, 2012.[30]

II. Compliance Date Extension for Certain Business Conduct and Documentation Requirements for Swap Dealers and Major Swap Participants

Subsequent to the issuance of the above-identified rules, the Commission received requests from a variety of market participants for additional time to achieve compliance with the documentation requirements of such rules.[31] More specifically, market participants requested that the Commission extend the compliance dates for the provisions of subpart H of part 23 that involve documentation,[32] the compliance dates for the provisions of § 23.502 (Portfolio Reconciliation), which has a significant documentation component, and the compliance dates for the provisions of § 23.504 (Swap Trading Relationship Documentation),[33] which also has a significant documentation component, to facilitate an orderly transition to the new regulatory regime.

In their letter, ISDA states that in order to facilitate an efficient transition to compliance, it has sponsored a number of documentation protocols for its members and other market participants, where amendments or supplements required by the Commission's regulations are effected through delivery of an adherence letter by each party to the underlying document to be amended (*i.e.,* a master agreement), and provides for additional bilateral delivery requirements in order to effectuate the addition of supplemental terms.[34]

ISDA published its first Dodd-Frank protocol in August 2012, focused on facilitating compliance with several new Commission regulations, including those found in part 23.[35] Pursuant to

[21] *See supra* note 10.

[22] *See* § 23.502(a)(1).

[23] *See* § 23.504(a)(2).

[24] *See* § 23.505(a).

[25] 77 FR 55904, 55941–42 (Sept. 11, 2012).

[26] The current compliance schedule associated with § 23.504 is as follows: With respect to swap transactions with SDs, security-based swap dealers, MSPs, major security-based swap participants, or any private fund, as defined in section 202(a) of the Investment Advisers Act of 1940, that is not a third-party subaccount (defined below) and that executes 200 or more swaps per month based on a monthly average over the 12 months preceding this adopting release (active funds), SDs and MSPs must comply with § 23.504 by January 1, 2013. With respect to swap transactions with commodity pools; private funds as defined in section 202(a) of the Investment Advisers Act of 1940 other than active funds; or persons predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature as defined in section 4(k) of the Bank Holding Company Act of 1956, provided that the entity is not an account that is managed by an investment manager that (1) is independent of and unaffiliated with the account's beneficial owner or sponsor, and (2) is responsible for the documentation necessary for the account's beneficial owner to document swaps as required under section 4s(i) of the CEA (third-party subaccounts), SDs and MSPs must comply with § 23.504 by April 1, 2013. With respect to swap transactions with any other counterparty, SDs and MSPs must comply with § 23.504 by July 1, 2013. 77 FR 55904, 55940 (Sept. 11, 2012). However, in a final rule recently adopted by the Commission, the compliance schedules for active funds was amended by requiring private funds to calculate the number of swaps they enter as a monthly average over the past 12 months preceding November 1, 2012.

[27] Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants, 75 FR 76666 (proposed Dec. 9, 2010).

[28] *See supra* note 14.

[29] *See supra* note 8.

[30] *See* 77 FR 20128, 20165 (Apr. 3, 2012). § 23.201(a)(1) is currently the subject of a staff no-action letter that was published on October 26, 2012, which provided no-action relief from compliance with § 23.201(a)(1) until March 31, 2013. *See* CFTC Letter No. 12–29, Request for No-Action Relief for Swap Dealers and Major Swap Participants from Compliance with Certain Internal Business Conduct Requirements Found in subpart F to part 23 of the CFTC's Regulations (*http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/12–29.pdf).*

[31] *See, e.g.,* Letter dated Dec. 4, 2012 from the International Swaps and Derivatives Association (''ISDA'') requesting exercise of Commission authority regarding part 23 Compliance Rules, Letter dated Nov. 27, 2012 (revised Dec. 6, 2012) from ISDA requesting exercise of Commission authority regarding part 23 compliance rules (''ISDA Dec. 6 Letter''), and Letter dated Nov. 20, 2012 from ISDA requesting no-action relief from compliance with §§ 23.502 and 23.504.

[32] The current compliance date for §§ 23.402; 23.410(c); 23.430; 23.431(a)–(c); 23.432; 23.434(a)(2), (b), and (c); 23.440; and 23.450 is January 1, 2013. *See* Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 FR 55904, 55942 (Sept. 11, 2012); *see also* Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties, 77 FR 9734, 9823–27 (Feb. 17, 2012) (promulgating the relevant provisions of subpart H of part 23 of the Commission's Regulations).

[33] 77 FR at 55940.

[34] *See http://www2.isda.org/dodd-frank-documentation-initiative/.*

[35] ISDA's first Dodd-Frank protocol is intended to facilitate compliance with the following Final Rules: Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties, 77 FR 9734 (Feb. 17, 2012); Large Trader Reporting for Physical Commodity Swaps, 76 FR 43851 (July 22, 2011); Position Limits for Futures and Swaps, 76 FR 71626 (Nov. 18, 2011);

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this first protocol, each party that submits an adherence letter must also deliver a completed questionnaire to another protocol participant for the addition of supplemental terms to be effective with respect to that protocol participant. To facilitate the delivery of completed questionnaires, ISDA, together with Markit, have developed a technology-based solution to automate the information-gathering process and provide sharing of submitted data and documents to permissioned counterparties.

ISDA has represented to the Commission that, despite an extensive counterparty outreach and education effort by its members, only 17.5% of counterparties to prospective SDs and MSPs have submitted an adherence letter for its first Dodd-Frank protocol and less than 1% have submitted the completed questionnaires necessary for SDs and MSPs to make use of the protocol and integrate necessary counterparty information into their compliance systems. ISDA has represented that more time is needed for these counterparties to understand the Commission's requirements, to understand the legal consequences of adhering to the protocol, and to gather the information needed to complete the questionnaire from principals and beneficial owners.

In addition, ISDA states that Hurricane Sandy has hampered the ability of SDs, MSPs, and their counterparties to complete the documentation process necessary to comply with the Commission's regulations within the original compliance periods. ISDA states that Hurricane Sandy shut down institutions and vendors, depleted staff and severely damaged development efforts in a number of compliance areas—producing a knock-on effect across institutional (and vendor) compliance efforts (including delays at Markit—the provider of protocol automation mechanisms). Further, specifically with respect to the January 1, 2013 compliance date for subpart H of part 23 of the Commission's regulations, ISDA has represented that compliance obstacles are compounded by industry code freezes, which are typically put into effect near the calendar year-end to ensure a stable IT environment for the closing of books and records. The freezes limit the ability of firms to make adjustments to IT infrastructure related to the delivery of required disclosure and the re-onboarding of counterparties in accordance with the counterparty characteristics provided in response to the first Dodd-Frank protocol.

Absent completion of the protocol process by a counterparty, or completion of bilateral amendments to trading documentation with the equivalent effect, an SD or MSP that continues to enter into swaps with such counterparty would be in violation of multiple Commission regulations contained in part 23. In order to avoid such violations of Commission regulations, ISDA has represented that many SDs and MSPs will stop entering into swaps with counterparties that have not completed the protocol process by December 31, 2012, which could result in a sudden and dramatic drop in the number of participants in the swap markets. ISDA states that the resulting decrease in liquidity would damage all market participants as well as the broader economy.

ISDA has further represented that market participants are working diligently toward publishing a second Dodd-Frank protocol covering other Commission rules requiring documentation supplements, including §§ 23.502 and 23.504, but require additional time to complete the review process and implement the protocol. ISDA states that the pace of implementation of its second Dodd-Frank protocol has been adversely affected by the difficulty of reaching agreement on the valuation methodologies required by § 23.504(b)(4),[36] the developmental challenges to reaching the agreement on reconciliation processes required by § 23.502(a)(1), the consumption of legal and operational resources by the implementation of the first Dodd-Frank protocol, and the effects of Hurricane Sandy discussed above. Accordingly, ISDA has represented that an extension of the compliance dates for §§ 23.502 and 23.504 would allow for a smooth and orderly progression to compliance with such rules and avoid unnecessary market disruption.

For reasons described above, the Commission has decided to defer the compliance dates for §§ 23.201(b)(3)(ii), 23.402; 23.410(c); 23.430; 23.431(a)–(c); 23.432; 23.434(a)(2), (b), and (c); 23.440; 23.450; and 23.505 of subpart F, subpart H, and subpart I of part 23 until May 1, 2013. In addition, the Commission has decided to defer the compliance dates for § 23.502 (Portfolio Reconciliation) and § 23.504 (Swap Trading Relationship Documentation)[37] of subpart I of part 23 until July 1, 2013.[38] Compliance dates for all other provisions of subpart F, subpart H, and subpart I of part 23 remain unchanged. All market participants are subject to the new compliance dates regardless of whether they participate in any protocol sponsored by ISDA.

III. Related Matters

A. Administrative Law Matters and Request for Comments

The Administrative Procedure Act[39] (''APA'') generally requires an agency to publish a notice of a proposed rulemaking in the **Federal Register**.[40] This requirement does not apply, however, when the agency ''for good cause finds * * * that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.''[41] Moreover, while the APA requires generally that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective, this requirement does not apply if the agency finds good cause to make the rule effective sooner.[42]

The Commission, for good cause, finds that notice and solicitation of comment regarding the amendments is impracticable, unnecessary and contrary to the public interest. As of December 3, 2012, the CFTC has finalized over 41 new rulemakings pursuant to the Dodd-Frank Act, with each rulemaking imposing significant new regulatory requirements on market participants. In the aggregate, the rulemakings establish

Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182 (Jan. 9, 2012); Swap Data Recordkeeping and Reporting Requirements, 77 FR. 2136 (Jan. 13, 2012); Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 FR 20128 (Apr. 3, 2012); and Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 77 FR 35200 (June 12, 2012). However, the changes to compliance dates affected in this release do not address compliance with rules other than those specifically stated in the text above.

[36] Commission regulation § 23.504(b)(4) requires SDs and MSPs to agree with their counterparties, prior to the execution of a swap, on the process for determining the value of such swap at any time from execution to the termination, maturity, or expiration of such swap.

[37] As discussed in note 26 *supra,* the Commission imposed a staggered compliance schedule for § 23.504, establishing three separate compliance dates based on the type of counterparty. The compliance date established herein—July 1, 2013—provides SDs and MSPs with a single compliance date for § 23.504, that is applicable for all types of counterparties.

[38] The Commission's decision to defer compliance does not reflect an endorsement of the industry-led effort, nor does it imply that the Commission has reviewed the documentation protocol for compliance with Commission rules.

[39] 5 U.S.C. 553.

[40] 5 U.S.C. 553(b).

[41] *Id.*

[42] 5 U.S.C. 553(d).

a robust and comprehensive registration and regulatory framework intended to achieve the overarching goals of the Dodd-Frank Act, as detailed in Section I above. In promulgating the final rules, the Commission constructed a phased implementation schedule that was intended to allow market participants to achieve full compliance through an orderly and effective process over a period of time. Market participants, including a trade association, buy-side firms and sell-side dealers, have represented to the Commission that they have been diligently preparing to comply with the part 23 rules, in accordance with the phased implementation schedule. The Commission anticipates that the phased implementation schedule for most rules promulgated under part 23 will continue, on schedule, without need for delay.

Notwithstanding the Commission's efforts to implement the business conduct standards rules required under the Dodd-Frank Act in a timely manner, the Commission has determined that, due to circumstances beyond the Commission's control, a short delay in the implementation schedule for a limited set of part 23 rules is necessary. As discussed in greater detail in Section II above, ISDA has represented that, despite an extensive counterparty outreach and education effort by its members, a relatively small percentage of counterparties have fully executed the necessary documentation to comply with the provisions of subpart H of part 23 that involve documentation. ISDA has represented that more time is needed for these counterparties to understand the Commission's requirements, to understand the legal consequences of adhering to the required documentation, and to gather the information needed to complete the questionnaire from principals and beneficial owners. ISDA further represented that without additional time to address that relatively narrow scope of documentation rules, a sudden and dramatic drop in the number of participants in the swap markets could occur, and the resulting decrease in liquidity would damage all market participants as well as the broader economy.

The extended compliance dates provided herein do not include all business conduct standards promulgated by the Commission. Specifically, compliance dates for § 23.410(a) and (b), § 23.433, and § 23.434(a)(1) are not being extended. Consequently, fundamental counterparty protections relating to (i) prohibitions on fraud, manipulation and abusive practices, (ii) fair dealings in communications, and (iii) reasonable diligence regarding recommended swaps would not be affected by delayed compliance.

Accordingly, for the reasons discussed above, the Commission finds good cause to extend the compliance dates for a short period, for a limited number of rules promulgated under part 23, to enable market participants to continue the work necessary to achieve full compliance. Specifically, the compliance date for §§ 23.201(b)(3)(ii), 23.402; 23.410(c); 23.430; 23.431(a) through (c); 23.432; 23.434(a)(2), (b), and (c); 23.440; 23.450, and 23.505 is delayed until May 1, 2013, providing an additional 4 months from the original compliance date. Likewise, the compliance date for § 23.502 and § 23.504 is deferred until July 1, 2013, providing an additional 6 months from the original date.[43] Compliance dates for all other provisions of part 23 remain unchanged. The Commission anticipates that the amended compliance dates will enable market participants to achieve full compliance with the affected rules prior to the expiration of the amended compliance period.

Although the Commission is dispensing with prior notice of proposed rulemaking, the Commission is soliciting written comments on the changes to compliance dates affected by this release within 30 days after publication of this release in the **Federal Register**. The Commission will consider those comments and make changes to the amendments if necessary.

B. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), 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.[44] The changes to compliance dates affected by this release will not impose any new recordkeeping or information collection requirements, or other collections of information that require approval of the Office of Management and Budget under the PRA. The Commission invites public comment on the accuracy of its estimate that no additional information collection requirements or changes to existing collection requirements would result from the rules proposed herein.

C. Considerations of the Costs and Benefits

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing an order. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

1. Background

The Commission is changing its compliance dates for amendments to specific sections of subparts H, I and F of part 23 of the Commission regulations. Subpart H to part 23 sets forth business conduct standards for SDs and MSPs in their dealings with counterparties. SDs and MSPs are required to comply with the requirements found in subpart H to part 23 by January 1, 2013. The changes to compliance dates for §§ 23.402; 23.410(c); 23.430; 23.431(a) through (c); 23.432; 23.434(a)(2), (b), and (c); 23.440; and 23.450 contained in subpart H rules will extend the compliance dates for these provisions until May 1, 2013. Compliance dates for all other provisions of subpart H of part 23 remain unchanged.

With regard to the portfolio reconciliation requirements found in § 23.502, for those SDs and MSPs that have been previously regulated by a prudential regulator, the Commission had provided for a compliance date of December 11, 2012. The compliance date for SDs and MSPs that have not been previously regulated was March 11, 2013. The earliest that an SD or MSP would be required to comply with the swap trading relationship documentation requirements of § 23.504 is January 1, 2013. The earliest that an SD or MSP would be required to comply with the end user documentation requirements of § 23.505 is December 31, 2012. The changes to compliance dates for §§ 23.502 and 23.504 contained in subpart I will extend the compliance dates for these provisions until July 1, 2013. The changes to compliance dates for § 23.505 will extend the compliance date for this rule until May 1, 2013.

With regard to the general records requirements found in § 23.201 of

[43] The Commission's decision to defer compliance does not reflect an endorsement of the industry-led effort, nor does it imply that the Commission has reviewed the documentation protocol for compliance with Commission rules. All market participants are subject to the new compliance dates regardless of whether they participate in the protocol.

[44] 44 U.S.C. 3501 *et seq.*

subpart F of part 23, the earliest that an SD or MSP would be required to comply with such requirements is December 31, 2012. The changes to compliance dates for § 23.201 will extend the compliance date for certain provisions of this rule until May 1, 2013.

The changes to compliance dates being adopted do not change the substance of the rules; rather, they merely provide additional time by which parties can comply. As such, the costs and benefits of the Commission's action relate only to the additional time provided.

2. Costs

The Commission does not anticipate there being any new, quantifiable costs attributable to these changes to compliance dates being adopted because it is only extending the compliance dates for certain requirements in part 23 of the Commission's regulations. At the same time, however, the Commission is mindful that a delay in the protections afforded by the regulations could result in costs to the public, even if the same is not amenable to quantification. The Commission believes, however, that these costs are mitigated by the maintenance of various other provisions relating to (i) prohibitions on fraud, manipulation and abusive practices, (ii) fair dealings in communications, and (iii) reasonable diligence regarding recommended swaps. These provisions are unaffected by delayed compliance from this extension. The Commission invites comments from the public on any costs, quantitative and qualitative, arising from the delay granted by the changes to compliance dates being adopted.

3. Benefits

The additional time for compliance provided for in this release will yield substantial benefit for market participants and the public alike. Absent this extension, market participants would be required to implement temporary solutions while the more permanent, industry wide solutions described earlier are finalized. The Commission believes that this duplication of efforts to achieve compliance would impose extensive burdens and costs on parties without any concomitant benefit to the public. Moreover, the Commission is concerned that based on the representations made by market participants, absent the changes to compliance dates being adopted, market participants might exit the market or curtail their swaps activity due to a lack of legal certainty and protection afforded by Commission relief. If that were to occur, the Commission expects that reduced market liquidity would increase the costs of hedging, which would then be passed on the public in the form of higher costs.

4. Section 15(a)

Section 15(a) of the CEA requires the Commission to consider the effects of its actions in light of the following five factors:

a. Protection of Market Participants and the Public

The Commission believes that by extending the compliance date for certain regulations in part 23, market participants will be able to continue to participate in the swaps market without concerns about potential consequences of failure to comply with the specified regulations. This will, in turn, protect the public by ensuring that the economy does not suffer as a result of any unintended consequences that may have arisen if market participants exited the swaps market. The Commission recognizes that any delay in compliance with the aforementioned business conduct and documentation requirements continues to leave the public without the protections and attendant benefits of those requirements. However, the Commission believes that delaying compliance for only certain business conduct and documentation requirements, while retaining the original compliance dates for fundamental counterparty protections relating to (i) prohibitions on fraud, manipulation and abusive practices, (ii) fair dealings in communications, and (iii) reasonable diligence regarding recommended swaps, will mitigate those effects while avoiding this risk that market participants will exit the market due to legal uncertainty.

b. Efficiency, Competitiveness, and Financial Integrity of Markets

The Commission believes that extending the compliance dates for the aforementioned rules will help protect the efficiency and competitiveness of the markets by obviating the need to stop transacting in swaps due to delay in complying with specific Commission regulations. It will also strengthen the financial integrity of markets by ensuring that market participants do not transact in the swaps markets while not being in full compliance with these regulations.

c. Price Discovery

If concerns regarding non-compliance results in a reduction in participation by a large number of market participants, such a decrease in swaps activity will adversely impact the price discovery process of the swaps markets.

d. Sound Risk Management

If counterparties refrain from transacting in swaps, the ability of other market participants to hedge their risks using these instruments may suffer. By mitigating the concerns of market participants regarding compliance with Commission rules, the changes to compliance dates being adopted herein help ensure that, while firms diligently complete the compliance requirements, they can continue entering into swap transactions to hedge their business and investment risks.

e. Other Public Interest Considerations

The Commission has not identified an impact on other public interest considerations, other than those mentioned above, as a result of the changes to compliance dates being adopted herein, but seeks comment as to any potential impact on this and other 15(a) factors.

Issued in Washington, DC on December 18, 2012, by the Commission.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

Appendix to Business Conduct and Documentation Requirements for Swap Dealers and Major Swap Participants—Commission Voting Summary

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

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Sommers, Chilton, O'Malia and Wetjen voted in the affirmative; no Commissioner voted in the negative.

[FR Doc. 2012–30885 Filed 12–31–12; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 558

[Docket No. FDA–2012–N–0002]

New Animal Drugs; Meloxicam; Nicarbazin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect

approval actions for new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) during October 2012. FDA is also informing the public of the availability of summaries of the basis of approval and of environmental review documents, where applicable.

DATES: This rule is effective January 2, 2013.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9019, *george.haibel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is amending the animal drug regulations to reflect original and supplemental approval actions during October 2012, as listed in table 1 of this document. In addition, FDA is informing the public of the availability, where applicable, of documentation of environmental review required under the National Environmental Policy Act (NEPA) and, for actions requiring review of safety or effectiveness data, summaries of the basis of approval (FOI Summaries) under the Freedom of Information Act (FOIA). These public documents may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday. Persons with access to the Internet may obtain these documents at the Center for Veterinary Medicine FOIA Electronic Reading Room: *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofFoods/CVM/CVMFOIAElectronicReadingRoom/default.htm.*

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS AND ANADAS APPROVED DURING OCTOBER 2012

NADA/ANADA	Sponsor	New animal drug product name	Action	21 CFR section	FOIA summary	NEPA review
009–476	Phibro Animal Health Corp., GlenPointe Centre East, Third floor, 300 Frank W. Burr Blvd., suite 21, Teaneck, NJ 07666.	NICARB 25% (nicarbazin) Type A medicated article.	Supplement revising nicarbazin dosage to a range consistent with dosage approved for use in combination feeds.	558.366	No	CE [1]
098–378	Phibro Animal Health Corp., GlenPointe Centre East, Third floor, 300 Frank W. Burr Blvd., suite 21, Teaneck, NJ 07666.	NICARB 25% (nicarbazin) and bacitracin methylene disalicylate Type A medicated articles.	Supplement revising nicarbazin dosage to a range consistent with dosage approved for use in combination feeds.	558.366	No	CE [1]
200–496	Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland.	AMPROMED P for Poultry (amprolium) 9.6% Oral Solution.	Original approval as a generic copy of NADA 13–149.	520.100	Yes	CE [1]

[1] The Agency has determined under 21 CFR 25.33 that this action is categorically excluded (CE) from the requirement to submit an environmental assessment or an environmental impact statement because it is of a type that does not individually or cumulatively have a significant effect on the human environment.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 558 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 2. In § 520.100, revise paragraph (b)(4) and the introductory text in paragraph (d)(1) to read as follows:

§ 520.100 Amprolium.

* * * * *

(b) * * *

(4) No. 061623 for use of products described in paragraphs (a)(1) and (a)(2) of this section as in paragraph (d) of this section.

* * * * *

(d) * * * (1) *Growing chickens, turkeys, and laying hens.* It is used in drinking water as follows:

* * * * *

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

■ 4. In § 558.366, in paragraph (d), amend the table as follows:

■ a. Revise the entries for ''90.8 to 181.6 (0.01 to 0.02 pct)''.

■ b. In the entry for ''113.5 (0.0125 pct)'', in the entry for ''Chickens; aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina*, *E. maxima*, *E. necatrix*, and *E. brunetti*)

coccidiosis'', remove ''066104'' from the ''Sponsor'' column.

■ c. In the entry for ''113.5 (0.0125 pct)'', in the entry for ''Bacitracin methylene disalicylate 30'', remove ''066104'' from the ''Sponsor'' column.

The revisions read as follows:

§ 558.366 Nicarbazin.

* * * * *

(d) * * *

Nicarbazin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
90.8 to 181.6 (0.01 to 0.02 pct).	.....	Broiler chickens: As an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina*, *E. maxima, E. necatrix*, and *E. brunetti*) coccidiosis.	Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard. Do not use as a treatment for coccidiosis. Do not feed to laying hens. Withdraw 4 days before slaughter for use levels at or below 113.5 g/ton. Withdraw 5 days before slaughter for use levels above 113.5 g/ton.	066104
	Bacitracin methylene disalicylate 4 to 50 and roxarsone 22.7 to 45.4.	Broiler chickens: As an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina, E. maxima*, *E. necatrix*, and *E. brunetti*) coccidiosis; and for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard; do not use as a treatment for outbreaks of coccidiosis. Discontinue medication 5 days before marketing the birds for human consumption to allow for elimination of the drug from edible tissue. Do not feed to laying hens in production. Nicarbazin as provided by No. 066104; bacitracin methylene disalicylate and roxarsone by No. 046573 in § 510.600(c) of this chapter.	066104
	Bacitracin methylene disalicylate 30.	Broiler chickens: As an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina, E. maxima*, *E. necatrix*, and *E. brunetti*) coccidiosis; and for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard. Do not use as a treatment for coccidiosis. Do not feed to laying hens. Withdraw 4 days before slaughter for use levels at or below 113.5 g/ton. Withdraw 5 days before slaughter for use levels above 113.5 g/ton.	066104
	Penicillin 2.4 to 50 ..	Broiler chickens: As an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina*, *E. maxima*, *E. necatrix*, and *E. brunetti*) coccidiosis, and for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard; do not use as a treatment for outbreaks of coccidiosis. Do not use in flushing mashes. Do not feed to chickens producing eggs for human consumption. Discontinue medication 5 days before marketing the birds for human consumption to allow for elimination of the drug from edible tissue. Penicillin as procaine penicillin G. Nicarbazin and penicillin as provided by No. 066104 in § 510.600(c) of this chapter.	066104

Nicarbazin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
	Penicillin 2.4 to 50 and roxarsone 22.7 to 45.4.	Broiler chickens: As an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina*, *E. maxima*, *E. necatrix*, and *E. brunetti*) coccidiosis, and for increased rate of weight gain and improved feed efficiency, and improved pigmentation.	Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard; do not use as a treatment for outbreaks of coccidiosis. Feed as the sole source of organic arsenic; drug overdose or lack of water may result in leg weakness; do not use in flushing mashes. Discontinue medication 5 days before marketing the birds for human consumption to allow for elimination of the drug from edible tissue. Do not feed to laying hens in production. Penicillin as procaine penicillin G. Nicarbazin and penicillin as provided by No. 066104; roxarsone by No. 046573 in § 510.600(c) of this chapter.	066104
*	*	*	*	*	*	*

Dated: December 21, 2012

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2012–31234 Filed 12–31–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2012–1074]

RIN 1625–AA11

Regulated Navigation Area; Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District; Extension of Stay (Suspension)

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Commander, Eighth Coast Guard District is extending the previously published stay (suspension) of reporting requirements under the Regulated Navigation Area (RNA) established by 33 CFR 165.830 for barges loaded with certain dangerous cargoes (CDC barges) in the inland rivers of the Eighth Coast Guard District. A two year stay was previously published at 76 **Federal Register** (FR) 1360 (January 10, 2011), which expires January 15, 2013. This extension is necessary because the Coast Guard continues to analyze future reporting needs and evaluate possible changes in CDC reporting requirements. This extension of the suspension of the CDC reporting requirements in no way relieves towing vessel operators and fleeting area managers responsible for CDC barges in the RNA from their dangerous cargo or vessel arrival and movement reporting obligations currently in effect under other regulations or placed into effect under appropriate Coast Guard authority.

DATES: Effective midnight January 15, 2013, 33 CFR 165.830(d), (e), (f), (g), and (h) are stayed until midnight September 30, 2013.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–1074. 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 about this temporary rule, call or email LT Jason Doherty, Coast Guard; telephone 504–671–2266, email: *Jason.C.Doherty@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

CDC Certain Dangerous Cargo
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)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable, unnecessary, and contrary to the public interest.

The contract for the CDC barge reporting system at the Inland River Vessel Movement Center (IRVMC) expired in January 2011. Due to the expiration of this contract, the Coast Guard would not be able to receive and process reports, therefore, in late December 2010, the Coast Guard decided to suspend the IRVMC reporting requirements for a two-year period. This suspension was published in the **Federal Register** at 76 FR 1360 (January 10, 2011), and expires on January 15, 2013.

At this time, the contract for the CDC barge reporting system has not been renewed, and the Coast Guard is still considering whether to enter into a new contract and lift the suspension, modify the reporting requirements in the RNA, or repeal the RNA completely. An extension of the stay is necessary while the Coast Guard continues to consider these options.

We believe prior notice and comment is unnecessary because we expect the affected public will have no objection to

the extension of the temporary suspension of regulatory requirements. This suspension has been in place since January 2011, and the Coast Guard has received no public comment or objection regarding the suspension. Prior notice and comment is also contrary to the public interest because there is no public purpose served by continuing to require reports when there is no mechanism for receiving or processing those reports.

Under 5 U.S.C. 553(d)(1), a substantive rule that relieves a restriction may be made effective less than 30 days after publication. This temporary final rule, suspending the reporting requirements and thereby relieving the regulatory restriction on towing vessel operators and fleeting area managers provided by 33 CFR 165.830, takes effect at midnight on January 15, 2013, less than 30 days after publication.

B. Basis and Purpose

The legal basis for this rulemaking is the Coast Guard's authority to establish regulated navigation areas, under 33 U.S.C. 1226, 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; and Department of Homeland Security Delegation No. 0170.1. An RNA is a water area within a defined boundary for which regulations for vessels navigating within the area have been established, to control vessel traffic in a place determined to have hazardous conditions. 33 CFR 165.10; Commandant Instruction Manual M16704.3A, 1–6.

The purpose of this temporary final rule is to extend the previously published suspension of the reporting requirements for CDC barges imposed by the RNA created in 33 CFR 165.830. This temporary rule relieves the towing vessel operators and fleeting area managers responsible for CDC barges from the reporting requirements for a nine month period.

C. Discussion of the Final Rule

During the extended period for the suspension of reporting requirements, towing vessel operators and fleeting area managers responsible for CDC barges will be relieved of their obligation to report their CDCs under 33 CFR 165.830(d), (e), (f), (g), and (h). This suspension in no way relieves towing vessel operators and fleeting area managers responsible for CDC barges from their dangerous cargo or vessel arrival and movement reporting obligations currently in effect under other regulations or placed into effect under appropriate Coast Guard authority.

D. Regulatory Analyses

We developed this temporary final rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 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 that Order. This rule is temporary and limited in nature by extending the previously published suspension of CDC barge reporting requirements for an additional nine-month period, creating no undue delay to vessel traffic in the regulated area.

2. 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 will affect the following entities, some which may be small entities: owners or operators of CDC barges intending to transit the Inland Rivers in the Eighth Coast Guard District during this two-year period. This rule will not have a significant economic impact on those entities or a substantial number of any small entities because this rule suspends reporting requirements for two years.

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 State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it 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 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 which do not individually or cumulatively have a significant effect on the human environment. This rule involves the nine-month extension of a previously published suspension of reporting requirements established for CDC barges transiting the inland rivers of the Eighth Coast Guard District. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. Under figure 2–1, paragraph (34)(g), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

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

■ 2. Amend 33 CFR 165.830 by staying paragraphs (d), (e), (f), (g), and (h) from midnight January 15, 2013 to midnight September 30, 2013.

Dated: December 14, 2012.

Roy A. Nash,

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

[FR Doc. 2012–30986 Filed 12–31–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2012–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

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

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL) modified	Communities affected
Middlesex County, Connecticut (All Jurisdictions) Docket No.: FEMA–B–1232			
Long Island Sound	Approximately 1,000 feet south of the intersection of U.S. Route 1 and Chapman Beach Drive.	+10	Borough of Fenwick, Town of Clinton, Town of Old Saybrook, Town of Westbrook.
	Approximately 400 feet southeast of the intersection of Hartlands Drive and Sea Lane No. 1.	+24	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Borough of Fenwick
Maps are available for inspection at the Fenwick Borough Municipal Office, 580 Maple Avenue, Old Saybrook, CT 06475.

Town of Clinton
Maps are available for inspection at the Town Hall, 54 East Main Street, Clinton, CT 06413.

Town of Old Saybrook
Maps are available for inspection at the Town Hall, 302 Main Street, Old Saybrook, CT 06475.

Town of Westbrook
Maps are available for inspection at the Town Hall, 866 Boston Post Road, Westbrook, CT 06498.

Larimer County, Colorado, and Incorporated Areas Docket No.: FEMA–B–1226			
Little Thompson River	At the downstream side of Weld County Road 1	+4935	Town of Berthoud, Unincorporated Areas of Larimer County.
	Approximately 0.38 mile upstream of Little Thompson Drive.	+5093	
Little Thompson River-Spill Reach.	Approximately 285 feet upstream of the Little Thompson River confluence.	+5009	Unincorporated Areas of Larimer County.
	Approximately 1,500 feet upstream of the Little Thompson River confluence.	+5015	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Town of Berthoud
Maps are available for inspection at 935 10th Street, Berthoud, CO 80513.

Unincorporated Areas of Larimer County
Maps are available for inspection at 200 West Oak Street, 2nd Floor, Fort Collins, CO 80522.

Coweta County, Georgia, and Incorporated Areas Docket No.: FEMA–B–1233			
Chattahoochee River	Approximately 1,850 feet downstream of the Heard County boundary.	+686	Unincorporated Areas of Coweta County.
	Approximately 4.1 miles upstream of the Cedar Creek confluence.	+720	
Little Wahoo Creek	Approximately 150 feet upstream of the Wahoo Creek confluence.	+799	Unincorporated Areas of Coweta County.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL) modified	Communities affected
	Approximately 1.49 miles upstream of Fast Guard Farms	+869	
Snake Creek	At the Wahoo Creek confluence	+799	City of Newnan, Unincorporated Areas of Coweta County.
	Approximately 0.5 mile upstream of Dixon Street	+927	
Tributary 1 to Snake Creek	At the Snake Creek confluence	+875	City of Newnan.
	Approximately 1,125 feet upstream of Pickens Drive	+897	
Tributary 1 to Wahoo Creek	At the Wahoo Creek confluence	+842	City of Newnan, Unincorporated Areas of Coweta County.
	Approximately 400 feet upstream of Wood Trail	+941	
Tributary 10 to Wahoo Creek	At the Wahoo Creek confluence	+880	City of Newnan.
	Approximately 0.63 mile upstream of the Wahoo Creek confluence.	+934	
Tributary 11 to Wahoo Creek	At the Wahoo Creek confluence	+881	City of Newnan.
	Approximately 1,400 feet upstream of Roberts Road	+906	
Tributary 12 to Wahoo Creek	At the Wahoo Creek confluence	+897	City of Newnan.
	Approximately 600 feet upstream of Dewey Street	+944	
Tributary 2 to Snake Creek	At the Snake Creek confluence	+892	City of Newnan.
	Approximately 700 feet upstream of Maple Drive	+928	
Tributary 2 to Wahoo Creek	At the Wahoo Creek confluence	+860	City of Newnan, Unincorporated Areas of Coweta County.
	Approximately 1,200 feet upstream of Jefferson Street	+920	
Tributary 3 to Wahoo Creek	At the Tributary 2 to Wahoo Creek confluence	+868	City of Newnan.
	At the upstream side of Matador Way	+885	
Tributary 4 to Wahoo Creek	At the Tributary 3 to Wahoo Creek confluence	+871	City of Newnan.
	Approximately 360 feet upstream of the detention pond	+885	
Tributary 5 to Wahoo Creek	At the Tributary 2 to Wahoo Creek confluence	+879	City of Newnan.
	Approximately 580 feet upstream of the Tributary 2 to Wahoo Creek confluence.	+888	
Tributary 6 to Wahoo Creek	Approximately 210 feet upstream of the Tributary 2 to Wahoo Creek confluence.	+882	City of Newnan.
	Approximately 140 feet upstream of Ashley Park Drive	+897	
Tributary 7 to Wahoo Creek	At the Wahoo Creek confluence	+860	City of Newnan, Unincorporated Areas of Coweta County.
	Approximately 1,650 feet upstream of Marathon Street	+898	
Tributary 8 to Wahoo Creek	At the Wahoo Creek confluence	+861	City of Newnan.
	Approximately 0.41 mile upstream of the Wahoo Creek confluence.	+899	
Tributary 9 to Wahoo Creek	At the Wahoo Creek confluence	+874	City of Newnan.
	Approximately 1,800 feet upstream of the Wahoo Creek confluence.	+905	
Wahoo Creek	At the Chattahoochee River confluence	+701	City of Newnan, Unincorporated Areas of Coweta County.
	Approximately 960 feet upstream of Paul Street	+945	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Newnan

Maps are available for inspection at the Public Works Department, 25 LaGrange Street, Newnan, GA 30263.

Unincorporated Areas of Coweta County

Maps are available for inspection at the Coweta County Development and Engineering Department, 21 East Washington Street, Newnan, GA 30263.

Darlington County, South Carolina, and Incorporated Areas
Docket No.: FEMA–B–1145

Beaverdam Creek	At the confluence with Black Creek	+178	Unincorporated Areas of Darlington County.
	Approximately 0.7 mile upstream of Bobo Newsom Highway.	+189	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL) modified	Communities affected
Black Creek (DS)	Approximately 0.5 mile downstream of Muses Bridge Road.	+77	City of Darlington, Unincorporated Areas of Darlington County.
	Just downstream of Society Hill Road	+102	
Black Creek	Approximately 1.4 mile downstream of Patrick Highway	+158	City of Hartsville, Unincorporated Areas of Darlington County.
	Approximately 0.5 mile downstream of New Market Road	+178	
Black Creek (US)	Approximately 1,148 feet downstream of West Old Camden Road.	+189	Unincorporated Areas of Darlington County.
	Approximately 2.6 miles upstream of West Old Camden Road.	+221	
Black Creek Tributary 1	At the confluence with Black Creek	+85	Unincorporated Areas of Darlington County.
	Approximately 0.5 mile upstream of the confluence with Black Creek.	+86	
Great Pee Dee River	Approximately 927 feet downstream of North Main Street	+82	Unincorporated Areas of Darlington County.
	At the confluence with Cedar Creek	+84	
High Hill Creek	Approximately 67 feet downstream of Pisgah Road	+89	Unincorporated Areas of Darlington County.
	Approximately 140 feet upstream of Ebenezer Road	+110	
Indian Creek	At the confluence with Swift Creek	+117	City of Darlington, Unincorporated Areas of Darlington County.
	Approximately 0.5 mile upstream of Rogers Road	+142	
McCalls Branch	Approximately 1,441 feet downstream of I–20	+166	Unincorporated Areas of Darlington County.
	Approximately 364 feet upstream of Buck Reynolds Road	+176	
Newman Swamp	Approximately 445 feet downstream of Zion Road	+149	Town of Lamar, Unincorporated Areas of Darlington County.
	Approximately 1,860 feet upstream of Lamar Highway	+152	
Spring Branch	At the confluence with Black Creek	+159	Unincorporated Areas of Darlington County.
	Approximately 0.9 mile upstream of North 5th Street	+187	
Star Fork Branch	At the confluence with High Hill Creek	+103	Unincorporated Areas of Darlington County.
	Approximately 325 feet upstream of Ebenezer Road	+114	
Star Fork Branch Tributary 1	At the confluence with Star Fork Branch	+103	Unincorporated Areas of Darlington County.
	Approximately 733 feet downstream of Ebenezer Road	+120	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Darlington
Maps are available for inspection at 400 Pearl Street, Darlington, SC 29532.

City of Hartsville
Maps are available for inspection at 133 West Carolina Avenue, Hartsville, SC 29551.

Town of Lamar
Maps are available for inspection at 117 Main Street, Lamar, SC 29069.

Unincorporated Areas of Darlington County
Maps are available for inspection at 1 Public Square, Room 405, Darlington, SC 29532.

Lake County, Montana, and Incorporated Areas
Docket No.: FEMA–B–1233

Dayton Creek	Approximately 1,100 feet downstream of U.S. Route 93	+2897	Unincorporated Areas of Lake County.
	Approximately 1,930 feet upstream of Big Meadows Road	+3196	
Johnson Creek	At the upstream side of Private Drive	+3078	Unincorporated Areas of Lake County.
	Approximately 1.25 miles upstream of Private Drive	+4010	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL) modified	Communities affected
Johnson Creek Overflow (Kelley Drive).	Approximately 840 feet downstream of Sunburst Drive	+3082	Unincorporated Areas of Lake County.
	Approximately 1,880 feet upstream of Sunburst Drive	+3116	
Lower Mission Creek	At the Post Creek confluence	+2658	Unincorporated Areas of Lake County.
	Approximately 1.67 miles upstream of Old Freight Road	+2815	
Post Creek	Approximately 1.87 miles downstream of Old Freight Road.	+2658	Unincorporated Areas of Lake County.
	Approximately 670 feet upstream of Fish Hatchery Road	+2735	
Swan Lake	Entire shoreline	+3078	Unincorporated Areas of Lake County.
Upper Mission Creek	Approximately 90 feet upstream of U.S. Route 20	+2883	Town of Saint Ignatius, Unincorporated Areas of Lake County.
	Approximately 0.74 mile upstream of Foothills Road	+3311	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Town of Saint Ignatius

Maps are available for inspection at 12 1st Avenue, Saint Ignatius, MT 59865.

Unincorporated Areas of Lake County

Maps are available for inspection at 106 4th Avenue East, Polson, MT 59860.

Shelby County, Tennessee, and Incorporated Areas
Docket No.: FEMA–B–1192

Fletcher Creek	Approximately 100 feet upstream of Bartlett Road	+245	City of Memphis, Unincorporated Areas of Shelby County.
	Approximately 150 feet upstream of Back Nine Drive	+366	
Howard Creek	Approximately 1,310 feet downstream of Old Brownsville Road.	+247	City of Bartlett, Unincorporated Areas of Shelby County.
	Approximately 1,115 feet upstream of Billy Maher Road	+256	
Ivy Creek	Approximately 650 feet upstream of CSX railroad	+261	City of Lakeland
	At the upstream side of Memphis Arlington Road.	+295	
Loosahatchie River Lateral A	Approximately 200 feet downstream of Gulf Stream Road	+267	Township of Arlington.
	At the upstream side of Memphis Arlington Road	+281	
Loosahatchie River Lateral CA	At the Loosahatchie River Lateral C confluence	+275	Township of Arlington.
	Approximately 0.3 mile upstream of Forrest Street	+294	
North Fork Creek Lateral A	Approximately 0.8 mile upstream of the North Fork Creek confluence.	+275	City of Millington, Unincorporated Areas of Shelby County.
	At the upstream side of Sullivan Road	+320	
Wolf Creek Lateral F	Approximately 125 feet upstream of Wolf River Boulevard	+274	City of Germantown.
	At the upstream side of Johnson Road	+337	
Wolf River Lateral C	Approximately 645 feet upstream of the Wolf River Lateral CA confluence.	+272	City of Germantown.
	Approximately 130 feet upstream of Woodruff Drive	+311	
Wolf River Lateral G	Approximately 0.4 mile upstream of the Wolf River confluence.	+272	City of Germantown, Town of Collierville.
	Approximately 0.5 mile upstream of Fox Hill East Circle	+323	
Wolf River Lateral H	Approximately 0.3 mile downstream of Wolf River Boulevard.	+280	Town of Collierville, Unincorporated Areas of Shelby County.
	Approximately 140 feet downstream of State Highway 72	+325	
Wolf River Lateral J	Approximately 0.4 mile downstream of Shelton Road East	+288	Town of Collierville, Unincorporated Areas of Shelby County.
	Approximately 130 feet upstream of West White Road	+323	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL) modified	Communities affected

Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Bartlett
Maps are available for inspection at 3585 Altrurial Road, Bartlett, TN 38134.

City of Germantown
Maps are available for inspection at 1920 South Germantown Road, Germantown, TN 38138.

City of Lakeland
Maps are available for inspection at 10001 Highway 70, Lakeland, TN 38002.

City of Memphis
Maps are available for inspection at 125 North Main Street, Room 476, Memphis, TN 38103.

City of Millington
Maps are available for inspection at 7930 Nelson Street, Millington, TN 38053.

Town of Collierville
Maps are available for inspection at 500 Keough Road, Collierville, TN 38017.

Township of Arlington
Maps are available for inspection at 5854 Airline Road, Arlington, TN 38002.

Unincorporated Areas of Shelby County
Maps are available for inspection at 160 North Main Street, Suite 350, Memphis, TN 38103.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 28, 2012.

James A. Walke,

Acting Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–31506 Filed 12–31–12; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 12–1976]

Radio Broadcasting Services; Westley, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule, petition for reconsideration.

SUMMARY: This document grants the Petitions for Reconsideration filed separately by Modesto Peace/Life Center (''MPLC'') and Calvary Chapel of Turlock, Inc. (''CCT''), reinstates the applications, File Nos. BNPED–20100224ABX and BNPED–20100226AGO, respectively, *nunc pro tunc,* and re-reserves Channel 238A at Westley, California for noncommercial educational use.

DATES: Effective January 21, 2013.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kelly Donohue, Media Bureau, (202) 418–8192.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Letter,* DA 12–1976, released December 7, 2012. Both MPLC and CCT filed separately timely Petitions for Reconsideration, and amendments to their applications, File Nos. BNPED–20100224ABX and BNPED–20100226AGO, respectively, in response to the staff's July 27, 2012 decision. *See* 77 FR 50053, published August 20, 2012. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *www.BCPIWEB.com.* The Commission will send a copy of the *Letter* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Although the Bureau now finds that the MPLC and CCT Applications both satisfy the reservation standard, MPLC and CCT remain tied with five points each. Thus, the Bureau refers the MPLC and CCT Applications to the Commission to administer the tie-breaker mechanisms and to determine the tentative selectee(s) for NCE Reserved Allotment Group No. 8.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Peter H. Doyle,

Chief, Audio Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission amends 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 California, is amended by removing Channel 238A and by adding Channel *238A at Westley.

[FR Doc. 2012–31493 Filed 12–31–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 111220786–1781–01]

RIN 0648–XC396

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring a portion of its 2012 commercial summer flounder quota to the Commonwealth of Virginia, the State of North Carolina is transferring a portion of its 2012 commercial summer flounder quota to the State of Connecticut, and the Commonwealth of Massachusetts is transferring a portion of its 2012 commercial summer flounder quota to the State of Rhode Island. NMFS is adjusting the quotas and announcing the revised commercial quota for each state involved.

DATES: Effective December 27, 2012, through December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Management Specialist, 978–281–9224.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are in 50 CFR part 648, and require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.102.

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider the criteria in § 648.102(c)(2)(i) to evaluate requests for quota transfers or combinations.

North Carolina has agreed to transfer 13,503 lb (6,124 kg) of its 2012 commercial quota to Virginia. This transfer was prompted by summer flounder landings of a number of North Carolina vessels that were granted safe harbor in Virginia due to mechanical failures and hazardous weather, between November 1, 2012, and November 30, 2012, thereby requiring a quota transfer to account for an increase in Virginia's landings that would have otherwise accrued against the North Carolina quota. North Carolina has agreed to transfer 20,000 lb (9,071 kg) of its 2012 commercial quota to Connecticut. This transfer was prompted by the diligent efforts of the state officials in Connecticut not to exceed the commercial summer flounder quota. Massachusetts has agreed to transfer 7,034 lb (3,190 kg) of its 2012 commercial quota to Rhode Island. This transfer was prompted by the diligent efforts of state officials in Rhode Island not to exceed the commercial summer flounder quota. The Regional Administrator has determined that the criteria set forth in § 648.102(c)(2)(i) have been met. The revised summer flounder quotas for calendar year 2012 are: North Carolina, 1,667,438 lb (765,409 kg); Virginia, 4,704,093 lb (2,133,741 kg); Connecticut, 322,490 lb (146,279 kg); Massachusetts, 888,902 lb (403,199 kg); and Rhode Island, 2,081,075 lb (943,959 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: December 27, 2012.

Lindsay Fullenkamp,

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

[FR Doc. 2012–31531 Filed 12–27–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 1
Wednesday, January 2, 2013

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS–FV–12–0030; FV12–927–1 PR]

Pears Grown in Oregon and Washington; Modification of the Assessment Rate for Fresh Pears

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Fresh Pear Committee (Committee) for the 2012–2013 and subsequent fiscal periods from $0.366 to $0.449 per standard box or equivalent of summer/fall pears handled, and would decrease the assessment rate from $0.471 to $0.449 per standard box or equivalent of fresh winter pears handled. The Committee locally administers the marketing order which regulates the handling of fresh pears grown in Oregon and Washington. Assessments upon Oregon-Washington fresh pear handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins July 1 and ends June 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by January 14, 2013.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Teresa.Hutchinson@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Laurel.May@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 927, as amended (7 CFR part 927), regulating the handling of pears grown in Oregon and Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Oregon-Washington pear handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable fresh pears beginning July 1, 2012, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Fresh Pear Committee (Committee) for the 2012–2013 and subsequent fiscal periods from $0.366 to $0.449 per standard box or equivalent of summer/fall pears handled, and would decrease the assessment rate from $0.471 to $0.449 per standard box or equivalent of fresh winter pears handled. The standard box or equivalent assessment rate for ''other'' fresh pears would remain unchanged at $0.00.

The Oregon-Washington pear marketing order provides authority for the Committee, with USDA approval, to formulate an annual budget of expenses and to collect assessments from handlers to administer the fresh pear program. The members of the Committee are producers and handlers of Oregon-Washington fresh pears. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2011–2012 and subsequent fiscal periods, the Committee recommended, and USDA approved, the following three base rates of assessment: (a) $0.366 per standard box or equivalent for any or all varieties or subvarieties of fresh pears classified as ''summer/fall''; (b) $0.471 per standard box or equivalent for any or all varieties or subvarieties of fresh pears classified as ''winter''; and (c) $0.000 per standard box or equivalent for any or all varieties or subvarieties of fresh pears classified as ''other''. These base rates of

assessment would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 31, 2012, and unanimously recommended 2012–2013 expenditures of $9,166,744. To fund the 2012–2013 expenditures, the Committee also recommended an assessment rate of $0.449 per standard box or equivalent for both fresh summer/fall and winter pears.

In comparison, last year's budgeted expenditures were $9,301,960. The fresh summer/fall pear assessment rate of $0.449 is $0.083 higher than the rate currently in effect. The fresh winter pear assessment rate of $0.449 is $0.022 lower than the rate currently in effect. The Committee recommended increasing the promotion and paid advertising expenditures to market the larger 2012–2013 fresh summer/fall pear crop, estimated at four percent higher than 2011–2012 and the five-year average. Accordingly, the Committee recommended the higher fresh summer/fall pear assessment rate to fund the increased 2012–2013 promotion and paid advertising expenditures. The Committee estimates that the 2012–2013 fresh winter pear crop will be nine percent lower than 2011–2012. Consequently, the Committee recommended lower promotion and paid advertising expenditures for marketing the reduced fresh winter pear crop, resulting in a lower assessment rate for 2012–2013.

The major expenditures recommended by the Committee for the 2012–2013 fiscal period include $450,274 for contracted administration by Pear Bureau Northwest, $635,500 for production research and market development, $6,160,000 for promotion and paid advertising for winter pears, and $1,732,500 for promotion and paid advertising for summer/fall pears. In comparison, major expenses for the 2011–2012 fiscal period included $437,160 for contracted administration by Pear Bureau Northwest, $644,800 for production research and market development, $6,765,000 for promotion and paid advertising for winter pears, and $1,290,000 for promotion and paid advertising for summer/fall pears.

The Committee based its recommended assessment rate for fresh pears on the 2012–2013 summer/fall and winter pear crop estimates, the 2012–2013 program expenditure needs, and the current and projected size of its monetary reserve. Applying the $0.449 per standard box or equivalent assessment rate to the Committee's 4,500,000 standard box or equivalent fresh summer/fall pear crop estimate should provide $2,020,500 in assessment income. The quantity of assessable fresh winter pears for the 2012–2013 fiscal period is estimated at 16,000,000 standard boxes or equivalent and should provide $7,184,000 in assessment income. Thus, income derived from winter and summer/fall fresh pear handler assessments ($9,204,500) and interest and miscellaneous income ($20,000) would be adequate to cover the recommended $9,166,774 budget for 2012–2013. The Committee estimates that it will have a monetary reserve of $1,031,259 on June 30, 2012. During 2012–2013, the Committee estimates that $57,726 would be added to the reserve for an estimated reserve of $1,088,985 on June 30, 2013, which would be within the maximum permitted by the order of approximately one fiscal period's operational expenses (§ 927.42).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2012–2013 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,580 producers of fresh pears in the regulated production area and approximately 38 handlers of fresh pears subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000.

According to the Noncitrus Fruits and Nuts 2011 Preliminary Summary issued in March 2012 by the National Agricultural Statistics Service, the total 2011 farm-gate value of all pears grown in Oregon and Washington is estimated at approximately $275,531,000. Based on the number of pear producers in the Oregon and Washington, the average gross revenue for each producer can be estimated at approximately $174,387. Furthermore, based on Committee records, the Committee has estimated that 56 percent of Oregon-Washington pear handlers currently ship less than $7,000,000 worth of fresh pears on an annual basis. From this information, it is concluded that the majority of producers and handlers of Oregon and Washington fresh pears may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2012–2013 and subsequent fiscal periods from $0.366 to $0.449 per standard box or equivalent of fresh summer/fall pears handled, and would decrease the assessment rate from $0.471 to $0.449 per standard box or equivalent of fresh winter pears handled. The Committee unanimously recommended 2012–2013 expenditures of $9,166,774, and an assessment rate of $0.449 per standard box or equivalent of fresh summer/fall and winter pears handled. The proposed assessment rate of $0.449 is $0.083 higher than the 2011–2012 assessment rate for summer/fall pears, and $0.022 lower than the 2011–2012 assessment rate for winter pears. The Committee recommended increasing the promotion and paid advertising expenditures to market the larger 2012–2013 fresh summer/fall pear crop, estimated at four percent higher than 2011–2012 and the five-year average. Accordingly, the Committee recommended the higher fresh summer/fall pear assessment rate to fund the

increased 2012–2013 promotion and paid advertising expenditures. The Committee estimates that the 2012–2013 fresh winter pear crop will be nine percent lower than 2011–2012. Consequently, the Committee recommended lower promotion and paid advertising expenditures for marketing the reduced fresh winter pear crop, resulting in a lower assessment rate for 2012–2013.

The quantity of assessable fresh summer/fall pears for the 2012–2013 fiscal period is estimated at 4,500,000 standard boxes or equivalent. Thus, the $0.449 rate should provide $2,020,500 in assessment income. Applying the $0.449 per standard box or equivalent assessment rate to the Committee's 16,000,000 standard box or equivalent fresh winter pear crop estimate should provide $7,184,000 in assessment income. Income derived from winter and summer/fall fresh pear handler assessments ($9,204,500) and interest and miscellaneous income ($20,000) would be adequate to cover the budgeted expenses.

The major expenditures recommended by the Committee for the 2012–2013 fiscal period include $450,274 for contracted administration by Pear Bureau Northwest, $635,500 for production research and market development, $6,160,000 for promotion and paid advertising for winter pears, and $1,732,500 for promotion and paid advertising for summer/fall pears. Budgeted expenses for these items in 2011–2012 were $437,160, $644,800, $6,765,000, and $1,290,000, respectively.

The Committee discussed alternatives to this rule. Leaving the assessment rate at the current level for summer/fall and winter pears was initially considered, but not recommended. Although considered, the Committee believes that the current assessment level for fresh summer/fall pears would not generate the funds necessary for the promotion and marketing of the larger fresh summer/fall pear crop. As a consequence, increasing it to the level recommended herein was determined as the best alternative. Similarly, the Committee discussed alternatives for the winter pear assessment rate, but concluded that the recommended lower assessment rate should generate enough funds for promotion and marketing of the smaller fresh winter pear crop.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the Oregon-Washington producer price for the 2012–2013 fiscal period could average $9 per standard box or equivalent of pears. Therefore, the estimated assessment revenue for the 2012–2013 fiscal period as a percentage of total producer revenue is 4.99 percent.

This action would modify the assessment obligation imposed on handlers. While the increase in the summer/fall pear assessment rate may impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. These costs would be offset by the benefits derived by the operation of the marketing order. On the other hand, decreasing the winter pear assessment rate would reduce the burden on handlers, and may reduce the burden on producers.

In addition, the Committee's meeting was widely publicized throughout the Oregon-Washington pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 31, 2012, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189, Generic Fruit Crops. No changes in those requirements as a result of this action are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Oregon-Washington fresh pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 10-day comment period is provided to allow interested persons to respond to this proposed rule. Ten days is deemed appropriate because: (1) The 2012–2013 fiscal period begins on July 1, 2012, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable pears handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (3) the proposed rule would decrease the assessment rate for assessable fresh winter pears; and (4) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is proposed to be amended as follows:

PART 927—PEARS GROWN IN OREGON AND WASHINGTON

■ 1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 927.236, the introductory text and paragraphs (a) and (b) are revised to read as follows:

§ 927.236 Fresh pear assessment rate.

On and after July 1, 2012, the following base rates of assessment for fresh pears are established for the Fresh Pear Committee:

(a) $0.449 per 44-pound net weight standard box or container equivalent for any or all varieties or subvarieties of fresh pears classified as ''summer/fall'';

(b) $0.449 per 44-pound net weight standard box or container equivalent for any or all varieties or subvarieties of fresh pears classified as ''winter''; and

* * * * *

Dated: December 26, 2012.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2012–31516 Filed 12–31–12; 8:45 am]

BILLING CODE 3410–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2012–0958; FRL–9765–8]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Maintenance Plan for the 1997 8-Hour Ozone Standard for Salt Lake County and Davis County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove State Implementation Plan (SIP) revisions submitted by the Governor of Utah on March 22, 2007. The SIP revision is the State of Utah's maintenance plan for the 1997 8-hour ozone standard for Salt Lake County and Davis County, along with associated rules: R307–101–2, ''Definitions;'' R307–110–13, ''Section IX, Control Measures for Area and Point Sources, Part D, Ozone;'' R307–320, ''Ozone Maintenance Areas and Ogden City: Employer-Based Trip Reduction Program;'' R307–325, ''Ozone Nonattainment and Maintenance Areas: General Requirements;'' R307–326, ''Ozone Nonattainment and Maintenance Areas: Control of Hydrocarbon Emissions in Petroleum Refineries;'' R307–327, ''Ozone Nonattainment and Maintenance Areas: Petroleum Liquid Storage;'' R307–328, ''Ozone Nonattainment and Maintenance Areas and Utah and Weber Counties: Gasoline Transfer and Storage;'' R307–335, ''Ozone Nonattainment and Maintenance Areas: Degreasing and Solvent Cleaning Operations;'' R307–340, ''Ozone Nonattainment and Maintenance Areas: Surface Coating Processes;'' R307–341, ''Ozone Nonattainment and Maintenance Areas: Cutback Asphalt;'' and R307–342, ''Ozone Nonattainment and Maintenance Areas: Qualification of Contractors and Test Procedures for Vapor Recovery Systems for Gasoline Delivery Tanks.'' This action is being taken under sections 107 and 110 of the Clean Air Act (Act).

DATES: Comments must be received on or before February 1, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2012–0958, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: ostendorf.jody@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop St., Denver, Colorado 80202–1129.
- *Hand Delivery:* Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop St., Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2012–0958. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jody Ostendorf, Air Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202–1129, (303) 312–7814, *ostendorf.jody@epa.gov*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information
II. Background of State Submittals
III. EPA Analysis of the Maintenance Plan for the 1997 8-Hour Ozone Standard for Salt Lake County and Davis County
IV. EPA Analysis of the Associated Rule Revisions
V. Proposed Action
VI. Statutory and Executive Order Reviews

Definitions

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

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

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

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or *Utah* mean the State of Utah, unless the context indicates otherwise.

I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. 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:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. 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.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. Background of State Submittals

A. Regulatory Context

Under the Clean Air Act (CAA) enacted in 1970, EPA established national ambient air quality standards (NAAQS) for certain pervasive air pollutants, such as photochemical oxidant, carbon monoxide, and particulate matter. The NAAQS represent concentration levels below which public health and welfare are protected. The 1970 Act also required states to adopt and submit State Implementation Plans (SIPs) to implement, maintain, and enforce the NAAQS.

From time-to-time, the CAA requires SIP revisions to account for new or amended NAAQS or to meet other changed circumstances. The CAA was significantly amended in 1977, and under the 1977 Amendments, EPA promulgated attainment status designations for all areas of the country with respect to the NAAQS.

The CAA requires EPA to periodically review and revise the NAAQS, and in 1979, EPA established a new NAAQS of 0.12 ppm for ozone, averaged over 1 hour. This new NAAQS replaced the oxidant standard of 0.08 ppm. See 44 FR 8202 (February 8, 1979). Areas designated nonattainment for oxidant were considered to be nonattainment for ozone as well. Part D of CAA Title I requires special measures for areas designated nonattainment. In 1984, EPA approved Utah's SIP for the 1-hour ozone standard for the Salt Lake County and Davis County nonattainment area (49 FR 32575).

Congress significantly amended the CAA again in 1990. Under the 1990 Amendments, each area of the country that was designated nonattainment for the 1-hour ozone NAAQS, including Salt Lake County and Davis County, was classified by operation of law as marginal, moderate, serious, severe, or extreme nonattainment depending on the severity of the area's air quality problem. The ozone nonattainment designation for Salt Lake County and Davis County continued by operation of law according to section 107(d)(1)(C)(i) of the CAA, as amended in 1990. Furthermore, the area was classified by operation of law as moderate for ozone under CAA section 181(a)(1).

Under CAA section 175A, states may request redesignation of a nonattainment area to attainment if monitoring data showed that the area has met the NAAQS and if the area meets certain other requirements. On July 18, 1995, both Salt Lake and Davis Counties were found to be attaining the 1-hour ozone standard (60 FR 36723). On July 17, 1997, EPA approved the State's request to redesignate Salt Lake and Davis Counties to attainment for the 1-hour ozone standard. As part of that action, EPA approved the State's 1-hour ozone maintenance plan (62 FR 38213).

On July 18, 1997, EPA promulgated an 8-hour ozone NAAQS of 0.08 ppm (62 FR 38894). This standard was intended to replace the 1-hour ozone standard. On April 30, 2004, EPA designated areas of the country for the 1997 8-hour ozone standard (69 FR 23857). EPA designated all areas in Utah, including Salt Lake County and Davis County, as unclassifiable/attainment for the 1997 8-hour ozone NAAQS (69 FR 23940).

Also, on April 30, 2004, EPA revoked the pre-existing 1-hour NAAQS (69 FR 23951, 23996; 40 CFR 50.9(b)). As part of this rulemaking, EPA established certain requirements to prevent backsliding in those areas that were designated as nonattainment for the 1-hour ozone standard at the time of designation for the 8-hour ozone standard, or that were redesignated to ''attainment'' but subject to a maintenance plan, as is the case for Salt Lake County and Davis County. These requirements are codified at 40 CFR 51.905.

In the case of Utah, one of these requirements was to submit a maintenance plan for the 1997 8-hour ozone standard. On March 22, 2007, the Governor of Utah submitted a maintenance plan for the 1997 8-hour ozone standard for Salt Lake County and Davis County, and associated rule revisions. In this notice, EPA is proposing to act on this March 22, 2007 maintenance plan and rule revisions.

In 2008, EPA promulgated a lower 8-hour ozone standard—0.075 ppm. 73 FR 16436. The 2008 ozone standard retains the same general form and averaging time as the 0.08 ppm standard set in 1997. Effective July 20, 2012, Salt Lake County and Davis County were designated Unclassifiable/Attainment for this lower standard. 77 FR 30088, 30151.

B. Ambient Ozone Conditions

The 1997 ozone NAAQS is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ambient ozone concentration (also referred to as the ''design value'') is less than or equal to 0.08 ppm at all monitoring sites within an air quality planning area. Forty CFR part 50, Appendix I, section 2.3, directs that the third decimal place of the computed three-year average be rounded; values equal to or greater than 0.005 are rounded up. Thus, under our regulations, a computed three-year ozone concentration of 0.085 ppm is the smallest value that is considered to be greater than 0.08 ppm and, thus, a violation of the standard.

A review of the data gathered at the ozone monitoring sites in Salt Lake County and Davis County from 2000–2011 [1] shows the area has been attaining the 8-hour ozone NAAQS except for the 2005–2007 period, which had a design value of 0.085 ppm. As noted above, EPA designated Salt Lake County and Davis County unclassifiable/attainment for the lower 2008 ozone standard (0.075 ppm) based on monitored values for 2008–2010. The following table shows design values for each year from 2000 through 2011:

[1] Data for 2012 have not been certified yet.

TABLE 1—SALT LAKE AND DAVIS COUNTIES THREE-YEAR AVERAGE OF THE 4TH HIGHEST OZONE VALUE (PPM)

Monitoring site (county)	2000–2002	2001–2003	2002–2004	2003–2005	2004–2006	2005–2007	2006–2008	2007–2009	2008–2010	2009–2011
Beach (Salt Lake)	0.081	0.081	0.078	0.079	0.081	0.083	0.079	0.076	0.072	0.072
Bountiful (Davis)	0.082	0.083	0.078	0.079	0.080	0.085	0.080	0.077	0.074	0.071
Cottonwood (Salt Lake)	0.076	0.080	0.079	0.080	0.080	0.083	0.082	0.077	0.075	0.073
Hawthorne (Salt Lake)	0.077	0.080	0.078	0.077	0.077	0.081	0.078	0.076	0.074	0.074
Herriman (Salt Lake)	0.078	0.076	0.076	0.076	0.078	0.080	[2] n/a	n/a	n/a	n/a
West Valley (Salt Lake)	0.079	0.080	0.076	0.078	0.078	0.081	[2] n/a	n/a	n/a	n/a

III. EPA Analysis of the Maintenance Plan for the 1997 8-Hour Ozone Standard for Salt Lake County and Davis County

As noted above, 40 CFR 51.905 requires a maintenance plan for the 1997 8-hour ozone standard, pursuant to section 110(a)(1) of the CAA. In the case of areas like Salt Lake County and Davis County, that have an approved maintenance plan for the 1-hour ozone standard and are unclassifiable/attainment for the 8-hour standard, 40 CFR 51.905(a)(4)(ii) specifies that the maintenance plan must provide for continued maintenance of the 8-hour standard for 10 years following designation—i.e., until 2014—and must include contingency measures. In May 20, 2005 guidance entitled ''Maintenance Plan Guidance Document for Certain 8-hour Ozone Areas Under Section 110(a)(1) of the Clean Air Act'' (''2005 guidance''), EPA provided its interpretations of the components that 40 CFR 51.905 maintenance plans should include. These components are: (1) An attainment inventory, (2) a maintenance demonstration, (3) ambient air quality monitoring, (4) a contingency plan, and (5) verification of continued attainment.

In addition, 40 CFR 51.905(a)(4)(i) restricts states from removing certain ''applicable requirements,'' as defined in 40 CFR 51.900(f), from the SIP. States may shift applicable requirements to contingency measures if such a shift is consistent with CAA sections 110(l) and 193. As a general proposition, EPA may not approve a SIP revision that is inconsistent with CAA section 110(l) or CAA section 193.

Below, we evaluate whether the Utah maintenance plan is consistent with the relevant statutory and regulatory requirements, as we have interpreted them.

A. Attainment Emission Inventory

As recommended by EPA, the State used 2002 as the year for the maintenance plan's attainment inventory, and the inventory reflects typical summer day emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X). The emission inventory is divided into four major source categories: point sources, area sources, mobile sources, and naturally occurring biogenic sources. Mobile sources are further divided into on-road and non-road categories. The following tables present the 2002 attainment inventory, as well as the State's projected inventories through 2014.

TABLE 2—SALT LAKE AND DAVIS COUNTIES SOURCE CATEGORY TOTALS FOR VOCS (TONS/DAY)

	2002	2005	2008	2011	2014
Point Source	11.24	11.21	11.66	11.96	12.36
Area Source	89.32	92.42	96.30	101.86	107.75
Biogenic Source	120.26	120.26	120.26	120.26	120.26
Mobile On-Road	57.66	44.70	35.36	29.11	24.52
Mobile Non-Road	29.55	25.47	20.90	18.42	16.57
Total	308.03	294.06	284.48	281.61	281.46
Attainment	308.03	308.03	308.03	308.03	308.03

TABLE 3—SALT LAKE AND DAVIS COUNTIES SOURCE CATEGORY TOTALS FOR NO_X (TONS/DAY)

	2002	2005	2008	2011	2014
Point Source	39.27	38.09	37.78	36.75	36.82
Area Source	11.36	10.08	10.79	11.82	12.82
Mobile On-Road	98.89	85.52	65.47	49.45	35.92
Mobile Non-Road	83.87	80.35	72.56	63.48	51.30
Total	233.39	214.04	186.60	161.50	136.86
Attainment	233.39	233.39	233.39	233.39	233.39

The attainment inventory was prepared in accordance with EPA guidance and we find that it accurately portrays typical summer day emissions during the 2002 ozone season (June–August).

B. Maintenance Demonstration

Under EPA's interpretation of the CAA and its regulations, maintenance of an ozone standard generally may be

[2] These two monitors were shut down in Sept. 2007.

demonstrated through modeling or through an emissions inventory approach. Utah chose the latter approach, which involves a showing that future emissions of ozone precursors will not exceed the level of such precursors in the attainment year inventory.

The maintenance plan's projections, as reflected in Tables 2 and 3 above, show that future emissions of VOCs and NO_X will not exceed the 2002 inventory values. However, primarily due to high monitored ambient ozone concentrations in the 2005 ozone season, the area recorded a violation of the 1997 8-hour ozone standard for the 2005–2007 seasons. This violation casts doubt on the use of the 2002 emissions inventories as representative of the levels of emissions that are consistent with maintaining the standard. However, the circumstances presented here provide countervailing considerations:

1. Since the time of the area's designation to attainment in 2004, the only monitored violation occurred during 2005–2007. As stated above, the 1997 8-hour ozone standard is attained at a design value of 0.084, and the design value for 2005–2007 was 0.085 ppm—the lowest value that can represent a violation.

2. In 2005, the area monitored significantly higher 4th high maximum values than it had monitored in the previous four years and than it has monitored since.

3. In 2006–2008, the area immediately returned to attainment and has continued to attain the standard. Complete quality-assured data for 2007–2009, 2008–2010, 2009–2011, and preliminary data for 2012, show that the area has continuously maintained the standard.

4. Under the applicable regulatory requirement, 40 CFR 51.905(a)(4), the State must demonstrate maintenance for ten years after designation, or until 2014.

5. In evaluating the potential for the area, given its continued maintenance during and subsequent to 2008, EPA takes into consideration the fact that, in order for the area to violate the standard in 2013–2014, the area would have to experience significantly higher 4th high maximums than it experienced in 2005. We find this prospect to be highly unlikely, particularly given the State's projected emissions trends, as reflected in Tables 2 and 3 above.

6. Mobile source emissions account for a very large portion of the overall emissions inventory, and federal motor vehicle control standards, combined with fleet turnover, will continue to reduce relevant emissions through 2014.

Based on this unique combination of factors, we are proposing to approve the maintenance demonstration. However, we are also proposing disapproval in the alternative should comments convince us that approval is not consistent with the CAA.

C. Ambient Air Quality Monitoring/ Verification of Continued Attainment

EPA's 2005 guidance indicates that, ''The State should continue to operate air quality monitors in accordance with 40 CFR 58 to verify maintenance of the 8-hour ozone standard in the area.'' The maintenance plan (section 4) describes the ozone monitoring network, presents monitoring data, and includes the State's commitment to continue to operate and maintain an adequate monitoring network in accordance with 40 CFR 58. For the period 1999 through 2005, there were six ozone monitors in Salt Lake and Davis Counties. The plan indicates that the State will continue to conduct annual reviews of the network and gain EPA approval before making any changes to the existing network.

Regarding verification of continued attainment, our guidance indicates that the plan should indicate how the State will track the progress of the maintenance plan. One option mentioned is to periodically update the emission inventory. In the maintenance plan, the State includes a section 7 entitled, ''Verification of Continued Ozone Maintenance.'' In it, the State commits to update the VOC and NO_X emission inventories for Salt Lake and Davis Counties at least once every three years, and to compare the updated inventories to the plan's projections to verify that emissions are within acceptable limits to maintain the standard. EPA is proposing to approve this section of the maintenance plan.

D. Contingency Measures

EPA's 2005 guidance states that the contingency plan should include measures to ensure that a violation of the 8-hour ozone NAAQS is promptly corrected. EPA's interpretation of the section 51.905 contingency measures requirement is consistent with its interpretation of the CAA section 175A contingency plan requirement. Thus, the plan must include the State's enforceable commitment to adopt and implement the contingency measures in a timely fashion once they're triggered. The plan must identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the State.

A pre-adopted contingency measure is not required; rather, the plan may include a list of potential measures from which the State could choose should a violation occur. The purpose of the contingency measures is to achieve VOC and/or NO_X emission reductions to correct a violation.

The State's maintenance plan provides that the contingency trigger date is the date that certified data show that a monitored violation of the 1997 ozone standard has occurred. The maintenance plan describes the State's timeline to implement contingency measures. Within 60 days of the contingency trigger date, the Utah Division of Air Quality will begin evaluation of potential contingency measures. Within 180 days of the contingency trigger date, the Division of Air Quality will present the recommended contingency measures to the Utah Air Quality Board. The Air Quality Board will then hold public hearings to consider the recommended contingency measures along with any other contingency measures the Air Quality Board deems appropriate. The plan indicates that the necessary contingency measures will be adopted and implemented within 24 months of the contingency trigger date.

Possible contingency measures include:

1. Alert Day Enhancements—A public outreach campaign to educate individuals of smart choices, such as discouraging refueling vehicles or mowing lawns during peak ozone periods.

2. Reduction of Truck Stop Idling—The plan indicates that Utah could adopt a rule limiting vehicle idling time while vehicles are not actually moving.

3. Heavy Equipment Emission Control Program—According to the plan, this ''could include incentives to encourage after-market retrofit of heavy-duty diesel construction equipment and increased use of compressed natural gas-fueled school and [Utah Transit Authority] buses.''

4. Reduce Emissions of VOCs—Voluntary commitments or regulatory measures to reduce VOC emissions from major sources.

5. Identification of High-Polluting Vehicles—Use of remote sensing technology to identify smoking or high-polluting vehicles and provide incentives for repair of these vehicles.

6. Establish an Offset Ratio for NO_X—Lower the threshold at which offsets are required for new NO_X sources.

7. Implement More Effective Low-NO_X Burner Controls—Require sources to replace existing burners with low-NO_X burners.

8. Other VOC or NO_X emission control measures as appropriate.

On November 2, 2006, during the State's public comment period on its draft maintenance plan, we provided comments to the State on the proposed contingency measure portion of the plan. We noted that several of the contingency measures included on the State's list of potential measures were voluntary measures. We advised the State that voluntary measures do not function or qualify as contingency measures. The State disagreed and retained the voluntary measures in its list of contingency measures.

In today's notice, we are proposing to approve contingency measure numbers 2 and 7 on the list above, because these measures would impose regulatory requirements. We are proposing to approve measure number 4 to the extent it prescribes measures that are enforceable and regulatory, as opposed to voluntary measures. We also are proposing to approve measure number 8, with the understanding that any contingency measure under this category must be enforceable, not voluntary, to be considered valid under our proposed approval.

We are proposing to disapprove those measures on the list above that are voluntary: Measure numbers 1 and 2, the portion of measure number 4 that includes voluntary measures, and measure number 5. While we have not required that potential contingency measures be effective without further action by the state, we interpret the CAA as requiring measures that will be enforceable. Voluntary measures may not be widely implemented and, thus, cannot be relied on to ensure prompt emission reductions to correct a violation. We also are proposing to disapprove measure number 6 on the list of contingency measures because it will achieve emissions reductions only if new source construction occurs. Thus, it is not a measure that will ensure prompt correction of a violation.

Because we consider those regulatory contingency measures that we are proposing to approve to be sufficient to satisfy the contingency measure requirements for this maintenance plan, our disapproval of the other contingency measures would not trigger a deadline for EPA to promulgate a federal implementation plan under CAA section 110(c).

E. Other Aspects of the Maintenance Plan

1. VOC Reasonably Available Control Technology (RACT)

40 CFR 51.904(a)(4) provides that applicable requirements in a 1-hour ozone plan, as defined in 40 CFR 51.900(f), may not be removed from the SIP. It allows a state to move such requirements to contingency measures, but only if the requirements of CAA sections 110(l) and 193 are met.

In the 8-hour ozone maintenance plan, the State indicates that all RACT requirements from the 1-hour ozone SIP will remain in place. However, later in the 8-hour ozone maintenance plan, Utah proposes to remove the approval orders for Hill Air Force Base from the SIP. When we approved Utah's 1-hour maintenance plan and redesignation request, we approved and incorporated these orders to satisfy applicable CAA RACT requirements. 62 FR 28399; 62 FR 38214–38215. In place of these approval orders, the State claims that Maximum Achievable Control Technology (MACT) requirements, New Source Performance Standards (NSPS), and generic State rules will provide a more stringent substitute to ''regulate over eighty-six percent of the total VOC emissions originating from Hill Air Force Base.'' According to the State, the ''remaining fourteen percent'' will be regulated by ''the forthcoming Military MACT.'' The State did not propose to move the approval orders to the contingency measures.

We find that the State's generic statements regarding equivalency, without a specific, comparative analysis of the units and pollutants involved, are not sufficient to satisfy the requirements of CAA sections 110(l) and 193. We are unable to conclude that the various MACT, NSPS, and generic State rules are as or more stringent than the approval orders. Furthermore, we are unclear what the State is referring to when it mentions a forthcoming Military MACT. Thus, we are proposing to disapprove the State's proposal to remove the approval orders for Hill Air Force Base from the SIP.

Because these approval orders would remain a part of the federally enforceable SIP should we finalize our proposed disapproval, our disapproval of the State's proposal to remove the approval orders would not trigger a FIP deadline.

The State has also submitted revisions to the following generic VOC RACT rules that it relied on in the 1-hour maintenance plan:

R307–325, General Requirements
R307–326, Control of Hydrocarbon Emissions in Petroleum Refineries
R307–327, Petroleum Liquid Storage
R307–328, Gasoline Transfer and Storage
R307–335, Degreasing and Solvent Cleaning Operations
R307–340, Surface Coating Processes
R307–341, Cutback Asphalt
R307–342, Qualification of Contractors and Test Procedures for Vapor Recovery Systems for Gasoline Delivery Tanks

These rules are further discussed in Section IV, ''EPA Analysis of the Associated Rule Revisions,'' of this notice.

2. NO_X RACT

For the PacifiCorp Gadsby Power Plant, the State asserts in the 8-hour maintenance plan that ''current'' NO_X emission limitations in Section IX, Part H of the SIP are equivalent to the NO_X emission limitations that the State approved as RACT in conjunction with the 1-hour ozone maintenance plan. It appears that Utah is using the word ''current'' to refer to the emission limit contained in Utah's 2005 PM_{10} maintenance plan. We think this limit is a daily NO_X limit for the entire plant of 6.57 tons per day. However, Utah does not specify this in the 8-hour ozone maintenance plan and does not explain how this limit is equivalent to the NO_X RACT limits for boilers 1, 2, and 3 that EPA approved with the 1-hour ozone maintenance plan in 1997. See 62 FR 28403; 62 FR 38215–38216.[3] Furthermore, after we proposed to disapprove Utah's 2005 PM_{10} maintenance plan, the Governor withdrew it. Thus, the version of Section IX, Part H that the State describes in the 8-hour ozone maintenance plan is not currently before us for consideration. As a result of these issues, we are proposing to disapprove the State's proposal to remove the NO_X RACT limits that we approved for boilers 1, 2, and 3 in 1997.

Because these NO_X RACT limits would remain a part of the federally enforceable SIP, should we finalize our proposed disapproval, our disapproval of the State's proposal to remove the NO_X RACT limits would not trigger a FIP deadline.

3. Employer-Based Trip Reduction Program

The 8-hour maintenance plan states that the employer-based trip reduction program, contained in Utah rule R307–320, is included in the 1-hour

[3] In our 1997 action, we incorporated by reference Utah's February 3, 1994 approval order for PacifiCorp Gadsby that specified hourly NO_X limits of 179, 204, and 203 pounds per hour for boilers 1, 2, and 3 individually.

maintenance plan, but that no reduction credit is claimed for it. The maintenance plan indicates that the program is retained as a control measure in the 8-hour plan.

We note that we did not approve R307–320 when we acted on the 1-hour maintenance plan and that it is not currently part of the EPA-approved SIP. We also note that the State claimed no reduction credit for the employer-based trip reduction program in the 1-hour maintenance plan. Because the program only applies to governmental employers and does not apply to private employers of the same size, the program is inconsistent with CAA section 118. Specifically, Congress has only waived the sovereign immunity of the federal government for purposes of control and abatement of air pollution to the extent that nongovernmental entities are regulated. Thus, we are proposing to disapprove section 5.g of the maintenance plan and R307–320.

Our disapproval of section 5.g of the maintenance plan and R307–320 would not trigger a FIP deadline because an employer-based trip reduction program is not required.

IV. EPA Analysis of the Associated Rule Revisions

Along with the maintenance plan for the 1997 8-hour ozone standard for Salt Lake and Davis Counties, the State also submitted associated rule revisions. Some of these are relied on in the maintenance plan to demonstrate maintenance of the 1997 8-hour ozone standard. We evaluate each of these rules below.

A. R307–101–2. ''Definitions.'' The revisions to this rule that the State submitted with the maintenance plan were effective March 9, 2007. However, on April 17, 2008, the State submitted further revisions to the rule that were effective on February 8, 2008. Our review indicates that the 2008 version of the rule superseded the 2007 version. We approved the 2008 version of the rule on September 2, 2008 and incorporated it by reference into the Code of Federal Regulations. See 73 FR 51222. Thus, in this proposed action we are not acting on the 2007 version of R307–101–2.

B. R307–110–13. ''Section IX, Control Measures for Area and Point Sources, Part D, Ozone.'' This rule merely incorporates the maintenance plan into Utah's rules. To the extent we are proposing to approve the maintenance plan, we are proposing to approve this rule. We do not intend to approve the incorporation of the parts of the maintenance plan that we are proposing to disapprove.

C. R307–320. ''Ozone Maintenance Areas and Ogden City: Employer-Based Trip Reduction Program.'' As noted above, the program only applies to governmental employers and does not apply to private employers of the same size. Thus, the program is inconsistent with CAA section 118, and we are proposing to disapprove the rule.

D. R307–325. ''Ozone Nonattainment and Maintenance Areas: General Requirements.'' Utah revised this rule to clarify the purpose, applicability, and compliance schedule. Utah moved language regarding alternate methods of control from this rule to individual VOC RACT rules, as described in section IV.E below. Additionally, Utah deleted language because it is not needed in this rule or any other rule, and Utah made minor grammatical corrections. Utah also made administrative revisions to the rule's title to replace the reference to ''Salt Lake and Davis Counties'' with a reference to ''Ozone Nonattainment and Maintenance Area.'' Per section 110(l) of the CAA, EPA, in November 2, 2006 comments to Utah, requested that Utah demonstrate that deleting the generic RACT requirement from R307–325 would not interfere with attainment, maintenance, or any other requirement of the CAA. In our November 2, 2006 comments, we clarified that this demonstration could consist of a State certification that all sources potentially subject to the rule were controlled through adoption of specific RACT provisions. The State provided that certification in its response to comments (contained in the docket for this action), and further stated that any sources not controlled through source-specific RACT determinations would be addressed by the NO_X RACT waiver that EPA approved in 1997 (See 62 FR 38215). Therefore, we are proposing to approve these changes.

E. Alternate Methods of Control (AMOC) and EPA's Concurrence Requirement

The State is proposing revisions to R307–326, R307–327, R307–328, R307–335, R307–340, and R307–342, which are addressed individually below. For each of these rules, the State wishes to include AMOC language that was previously included in R307–325. That language states:

> ''Any person may apply to the executive secretary for approval of an alternate test method, an alternate method of control, an alternate compliance period, an alternate emission limit, or an alternate monitoring schedule. The application must include a demonstration that the proposed alternate produces an equal or greater air quality benefit than that required by [this rule], or that the alternate test method is equivalent to that required by these rules. The executive secretary shall obtain concurrence from EPA when approving an alternate test method, an alternate method of control, an alternate compliance period, an alternate emission limit, or an alternate monitoring schedule.''

The Utah Department of Environmental Quality (DEQ) has confirmed that this regulatory language requiring concurrence from EPA on any AMOC applies to all the provisions in these rules that allow for DEQ to alter the compliance requirements of the rule. EPA would like to clarify its position on what is required for EPA to concur on such changes.

Section 110(i) of the CAA specifically precludes states from changing the requirements of the SIP that apply to any stationary source except through SIP revisions approved by EPA. SIP revisions will be approved by EPA only if they meet all requirements of section 110 of the Act and the implementing regulations at 40 CFR Part 51. See, e.g., CAA section 110(l); 40 CFR 51.104. Section 51.104(d) specifically states that in order for a variance to be considered for approval as a SIP revision, the state must submit it in accordance with the requirements of 40 CFR 51.104, which includes the public notice, comment and hearing provisions of 40 CFR 51.102.

Furthermore, the AMOC provision does not contain specific, objective, and replicable criteria for determining if such ''alternate methods'' are in fact at least as effective as the required methods in terms of emission rates and ambient impacts. For purposes of meeting CAA requirements, EPA concurrence in the form of a SIP approval is required for any of the alternate compliance provisions throughout R307–326, R307–327, R307–328, R307–335, R307–340, and R307–342. This includes approval of an alternate method of control, an alternate test method, an alternate compliance period, an alternate emission limit, a variance, or an alternate monitoring schedule. The public notice process of a SIP approval will allow EPA and the public to determine whether any new compliance terms approved by the executive secretary continue to assure maintenance of the ambient standard.[4]

F. R307–326. ''Ozone Nonattainment and Maintenance Areas: Control of Hydrocarbon Emissions in Petroleum

[4] By adopting a generic SIP provision consistent with the EPA guidance known as White Paper Number 2, a state may be able to streamline EPA's SIP approval process for an AMOC. White Paper Number 2, Attachment B, envisions the use of the Title V permit process to establish alternative requirements.

Refineries.'' Utah made additions and modifications to clarify the purpose, applicability, definitions, monitoring requirements, alternative method of control provisions, and compliance schedule. Additionally, Utah deleted language because it is not needed in this rule or any other rule. Utah has made administrative revisions to the rule's title where the reference to Salt Lake and Davis Counties was simply replaced with ''ozone maintenance area.'' EPA is proposing to approve these changes. However, for purposes of clarification, EPA interprets the following provisions in R307–326 (in addition to any other request for an AMOC that may arise outside of these provisions) as being subject to the requirement in R307–326–10(1) for EPA concurrence, and thus subject to EPA's general statement about alternate methods of control, above:

1. R307–326–4(3).

2. R307–326–6(3).

3. In R307–326–7, the provision that reads, ''or controlled by other methods, provided the design and effectiveness of such methods are documented, submitted to, and approved by the executive secretary.''

4. R307–326–9(5)(a).

5. In R307–326–10(3), the provision that reads, ''or approved by the executive secretary.'' In addition, we interpret R307–326–10(2), which requires an owner or operator to repair a malfunctioning control device within 15 days or other period approved by the executive secretary, as not excusing any period of violation of the control requirements in R307–326.

G. R307–327. ''Ozone Nonattainment and Maintenance Areas: Petroleum Liquid Storage.'' Utah made additions and modifications to clarify the purpose, applicability, general requirements, alternate method of control provisions, and compliance schedule. Additionally, Utah deleted language because it is not needed in this rule or any other rule. Utah has made administrative revisions to the rule's title where the reference to Salt Lake and Davis Counties was simply replaced with ''ozone maintenance area.'' EPA is proposing to approve these changes. However, for purposes of clarification, EPA interprets the following provisions in R307–327 (in addition to any other request for an AMOC that may arise outside of these provisions) as being subject to the requirement in R307–327–7(1) for EPA concurrence, and thus subject to EPA's general statement about alternate methods of control, above:

1. In R307–327–4(1), the provision that reads, ''or alternative equivalent controls, provided the design and effectiveness of such equipment is documented and submitted to and approved by the executive secretary.''

2. R307–327–6(3)(d).

3. In R307–327–7(3), the provision that reads, ''or approved by the executive secretary.'' In addition, we interpret R307–327–7(2), which requires an owner or operator to repair a malfunctioning control device within 15 days or other period approved by the executive secretary, as not excusing any period of violation of the control requirements in R307–327.

H. R307–328. ''Ozone Nonattainment and Maintenance Areas and Utah and Weber Counties: Gasoline Transfer and Storage.'' Utah made additions and modifications to clarify the purpose, applicability, definitions, transport vehicle provisions, alternate method of control provisions, and compliance schedule. Additionally, Utah deleted language because it is not needed in this rule or any other rule. Utah has made administrative revisions to the rule's title where the reference to Salt Lake and Davis Counties was simply replaced with ''ozone maintenance area.'' EPA is proposing to approve these changes. However, for purposes of clarification, EPA interprets the following provisions in R307–328 (in addition to any other request for an AMOC that may arise outside of these provisions) as being subject to the requirement in R307–328–8(1) for EPA concurrence, and thus subject to EPA's general statement about alternate methods of control, above:

1. In R307–328–4(6), the provision that reads, ''or alternate equivalent methods * * *. The design effectiveness of such equipment and the operating procedures must be documented and submitted to and approved by the executive secretary.''

2. In R307–328–4(9), the provision that reads, ''The frequency of tests may be altered by the executive secretary upon submittal of documentation which would justify a change.''

3. In R307–328–5(1)(c), the provision that reads, ''or their equivalent which have been approved by the executive secretary.''

4. In R307–328–6(4), the provision that reads, ''or equivalent equipment provided the design and effectiveness of such equipment are documented and submitted to and approved by the executive secretary.''

5. In R307–328–8(3), the provision that reads, ''or approved by the executive secretary.''

In addition, we interpret R307–328–8(2), which requires an owner or operator to repair a malfunctioning control device within 15 days or other period approved by the executive secretary, as not excusing any period of violation of the control requirements in R307–328.

I. R307–335. ''Ozone Nonattainment and Maintenance Areas: Degreasing and Solvent Cleaning Operations.'' Utah made additions and modifications to clarify the purpose, applicability, definitions, alternate method of control provisions, and compliance schedule. Additionally, Utah deleted language because it is not needed in this rule or any other rule. Utah has made administrative revisions to the rule's title where the reference to Salt Lake and Davis Counties was simply replaced with ''ozone maintenance area.'' EPA is proposing to approve these changes. However, for purposes of clarification, EPA interprets the following provisions in R307–335 (in addition to any other request for an AMOC that may arise outside of these provisions) as being subject to the requirement in R307–335–7(1) for EPA concurrence, and thus subject to EPA's general statement about alternate methods of control, above:

1. In R307–335–4(3), the provision that reads, ''or by an alternate means approved by the executive secretary.''

2. In R307–335–7(3), the provision that reads, ''or approved by the executive secretary.''

In addition, we interpret R307–335–8(2), which requires an owner or operator to repair a malfunctioning control device within 15 days or other period approved by the executive secretary, as not excusing any period of violation of the control requirements in R307–335.

J. R307–340. ''Ozone Nonattainment and Maintenance Areas: Surface Coating Processes.'' Utah made additions and modifications to clarify the purpose, applicability, definitions, general provisions for volatile organic compounds, alternate method of control provisions, and compliance schedule. Additionally, Utah deleted language because it is not needed in this rule or any other rule. Utah has made administrative revisions to the rule's title where the reference to Salt Lake and Davis Counties was simply replaced with ''ozone maintenance area.'' EPA is proposing to approve these changes. However, for purposes of clarification, EPA interprets the following provisions in R307–340 (in addition to any other request for an AMOC that may arise outside of these provisions) as being subject to the requirement in R307–340–16(1) for EPA concurrence, and thus subject to EPA's general statement about alternate methods of control, above:

1. In R307–340–4(4), the provision that reads, ''or by an alternate means approved by the executive secretary.''

2. In R307–340–4(5)(a), the provision that reads, ''Sources may request approval for longer times for compliance determination from the executive secretary.''

3. In R307–340–15(1), the provision that reads, ''or an alternative method approved by the executive secretary.''

4. In R307–340–15(2), the provision that reads, ''or an alternative method approved by the executive secretary or equivalent method.''

5. In R307–340–16(3), the provision that reads, ''or approved by the executive secretary.''

In addition, we interpret R307–340–16(2), which requires an owner or operator to repair a malfunctioning control device within 15 days or other period approved by the executive secretary, as not excusing any period of violation of the control requirements in R307–340.

K. R307–341. ''Ozone Nonattainment and Maintenance Areas: Cutback Asphalt.'' Utah made additions and modifications to simply clarify the purpose, applicability, definitions, limitations on use of cutback asphalt, recordkeeping, and compliance schedule. Additionally, Utah deleted obsolete language because it is not needed in this rule or any other rule. Utah has made administrative revisions to the rule's title where the reference to Salt Lake and Davis Counties was simply replaced with ''ozone maintenance area.'' EPA is proposing to approve the deletion of the obsolete language and other minor revisions.

L. R307–342. ''Ozone Nonattainment and Maintenance Areas: Qualification of Contractors and Test Procedures for Vapor Recovery Systems for Gasoline Delivery Tanks.'' Utah made additions and modifications to clarify the purpose, applicability, general requirements, and alternate method of control provisions. Additionally, Utah deleted language because it is not needed in this rule or any other rule. Utah has made administrative revisions to the rule's title where the reference to Salt Lake and Davis Counties was simply replaced with ''ozone maintenance area.'' EPA is proposing to approve these changes. However, for purposes of clarification, EPA interprets the following provision in R307–342 (in addition to any other request for an AMOC that may arise outside of this provision) as being subject to the requirement in R307–342–7(1) for EPA concurrence, and thus subject to EPA's general statement about alternate methods of control, above:

1. In R307–342–7(3), the provision that reads, ''or approved by the executive secretary.''

In addition, we interpret R307–342–7(2), which requires an owner or operator to repair a malfunctioning control device within 15 days or other period approved by the executive secretary, as not excusing any period of violation of the control requirements in R307–342.

V. Proposed Action

As described above, we are proposing the following with respect to the State's March 22, 2007 submittal:

1. We are proposing to approve the State's maintenance demonstration for the 1997 8-hour ozone NAAQS for Salt Lake and Davis Counties, but, in the alternative, to disapprove the maintenance demonstration should comments convince us that approval is not consistent with the Clean Air Act. (See section III.B above.)

2. We are proposing to approve the rest of the State's 1997 8-hour ozone maintenance plan for Salt Lake and Davis Counties, except for the following aspects, which we are proposing to disapprove:

a. Those contingency measures listed in the State's maintenance plan that are voluntary in nature, and the contingency measure described in the maintenance plan as ''Establish an Offset Ratio for NO_X.'' (See section III.D above.)

b. The State's proposal to remove from the SIP the VOC RACT approval orders for Hill Air Force Base. (See section III.E above.)

c. The State's proposal to remove from the SIP the NO_X RACT limits for the PacifiCorp Gadsby Power Plant. (See section III.E above.)

d. Section 5.g of the maintenance plan, which indicates that the employer-based trip reduction program is included as part of the plan. (See section III.E above.)

3. We are proposing to take no action on R307–101–2 because we have already acted on a later version of the definitions. (See section IV.A above.)

4. We are proposing to approve R307–110–13, but only to the extent we are proposing to approve the 1997 8-hour ozone maintenance plan. (See section IV.B above.)

5. We are proposing to disapprove R307–320, the employer-based trip reduction program. (See section IV.C above.)

6. We are proposing to approve R307–325, R307–326, R307–327, R307–328, R307–335, R307–340, R307–341, and R307–342, subject to our interpretation of these rules. (See sections IV.D through L above.)

EPA is soliciting public comment on its proposed rulemaking as discussed in this document. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to EPA as discussed in this notice.

VI. Statutory and Executive Order Reviews

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

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

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

Approval and Promulgation of Air Quality Implementation Plans; Utah; Maintenance Plan for the 1997 8-Hour Ozone Standard for Salt Lake County and Davis County, page 33 of 33

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 52

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

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

Dated: December 13, 2012.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2012–31562 Filed 12–31–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0622; FRL–9767–2]

Approval and Promulgation of Implementation Plans; Georgia: New Source Review—Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve portions of a revision to the Georgia State Implementation Plan (SIP) submitted by the State of Georgia, through the Georgia Department of Natural Resources' Environmental Protection Division (EPD), on July 26, 2012. The SIP submission includes changes to Georgia's New Source Review (NSR), Prevention of Significant Deterioration (PSD) program to incorporate by reference (IBR) federal PSD requirements regarding fine particulate matter ($PM_{2.5}$) increments, significant impact levels (SILs), significant monitoring concentration (SMC) and the deferral of, until July 21, 2014, PSD applicability to biogenic carbon dioxide (CO_2) emissions from bioenergy and other biogenic stationary sources. EPA is proposing to approve portions of Georgia's SIP submittal because the Agency has preliminarily determined that it is consistent with section 110 of the Clean Air Act (CAA or Act) and EPA regulations regarding NSR permitting.

DATES: Comments must be received on or before February 1, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0622 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2012–0622, 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.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, 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. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2012–0622.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the 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 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: For information regarding the Georgia SIP, contact Ms. Twunjala Bradley, 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. Ms. Bradley's telephone number is (404) 562–9352; email address: *bradley.twunjala@epa.gov.* For information regarding NSR, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. Ms. Adams' telephone number is (404) 562–9241; email address: *adams.yolanda@epa.gov.* For information regarding the $PM_{2.5}$ national ambient air quality standards (NAAQS), contact Mr. Joel Huey, Regulatory Development Section, at the same address above. Mr. Huey's

telephone number is (404) 562–9104; email address: *huey.joel@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What action is EPA proposing?
II. What is the background for EPA's proposed action?
III. What is EPA's analysis of Georgia's SIP revision?
IV. Proposed Action
V. Statutory and Executive Order Reviews

I. What action is EPA proposing?

On July 26, 2012, EPD submitted a SIP revision to EPA for approval into the Georgia SIP to IBR [1] federal NSR PSD permitting requirements at Georgia's Air Quality Control Rule 391–3–1–.02(7)—*Prevention of Significant Deterioration of Air Quality.* These rule changes were provided to comply with federal NSR permitting regulations and include provisions related to the implementation of the $PM_{2.5}$ NAAQS for the PSD program as promulgated in the rule entitled ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC), Final Rule,'' 75 FR 64864 (October 20, 2010) (hereafter referred to as ''$PM_{2.5}$ PSD Increment-SILs-SMC Rule'') and the deferral until July 21, 2014, of the application of PSD permitting requirement to biogenic CO_2 emissions from bioenergy and other biogenic stationary sources as promulgated in the rule entitled, ''Deferral for CO_2 Emissions From Bioenergy and Other Biogenic Sources Under the Prevention of Significant Deterioration (PSD) and Title V Programs,'' Final Rule, 76 FR 43490 (July 20, 2011) (hereafter referred to as CO_2 Biomass Deferral Rule). Additionally, the July 26, 2012, SIP revision (1) IBR into Georgia SIP EPA's interim rulemaking entitled ''Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Reconsideration of Inclusion of Fugitive Emissions; Interim Rule; Stay and Revisions,'' 76 FR 17548 (March 30, 2011) (hereafter referred to as the ''Fugitive Emissions Interim Rule''); (2) requests that EPA remove from the SIP the exclusion language at Rule 391–3–1–.02(7) regarding the coarse particle pollution (PM_{10}) surrogate and grandfathering provision promulgated in the ''Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers,'' 73 FR 28321, May 16, 2008 (hereafter referred to as ''NSR $PM_{2.5}$ Rule''); (3) amends the definitions Rule 391–3–1–.01(nnn)—*Definitions* regarding testing and monitoring of air pollutants; and (4) revises Rule 391–3–1–.03(6)—*Exemptions* by adding a new exemption for cumulative small modifications at an existing quarry where the quarry is not a major source and the associated emissions increase is less than 10 tons per year of particulate matter and PM_{10}.

The two elements of EPD's July 26, 2012, SIP submittal that EPA is not proposing to approve in this action are: (1) incorporation of the SIL thresholds and provisions promulgated in EPA's $PM_{2.5}$ PSD Increment-SILs-SMC Rule (for reasons explained later in this notice); and (2) revisions to Rules 391–3–1–.02(2)(c)—*Incinerators,* 391–3–1–.02(www)—*Sewage Sludge Incineration,* 391–3–1–.02(8)(b)—*New Source Performance Standards* and 391–3–1–.02(9)(b)—*Emissions Standards for Hazardous Air Pollutants,* as these regulations are not part of Georgia's federally approved SIP.

II. What is the background for EPA's proposed action?

Today's proposed action to revise the Georgia SIP relates to PSD provisions promulgated in EPA's $PM_{2.5}$ PSD Increment-SILs-SMC Rule and CO_2 Biomass Deferral Rule. Additionally, the July 26, 2012, SIP revision addresses EPA's repeal of the grandfathering provision as promulgated in the Rule entitled ''Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$); Final Rule to Repeal Grandfather Provision'' (76 FR 28646, May 18, 2011) and the extension of the stay in the Fugitive Emissions Interim Rule. More details regarding these rules are found in the respective final rulemakings and are summarized below. For more information on the NSR Program and the $PM_{2.5}$ NAAQS please refer to the $PM_{2.5}$ PSD Increment-SILs-SMC Rule and the NSR $PM_{2.5}$ Rule.

A. $PM_{2.5}$ PSD Increment-SILs-SMC-Rule

On October 20, 2010, EPA finalized the $PM_{2.5}$ PSD Increment-SILs-SMC Rule to provide additional regulatory requirements under the PSD program regarding the implementation of the $PM_{2.5}$ NAAQS for NSR. Specifically, the rule establishes: (1) $PM_{2.5}$ increments pursuant to section 166(a) of the CAA to prevent significant deterioration of air quality in areas meeting the NAAQS; (2) SILs used as a screening tool (by a major source subject to PSD) to evaluate the impact a proposed major source or modification may have on the NAAQS or PSD increment; and (3) a SMC (also a screening tool) used by a major source subject to PSD to determine if a source must submit to the permitting authority one year of pre-construction air quality monitoring data prior to constructing or modifying a facility. As part of the response to comments on the October 20, 2010, final rulemaking, EPA explained that the Agency agrees that the SILs and SMCs used as *de minimis* [2] thresholds for the various pollutants are useful tools that enable permitting authorities and PSD applicants to screen out ''insignificant'' activities; however, these values are not required by the Act as part of an approvable SIP program. EPA believes that most states are likely to adopt the SILs and SMCs because of the useful purpose they serve regardless of EPA's position that the values are not mandatory. Alternatively, states may develop more stringent values if they desire to do so. In any case, states are not under any statutory deadline for revising their PSD programs to add these screening tools. *See* 75 FR 64864, 64900.

Georgia's July 26, 2012, SIP revision IBR the NSR changes promulgated in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule to be consistent with the federal NSR regulations and to appropriately implement the State's NSR program for the $PM_{2.5}$ NAAQS. More detail on the $PM_{2.5}$ PSD Increment-SILs-SMC Rule can be found in EPA's October 20, 2010, final rule and is summarized below. *See* 75 FR 64864. For the reasons explained below, EPA is not proposing to take action to approve the SILs (promulgated in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule) into the Georgia SIP in this rulemaking. EPA's authority to implement the SILs and SMC for PSD purposes has been challenged by the Sierra Club. *Sierra Club* v. *EPA,* Case No 10–1413 (D.C. Circuit Court).[3] More details regarding Georgia's changes to its PSD regulations are also summarized below in Section III.

1. What are PSD increments?

As established in part C of title I of the CAA, EPA's PSD program protects public health from adverse effects of air pollution by ensuring that construction of new or modified sources in attainment or unclassifiable areas does not lead to significant deterioration of

[1] Throughout this document IBR means incorporate or incorporates by reference.

[2] The *de minimis* principle is grounded in the decision described by the court case *Alabama Power Co.* v. *Costle,* 636 F.2d 323, 360 (DC Cir. 1980). In this case, reviewing EPA's 1978 PSD regulations, the court recognized that ''there is likely a basis for an implication of *de minimis* authority to provide exemption when the burdens of regulation yield a gain of trivial or no value.'' 636 F.2d at 360.

[3] On April 6, 2012, EPA filed a brief with the D.C. Circuit Court defending the Agency's authority to implement SILs and SMC for PSD purposes.

air quality while simultaneously ensuring that economic growth will occur in a manner consistent with preservation of clean air resources. Under section 165(a)(3) of the CAA, a PSD permit applicant must demonstrate that emissions from the proposed construction and operation of a facility ''will not cause, or contribute to, air pollution in excess of any maximum allowable increase or allowable concentration for any pollutant.'' In other words, when a source applies for a permit to emit a regulated pollutant in an area that meets the NAAQS, the state and EPA must determine if emissions of the regulated pollutant from the source will cause significant deterioration in air quality. Significant deterioration occurs when the amount of the new pollution exceeds the applicable PSD increment, which is the ''maximum allowable increase'' of an air pollutant allowed to occur above the applicable baseline concentration[4] for that pollutant. PSD increments prevent air quality in clean areas from deteriorating to the level set by the NAAQS. Therefore, an increment is the mechanism used to estimate ''significant deterioration'' of air quality for a pollutant in an area.

For PSD baseline purposes, a baseline area for a particular pollutant emitted from a source includes the attainment or unclassifiable area in which the source is located as well as any other attainment or unclassifiable area in which the source's emissions of that pollutant are projected (by air quality modeling) to result in an ambient pollutant increase of at least 1 microgram per meter cubed (μg/m^3) (annual average). *See* 40 CFR 52.21(b)(15)(i). Under EPA's existing regulations, the establishment of a baseline area for any PSD increment results from the submission of the first complete PSD permit application and is based on the location of the proposed source and its emissions impact on the area. Once the baseline area is established, subsequent PSD sources locating in that area need to consider that a portion of the available increment may have already been consumed by previous emissions increases. In general, the submittal date of the first complete PSD permit application in a particular area is the operative ''baseline date'' after which new sources must evaluate increment consumption.[5] On or before the date of the first complete PSD application, emissions generally are considered to be part of the baseline concentration, except for certain emissions from major stationary sources. Most emissions increases that occur after the baseline date will be counted toward the amount of increment consumed. Similarly, emissions decreases after the baseline date restore or expand the amount of increment that is available. *See* 75 FR 64864. As described in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule, and pursuant to the authority under section 166(a) of the CAA, EPA promulgated numerical increments for $PM_{2.5}$ as a new pollutant[6] for which NAAQS were established after August 7, 1977,[7] and derived 24-hour and annual $PM_{2.5}$ increments for the three area classifications (Class I, II and III) using the ''contingent safe harbor'' approach. *See* 75 FR 64864 at 64869 and ambient air increment table at 40 CFR 51.166(c)(1) and 52.21(c).

In addition to PSD increments for the $PM_{2.5}$ NAAQS, the $PM_{2.5}$ PSD Increment-SILs-SMC Rule amended the definition at 40 CFR 51.166 and 52.21 for ''*major source baseline date*'' and ''*minor source baseline date*'' (including trigger dates) to establish the $PM_{2.5}$ NAAQS specific dates associated with the implementation of $PM_{2.5}$ PSD increments. *See* 75 FR 64864. In accordance with section 166(b) of the CAA, EPA required the states to submit revised implementation plans to EPA for approval (to adopt the $PM_{2.5}$ PSD increments) within 21 months from promulgation of the final rule (by July 20, 2012). Regardless of when a state submits its revised SIP, the emissions from major sources subject to PSD for $PM_{2.5}$ for which construction commenced after October 20, 2010 (major source baseline date), consume $PM_{2.5}$ increment and should be included in the increment analyses occurring after the minor source baseline date is established for an area under the state's revised PSD program. *See* 75 FR 64864. As discussed in detail in Section III, Georgia's July 26, 2012, SIP revision IBR the $PM_{2.5}$ PSD increment permitting requirements promulgated in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule.

2. What are significant monitoring concentrations?

Under the CAA and EPA regulations, an applicant for a PSD permit is required to gather preconstruction monitoring data in certain circumstances. CAA Section 165(a)(7) calls for ''such monitoring as may be necessary to determine the effect which emissions from any such facility may have, or is having, on air quality in any areas which may be affected by emissions from such source.'' In addition, CAA section 165(e) requires an analysis of the air quality in areas affected by a proposed major facility or major modification and calls for gathering one year of monitoring data unless the reviewing authority determines that a complete and adequate analysis may be accomplished in a shorter period. These requirements are codified in EPA's PSD regulations at 40 CFR 51.166(m) and 40 CFR 52.21(m). In accordance with EPA's Guideline for Air Quality Modeling (40 CFR part 51, appendix W), the preconstruction monitoring data are primarily used to determine background concentrations in modeling conducted to demonstrate that the proposed source or modification will not cause or contribute to a violation of the NAAQS. *See* 40 CFR part 51, appendix W, section 9.2. SMCs are numerical values that represent thresholds of insignificant (i.e., *de minimis*), monitored (ambient) impacts on pollutant concentrations. In EPA's $PM_{2.5}$ PSD Increment-SILs-SMC Rule, EPA established a SMC of 4 μg/m^3 for $PM_{2.5}$.

Using the SMC as a screening tool, sources may be able to demonstrate that the modeled air quality impact of emissions from the new source or modification, or the existing air quality level in the area where the source would construct, is less than the SMC (i.e., *de minimis*), and as such, may be allowed to forego the preconstruction monitoring requirement for a particular pollutant at the discretion of the reviewing authority. *See* 40 CFR 51.166(i)(5) and 52.21(i)(5). SMCs are not minimum required elements of an approvable SIP under the CAA. This *de minimis* value is widely considered to be a useful component for implementing the PSD program, but is not absolutely necessary for the states to implement PSD programs. States can satisfy the statutory requirements for a PSD program by requiring each PSD

[4] Section 169(4) of the CAA provides that the baseline concentration of a pollutant for a particular baseline area is generally the air quality at the time of the first application for a PSD permit in the area.

[5] Baseline dates are pollutant specific. That is, a complete PSD application establishes the baseline date only for those regulated NSR pollutants that are projected to be emitted in significant amounts (as defined in the regulations) by the applicant's new source or modification. Thus, an area may have different baseline dates for different pollutants.

[6] EPA generally characterized the $PM_{2.5}$ NAAQS as a NAAQS for a new indicator of PM. EPA did not replace the PM_{10} NAAQS with the NAAQS for $PM_{2.5}$ when the $PM_{2.5}$ NAAQS were promulgated in 1997. EPA rather retained the annual and 24-hour NAAQS for $PM_{2.5}$ as if $PM_{2.5}$ was a new pollutant even though EPA had already developed air quality criteria for PM generally. *See* 75 FR 64864 (October 20, 2010).

[7] EPA interprets 166(a) to authorize EPA to promulgate pollutant-specific PSD regulations meeting the requirements of section 166(c) and 166(d) for any pollutant for which EPA promulgates a NAAQS after 1977.

applicant to submit air quality monitoring data for $PM_{2.5}$ without using *de minimis* thresholds to exempt certain sources from such requirements. *See* 75 FR 64864. The $PM_{2.5}$ SMC became effective under the federal PSD program on December 20, 2010. States with EPA-approved PSD programs that adopt the SMC for $PM_{2.5,}$ however, may use the SMC, once it is part of an approved SIP, to determine when it may be appropriate to exempt a particular major stationary source or major modification from the monitoring requirements under its state PSD program. Georgia's July 26, 2012, revision IBR the SMC provision into the Georgia SIP.

Recently, the Sierra Club filed suit challenging EPA's authority to implement the $PM_{2.5}$ SILs [8] as well as the SMC for PSD purposes as promulgated in the October 20, 2010, rule. *Sierra Club* v. *EPA,* Case No 10–1413, D.C. Circuit Court. Specifically regarding the SMC, Sierra Club claims that the use of SMC to exempt a source from submitting a year's worth of monitoring data is inconsistent with the CAA. EPA responded to Sierra Club's claims in a brief dated April 6, 2012, which describes the Agency's authority to develop and promulgate SMCs.[9] A copy of EPA's April 6, 2012, brief can be found in the docket for today's rulemaking at *www.regulations.gov* using docket ID: EPA–R04–OAR–2012–0622.

B. CO_2 Biomass Deferral

1. The GHG Tailoring Rule

On June 3, 2010 (effective August 2, 2010), EPA promulgated a final rulemaking, entitled ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule'' (hereafter referred to as the GHG Tailoring Rule), for the purpose of relieving overwhelming permitting burdens from the regulation of greenhouse gases (GHG) that would, in the absence of the rule, fall on permitting authorities and sources. *See* 75 FR 31514. EPA accomplished this by tailoring the applicability criteria that determine which GHG emission sources become subject to the PSD program of the CAA. In particular, EPA established in the GHG Tailoring Rule a phase-in approach for PSD applicability and estblished the first two steps of the phase-in for the largest GHG emitters.[10] On January 13, 2011, EPD submitted a SIP revision to EPA to IBR into the Georgia SIP (at 391–3–1–.02(7)), the version of 40 CFR 52.21 as of June 3, 2010, which included the GHG Tailoring Rule thresholds.[11] EPA took final action to approve Georgia's SIP revision on September 8, 2011. *See* 76 FR 55572. Please refer to the GHG Tailoring Rule for specific details on the PSD thresholds.

2. EPA's CO_2 Biomass Deferral Rule

In the July 20, 2011, final rulemaking, EPA deferred until July 21, 2014, the consideration of CO_2 emissions from bioenergy and other biogenic sources (hereafter referred to as ''biogenic CO_2 emissions'') when determining whether a stationary source meets the PSD and title V applicability thresholds, including those for the application of best available control technology (BACT).[12] *See* 76 FR 43490. Thus, under the federal PSD rules, stationary sources that combust biomass (or otherwise emit biogenic CO_2 emissions) and construct or modify during the deferral period will not be subject to the application of PSD to the biogenic CO_2 emissions resulting from those actions. The deferral applies only to biogenic CO_2 emissions and does not affect non-GHG pollutants or other GHGs (e.g., methane and nitrous oxide) emitted from the combustion of biomass fuel. Also, the deferral only pertains to regulation of biogenic CO_2 emissions under the PSD and title V programs and does not pertain to any other EPA programs such as the GHG Reporting Program.

Biogenic CO_2 emissions are defined as emissions of CO_2 from a stationary source directly resulting from the combustion or decomposition of biologically-based materials other than fossil fuels and mineral sources of carbon. Examples of ''biogenic CO_2 emissions'' include, but are not limited to:

- CO_2 generated from the biological decomposition of waste in landfills, wastewater treatment, or manure management processes;
- CO_2 from the combustion of biogas collected from biological decomposition of waste in landfills, wastewater treatment, or manure management processes;
- CO_2 from fermentation during ethanol production or other industrial fermentation processes;
- CO_2 from combustion of the biological fraction of municipal solid waste or biosolids;
- CO_2 from combustion of the biological fraction of tire-derived fuel; and
- CO_2 derived from combustion of biological material, including all types of wood and wood waste, forest residue, and agricultural material.

The deferral is intended to be a temporary measure, in effect for no more than three years, to allow the Agency time to conduct detailed examination of the science and technical issues related to accounting for biogenic CO_2 emissions, and determine what, if any, treatment of biogenic CO_2 emissions should be in the PSD and title V programs. The biomass deferral rule is not EPA's final determination on the treatment of biogenic CO_2 emissions in those programs. The Agency plans to complete its science and technical review and any follow-up rulemakings within the three-year deferral period and further believes that three years is ample time to complete these tasks. It is possible that the subsequent rulemaking, depending on the nature of EPA's determinations, would supersede the biomass deferral rulemaking and become effective in fewer than three years. In that event, Georgia may revise its SIP accordingly.

EPA's final biomass deferral rule is an interim deferral for biogenic CO_2 emissions only and does not relieve sources of the obligation to meet the PSD and title V permitting requirements for other pollutant emissions that are otherwise applicable to the source during the deferral period or that may be applicable to the source at a future date pending the results of EPA's study and subsequent rulemaking action. This means, for example, that if the deferral is applicable to biogenic CO_2 emissions from a particular source during the three-year effective period and the study and future rulemaking do not provide for a permanent exemption from PSD and title V permitting requirements for the biogenic CO_2 emissions from a source with particular characteristics, then the deferral would end for that type of source and its biogenic CO_2 emissions would have to be

[8] As mentioned earlier, due to litigation by the Sierra Club, EPA is not proposing to take action on the SILs portion of the Georgia's July 26, 2012, SIP revision at this time but will take action once the court case regarding SILs implementation is resolved.

[9] Additional information on this issue can also be found in an April 25, 2012, comment letter from EPA Region 6 to the Louisiana Department of Environmental Quality regarding the SILs-SMC litigation. A copy of this letter can be found in the docket for today's rulemaking at *www.regulations.gov* using docket ID: EPA–R04–OAR–2012–0622.

[10] Please refer to the July 12, 2012 rulemaking finalizing GHG Tailoring Rule Step 3. *See* 77 FR 41051.

[11] Georgia's submittal also revised the State's title V operating permit provisions (which are not included in the federally approved SIP) to incorporate the GHG Tailoring Rule provisions. As such, EPA did not taking final action to approve Georgia's update to its title V.

[12] As with the Tailoring Rule, the Biomass Deferral addresses both PSD and title V requirements. However, EPA is only taking action on Georgia's PSD program as part of this action.

appropriately considered in any applicability determinations that the source may need to conduct for future stationary source permitting purposes, consistent with that subsequent rulemaking and the final GHG Tailoring Rule (*e.g.,* a major source determination for title V purposes or a major modification determination for PSD purposes). EPA also wishes to clarify that the agency does not require that a PSD permit issued during the deferral period be amended or that any PSD requirements in a PSD permit existing at the time the deferral took effect, such as BACT limitations, be revised or removed from an effective PSD permit for any reason related to the deferral or when the deferral period expires.

Under 40 CFR 52.21(w), any PSD permit shall remain in effect, unless and until it expires or it is rescinded, under the limited conditions specified in that provision. Thus, a PSD permit that is issued to a source while the deferral was effective need not be reopened or amended if the source is no longer eligible to exclude its biogenic CO_2 emissions from PSD applicability after the deferral expires. However, if such a source undertakes a modification that could potentially require a PSD permit and the source is not eligible to continue excluding its biogenic CO_2 emissions after the deferral expires, the source will need to consider its biogenic CO_2 emissions in assessing whether it needs a PSD permit to authorize the modification.

Any future actions to modify, shorten, or make permanent the deferral for biogenic sources are beyond the scope of the biomass deferral action and this proposed approval of the deferral into the Georgia SIP, and will be addressed through subsequent rulemaking. The results of EPA's review of the science related to net atmospheric impacts of biogenic CO_2 and the framework to properly account for such emissions in title V and PSD permitting programs based on the study are prospective and unknown. Thus, EPA is unable to predict which biogenic CO_2 sources, if any, currently subject to the deferral as incorporated into the Georgia SIP would be subject to any permanent exemptions or which currently deferred sources would be potentially required to account for their emissions in the future rulemaking EPA has committed to undertake for such purposes in three or fewer years. Only in that rulemaking can EPA address the question of extending the deferral or putting in place requirements that would have the equivalent effect on sources covered by the biomass deferral. Once that rulemaking has occurred, Georgia may address related revisions to its SIP.

III. What is EPA's analysis of Georgia's SIP revision?

Georgia currently has a SIP-approved NSR program for new and modified stationary sources. EPD's PSD preconstruction rules are found at Georgia Air Quality Control Rule 391–3–1–.02(7)—*Prevention of Significant Deterioration of Air Quality* and apply to major stationary sources or modifications constructed in areas designated attainment areas or unclassifiable/attainment areas as required under part C of title I of the CAA with respect to the NAAQS. Georgia's Rule 391–3–1–.02(7) IBR the federal NSR PSD regulations at 40 CFR 52.21 into the Georgia SIP. In effect, EPD's July 26, 2012, SIP revision revises Rule 391–3–1–.02(7) by updating the State's IBR date to July 20, 2011, which includes the federal PSD permitting updates promulgated in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule, the CO_2 Biomass Deferral Rule and the extension of the stay in the Fugitive Emissions Interim Rule. Additionally, the July 26, 2012, SIP submission revises Rule 391–3–1–.02(7) by removing language to address EPA's repeal of the PM_{10} surrogate and grandfathering provisions and clarifies at subparagraph (a)(1) of 391–3–1–.01 that all dates associated with IBR of the federal PSD rules (at 40 CFR 52.21) refer to the date of publication of those rules in the **Federal Register**. In addition to changes to Rule 391–3–1–.02(7), the July 26, 2012, SIP revision also (1) amends Georgia's definitions at 391–3–1–.01 by revising subparagraph (nnnn) to reference the February 1, 2012, update to Georgia's ''Procedures for Testing and Monitoring Sources of Air Pollutants,'' and; (2) modifies Rule 391–3–1–.03(6) by adding a new exemption from SIP permitting requirements (at subparagraph (i)(4)) for small modifications to an existing quarry that is not a major source, where the combined emissions increases, including any contemporaneous emission decreases from all nonexempt modified activities, are less than 10 tons per year of particulate matter and PM_{10}. The new quarry exemption may not be used to avoid any emission limitations or standards of the Rules for Air Quality Control Chapter 391–3–1–.02 (e.g., PSD requirements), lower the potential to emit below ''major source'' thresholds, or avoid any ''applicable requirement'' as defined in 40 CFR Part 70.2. *See* Georgia Rule 391–3–1–.03(6).

These changes to Georgia's rules became state effective on August 9, 2012. EPA is proposing to approve changes to Georgia's Rule 391–3–1–.02(7), to update the State's existing SIP-approved PSD program to be consistent with federal NSR regulations (at 40 CFR 52.21) and the CAA. In addition, EPA is proposing to approve Georgia's requested changes to Rules 391–3–1–.01 and .0. 3. More details on EPA's analysis and proposed approval of the portions of Georgia's July 26, 2012, SIP submittal addressing PSD provisions promulgated in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule, the CO_2 Deferral Rule, the Fugitive Emissions Interim Rule and the NSR $PM_{2.5}$ Rule (grandfathering provision) are discussed below.

A. Rule 391–3–1–.02(7) SIP Revision

1. $PM_{2.5}$ PSD Increment-SILs-SMC Rule

EPD's July 26, 2012, SIP revision IBR the following provisions into the Georgia SIP at regulation 391–3–1–.02(7) as promulgated in the October 20, 2010, $PM_{2.5}$ PSD Increment-SILs-SMC Rule: (1) PSD increments for $PM_{2.5}$ annual and 24-hour NAAQS pursuant to section 166(a) of the CAA; (2) SILs used as a screening tool (used by a major source subject to PSD) to evaluate the impact a proposed major source or modification may have on the NAAQS or PSD increment; and (3) SMC to determine the level of data gathering required of a major source in support of its PSD permit application for $PM_{2.5}$ emissions.

Specifically, Georgia's July 26, 2012, SIP revision IBR into the Georgia SIP (at 391–3–1–.02(7)) the $PM_{2.5}$ PSD increments as amended in the tables at 40 CFR 52.21(c) and (p)(5) (for Class I Variances) the amendments to the terms ''major source baseline date'' (as amended at 40 CFR 52.21(b)(14)(i)(c)); ''minor source baseline date'' (including establishment of the ''trigger date'') (40 CFR 52.21(b)(14)(ii)(c)); and the definition of ''baseline area'' (as amended at 40 CFR 52.21(b)(15)(i) and (ii)). These changes provide for the implementation of the $PM_{2.5}$ PSD increments for the $PM_{2.5}$ NAAQS in the State's PSD program. In today's action, EPA is proposing to approve Georgia's July 26, 2012, SIP revision to address $PM_{2.5}$ PSD increments.

Regarding the SILs and SMC established in the October 20, 2010, $PM_{2.5}$ PSD Increment-SILs-SMC Rule, the Sierra Club has challenged EPA's authority to implement SILs and SMC. In a brief filed in the DC Circuit on April 6, 2012, EPA described the Agency's authority under the CAA to promulgate and implement the SMCs and SILs *de minimis* thresholds. With respect to the SMC, Georgia's July 26, 2012, SIP revision IBR the SMC of 4 $\mu g/m^3$ for

$PM_{2.5}$ NAAQS at 391–3–1–.02(7). Georgia's July 26, 2012, SIP revision is consistent with EPA's current promulgated provisions in the October 20, 2010, $PM_{2.5}$ PSD Increment-SILs-SMC Rule. EPA is proposing to approve this promulgated threshold into the Georgia SIP as EPA believes the SMC is a valid exercise of the Agency's *de minimis* authority. However, EPA notes that future court action may require subsequent rule revisions and SIP revisions from the State of Georgia.

The July 26, 2012, SIP revision submitted by Georgia to IBR the new PSD requirements for $PM_{2.5}$ pursuant to the $PM_{2.5}$ PSD Increment-SILs-SMC Rule also includes the new regulatory text at 40 CFR 52.21(k)(2), concerning the implementation of SILs for $PM_{2.5}$. EPA stated in the preamble to the October 20, 2010, final rule that we do not consider the SILs to be a mandatory SIP element, but regard them as discretionary on the part of a regulating authority for use in the PSD permitting process. Nevertheless, the $PM_{2.5}$ SILs are currently the subject of litigation before the U.S. Court of Appeals. *Sierra Club* v. *EPA,* Case No 10–1413 (DC Circuit). In response to that litigation, EPA has requested that the court remand and vacate the regulatory text in EPA's PSD regulations at paragraph (k)(2) so that EPA can make necessary rulemaking revisions to that text. In light of EPA's request for remand and vacatur and the acknowledgement of the need to revise the regulatory text presently contained at paragraph (k)(2) of sections 51.166 and 52.21, EPA does not believe that it is appropriate at this time to approve that portion of Georgia's SIP revision that contains the affected regulatory text in the State's PSD regulations, at 391–3–1–0.2(7). Instead, EPA is taking no action at this time with regard to that specific provision contained in the SIP revision. EPA will take action on the SILs portion of Georgia's July 26, 2012, SIP revision in a separate rulemaking once the issue regarding the court case has been resolved.

2. CO_2 Biomass Deferral

In the July 20, 2011, CO_2 Biomass Deferral Rule, similar to the approach with the GHG Tailoring Rule, EPA incorporated the biomass deferral into the Federal PSD program by amending the definition of ''subject to regulation'' under 40 CFR 51.166 and 52.21, respectively. Georgia's July 26, 2012, SIP revision IBR into the Georgia SIP 40 CFR 52.21 as of July 20, 2011, which includes the CO_2 Biomass Deferral revision to the definition of ''subject to regulation'' deferring, until July 21, 2014, PSD applicability to biogenic carbon dioxide (CO_2) emissions from bioenergy and other biogenic stationary sources. EPA is proposing to approve Georgia's IBR of the CO_2 Biomass Deferral Rule.

3. Fugitive Emissions Interim Rule

Georgia's July 26, 2012, SIP revision also IBR the extension of the stay of the Fugitive Emissions Rule into the Georgia PSD program at 391–3–1–.02(7). On December 19, 2008, EPA issued a final rule revising the requirements of the NSR permitting program regarding the treatment of fugitive emissions. *See* 73 FR 77882. The final rule required fugitive emissions to be included in determining whether a physical or operational change results in a major modification only for sources in industries that have been designated through rulemaking under section 302(j) [13] of the CAA. As a result of EPA granting the Natural Resource Defense Council's petition for reconsideration on the original Fugitive Emissions Rule [14] on March 31, 2010, EPA stayed the Fugitive Emissions Rule (73 FR 77882) for 18 months to October 3, 2011. The stay allowed the Agency time to propose, take comment and issue a final action regarding the inclusion of fugitive emissions in NSR applicability determinations. On March 30, 2011 (76 FR 17548), EPA proposed an interim rule which superseded the March 31, 2010, stay and clarified and extended the stay of the Fugitive Emission Rule until EPA completes its reconsideration. The interim rule simply reverts the CFR text back to the language that existed prior to the Fugitive Emissions Rule changes in the December 19, 2008, rulemaking. EPA plans to issue a final rule affirming the interim rule as final. The final rule will remain in effect until EPA completes its reconsideration. EPA is proposing to approve Georgia's IBR of the interim rulemaking extending the stay of the Fugitives Emissions Rule into its SIP at Rule 391–3–1–.02(7).

4. $PM_{2.5}$ Grandfathering Provision

In the NSR $PM_{2.5}$ Rule, EPA finalized regulations to establish the framework for implementing preconstruction permit review for the $PM_{2.5}$ NAAQS in both attainment and nonattainment areas including the grandfather provision which allowed PSD applicants that submitted their complete permit application prior to the July 15, 2008 effective date of the NSR $PM_{2.5}$ Rule to continue to rely on the 1997 $p.m._{10}$ Surrogate Policy rather than amend their application to demonstrate compliance directly with the new $PM_{2.5}$ requirements. *See* 73 FR 28321. On January 13, 2011, Georgia submitted a SIP revision to IBR into the Georgia SIP the version of 40 CFR 52.21 as of June 3, 2010 which included language that excluded the grandfathering exemption (at 40 CFR 52.21(i)(1)(xi)) from the state's PSD regulations (at Rule 391–3–1–.02(7)(b)(6)(i)) ensuring that sources were not subject to the grandfathering provision. EPA approved Georgia's January 13, 2011, SIP revision on September 8, 2011(76 FR 55572).

On May 18, 2011, EPA took final action to repeal the $PM_{2.5}$ grandfathering provision at 40 CFR 52.21(i)(1)(xi). *See* 76 FR 28646. Georgia's July 26, 2012, SIP submittal incorporates into the Georgia SIP the version of 40 CFR 52.21 as of July 20, 2011, which includes the May 18, 2011, repeal of the grandfather provision. Thus, the language previously approved into Georgia's SIP at Rule 391–3–1–.02(7)(b)(6)(i) that excludes the grandfathering provision is no longer necessary. Georgia's July 26, 2012, SIP submittal removes the unnecessary language pertaining to the grandfather provision from Rule 391–3–1–.02(7)(b)(6)(i).[15] EPA is proposing to approve this portion of Georgia's July 26, 2012, SIP submittal.

IV. Proposed Action

EPA is proposing to approve portions of Georgia's July 26, 2012, SIP revision adopting federal regulations amended in the October 20, 2010, $PM_{2.5}$ PSD Increment-SILs-SMC rule, the June 3, 2010, CO_2 Biomass Deferral Rule; the March 30, 2011, Fugitive Emissions Interim Rule, the additional amendments regarding $PM_{2.5}$ Grandfathering Provision, and the definition and exemption revisions into the Georgia SIP. EPA is not however proposing to approve in this rulemaking Georgia's SIP revisions regarding the SIL thresholds and provisions and Rule 391–3–1–.02(c)—*Incinerators,* 391–3–1–.02(www)—*Sewage Sludge Incineration,* 391–3–1–.02(8)(b)—*New Source Performance Standards* and 391–3–1–

[13] Pursuant to CAA section 302(j), examples of these industry sectors include oil refineries, Portland cement plants, and iron and steel mills.

[14] On April 24, 2009, EPA agreed to reconsider the approach to handling fugitive emissions and granted a 3-month administrative stay of the Fugitive Emissions Rule. The administrative stay of the Fugitive Emissions Rule became effective on September 30, 2009. EPA put an additional three-month stay in place from December 31, 2009, until March 31, 2010.

[15] Georgia's previous incorporation by reference of 40 CFR 52.21 at 391–3–1–.02(7) was as of June 3, 2010, which did not include the May 18, 2011, repeal of the PM_{10} Surrogate Policy; therefore the grandfathering exclusion language at 391–3–1–.02(7)(b)(6)(i) was necessary at that time. The June 3, 2010, IBR date was approved into the Georgia SIP on September 8, 2011.

.02(9)(b)—*Emissions Standards for Hazardous Air Pollutants.* EPA has made the preliminary determination that this SIP revision, with regard to the aforementioned proposed actions, is approvable because it is consistent with section 110 of the CAA and EPA regulations regarding NSR permitting.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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 F43255, 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 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, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: December 18, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–31538 Filed 12–31–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R09–OAR–2012–0936; FRL–9767–4]

Designation of Areas for Air Quality Planning Purposes; California; Morongo Band of Mission Indians

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to correct an error in a previous rulemaking that revised the boundaries between nonattainment areas in Southern California established under the Clean Air Act for the purposes of addressing the revoked national ambient air quality standard for one-hour ozone. EPA is also proposing to revise the boundaries of certain Southern California air quality planning areas to designate the Indian country of the Morongo Band of Mission Indians, California (Morongo Reservation) as a separate air quality planning area for the one-hour and 1997 eight-hour ozone standards.

DATES: Written comments must be received on or before February 1, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2012–0936, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: israels.ken@epa.gov.*
3. *Fax:* 415–947–3579.
4. *Mail or deliver:* Ken Israels (Mailcode AIR–8), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the *http://www.regulations.gov* or email; *http://www.regulations.gov* is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

FOR FURTHER INFORMATION CONTACT: Ken Israels, Grants and Program Integration Office (AIR–8), U.S. Environmental Protection Agency, Region IX, (415) 947–4102, *israels.ken@epa.gov.*

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

Table of Contents

I. Background
  A. Banning Pass and the Morongo Band of Mission Indians
  B. National Ambient Air Quality Standards
  C. Area Designations and Classifications
II. Proposed Action
  A. Legal Authority
  B. Proposed Correction to 2003 Action
  C. Proposed Boundary Redesignation of the Morongo Reservation as a Separate Nonattainment Area for the One-Hour Ozone and Eight-Hour Ozone Standards
III. Summary of Proposed Action and Request for Public Comment

IV. Statutory and Executive Order Reviews

I. Background

A. Banning Pass and the Morongo Band of Mission Indians

Connecting the South Coast Air Basin to the Coachella Valley, the Banning Pass (also known as the San Gorgonio Pass) is one of the three major routes by which air pollutants are transported out of the Los Angeles metropolitan area (which lies within the South Coast Air Basin). Banning Pass runs in an east-west direction for about 15 miles and is about 5 miles wide. The pass starts west of Beaumont, California at an elevation of about 2,200 feet and reaches a maximum elevation of around 2,600 feet in the city of Beaumont, then drops to an elevation of near 1,400 feet between Cabazon and White Water. The San Bernardino Mountains are on the north side of the pass and the San Jacinto Mountains are on the south side. The San Bernardino Mountains reach a maximum elevation of approximately 11,500 feet at the top of San Gorgonio Mountain and the San Jacinto Mountains reach a maximum elevation of approximately 10,800 feet at Mt. San Jacinto.

The Morongo Band of Mission Indians, California (''Morongo Tribe'' or ''Tribe'') is a federally-recognized Indian tribe whose Indian country [1] (''Morongo Reservation'' or ''Reservation'') lies within the Banning Pass. The Morongo Reservation covers approximately 35,000 acres and is home to approximately 1,500 full-time residents.[2] The Morongo Reservation is rural, and most of the current land use is residential or agricultural. The Morongo Reservation also hosts a hotel and casino, among other enterprises.

The eastern edge of the Morongo Reservation abuts the current boundary between the South Coast Air Basin and Southeast Desert/Coachella Valley air planning areas. Most of the Morongo Reservation is located north of Interstate 10, just east of the City of Banning, but some of the Reservation is located south of Interstate 10 as well.

B. National Ambient Air Quality Standards

The Clean Air Act (CAA or ''Act'') requires EPA to establish a National Ambient Air Quality Standard (NAAQS or ''standard'') for pollutants that ''may reasonably be anticipated to endanger public health and welfare'' and to develop a primary and secondary standard for each NAAQS. The primary standard is designed to protect human health with an adequate margin of safety and the secondary standard is designed to protect public welfare and the environment. EPA has set NAAQS for six common air pollutants, referred to as criteria pollutants: Ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, particulate matter, and lead.

In 1979, EPA promulgated the first ozone [3] standard of 0.12 parts per million (ppm), averaged over a one-hour period (''one-hour ozone standard''), to replace an earlier photochemical oxidant standard. In 1997, EPA revised the ozone standard to 0.08 ppm, eight-hour average (''1997 eight-hour ozone standard''), and then, in 2008, lowered the eight-hour ozone standard to 0.075 ppm (''2008 ozone standard''). Today's proposed action relates only to the designations and classifications for the one-hour ozone and 1997 eight-hour ozone standards, discussed below, but relies on EPA's analysis and rationale for the Agency's recent designations for the 2008 ozone standard.

C. Area Designations and Classifications

Areas of the country were originally designated as attainment, nonattainment, or unclassifiable following enactment of the 1977 Amendments to the CAA. *See* 43 FR 8962 (March 3, 1978). These designations were generally based on monitored air quality values compared to the applicable standard. Under the 1990 Amendments to the CAA, ozone nonattainment areas were further classified as ''Marginal,'' ''Moderate,'' ''Serious,'' ''Severe'' or ''Extreme'' depending upon the severity of the ozone problem. Area designations and classifications are codified in 40 CFR part 81; area designations and classifications for California are codified at 40 CFR 81.305.

EPA has historically designated areas in Southern California by referencing air basins, including the South Coast Air Basin [4] and the Southeast Desert Air Basin. More recently, the EPA has recognized California's division of the former Southeast Desert Air Basin into the Mojave Desert Air Basin and the Salton Sea Air Basin. The relevant portion of the Southeast Desert Air Basin (and Salton Sea Air Basin) for the purposes of this proposed action is Coachella Valley, which covers roughly the middle third of Riverside County, i.e., east of the South Coast Air Basin and west of the Little San Bernardino Mountains.

Historically, the Morongo Reservation was included in the Coachella Valley portion of the Southeast Desert Air Basin and was designated accordingly for the various standards. In 2002, the State of California requested that EPA revise the boundaries of the South Coast Air Basin and the Southeast Desert Air Basin to remove the Banning Pass area from the Coachella Valley portion of the Southeast Desert Air Basin and include it in the South Coast Air Basin. *See* 68 FR 57820 (October 7, 2003).[5] Specifically, California sought to establish a new boundary approximately 18 miles east of the then-established boundary between the South Coast Air Basin and the Coachella Valley portion of the Southeast Desert Air Basin. The boundary between the two basins was to be moved from the range line common to Range 2 West and Range 1 West to the range line common to Range 2 East and Range 3 East (San Bernardino Base and

[1] ''Indian country'' as defined at 18 U.S.C. 1151 refers to: ''(a) 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, (b) 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 (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.'' The Morongo Tribe is the only Tribe that has Indian country in the portion of the Banning Pass at issue in this rulemaking.

[2] See EPA's 2008 eight-hour ozone standard designations Technical Support Document (TSD) found at *http://www.epa.gov/groundlevelozone/designations/2008standards/documents/R9_CA_TSD_FINAL.pdf.*

[3] Ground-level ozone is a gas that is formed by the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the atmosphere in the presence of sunlight. These precursor emissions are emitted by many types of pollution sources, including power plants and industrial emissions sources, on-road and off-road motor vehicles and engines, and smaller sources, collectively referred to as area sources.

[4] The South Coast includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County (see 40 CFR 81.305).

[5] California also requested two other specific boundary changes: (1) To move the eastern boundary of the Coachella Valley portion of the Southeast Desert ozone nonattainment area further east to match the boundaries of the Coachella Valley PM–10 nonattainment area, and (2) to correct an error in the eastern boundary of the San Bernardino County portion of the South Coast Air Basin with respect to carbon monoxide. Unlike the boundary change to enlarge the South Coast to include the entire Banning Pass area, the change in the eastern boundary of the Coachella Valley portion of the Southeast Desert ozone nonattainment area did not affect Indian country and would not be affected by today's proposed action. The approval of the State's request to correct the carbon monoxide boundary simply fixed a typographical error and thereby removed from the South Coast carbon monoxide nonattainment area a portion of San Bernardino County that neither EPA nor California intended to be included. *See* 68 FR 48848, at 48850 (August 15, 2003). EPA's correction of the carbon monoxide boundary in San Bernardino County would also be unaffected by today's proposed action.

Meridian).[6] On October 7, 2003, EPA approved California's boundary change request (68 FR 57820).

With respect to the one-hour ozone standard, EPA's 2003 action had the effect of moving the Morongo Reservation from the Coachella Valley portion of the ''Southeast Desert Modified AQMA Area'' (''Southeast Desert'') to the South Coast Air Basin and changing the designations and classifications accordingly. Specifically, EPA's 2003 action had the effect of changing the ozone nonattainment area classification for the Banning Pass area, including the Morongo Reservation, from ''Severe-17'' to ''Extreme''.[7]

In 2004, EPA promulgated area designations and classifications for the 1997 eight-hour ozone standard. Among the California areas, EPA designated the ''Los Angeles-South Coast Air Basin, CA,'' the boundary of which coincided with the boundary for the one-hour ozone standard, as amended in 2003 to include the entire Banning Pass, including the Morongo Reservation, as a ''Severe-17'' nonattainment area. *See* 69 FR 23858 (April 30, 2004). In EPA's 2004 final rule, the Agency designated ''Riverside Co. (Coachella Valley), CA'' (''Coachella Valley'') as a ''Serious'' nonattainment area. In 2007, the State of California requested that EPA reclassify the South Coast nonattainment area from ''Severe-17'' to ''Extreme'' and the Coachella Valley nonattainment area from ''Serious'' to ''Severe-15'' for the 1997 eight-hour ozone standard.

In response to EPA's 2003 boundary change action and California's 2007 reclassification request, the Morongo Tribe requested that EPA create a separate nonattainment area for the Morongo Reservation or, alternatively, move the western boundary of the Coachella Valley area westward to include the Morongo Reservation. *See* letter from Robert Martin, Chairman, Morongo Band of Mission Indians, to Deborah Jordan, Director, Air Division, EPA Region IX, dated May 29, 2009.

In 2009, in response to California's 2007 reclassification request, EPA proposed that all Indian country in the South Coast be reclassified in keeping with the classification of non-Indian country State lands to ''Extreme'' for the 1997 eight-hour ozone standard. *See* 43 FR 43654 (August 27, 2009). In 2010, EPA took final action granting the request by California to reclassify the South Coast Air Basin from ''Severe-17'' to ''Extreme'' for the 1997 eight-hour ozone standard, and to reclassify all Indian country, except that pertaining to the Morongo Tribe and the Pechanga Tribe, in keeping with the reclassification of non-Indian country State lands to ''Extreme.'' With respect to the Morongo Tribe and the Pechanga Tribe, EPA deferred reclassification pending EPA's final decisions on their previously-submitted boundary change requests. *See* 75 FR 24409 (May 5, 2010). In EPA's 2010 final rule, the Agency also granted the request to reclassify the Coachella Valley nonattainment area to ''Severe-15.''

Today's proposed action would correct EPA's 2003 action to the extent that the action relates to the designations and classifications of the Morongo Reservation for the one-hour ozone standard and would establish a separate one-hour ozone nonattainment area for the Reservation. Today's proposed action would also grant the Tribe's request to revise the boundary designation and to designate the Morongo Reservation as a separate nonattainment area for the 1997 eight-hour ozone standard.[8]

Today's proposed action would not affect the current designations and classifications of the Morongo Reservation for any of the other standards. Today's proposed action would also not affect the designations and classifications for any pollutant with respect to State lands.

II. Proposed Action

A. Legal Authority

The relevant statutory provisions for this proposed action are CAA section 110(k)(6), which is EPA's error correction authority, and CAA sections 107(d)(3), 301(a) and 301(d), which are EPA's authority to redesignate Indian country areas under these circumstances.

Section 110(k)(6) of the CAA provides: ''Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.'' We interpret this provision to authorize the Agency to make corrections to a promulgated regulation when it is shown to our satisfaction that (1) we clearly erred in failing to consider or inappropriately considering information made available to EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate, and (2) other information persuasively supports a change in the regulation. *See* 57 FR 56762, at 56763 (November 30, 1992).

Sections 107(d)(3)(A)–(C) provide that EPA may initiate the redesignation process ''on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate,'' and ''promulgate the redesignation, if any, of the area or portion thereof.'' CAA section 107(d)(3) does not refer to Indian country, but consistent with EPA's discretionary authority in CAA sections 301(a) and 301(d)(4) to directly administer CAA programs, and protect air quality in Indian country through federal implementation, EPA is authorized to directly administer sections 107(d)(3)(A)–(C) and redesignate Indian country areas.[9]

[6] For a detailed map of the area, please see the technical support document (TSD) for this proposed rulemaking available in the docket for this action, EPA–R09–OAR–2012–0936.

[7] For carbon monoxide, EPA's action had the effect of changing the designation of the Banning Pass area from ''unclassifiable/attainment'' to ''Serious'' nonattainment. With respect to particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (''PM_{10}''), the action did not change the designation or classification of the Banning Pass because both the South Coast Air Basin and Coachella Valley are ''Serious'' nonattainment areas for that pollutant. Both the South Coast and Coachella Valley are designated as unclassifiable or attainment for the nitrogen dioxide and sulfur dioxide standards, but, for nitrogen dioxide, the South Coast Air Basin is a former nonattainment area for which a maintenance plan has been approved. *See* 63 FR 39747 (July 24, 1998). Today's proposed action relates only to the designations and classifications for the one-hour ozone and 1997 eight-hour ozone standards.

[8] If we finalize our proposed action to revise the boundaries of the South Coast to designate the Morongo Reservation as a separate nonattainment area for the 1997 eight-hour ozone standard, EPA will withdraw our proposed rule to reclassify Indian country in the South Coast to ''Extreme'' for the 1997 eight-hour ozone standard (74 FR 43654, August 27, 2009) to the extent that the 2009 proposed rule relates to the Morongo Reservation.

[9] Revisions of designations are referred to as ''redesignations.'' Boundary changes revise an area's designation and, as such, represent one type of redesignation. As a general matter, EPA is no longer acting to redesignate areas with respect to the revoked one-hour ozone standard. However, in this instance, EPA is proposing to revise the designation of an air quality planning area in concert with a proposal to correct a clear error that occurred with respect to Indian country prior to revocation of the one-hour ozone standard. As indicated in this document, EPA believes that correction of this error is justified by the specific jurisdictional context and the on-going regulatory impacts on the Morongo Tribe arising from the error.

B. Proposed Correction to 2003 Action

We have reviewed the materials submitted by the State of California in connection with the State's 2002 request to enlarge the South Coast Air Basin to include the Banning Pass area, thereby removing the area from the Southeast Desert. We have also reviewed EPA's rationale for approving the State's request. On the basis of that review, and for reasons given below, EPA has concluded that while EPA's action to approve California's request was not erroneous with respect to state lands, it was erroneous with respect to the Morongo Reservation and that we have sufficient justification to correct the error at this time.

First, a review of the items listed in EPA's administrative record for EPA's proposed (68 FR 48848, August 15, 2003) and final (68 FR 57820, October 7, 2003) rules approving California's boundary change request reveals no reference to, or map illustrating the location of, the Morongo Reservation.

Second, from review of the record, it is clear that EPA understood its action as one in which the Agency was taking action on a State request under CAA section 107(d)(3)(D). *See,* e.g., the proposed rule at 48850 (''* * * we are proposing to fully approve [the requests] under CAA section 107(d)(3)(D).''). Section 107(d)(3)(D) provides: ''The Governor of any State may, on the Governor's own motion, submit to the Administrator a revised designation of any area or portion thereof within the State.'' Typically, however, states are not approved to administer programs under the CAA in Indian country, and California has not been approved by EPA to administer any CAA programs in Indian country. CAA actions in Indian country would thus generally be taken either by EPA, or by an eligible Indian tribe itself under an EPA-approved program. In this case, the Morongo Tribe has not applied under CAA section 301(d) for treatment-in-a-similar-manner-as-a-state (TAS) for purposes of designations and redesignations under section 107(d) and does not implement any relevant EPA-approved CAA regulatory program, nor has the tribe developed a tribal implementation plan (TIP).[10] In these circumstances, EPA is the appropriate entity to administer relevant CAA programs in Indian country.

Thus, with respect to the Indian country located within an area subject to a State boundary change request, EPA is the appropriate entity to initiate and promulgate the redesignation, and EPA could do so under CAA sections 107(d)(3)(A)–(C) and sections 301(a) and 301(d)(4), as discussed above in subsection II.A (''Legal Authority''). While EPA thus had authority to change the boundary of the South Coast Air Basin with respect to Indian country, it is apparent from the proposed and final rules in 2003 that EPA did not recognize that it was acting under that authority or appropriately consider the effect of the action on Indian country lands. EPA recognized only that the Agency was acting on a State request under section 107(d)(3)(D) and reviewed the request accordingly. As noted previously, states are not approved to administer CAA programs in Indian country.[11]

If EPA's actions had more explicitly addressed the fact that the State's request affected tribal lands, and also had expressly considered the Tribe's position with respect to the State's request to revise the boundary in relation to Indian country, EPA might well have relied upon the same criteria cited in the proposed rule. The criteria, set forth in section 107(d)(3)(A) include ''air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate''. The evaluation of ''planning and control considerations'' for Indian country, however, differs from that for State lands. In this instance, with respect to State lands, the South Coast Air Quality Management District (SCAQMD) has planning and permitting responsibility over the entire Banning Pass area, as well as the South Coast, and Coachella Valley, and administers an EPA-approved (nonattainment) New Source Review (NSR) program under which permits may be issued to new or modified stationary sources.

In contrast, EPA currently administers relevant CAA programs on the Morongo Reservation. Until recently, EPA had not established a NSR program applicable to the Reservation. This means that a higher ozone classification, and simultaneous lowering (i.e., more stringent) of NSR major source thresholds, would have presented a greater challenge for new and modified stationary sources at the Morongo Reservation than for similar sources on State lands in the Banning Pass subject to SCAQMD's EPA-approved NSR program. (EPA's NSR rule for Indian country, including the Morongo Reservation, was published on July 1, 2011 at 76 FR 38748 and took effect on August 30, 2011.)

Moreover, state law and SCAQMD rules restrict the use of emission reduction credits generated under SCAQMD rules by major new or modified sources located within the South Coast Air Basin, but outside the scope of the SCAQMD program. *See* SCAQMD Rule 1309 (''Emission Reduction Credits''), subsection (h)(3); and California Health & Safety Code section 40709.6 (''Offset by reductions credited to stationary sources located in another district''). Given the few emissions sources on the Morongo Reservation, reliance upon emissions reductions by sources off the Reservation to offset emissions from any major new or modified sources on the Reservation is inevitable and because of the limitations in state law and SCAQMD rules, the availability of such emissions reductions is uncertain.

Therefore, as described above, in the specific circumstances presented here, and based on our review of the record from the 2003 rulemaking, we conclude that EPA erred in including the Morongo Reservation in the 2003 boundary change approval. Because Indian country was subsumed into a larger area for which the State requested a boundary revision, EPA should not have acted solely with respect to the State's request under section 107(d)(3)(D), but should have fulfilled its responsibilities pursuant to section 107(d)(3)(A)–(C), and sections 301(a) and 301(d) and considered the relevant criteria from the perspective of Indian country.

Furthermore, we recognize that the boundary change has had adverse regulatory impacts on the Morongo Tribe, particularly by lowering the one-hour ozone NSR major source threshold from 25 tons per year to 10 tons per year. This adverse regulatory impact continues to affect the Tribe, even though the one-hour ozone standard was revoked, effective on June 15, 2005 [i.e., one year from the designations for the eight-hour ozone standard—*see* 40 CFR 50.9(b)].

With respect to the one-hour ozone standard and the related NSR major source thresholds, the Tribe continues to be affected because, in the wake of a decision by the U.S. Court of Appeals for the DC Circuit challenging EPA's Phase I Implementation Rule for the

[10] In addition, the CAA does not require Indian tribes to develop and seek approval of air programs, and pursuant to our authority in CAA section 301(d), EPA has interpreted relevant CAA requirements for submission of air programs as not applying to tribes. *See* 40 CFR 49.4.

[11] EPA is not excluding the possibility that Tribes can agree with State requests in certain circumstances, nor are we suggesting that we would undo actions we took just because we did not explicitly identify Indian country land that was included with the State land.

eight-hour ozone standard,[12] the NSR requirements that had applied by virtue of the area's classification as of June 15, 2004 continue to apply under anti-backsliding requirements established by EPA for the transition from the one-hour ozone standard to the eight-hour ozone standard. *See* 77 FR 28424 (May 14, 2012) for information concerning the NSR requirement and the anti-backsliding provisions for the former one-hour ozone standard. Thus, notwithstanding the revocation of the one-hour ozone standard, the applicable major source NSR thresholds for the Morongo Reservation continue to be 10 tons per year, based on the inclusion of the Reservation in the South Coast because the South Coast was classified as ''Extreme'' for the one-hour ozone standard on June 15, 2004.

In sum, given the on-going effects that flow from our 2003 error, we are persuaded to propose action now to correct the error in our 2003 boundary change action as it relates to the Morongo Reservation.

In considering how to correct the error in our 2003 boundary change action, we have concluded from our review of the administrative record for that rulemaking that EPA did not commit an error with respect to State lands. Our proposed action addresses only the specific regulatory impact on the Morongo Reservation, and otherwise leaves the 2003 action unchanged. Thus, we propose to rescind the 2003 boundary change rule only with respect to the Morongo Reservation for the revoked one-hour ozone standard.

Revocation of the 2003 boundary change rule with respect to the Morongo Reservation would return it to its status before the 2003 boundary change, when the Reservation was included in the Southeast Desert one-hour ozone nonattainment area. (see section I.C. herein). In this action, however, EPA is taking the additional step of proposing to revise the boundaries of the Southeast Desert to designate the Morongo Reservation as a separate one-hour ozone nonattainment area. If both proposed actions are finalized, the Morongo Reservation would resume the one-hour ozone nonattainment classification it previously shared with the Southeast Desert (i.e., ''Severe-17'').

We are not proposing to rescind the 2003 action with respect to area designations for any of the other standards, because the Tribe has not faced any significant adverse regulatory impacts from the boundary change with respect to those pollutants. Our proposed action would not affect any area designations or classifications with respect to State lands.

C. Proposed Boundary Redesignation of the Morongo Reservation as a Separate Nonattainment Area for the One-Hour Ozone and 1997 Eight-Hour Ozone Standards

As noted previously, on May 29, 2009, the Morongo Tribe submitted a request to EPA for a boundary change to create a separate ozone nonattainment area, or in the alternative, to move the western boundary of the Coachella Valley nonattainment area westward to include the Morongo Reservation. As noted above, we are authorized to redesignate Indian country areas under these circumstances under CAA sections 107(d)(3)(A)–(C), 301(a) and 301(d).

Recently, EPA issued a policy (referred to herein as the ''Tribal Designation Policy'') for establishing separate air quality designations for areas of Indian country.[13] Where EPA receives a request for a boundary change from a tribe seeking to have its Indian country designated as a separate area, the policy indicates that EPA will make decisions regarding these requests on a case-by-case basis after consultation with the tribe. As a matter of policy, EPA believes that it is important for tribes to submit the following information when requesting a boundary change: A formal request from an authorized tribal official; documentation of Indian country boundaries to which the air quality designation request applies; concurrence with EPA's intent to include the identified tribal lands in the 40 CFR part 81 table should EPA separately designate the area; and a multi-factor analysis to support the request. *See* Tribal Designation Policy, pages 3 and 4.

The Tribal Designation Policy states that EPA intends to make decisions regarding a tribe's request for a separate air quality designation after all necessary consultation with the tribe and, as appropriate, with the involvement of other affected entities, and after evaluating whether there is sufficient information to support such a designation. Boundary change requests for a separate air quality designation should include an analysis of a number of factors (referred to as a ''multi-factor analysis,'') including air quality data, emissions-related data (including source emissions data, traffic and commuting patterns, population density and degree of urbanization), meteorology, geography/topography, and jurisdictional boundaries.[14] EPA believes these factors are appropriate to consider in acting under CAA sections 107(d)(3)(A)–(C), 301(a) and 301(d).

On May 29, 2009, the Chairman of the Morongo Tribe submitted the Tribe's request for a separate ozone nonattainment area that included a multi-factor analysis addressing air quality data, emissions data, meteorology, geography/topography, and jurisdictional boundaries. As such, although submitted prior to release of the Tribal Designation Policy, the Morongo Tribe's request for a boundary change to create a separate ozone nonattainment area, in conjunction with EPA's additional analysis found in the technical support document for this proposed action, represents the type of formal, official request and supporting information called for in the policy.[15]

EPA recently reviewed the Morongo Tribe's multi-factor analysis in connection with designating areas of the country for the 2008 ozone standard. Upon review of the Tribe's analysis and EPA's own supplemental analysis in light of the Tribal Designation Policy, EPA designated the Morongo Reservation as a separate nonattainment area for the 2008 ozone standard. *See* 77 FR 30088 (May 21, 2012). We believe that EPA's analysis and recent decision to designate the Morongo Reservation as a separate nonattainment area for the 2008 ozone standard is directly relevant to our consideration of whether to revise the boundaries of existing air quality planning areas to designate the Morongo Reservation as a separate nonattainment area for the one-hour and 1997 eight-hour ozone standards. We recognize that the three standards address the same pollutant, and thus share multi-factor analyses and considerations.[16]

EPA is therefore adopting the analysis and rationale previously relied upon by EPA in establishing the Morongo nonattainment area for the 2008 ozone

[12] *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (DC Cir. 2006) reh'g denied 489 F.3d 1245 (clarifying that the vacatur was limited to the issues on which the court granted the petitions for review).

[13] See memorandum from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards, to EPA Regional Air Directors, Regions I–X, dated December 20, 2011, titled ''Policy for Establishing Separate Air Quality Designations for Areas of Indian Country.''

[14] The Tribal Designation Policy also states that, in addition to information related to the identified factors, tribes may submit any other information that they believe is important for EPA to consider.

[15] In addition, EPA has consulted with the tribe several times about this matter.

[16] EPA also notes that in using many of the same factors found in the 2008 ozone designations process, we are using factors that represent the most current information regarding meteorology, air quality, etc. in the area and therefore we believe serve the purposes of being representative for the previously established ozone standards.

standard. Key findings from the 2008 ozone designations decision that we are adopting for this proposed action include: [17]

• *Air quality data:* The SCAQMD-run monitor in Banning is located within two miles of the Morongo monitor, and data from SCAQMD's Banning monitor is appropriate for use as a regulatory monitor and is representative of air quality within the Morongo Reservation. Eight-hour ozone concentrations measured at the SCAQMD-run Banning ozone monitor shows continued violations of the 1997 eight-hour ozone standard and, reflecting the transitional nature of the Banning Pass area, contrast with the higher design values of the South Coast Air Basin to the west and lower design values in Southeast Desert to the east; [18]

• *Emissions data:* Sources of air pollutants located on or associated with the Morongo Reservation consist of stationary sources that generate less than 20 tons per year (tpy) of NO_X and less than 20 tpy of VOC, and motor vehicles for travel associated with the 1,500 residents and visitors to the Morongo Casino Resort. In contrast, ozone precursor emissions from the adjacent Los Angeles-South Coast Air Basin nonattainment area exceed 400,000 tpy of NO_X and over 200,000 tpy of VOC, with a total population of approximately 17 million people.[19] To the east, ozone precursor emissions from the adjacent Riverside County (Coachella Valley, which was originally part of the Southeast Desert Air Basin) nonattainment area exceed 50,000 tpy of NO_X and 28,000 tpy of VOC, with a population of over 2 million people; [20]

• *Meteorology:* Under most meteorological conditions, air from the coastal plain (i.e., South Coast) to the west is funneled through Banning Pass to the desert area to the east. As a mountain pass area, the meteorology is dissimilar from that of either the coastal plain to the west or the desert area to the east. The winds are more frequent and stronger, with a more westerly component, than those in most of the coastal plain, and the temperatures vary more than in most of the coastal plain but not as much as in the desert area to the east.[21] Thus, in some ways, the Banning Pass is transitional between the coastal and desert areas; in other ways, as a mountain pass, the Banning Pass is simply unlike either area to the west or east;

• *Geography/topography:* The topographical characteristics of the Banning Pass create very different climatic conditions than found in the coastal plain to the west or the desert area to the east, such as persistently strong westerly air flow that is compressed and channeled by the elevated land mass of the Pass itself and the steep mountain peaks to the north and south; and

• *Jurisdictional boundaries:* Although the Morongo Reservation contains stationary and mobile sources of ozone precursors, the magnitude of ozone precursor emissions is very small compared to emissions from the adjacent Los Angeles-South Coast Air Basin and Coachella Valley nonattainment areas. Because the analysis of factors does not conclusively indicate that the sources located on the Morongo Reservation contribute to nonattainment in the surrounding area, EPA believes that consistent with the principles set forth in the Tribal Designation Policy, the jurisdictional boundaries factor is especially important in the decision-making process for designating the Morongo Reservation.

Air quality data, meteorology and topography indicate that the Morongo Reservation experiences transitional conditions characteristic of a mountain pass area through which pollutants are channeled from a highly urbanized metropolitan nonattainment area to the west to the relatively less developed nonattainment area to the east. Considering the three factors of air quality data, meteorology, and topography, EPA could reasonably include the Morongo Reservation in either the South Coast nonattainment area to the west, or the Southeast Desert nonattainment area to the east, as EPA has done in the past for the one-hour ozone standard and the 1997 eight-hour ozone standard. Alternatively, the Agency could establish a separate nonattainment area for the Morongo Reservation as it did for the 2008 eight-hour ozone standard.[22]

However, taking into account the minimal amount of emissions associated with activities on the Morongo Reservation and corresponding minimal contribution to regional ozone violations, we believe that in these circumstances it is appropriate to assign particular weight to the jurisdictional boundaries factor, and it is consistent with the principles for designations of Indian country set forth in the Tribal Designation Policy. Moreover, the Tribe has invested in the development of its own air program, including operation of weather stations and an air monitoring station, and has expressed interest in development of its own permitting program. Under the jurisdictional boundaries factor, we find that redesignation of the Morongo Reservation as a separate ozone nonattainment area for the one-hour ozone and 1997 eight-hour ozone standards would be appropriate. Therefore, consistent with the designation of the Morongo Reservation for the 2008 ozone standard, we propose to revise the boundaries of the Southeast Desert one-hour ozone nonattainment area and the boundaries of the South Coast 1997 eight-hour ozone nonattainment area to designate the Morongo Reservation as a separate nonattainment area for the one-hour and 1997 eight-hour ozone standards.

III. Summary of Proposed Action and Request for Public Comment

Under section 110(k)(6) of the CAA, EPA is proposing to correct an error in a 2003 final action that revised the boundaries between areas in Southern California established under the CAA for the purposes of addressing the standard for one-hour ozone. EPA has determined that the Agency erred in the 2003 final action to change the boundary of the South Coast Air Basin, which enlarged the basin to include all of the Banning Pass area. In taking that action, EPA failed to consider the presence of Indian country (i.e., the Morongo Reservation) located therein. EPA thus failed to consider the status of the Indian country under the appropriate statutory and regulatory provisions when it evaluated and acted upon the State's boundary change request. EPA believes that its error resulted in regulatory consequences for the Morongo Tribe that justify making a correction.

[17] See the TSD associated with this proposal for our detailed analysis of each of the factors. Our TSD also shows that violations continue for the one-hour standard and that the transitional characteristic observed for the eight-hour ozone data also applies to the one-hour ozone data.

[18] In performing our analysis, EPA relied on data from the following monitoring stations in our air quality system (AQS): Redlands (AQS #06–071–4003), Banning (AQS #06–065–0012), and Palm Springs (AQS #06–065–5001). EPA believes that the Banning monitor, given its proximity, is representative of the Morongo Indian Country's air quality. EPA also notes that, while the Morongo Tribe operates its own monitor, we did not use that data for this action.

[19] See page 5 of the Morongo portion of the 2008 eight-hour ozone standard TSD found at *http://www.epa.gov/groundlevelozone/designations/2008standards/documents/R9_CA_TSD_FINAL.pdf*

[20] See page 6 of the Morongo portion of the 2008 eight-hour ozone standard TSD found at *http://www.epa.gov/groundlevelozone/designations/2008standards/documents/R9_CA_TSD_FINAL.pdf*

[21] Meteorological information for the Morongo Reservation is from *2005–2009 Weather and Air Quality Summary,* prepared by the Morongo Band of Mission Indians, Environmental Protection Department, Tribal Air Program, August 2010.

[22] See 77 FR 30088, dated May 21, 2012.

Specifically, EPA is proposing to rescind the 2003 final action, as it pertains to the Morongo Reservation for the one-hour ozone standard. This proposed action would not affect the designations and classifications of State lands.

Second, under CAA section 107(d)(3), 301(a) and 301(d), we propose to revise the boundaries of the Southeast Desert to designate the Morongo Reservation as a separate nonattainment area for the one-hour ozone standard and to classify the Morongo Reservation as ''Severe-17,'' i.e., consistent with its prior classification when it was included in the Southeast Desert. Third, also under CAA section 107(d)(3), 301(a) and 301(d), we are proposing to revise the boundaries of the South Coast to designate the Morongo Reservation as a separate nonattainment area for the 1997 eight-hour ozone standard and to classify the Morongo Reservation as ''Severe-17,'' i.e., consistent with its original classification when it was included in the South Coast.

We are proposing to redesignate the Morongo Reservation as a separate air quality planning area for the one-hour ozone and 1997 eight-hour ozone standards based on our conclusion that factors such as air quality data, meteorology, and topography do not definitively support inclusion of the Reservation in either the South Coast or the Southeast Desert air quality planning areas, that Morongo Reservation emissions sources contribute minimally to regional ozone concentrations, and that the jurisdictional boundaries factor should be given particular weight under these circumstances.

If finalized as proposed, the Morongo air quality planning area for the one-hour and 1997 eight-hour ozone standards would have the same boundaries as the Morongo nonattainment area for the 2008 eight-hour ozone standard. Moreover, if finalized as proposed, new or modified stationary sources proposed for construction on the Morongo Reservation would be subject to the NSR major source thresholds for ''Severe-17'' ozone nonattainment areas, rather than the more stringent thresholds for ''Extreme'' ozone nonattainment areas.

EPA is soliciting public comments on the issues discussed in this document and will accept comments for the next 30 days. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one 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 the Executive Order. Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action would merely correct an error in a previous rulemaking and redesignate certain air quality planning area boundaries, and thereby reinstate certain CAA designations and corresponding requirements to which the affected area had previously been subject.

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.* 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. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). 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.

C. Regulatory Flexibility Act (RFA)

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 this 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 today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any direct requirements on small entities. EPA is proposing to correct an error in a previous rulemaking and redesignate certain air quality planning area boundaries, and thereby reinstate certain CAA designations and corresponding requirements to which the affected area had previously been subject. This proposed action is intended to, among other purposes, facilitate and support the Morongo Tribe's efforts to develop a tribal air permit program by re-establishing, within the Morongo Reservation, the less-stringent New Source Review major source thresholds that had applied under the area's

previous ''Severe-17'' classification for the one-hour ozone standard.

D. Unfunded Mandates Reform Act

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 the 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 in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the 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 do not apply when they are inconsistent with applicable law. Moreover, section 205 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 the 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. Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The proposed rule imposes no enforceable duty on any State, local or tribal governments or the private sector. In any event, EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), 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.'' This proposed action also does not have Federalism implications because it 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This proposed action would merely correct an error in a previous rulemaking and redesignate certain air quality planning area boundaries, and thereby reinstate certain CAA designations and corresponding requirements to which the affected area had previously been subject, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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.'' ''Policies that have tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the proposed regulation.

EPA has concluded that this action would have tribal implications. In 2009, the Morongo Tribe requested that EPA create a separate area for the Morongo Reservation in part due to the adverse regulatory impacts resulting from the Agency's 2003 boundary change action. EPA consulted with representatives of the Morongo Tribe prior to, and following, the Tribe's 2009 boundary change request, concerning the issues covered herein. In today's proposed action, EPA is responding to the Tribe's 2009 boundary change request and has proposed an action that would eliminate the adverse regulatory impacts arising from EPA's 2003 boundary change action. As described herein, we agree with the Tribe that the boundary should be corrected to reflect their concerns. As proposed, this action will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Rather, the proposed action would relieve the Tribe of the additional requirements that flowed from the boundary change and corresponding change in CAA designations and classifications. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health 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 EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically

significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this rule present a disproportionate risk to children.

H. National Technology Transfer Advancement Act

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

I. 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.

EPA has determined that this proposed action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment. In this action, EPA is proposing to correct an error in a previous rulemaking and redesignate certain air quality planning area boundaries, and thereby reinstate certain CAA designations and corresponding requirements to which the affected area had previously been subject.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, National parks, Ozone, Wilderness areas.

Dated: December 20, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012–31537 Filed 12–31–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–ES–2009–0094; 450 003 0115]

RIN 1018–AY64

Endangered and Threatened Wildlife and Plants; Listing the Honduran Emerald Hummingbird

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; 12-month finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list as endangered the Honduran emerald hummingbird (*Amazilia luciae*) under the Endangered Species Act of 1973, as amended (Act). This species is endemic to a small area in Honduras, and the population is estimated to be less than 1,000 and decreasing. Its suitable habitat has decreased in the past 100 years and continues to diminish. This document also serves as the completion of the status review (also known as the 12-month finding). We seek information from the public on the proposed listing for this species.

DATES: We will consider comments and information received or postmarked on or before March 4, 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–R9–ES–2009–0094.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R9–ES–2009–0094, Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept comments by email or fax. 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 Information Requested section below for more information).

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

Background

Section 4(b)(3)(B) of the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition (''12-month finding''). In this finding, we determine whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the ESA requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

In this document, we announce that listing this species as endangered is warranted, and we are issuing a proposed rule to add this species as endangered to the Federal List of Endangered and Threatened Wildlife. Prior to issuing a final rule on this proposed action, we will take into consideration all comments and any 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 of commenters, will become part of the administrative record.

Petition History

On October 28, 2008, the Service received a petition dated October 28, 2008, from Mr. David Anderson of Louisiana State University on behalf of The Hummingbird Society of Sedona,

Arizona; The Hummingbird Conservancy of Butte, Montana; Clos LaChance of San Martin, California; Honduran Environmental Network for Sustainable Development of La Ceiba, Honduras; Fundación Parque Nacional Pico Bonito of La Ceiba, Honduras; EcoLogic Development Fund of Cambridge, Massachusetts; and Crowell and Moring, LLP of the District of Columbia, requesting that we list the Honduran emerald hummingbird as endangered under the Act. The petition clearly identified itself as a petition and included the requisite identification information required at 50 CFR 424.14(a). In response to the petitioners' request, we sent a letter to Mr. Anderson dated December 5, 2008 acknowledging receipt of the petition. The petition also included a letter from the Honduras Ambassador, Roberto Flores Bermudez, to Secretary Salazar, dated January 23, 2009, in support of this petition. We also received subsequent letters supporting the petition to list this species from the Francis Lewis High School Key Club on February 12, 2009, the Lehman College Key Club on February 26, 2009, and the Ecologic Development Fund on April 8, 2009.

Previous Federal Actions

On June 23, 2010, we published a 90-day finding (75 FR 35746) on the petition announcing that we would initiate a status review to determine if listing this species is warranted. This proposed listing determination constitutes our 12-month finding on the petition to list this species as endangered.

Peer Review

We are seeking comments from independent species experts to ensure that our listing proposal is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment on our specific assumptions and conclusions in this listing proposal. Because we will consider all comments and information received during the comment period, our final determination may differ from this proposal.

Information Requested

We intend that any final actions resulting from this proposed rule will be based on the best scientific and commercial data available. Therefore, we request comments or information from the Government of Honduras, the scientific community, or any other interested parties concerning this proposed rule. We particularly seek clarifying information concerning:

(1) Information on the species' taxonomy, distribution, habitat selection (especially breeding and foraging habitats), diet, and population abundance and trends (especially current recruitment data) of this species.

(2) Information on the effects of habitat loss and changing land uses on the distribution and abundance of this species and its principal food sources over the short and long term.

(3) Information on whether changing climatic conditions (i.e., increasing intensity of hurricanes or drought) are affecting the species, its habitat, or its food sources.

(4) Information on the effects of other potential factors, including live capture and collection, domestic and international trade, predation by other animals, and diseases of this species or its principal food sources over the short and long term.

(5) Information on management programs for hummingbird conservation, including mitigation measures related to conservation programs, and any other private or governmental conservation programs that benefit this species.

(6) Genetics and taxonomy.

(7) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(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.

Please include sufficient information with your submission (such as full references) to allow us to verify any scientific or commercial information you include. Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the ESA directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

Public Hearing

At this time, we do not have a public hearing scheduled for this proposed rule. The main purpose of most public hearings is to obtain public testimony or comment. In most cases, it is sufficient to submit comments through the Federal eRulemaking Portal, described above in the **ADDRESSES** section. If you would like to request a public hearing for this proposed rule, you must submit your request, in writing, to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by February 19, 2013.

Species Information

Taxonomy

This species was first taxonomically described by Lawrence in 1867 and placed in the Trochilidae family as *Amazilia luciae* (UNEP–WCMC 2009a, p. 1). Common names for the species include Honduran emerald hummingbird, Ariane De Lucy (French), and colibrí esmeralda Hondureña (Spanish). The Honduran emerald hummingbird is also known by the synonyms *Polyerata luciae* and *Thaumatias luciae* (Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)). BirdLife International (BLI) and CITES both recognize the species as *Amazilia luciae* (BLI 2008, p. 1). Therefore, we accept the species as *Amazilia luciae,* which also follows the Integrated Taxonomic Information System (ITIS 2009). ITIS is a database maintained by a partnership of U.S., Canadian, and Mexican federal government agencies, other organizations, and taxonomic specialists to provide taxonomic information.

Description

The Honduran emerald hummingbird is in the family *Trochilidae* (BLI 2008, p. 1; Sibley and Monroe 1993, 1990). The species is a medium-sized hummingbird with an average length of 9.5 centimeters (3.7 inches) (BLI 2008, p. 2). There are more than 325 hummingbird species and they exhibit a wide range of flight-related morphology and behavior, based on ecological factors (Altshuler and Dudley 2002, p. 2,325). As do all hummingbirds, the Honduran emerald hummingbird exhibits slight sexual dimorphism, which is demonstrated in the coloring of its plumage. The male has an iridescent blue-green throat and upper chest and occasionally has a grey mottled coloring. Its back is an emerald green color, the ventral (underneath) side of the bird is pale grey with mottled green sides, and the tail is bright green with a bronze hint on the upper tail coverts (BLI 2008, p. 1). The bill is black with a red mandible and dark tip, and has a slightly longer, more decurved (downward curving) bill than the closely related species *A. candida* (Monroe 1968, p. 182). The plumage of the female is less brilliant (BLI 2008, p.

2). The tail of the female contains a grey tip, and the band of distinctive color on the throat of the female hummingbird is narrower, with pale edges (BLI 2008, p. 2; Monroe 1968, p. 183). Juveniles have grayish throats spotted with turquoise (BLI 2008, p. 2).

Biology

Limited information is available on the Honduran emerald hummingbird's behavior and life history (Anderson 2010, p. 2). In 1988, a bird was observed defending a territory of 10 m^2 (108 ft^2), suggesting that the species may be territorial (Collar *et al.* 1992, p. 493; Howell and Webb 1989, p. 643), as are many hummingbird species. This species has been observed feeding at heights between 0.5 to 10 m (2 to 32 ft) (Howell and Webb 1989, p. 643).

As with all hummingbird species, the Honduran emerald relies on nectar-producing flowers for food, but also relies on insects and spiders as sources of protein (BLI 2008, p. 3; Collar *et al.* 1992, p. 494). Hummingbirds are known to ''disperse'' rather than ''migrate'' in the sense that they do not follow routine, standard, round-trip movements; they follow sources of food availability (Berthold *et al.* 2003, pp. 40–41).

Population

Between 1988 and 1996 there was a notable decrease in reported occurrences of Honduran emerald hummingbirds (Portillo 2007, p. 48; Collar *et al.* 1992, p. 494; Stattersfield and Capper 2000, p. 311). In 1988, the species was known to be common in Olanchito and Coyoles (BLI 2000, p. 311). In 1991, BirdLife International reported that between 22 and 28 individuals were found in 2.5 km^2 (618 ac) of habitat in Olanchito (See Figure 1 for a map of the region.). In 1996, the Honduran emerald hummingbird was found in less than 1 km^2 (247 ac) of habitat in the Agalta valley (Olancho Department), northeast of Gualaco (Stattersfield and Capper 2000, p. 311).

In 2007, the total population was estimated to be between 200 and 1,000 individuals (Anderson *et al.* 2007, p. 1). As of 2012, BLI estimated that the population is between 43 and 999 birds with a decreasing trend (citation p. 1). In the Yoro Department, several attempts have been made to conduct a census of the Honduran emerald hummingbird population. The best estimate by local biologists suggests that in the protected area the population is approximately 250 individuals (Perez and Thorn pers. comm. 2012).

Historic Distribution

The Honduran emerald hummingbird is the only known endemic bird species in Honduras (Anderson and Devenish 2009, p. 258; Portillo 2007, p. 17; Thorn *et al.* 2000, p. 3; Collar *et al.* 1992, p. 493; Monroe 1968, p. 182). Based on specimen data, the species *(Amazilia luciae)* was originally known to occur in four departments (which are similar to ''States'' in the United States): Cortés and Santa Barbara in the west and Yoro and Olancho in the northeast (see *Figure 1*). The historical locations where this species has been documented, along with the date it was documented, are below.

Catacamas, Olancho Department (1937 and 1991) (Howell and Webb 1992, pp. 46–47; Monroe 1968, p. 182). Cofradía, Cortes Department (1933) (Monroe 1968, p. 182); Coyoles, Yoro Department (1948 and 1950) (Monroe 1968, p. 182); El Boquerón, Olancho Department (recorded September 1937) (Monroe 1968, p. 182); Olanchito, Yoro Department (1988) (Howell and Webb 1989, pp. 642–643); Santa Bárbara, Santa Bárbara Department (1935) (Monroe 1968, p. 182).

Between 1950 and 1988, there were no recorded observations of the Honduran emerald hummingbird. In 1988, the species was described as common in Olanchito and Coyoles, which are located 16 kilometers (km) (9 miles (mi)) apart (BLI 2008, p. 2). In 1991, between 22 and 28 individuals were found in a patch of habitat measuring 500 by 50 meters (m) (1,640 × 164 feet (ft)) near Olanchito (Howell and Webb 1992, pp. 46–47). In 1996, the bird was found in the Agalta Valley on less than 1 km^2 (247 acres (ac) or .39 mi^2) of suitable habitat (BLI 2008, p. 3).

Current Distribution

Between 2007 and 2008, this species was detected in five valleys of Honduras (See Figure 1; Anderson 2010, p. 4). The Honduran emerald hummingbird has been rediscovered in western Honduras in two valleys in the Santa Barbara Department: the Quimistán Valley (in the Río Chamelecón watershed) and Tencoa Valley (Río Ulúa watershed), where it had not been recorded since 1935. Until its rediscovery, it was thought that habitat loss had restricted the species to isolated patches of arid thorn-forest and scrub of the interior valleys of northern Honduras. In the Tencoa Valley, researchers found individuals in five fragments, each separated by at least 5 km (3 mi). These fragments were between 5 and 60 ha (12 and 148 ac) each. We estimate that the population in the Santa Barbara Department is approximately 200 km (124 mi) west of the nearest known population in the Aguán Valley (Anderson 2010, p. 5). Searches in Cortés were unsuccessful at locating this species (Anderson 2008; Petition 2008). It is unclear if the western and eastern populations of this species are interbreeding (Anderson 2010, p. 5). BLI estimates that its range is 400 km^2 (154 mi^2). However, local experts believe its actual extent of occurrence is closer to 150 km^2 (58 mi^2) (Perez and Thorn pers. comm. 2012). Even with the rediscovery of the species in Santa Barbara and the extension of its range in Olancho, the species' habitat has been reduced (See Figure 1; Perez and Thorn pers. comm. 2012).

This species tends to be found generally along the same latitude. This phenomenon is not surprising; it is supported by research conducted by Tingley *et al.* in 2009, which found that 90.6 percent of bird species in this study tracked their Grinnellian niche (pp. 19,637, 19,640), which is a niche driven by factors such as climate, latitude, and elevation. The Honduran emerald hummingbird is found in habitat that appears to contain similar ecological conditions such as rainfall, humidity, types of species, and temperature. This hummingbird species is well known in the Aguán Valley, Yoro Department, in the areas of Olanchito and Coyoles, and is reported as relatively common, but only within its remaining native habitat (Gallardo 2010, p. 186; Thorn *et al.* 2000, pp. 22–23). Recently it was observed in San Esteban in the Agalta Valley and in the Telica Valley, both in the Olancho Department (Anderson and Hyman 2007, p. 6). However, aspects of this species' behavior are unclear, such as how far individuals disperse, what habitats are important for dispersal, and how the populations are linked genetically (Perez and Thorn 2012 pers. comm.; Anderson *et al.* 2010, p. 7).

Agalta Valley

The Agalta Valley is a remote region in the mountains of eastern Honduras containing over 1,000,000 hectares (2,471,054 ac) of land characterized as dry basin. Here, the Honduran emerald's habitat primarily is on large, privately owned cattle ranches that have restricted access (Anderson *et al.* 2010, p. 3). The species has been known to occur in this valley since the mid-1990s (Anderson *et al.* 1998, p. 181).

Aguán Valley

The Honduran emerald's habitat formerly encompassed a large extent of the Aguán Valley, a once pristine plain of nearly 4,662 km^2 (1,800 mi^2). Ninety percent of its original habitat no longer exists in its original form due to the conversion of its habitat to banana

plantations and cattle pasture. Much of the Honduran emerald species' habitat is on privately-owned land and is often planted with non-native grasses for cattle foraging (Perez and Thorn 2012, pers. comm.; Anderson pers. comm. 2008 in Petition 2008, p. 11). In some cases, it is even planted with invasive grass species (*http://www.birdlist.org/cam/honduras/hn_ecosystems.htm*, accessed May 22, 2012). Today, due to decades of unregulated and expanding cattle ranching, the hummingbird's dry forest range is limited to a few small, isolated islands of habitat. Its increasingly smaller ecosystems are surrounded by human-dominated landscapes. One estimate indicated that between 2,428 and 3,237 ha (6,000–8,000 acres) of suitable habitat remains in the Aguán Valley, most of which is privately owned (Gallardo 2010, p. 186); however, other estimates indicate that the species has even less suitable habitat available than the above estimate (Perez and Thorn 2012 pers. comm.). Efforts by Pico Bonito National Park Foundation (Fundación Parque Nacional Pico Bonito (FUPNAPIB) and others have succeeded in preserving important parts of the bird's habitat, however, even the area designated as protected is experiencing habitat degradation.

The Aguán River Valley is one of the last remaining areas that contains suitable and optimal habitat for the Honduran emerald hummingbird (Anderson and Hyman 2007, pp. 1–4). The lands along the Aguán River have periodically been devastated by banana diseases, floods, and hurricanes, particularly Hurricane Fifi in 1974 and Hurricane Mitch in 1998 (NOAA 2012, p. 2; Winograd 2006; USGS 2002, p. 5). This valley is on the south side of the Nombre de Dios mountain range, primarily in the Yoro Department (Gallardo 2010, p. 185). The Aguán River Watershed is 10,546 km^2 (4,072 mi^2 or 2,605,973 acres), is delimited by the tributaries of the Aguán River, and extends across the departments of Yoro, Colon, Atlántida, and Olancho (WWF 2008, p. 12, See Map 5, Map of Honduras, Aguán Valley at *http://www.regulations.gov,* docket no. FWS–R9–ES–2009–0094, Supporting Maps). This valley experiences a unique microclimate in which most of the rain falls between June to November (Gallardo 2010, p. 185). The land in the Aguán Valley is rich, fertile, and highly coveted, particularly in a country with a high poverty index that relies strongly on its land for agriculture (WWF 2008, p. 2).

In the last approximately 100 years, the Aguán region has experienced three periods of agricultural economic growth (WWF 2008, p. 11). Thorn forests were initially cleared in the Aguán Valley to create banana and plantain plantations and rice farms, as well as pasture for cattle (Stattersfield and Capper 2000, p. 311). However, after an outbreak of Panama disease occurred in bananas, the Aguán Valley was largely abandoned, and much of the land reverted to pasture or forest. As a result of the agricultural reforms of the 1960's and 1970's, Honduran campesinos (farmers) received farmland in the Aguán Valley and proceeded to clear and develop the Valley that was previously forested into an agricultural region. In the late 1970s, lands were again cultivated with disease-resistant varieties of bananas. Now, only a single forest remnant larger than 100 ha (247 ac) that is suitable for this species is known to exist in this Valley (Anderson 2010, p. 6).

Western Honduras

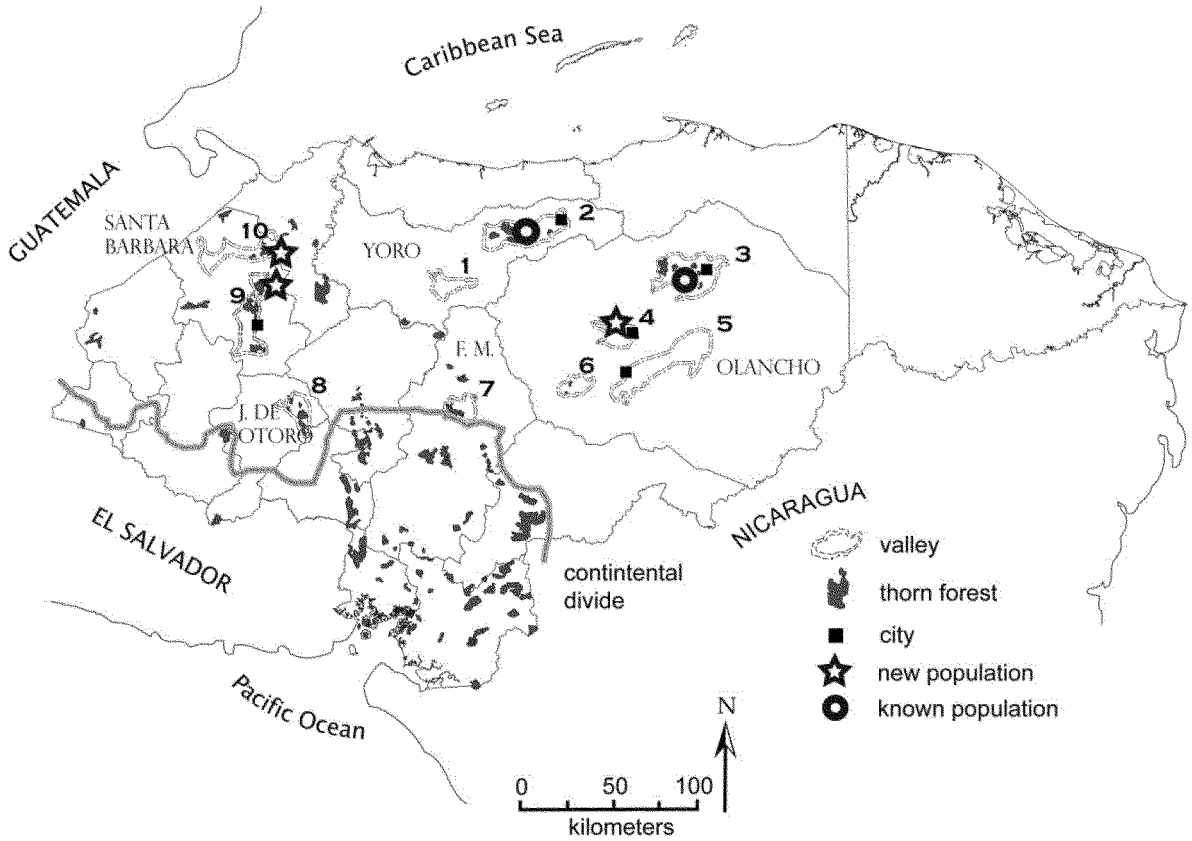
Sites occupied by the Honduran emerald in western Honduras are best described as semi-deciduous woodland, a habitat that has not previously been associated with the species. When hummingbirds do not find suitable available habitat, research indicates that they tend to abandon a territory and move to more productive patches (Feinsinger and Colwell 1978; Kodric-Brown and Brown 1978 in Justino *et al.* 2012, p. 194). Canopy height in this area averages 15 m (49 ft), dominated by semi-deciduous broad-leaved tree species, principally *Eugenia oerstediana, Bursera simaruba,* and *Tabebuia rosea,* that form a relatively closed tree canopy. Common understory species are *Agave parvidentata, Tillandsia fasciculata, Bromelia pinguin, Bromelia plumieri,* and *Acanthocereus pentagonus* (Anderson 2010, p. 5).

The Honduran emerald hummingbird prefers arid interior valleys of thorn forest and shrub. The Aguán River Valley area rarely receives more than 76 cm (30 inches) of rain per year (Perez and Thorn 2012, pers. comm.; Gallardo 2010, *www.birdsofhonduras.com*). Due to the arid climate, many of the plant species are adapted to retain water and are succulents or contain spines as protection from herbivores. Many of the plants lose all their leaves in the dry season, and Honduran emerald habitat may appear almost lifeless. Typical plants within its habitat are cacti, acacias, and other succulents. In Honduras, this habitat occurs primarily along the gulf of Fonseca, in the Agalta Valley in the Olancho Department, and the Aguán Valley in the Yoro Department. Most of the hummingbird's occurrences have been noted at elevations below 410 m (1,345 ft); however, one occurrence was recorded at 1,220 m (4,003 ft) (BLI 2008, p. 3; *et al.* 1994, p. 119; Collar *et al.* 1992, p. 494).

In the Coyoles area in the Aguán Valley, the thorn forest is primarily comprised of Mimosaceae (herbaceous and woody species), Cactaceae (cactus species), and Euphorbiaceae (herbs, shrubs, trees, and some succulent species) (Collar *et al.* 1992, p. 494). Thorn *et al.* (2000, p. 23) observed that habitat with abundant flowers, red in particular, appear to be a critical characteristic for suitable habitat. A list of plant species associated with Honduran emerald hummingbird habitat is below, as well as a key that indicates whether the plant is (1) commonly found in its habitat, (2) associated with feeding or nesting, (3) a cactus or orchid species, and (4) found in Western Honduras (Anderson 2010, p. 5; Anderson 2009, p. 235; House 2004, pp. 14–16; Thorn *et al.* 2000).

In Yoro (see Figure 1), the Honduran emerald hummingbird visited the species *Pedilanthus camporum*, which produces flowers year-round, and *Nopalea hondurensis*, which flowers generally between February and April, 90 percent of the time observed. In western Honduras, 90 percent of foraging observations were on *Aphelandra scabra* and *Helicteres guazaumifolia.*

Figure 1. Honduran emerald habitat. Anderson 2010.



Plant species associated with Honduran Emerald Hummingbird Habitat.

Key
¤ = Feeding (or nesting)
+ = Common tree in its habitat
* = arborescent (tree-like) cactus
^ = Orchid
~ = Western Honduras

- *Acacia deami* + (no common name [NCN], in the family *Fabaceae*)
- *Acanthocereus pentagonus* ~ (Synonym = *Acanthocereus tetragonus*, barbed wire cactus, sword cactus, sword pear, sword-pear, triangle cactus)
- *Achatocarpus nigricans* + (NCN, in the *Achatocarpaceae* family)
- *Achmea bracteata* ¤ (NCN, in the *Bromeliaceae* family)
- *Agave parvidentata* ~ (NCN, in the *Asparagaceae* family)
- *Aphelandra deppeana* ¤ (NCN, in the *Acanthaceae* family)
- *Aphelandra scabra* +, ~ (NCN, in the family *Acanthaceae*),
- *Bromelia pinguin* ~, (wild pineapple, wild pine, Pinguin, bayonette)
- *Bromelia plumieri* ¤, ~ (NCN, in the *Bromeliaceae* family),
- *Bursera simaruba* ~ (gumbo-limbo and Copperwood),
- *Caesalpinia yucatanensis* + (thorny shrub or low tree, in the family *Fabaceae*)
- *Chloroleucon mángense* + (palo pinto, palo fierro, palo ébana)
- *Coccoloba acapulcensis* + (NCN, in the family *Polygonaceae*)
- *Combretum fruticosum* (NCN, vine, in the family *Combretaceae*)
- *Combretum fruticosum* ¤ (Orange Flame Vine, in the *Combretaceae* family)
- *Encyclia nematocaulon* ^ (thread-stemmed encyclia, in the Orchidaceae family)
- *Eugenia oerstediana* ~ (Guayabita, Sequarra, Sequara, in the *Myrtaceae* family)
- *Guaiacum sanctum* + (lignum vitae, in the family *Zygophyllaceae*)
- *Haematoxylon brasiletto* (Brazil wood or palo de brasil, in the family *Fabaceae* or *Leguminosae*)
- *Helicteres gauzaumifolia* ¤, ~ (NCN, in the family *Sterculiaceae*)
- *Laelia rubescens* ^ (rosy tinted laelia, guarita, in the family *Orchidaceae*)

- *Leucaena lempirana* + (thorny shrub or low tree, in the *Fabaceae* family)
- *Malpighia glabra* + (Acerola, Antilles cherry, Barbados cherry, cereso, cerezo, escobillo, health tree, huesito, Puerto Rican cherry, West Indian cherry, in the family *Malpighiaceae* synonym *Malpighia emarginata)*
- *Melocactus curvispinus* ¤ (NCN, in the *Cactaceae* family)
- *Myrmecophila wendlandii* ^ (NCN, in the *Orchidaceae* family)
- *Nopalea hondurensis* ¤, ~ (paddle cactus, in the family *Cactaceae*)
- *Opuntia hondurensis* * ~ (NCN, in the family *Cactaceae*)
- *Pedilanthus camporum* ¤, ~ (NCN, in the *Euphorbiaceae* family)
- *Pedilanthus cf. tithymaloides* ¤ (NCN, in the Euphorbiaceae family)
- *Pilosocereus leucocephalus* ¤ (NCN, in the *Cactaceae* family)
- *Pilosocereus maxonii* * (NCN, in the family *Cactaceae*)
- *Pithecellobium lentiscifolium* ¤ (NCN, *Leguminosae-caesalpinioideae* family)
- *Psittacanthus rhyncanthus* ¤ (hemiparasitic mistletoe, grows on canopy trees; in the *Loranthaceae* family)
- *Randia cookii* ¤ (NCN, in the family *Rubiaceae*)
- *Stenocereus thurberi* ¤ (syn *Lemaireocereus thurberi*, organ pipe cactus)
- *Stenocereus yunckeri* ¤, * (NCN, in the *Cactaceae* family),
- *Tabebuia rosea* ~ (pink poui, Poirier, Roble de Sabana – Costa Rica, in the family *Bignoniaceae*)
- *Tillandsia bracycaulus* ¤ (NCN, in the *Bromeliaceae* family)
- *Tillandsia fasiculata* ¤, ~ (NCN, in the *Bromeliaceae* family).

Three species of arborescent (tree-like) cacti have been associated with the Honduran emerald habitat: *Pilosocereus maxoni, Stenocereus yunckeri* (endemic), and *Opuntia hondurensis* (endemic) (House 2004, p. 15). The trees and shrubs found in one study of its habitat were almost 100 percent deciduous (House 2004, p. 15). Although epiphytes are usually rare in this habitat type, some epiphytes are well adapted to the extremes of this environment. Large clusters of three species of orchids: *Myrmecophila wendlandii, Laelia rubescens,* and

Encyclia nematocaulon were found on some cacti (House 2004, p. 16). In larger, more mature trees, some bromeliads were found. The flowering of *Opuntia hondurensis* coincides with the nesting period of the Honduran emerald (House 2004, p. 23).

Conservation Status

The Honduran emerald hummingbird is listed as endangered by the IUCN (2012). This species was downlisted to endangered from critically endangered following its recent discovery in the western part of Honduras, which increased its known range (BLI 2012, pp. 1–2). Its IUCN classification is based on its very small and severely fragmented range and population. However, this status under IUCN conveys no actual protections to the species. The Honduran emerald hummingbird has been listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) since October 22, 1987, at which time all hummingbird species not previously listed in the Appendices were listed in Appendix II. CITES controls international trade in animal and plant species affected by trade. Appendix II includes species that are not necessarily threatened with extinction, but may become so unless trade is subject to strict regulation to avoid utilization incompatible with the species' survival. International trade in specimens of Appendix II species is authorized through a system of permits or certificates under certain circumstances. CITES, of which Honduras is a Party, is an international agreement through which member countries, called Parties, work together to ensure that the international trade in CITES-listed animals and plants is not detrimental to the survival of wild populations by regulating their import, export, and reexport. This process includes verification that (1) trade will not be detrimental to the survival of the species in the wild, and (2) that the material was legally acquired (www.cites.org).

Factors Affecting the Species

Introduction

The factors affecting the Honduran emerald hummingbird's habitat are interrelated. A species may be affected by more than one factor acting in combination with other factors. In some cases, it is not necessarily easy to determine which factor is negatively affecting a species. The most obvious factor that affects this species is a significant loss of habitat (90 percent) over the past approximately 100 years due to land conversion to plantations, agriculture, and cattle pastures (Perez and Thorn 2012, pers. comm.). This loss of habitat interacts with other factors in affecting the Honduran emerald hummingbird's habitat, and these factors are discussed in detail below.

Habitat Loss

The country has been steadily losing thorn forest cover, particularly since the early 1960s, often due to the conversion of thorn forest areas to cattle pastures and plantation agriculture such as banana and oil palm plantations (World Wildlife Fund [WWF] 2008, p. 11; Anderson pers. comm. 2008 in Petition 2008, p. 11; Portillo 2007, p. 75). In the Aguán Valley, as of 2000, this species' suitable habitat had reduced in size to an estimated 8,495 hectares (ha) (20,092 ac) from 16,000 ha (39,537 ac) in 1977 and 30,000 ha (74,132 ac) in 1938 (See Table 1; Thorn *et al.* 2000, p. 25).

The carrying capacity of suitable habitat that remains for this species is unknown. In other words, it is unclear how many hummingbirds the remaining suitable habitat can maintain. Nectar is the primary source of carbohydrates for hummingbirds, and pollen is the primary source of protein for hummingbirds (Araújo *et al.* 2011, p. 827; Hegland *et al.* 2009, p. 188). Although studies of nutritional requirements have been conducted with respect to other hummingbird species, the home range required to support the breeding, feeding, and nesting requirements for each pair of Honduran emerald hummingbirds is unclear.

In 2000, a survey was conducted for the Honduran emerald hummingbird which found that it occurs in dry tropical forest (Anderson and Hyman 2007, pp. 1–4; Thorn *et al.* 2000, pp. 1–5). However, the species has recently been discovered in Western Honduras in an area with different ecological characteristics (see habitat description above), where it had not been recorded since 1935 (Anderson *et al.* 2010, p. 1). It is unclear whether this species is moving westward in reaction to loss of habitat in eastern Honduras; some species of hummingbirds will make these types of moves in search of new habitat (Justino *et al.* 2012, pp. 194–195).

Conversion of this species' habitat to coffee, bean, and corn plantations has occurred in many areas, particularly in the Santa Barbara Department (See Figure 1; Perez and Thorn 2012, pers. comm.). In the Aguán Valley, 10,319 ha (25,500 acres) now consist of banana plantations in an area known as the Barisma farm (Dole 2011, p. 67). Habitat suitable for Honduran emerald hummingbirds continues to be cleared by private landowners in order to plant pasture grass for grazing cattle (Hyman 2012 pers. comm.). In the Yoro Department, there are only four large patches of suitable habitat for this species remaining (Perez and Thorn 2012, pers. comm.; Anderson 2010.). The four largest fragments are between 360 and 476 ha (890 and 1,176 ac), for a combined total of 1,704 ha (Anderson 2010, p. 6).

Several hummingbird species have persisted in fragmented tropical landscapes (Stouffer & Bierregaard 1995 in Hadley and Betts 2009, p. 207). However, hummingbird persistence at the landscape scale does not indicate that the population is at the same level it was prior to deforestation (Hadley and Betts 2009, p. 207). Flight paths used by another hummingbird species to travel between suitable habitats indicate that gaps in suitable habitat alter hummingbird movement pathways (Hadley and Betts 2009, p. 209). In agricultural landscapes, hummingbirds were observed traveling longer distances and took more circuitous routes than in forested landscapes. Overall, movement paths were strongly linked with areas that contained higher forest cover (2009, p. 209). The flight of hummingbirds is one of the most energetically demanding forms of animal locomotion (Buermann *et al.* 2011, p. 1671). Due to habitat loss, Honduran emerald hummingbirds expend more energy to travel between and find suitable habitat that provides substrates for breeding, feeding, and nesting.

Palm Oil Production

Palm oil plantations in the Aguán River Basin have replaced pasture lands that were left behind after the banana plantations diminished from their initial success during the first part of the twentieth century (WWF 2008, p. 30). The palm oil production in the Aguán River Basin is concentrated between Sava and Tumbaderos (WWF 2008, p. 17, see Figure 1) and covers 28,082 ha (69,392 ac). The area includes plantations, processing plants, nurseries, palm oil collecting sites, and other infrastructure. Honduras' palm oil industry exported product worth over 21 million U.S. dollars in 2004, and Honduras is expected to increase its biofuels production (Silvestri 2008, p. iii). Other countries are encouraging Honduras to increase production of palm oil which would likely affect the Aguán River Basin (Silvestri 2008, pp. 47; WWF 2008, pp. 37–38). These changes in land use, from production of bananas to pastures, and then to palm

oil plantations, have had an environmental cost (WWF 2008, pp. 30, 53–54) such as land degradation through deforestation and exposure to fertilizers and pesticides, which are discussed below.

To provide perspective on the magnitude of the production in this valley, the Aguán Valley Palm Producers Association (APROVA) is a cooperative of 154 oil palm farmers (USDA 2012, pp. 1–3). In 2009, APROVA opened its first palm oil processing plant, which processes up to five tons of palm oil per day (USDA 2012, pp. 1–3); there are now five processing plants. As of 1938, within the Aguán Valley 30,000 ha (74,131 ac) were tropical dry forest (Tierra America 2012, pp. 1–2). By 1977, suitable habitat for the Honduran emerald hummingbird had been reduced to 16,000 ha (39,537 ac), and in 2000, only 8,495 ha (20,991 ac) remained. Of that area, only 3,900 hectares (9,637 ac) can be considered well preserved enough to sustain significant populations of the Honduran emerald (Mejía pers. comm. in Tierra America 2012).

TABLE 1—LAND REDUCTION IN THE AGUÁN VALLEY

Aguán Valley	Year	Hectares	Acres
Tropical Dry Forest	1938	30,000	74,131
Tropical Dry Forest	1977	16,000	39,537
Tropical Dry Forest	2000	8,495	20,991

Source: Thorn et al. 2000.

Land Ownership

Because very little of this species' habitat is publicly owned, it is more difficult to provide protections to this species (approximately 84 percent of its suitable habitat is privately owned) (Steiner 2012 pers. comm.; FAO 2010, p. 238). In many cases, the only sites in Honduras that have maintained a viable ecosystem in somewhat of a natural state are places with irregular topography. Subsequently, these have become protected areas or private nature reserves (Portillo 2007, p. 75). Much of this species' original habitat, thorn forest, has been cleared for housing, towns, agriculture, and cattle grazing (Stattersfield and Capper 2000, p. 311; Thorn *et al.* 2000, p. 4). This species' remaining habitat in the Aguán Valley (Yoro Department) and Agalta Valley (Olancho Department) is primarily privately owned as large *haciendas* (plantations or farms), where cattle grazing, clearing for cattle, and plantation agriculture continues to occur (Stattersfield and Capper 2000, p. 311). In the lower river valley, agricultural cooperatives are raising citrus fruits, corn (maize), rice, and African palm for oil (WWF 2008, p. 12). Because most of this species' habitat is unprotected, the species is likely to continue to experience habitat degradation through conversion of its habitat to other uses such as cattle grazing and agricultural plantations.

Pesticides and Fertilizers

WWF notes that production yield level can only be increased with the use of agrochemicals such as fertilizer and more pesticides, which in turn all have an environmental impact. Before palm oil tree canopies are developed and sunlight is penetrating the ground, weeds are aggressive and frequent weed control is needed. Mechanical weed mowers hauled by agricultural tractors are used to keep weeds at a manageable height in between rows. Before the canopy is fully developed, areas around young plants are kept free of competing weeds mostly by chemical herbicides and by manually removing them (WWF 2008). Currently, these plantations are approximately 161 km (100 miles) north of the Honduran emerald hummingbird habitat, and are not known to directly affect this species (Hyman 2012, pers. comm.). However, it is likely that expansion of palm oil plantations in the Aguán River Basin will occur (Silvestri 2008, p. 48). Additionally, the significant amount of inputs, such as fertilizers and pesticides required by palm oil plantations, produce chemical residues that are discarded in several ways. All of these waste products have different fates, depending on their chemical and physical origin (WWF 2008, unpaginated), affecting Honduran emerald hummingbird habitat in various ways.

Roads

There are plans to pave the road between Olanchito and San Lorenzo, an approximately 46-km [28.6-mi] stretch that currently passes through the Aguán Valley which will further impact this species' habitat (Hyman 2012; pers. comm.; World Bank 2011, pp. 1–3; Hyman 2007, p. 10; Anderson pers. comm. 2008 in Petition 2008). Honduras is ranked among the countries with the lowest development of road networks in Central America (Acevedo *et al.* 2008, p. 1). The agricultural sector is the most important of the Honduran economy (Acevedo *et al.* 2008, p. 1); however, this sector is limited by difficulties of transportation and access to many of the productive areas of the country due to poor road infrastructure (Quintero *et al.,* 2007, pp. 15–18; Winograd 2006).

Existing roads have been negatively impacted by hurricanes, flooding, and neglect after the crash of the banana industry. The Aguán and Agalta valleys, which contain this species' preferred habitat, are some of the most productive agricultural areas of the country, and this change in land use has decreased the available suitable habitat for the Honduran emerald hummingbird (Acevedo *et al.* 2008, p. 1). These agricultural areas of the country are in the departments of Atlantida (Aguán Valley) and Olancho (Agalta and Guayape valleys) and include bananas, coffee, palm oil, corn, beans, edible vegetables, fruits, and other crops. The improvement and development of roads to transport agricultural products to economic hubs is being considered by the Government of Honduras, which may affect the Honduran emerald hummingbird's habitat.

Growth in this economic sector is impeded by the lack of access to the most productive agricultural areas of the country due to poor road infrastructure. The road improvement project (Central Road, Route no. 23) is funded by the World Bank ''Second Reconstruction and Improvement Project Road,'' (World Bank 2011, pp. 1–3; Proceso Digital 2010). The road improvement project will likely bring more traffic, which will increase land speculation and settlement of homes along the road, ultimately impacting surrounding Honduran emerald habitat (Perez and Thorn 2012, pers. comm.; Steiner and Coto 2011). Roads through prime Honduran emerald habitat, which is presently being affected by cultivation of bananas and plantains, link the river valley to the ports at Tela, La Ceiba, Trujillo, and Puerto Cortés.

This road construction project to widen the main highway between Olanchito and Yoro, spanning 57 km (35

mi) has been in the planning stages for several years. A project has been contingent on several factors, such as a loan from the World Bank and implementation of measures to mitigate the impact on the environment. A 2007 World Bank report indicated that during the project planning stage, the scope of the project changed so that the road segment passing through vital habitat for the Honduran emerald hummingbird was not implemented (Quintero 2007). In this report, the World Bank indicated that a Payments for Environmental Services plan, if successfully implemented, could lead to the long-term protection of an additional 1,000–2,000 hectares (2,474–4,942 ac) of Honduran emerald habitat on private lands. This, in turn, would address environmental concerns associated with the proposed paving of the Olanchito-San Lorenzo road (Quintero *et al.* 2007, p. 15). However, the status of this road project remains unclear.

The Agalta Valley is traversed by a highway that has been proposed to be repaved (Hyman 2012, pers. comm.; Inter American Development Bank 2012). This region is an area with a high rate of poverty—this highway is, in part, intended to improve the economic conditions in this region. This region contains approximately 50,000 human inhabitants. The highway will complete the second paved transit route between the Pacific and Atlantic oceans in Honduras. The road is being improved in order to provide a better link between Tegucigalpa and the Atlantic coast of Honduras and will better connect the Departments of Francisco Morazán, Olancho, and Colón. It is unclear how this highway will affect the remaining 5,000 hectares (12,355 ac) of this species' habitat (Bonta 2011, pers. comm.) in this valley.

Although this species exists in the Agalta Valley, very little information regarding the factors affecting this species in this area are known. Reports indicate that areas that contain suitable habitat characteristics for the Honduran emerald hummingbird are being cleared for rice cultivation (Hyman 2012, pers. comm.; Bonta 2011, pers. comm.). Several of the remaining habitat patches are connected by narrow corridors of habitat along property lines and waterways, but most of the patches of remaining habitat are ''islands'' within cattle pasture, which comprises approximately 90 percent of the Valley's area (Bonta 2011, pers. comm.). It is unclear whether the species migrates between the Agalta and Aguán valleys.

Hydroelectric and Development Projects

The construction of several development projects could possibly affect this species' habitat (Bonta 2012, pers. comm.) in the Agalta Valley. At least two hydroelectric projects have become operational in recent years (Bonta 2012, pers. comm.). These projects could likely result in more infrastructure development in the Valley which could also affect the Honduran emerald habitat. Additionally, several agricultural development projects may be underway in the Agalta Valley (Bonta 2012, pers. comm.). Bonta indicates that the following projects, which can be located at *http://www.hondurasopenforbusiness.com,* are likely to affect the Honduran emerald habitat.

- AGR112: Production of Transgenic Certified Maize,
- AGR126: Cultivation of Piñón, *Jatropha curcas,* for biodiesel (5,000 hectares in the Agalta Valley),
- AGR401: Cultivation of Piñón (5,000 hectares in the Agalta Valley),
- AGR402: Cultivation of Piñón,
- FOR204: Teak (*Tectona grandis*) plantation: 20,000 hectares in three valleys; estimate of 4,000 to 8,000 hectares in the Agalta Valley.

Although highway construction, agricultural development, and resulting infrastructure is likely to occur in the Agalta Valley, it is unclear how these activities would negatively affect the Honduran emerald hummingbird in this valley.

International Trade

Data obtained from the United Nations Environment Programme–World Conservation Monitoring Center (UNEP–WCMC) show that, since its listing in CITES Appendix II in 1987, only two Honduran emerald hummingbird specimens have been recorded in international trade, involving two bodies of unknown origin from Germany to the United States in 1996 (UNEP–WCMC 2009b). Therefore, international trade is not a factor influencing the species' status in the wild. Nor are we aware of any other information that indicates that collection or overutilization of the Honduran emerald hummingbird is affecting this species.

Disease and Predation

The Intergovernmental Panel on Climate Change (2007, p. 51) suggests that the distribution of some disease vectors may change as a result of climate change. However, after conducting a status review of the Honduran emerald hummingbird and consulting with experts, we have no information at this time to suggest that any specific diseases are or may become problematic to this species.

Small and Declining Population

The population of the Honduran emerald hummingbird is small and very likely declining (BLI 2012, pp. 1–2; Stattersfield and Capper 2000, p. 311). In 2007, the information available indicated that this species had experienced a population decline since the 1960s and consisted of fewer than 2,000 individuals distributed within two, and possibly a third, valleys (BLI 2008, p. 2; Anderson and Hyman 2007, p. 6). In 2012, BLI stated that the population estimate was between 250 and 999 birds, within an estimated area of occupancy (AOO) of 12 km^2 (4.6 mi^2) within an overall range of 400 km^2 (154 mi^2). However, local experts believe its actual extent of occurrence is even smaller—closer to 150 km^2 (58 mi^2) (Perez and Thorn pers. comm. 2012).

Species often tend to have a higher risk of extinction if they occupy a small geographic range, occur at low density, occupy a high trophic level (position in food chain), and exhibit low reproductive rates (Purvis *et al.* 2000, p. 1949). Small populations can be more affected by factors such as demographic stochasticity (variability in population growth rates arising from random differences among individuals in survival and reproduction within a season), local catastrophes, and inbreeding (Pimm *et al.* 1988, pp. 757, 773–775). A small, declining population makes the species vulnerable to genetic stochasticity (random changes in the genetic composition of a population) due to inbreeding depression and genetic drift (random changes in gene frequency). This, in turn, compromises a species' ability to adapt genetically to changing environments (Frankham 1996, p. 1,507) reduces fitness, and increases extinction risk (Reed and Frankham 2003, pp. 233–234). Alternatively, species can adapt to changes in their environment and expand their range (Pateman 2012, pp. 1,028–1,030), although this does not appear to be the case with the Honduran emerald hummingbird.

The range and abundance of the hummingbird has been significantly curtailed. Because the Honduran emerald hummingbird is currently found in only three valleys, and has undergone a restriction in range and a decline in population size, any threats to the species, alone or in combination, are further magnified. In order for a

population to sustain itself, there must be enough reproducing individuals and habitat to ensure its survival. Limited-range species are susceptible to extirpation, particularly when a species' remaining population is already small or its distribution is too fragmented. In addition, while this hummingbird may be either tolerant of fragmented thorn forests or appear to be tolerant of fragmented thorn forests, these fragmented areas likely do not represent optimal conditions for the species. The fragmentation of the habitat and increased distance between suitable patches of habitat causes the species to expend more energy and resources in search of its nutritional requirements (Justino *et al.* 2012, pp. 194–195; Hadley and Betts 2009, p. 207). When habitat is degraded, there is often a time lag between the initial conversion or degradation of suitable habitats and the extinction of endemic bird populations (Brooks *et al.* 1999a, p. 1; Brooks *et al.* 1999b, p. 1140). Individuals of species may be more visible or appear to be more numerous when their habitat has disappeared; when in fact their population is decreasing because they have fewer resources or are expending more energy to reach the resources they need to survive. Remaining fragments of forested habitat will likely undergo further degradation due to their altered ecological dynamics and isolation (through infestation of gap-opportunistic species such as bamboo, which alter forest structure and cause a decrease in gene flow between populations) (Tabanez and Viana 2000, pp. 929–932).

The combined effects of habitat fragmentation and other factors on a species' population can act synergistically (Gilpin and Soulé 1986, p. 31). For example, an increase in habitat fragmentation can separate populations to the point where individuals can no longer disperse and breed among habitat patches, causing a shift in the demographic characteristics of a population and a reduction in genetic fitness (Gilpin and Soulé 1986, p. 31). This is especially applicable for a species such as the Honduran emerald hummingbird that was once more widespread; it has lost a significant amount (90 percent) of its historical range due to habitat loss and degradation.

Extreme Weather Events

Small, declining populations can also be especially vulnerable to environmental disturbances such as flooding, drought, or hurricanes (O'Grady 2004, pp. 513–514). The Honduran emerald hummingbird relies on specific habitat to provide for its breeding, feeding, and nesting. In 2012, Honduras was determined to be one of the countries most affected by climate change due to its geographic location which is in the direct path of many tropical storms and hurricanes (Harmeling 2012, pp. 5–6). Research and modeling have explored how changes in climate might affect areas such as Honduras (Gasner *et al.* 2010, p. 1250, Winograd 2002, p. 11). The term ''climate change'' refers to a change in the mean, variability, or seasonality of climate variables over time periods of decades or hundreds of years (Intergovernmental Panel on Climate Change (IPCC) 2007, p. 78). Forecasts of the rate and consequences of future climate change are based on the results of extensive modeling efforts conducted by scientists around the world (Solman 2011, p. 20; Laurance and Useche 2009, p. 1,432; Nuñez *et al.* 2008, p. 1; Margeno 2008, p. 1; Meehl *et al.* 2007, p. 753).

Climate change models, like all other scientific models, produce projections that have some uncertainty because of the assumptions used, the data available, and the specific model features. The science supporting climate model projections as well as models assessing their impacts on species and habitats will continue to be refined as more information becomes available. While projections from regional climate model simulations are informative, various methods to downscale projections to more localized areas in which the species lives are still imperfect and under development (Solman 2011, p. 20; Nuñez *et al.* 2008, p. 1; Marengo 2008, p. 1).

Honduras appears to have entered a more active period of hurricane activity (Pielke *et al.* 2003, p. 102). Studies of natural events in the last 100 years indicate that Honduras is highly vulnerable to an increase in frequency and intensity in the future not only hurricanes, but also landslides, flooding, and drought (Şekercioğlu *et al.* 2011; Gasner *et al.* 2010, p. 1250; Winograd 2006, p. 1). Due to its location and the biophysical traits of the region, Honduras is likely to be affected every 3 to 4 years by climate-related events, such as drought-related fires, floods, and landslides (Winograd 2006, p. 1). Winograd notes that 50 percent of Honduras is at risk of landslides, 30 percent is at risk of severe droughts, and 25 percent is at risk of flooding, particularly agricultural areas.

Arid-zone species are assumed to be more resilient to high temperatures and low humidity (Şekercioğlu *et al.* 2012, p. 5). However, species such as the Honduran emerald hummingbird are exposed to very dry conditions and are likely dependent on seasonal rains, as well as seasonal and permanent waterholes and rivers (Schneider and Griesser 2009 in Şekercioğlu *et al.* 2011, p. 5). Even small temperature increases can greatly increase the amount of birds' evaporative water loss (Şekercioğlu *et al.* 2011, p. 5). Warmer weather due to climate change is expected to impact the ability of birds in arid regions to sustain their water balance.

Climate models are not always able to predict the possible effects of ecological interactions, adaptation, or how species, particularly pollinators, might disperse in response to climate change (Buermann *et al.* 2011, p. 1671; Burkle and Alarcón 2011, p. 528; Pearson and Dawson 2003, p. 361). Honduras is clearly in the path of hurricanes (Winograd 2006, 2002; Pielke *et al.* 2003, pp. 101–103). However, additional research is still needed to determine how changes in climate may affect species such as the Honduran emerald hummingbird (Hegland *et al.* 2009, p. 184).

Conservation Measures in Place

Several mechanisms are in place that are intended to provide protections to this species. These protections include involvement by nongovernmental organizations (NGOs), wildlife protection laws, and a reserve designated to protect its habitat. These mechanisms are described below.

Laws and Regulatory Mechanisms

Honduras has made significant progress in conservation of its natural resources (Portillo 2007, p. 60; Vreugdenhil *et al.* 2002, pp. 6, 11, 20–25). In the past 30 years, protected areas have increased from less than 20 protected areas to an estimated 600 areas with protected status (Portillo 2007, p. 60). Significant progress was made particularly between 1974 and 1987; meetings with regional authorities were held regarding protected areas in order to promote the conservation of the natural and cultural heritage of Honduras (Portillo 2007, p. 60). In 2003, the First Mesoamerican Congress on Protected Areas was held in Managua. The System of Protected Areas is managed by various entities such as NGOs, associations of municipalities or local authorities, or by management agreements. However, in some cases, these protected areas are not being managed effectively, as described below (Portillo 2007, p. 63; Vreugdenhil *et al.* 2002, pp. 6, 11, 20–25).

NGO Involvement

In Honduras, several NGOs are participating in the conservation and management of this species such as The Nature Conservancy (TNC) and the Honduran Biodiversity Research Coalition. The Honduran Emerald Reserve was created by the Honduran Government in 2005 with support from TNC. TNC has provided both technical and financial support to the government and local community groups to complete a 10-year management plan for the Reserve. Some aspects of TNC's involvement have included marking the official reserve boundaries and providing training to partners in the management of reserves and protected areas. The Honduran Biodiversity Research Coalition is a group of scientists and conservationists established in 2011 that undertakes and promotes biodiversity research and conservation in Honduras.

Honduran Emerald Reserve

In 2009, the National Conservation and Forestry Institute (ICF) began a management plan for a protected area specifically for the Honduran emerald hummingbird. This was with the participation of municipalities and Arenal Olanchito, the department of Yoro, SOPTRAVI Honduras Armed Forces (HAF), the Ministry of Education through the Regional Environmental Education Center, CREATE, the Ministry of Tourism and the Ministry of Environment and Natural Resources, SERNA (Steiner and Coto 2011; Portillo 2007, p. 99). The Interagency Technical Committee for Monitoring and Honduran Emerald Hummingbird Habitat Management Area was formed. In 2010, the ICF, with financial support from The Nature Conservancy, finalized the management plan for the protected area (Resolution No. DE–MP–147–2010). This Reserve was established in connection with funding from the World Bank to finish building the main highway linking the capital with Olanchito, Yoro, via Cedros Francisco Morazán (Steiner and Coto 2011) (refer to section on Roads, above).

This reserve is located 34 km (21 mi) west of the city Olanchito in the Aguán Valley (see Figure 1). The reserve encompasses 1,217 ha (3,007 ac) and spans elevations between 220 and 800 meters (722 and 2,625 ft). There are 651 ha (1609 ac) of dry forest habitat remaining that is suitable for the Honduran emerald hummingbird (Perez and Thorn 2012, pers. comm.; Thorn *et al.* 2000 in Anderson 2010, p. 6). The Honduran Emerald Reserve is guarded by Honduran Air Force soldiers who patrol the reserve and do not allow visitors into the Reserve without prior permission (Hyman 2012b pers. comm.). However, cattle from neighboring land owners are frequently found grazing uncontrolled on the property on the Honduran emerald habitat (Steiner 2011, p. 1; House 2004, p. 30). Despite conservation efforts, land owners around the protected area want to expand their properties and are cutting more of the Honduran emerald hummingbird's suitable habitat in order to plant grass for cattle grazing (Hyman and Steiner 2012 pers. comm.). Because encroachment and livestock grazing continue to occur both around and in the Reserve, and this species requires more suitable habitat than what exists in the Reserve, this protected area is insufficient to provide adequate suitable habitat for this species.

In conclusion, Honduras is improving its management of its resources (FAO 2010). For example, in 2010, Honduras began an initiative to recover degraded areas and denuded forests (Ecolex 2011). However, most of the habitat required by the Honduran emerald hummingbird is privately owned, and the thorn forests are being converted to other uses that are not suitable for this species. Despite the progress made in Honduras with respect to laws and regulatory mechanisms in place to protect the Honduran emerald hummingbird, the species continues to face habitat loss and degradation.

Finding and Proposed Listing Determination

An assessment of the need for a species' protection under the Act is based on threats to that species and the regulatory mechanisms in place to ameliorate impacts from these threats. As required by section 4(a)(1) of the Act, we conducted a review of the status of this species and assessed the five factors in consideration of whether the Honduran emerald hummingbird is threatened or endangered throughout all of its range. These five factors are:

(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.

We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the species and consulted with species experts.

We found that habitat loss due to conversion to agriculture and plantations is the main factor affecting this species throughout its range (factor A) (Bonta 2012 pers. comm.; Perez and Thorn 2012 pers. comm.). Hummingbirds require a constant source of energy, primarily in the form of nectar. In order to meet its energy and nutritional requirements, this species needs access to intact, suitable habitat with a diversity of plant species that contain its energy sources throughout the year.

The Honduran emerald hummingbird and its habitat are being affected primarily by the clearing of dry forest for cattle grazing and agricultural development. Habitat degradation and loss continues to occur and affect the species throughout its range. Due to uncontrolled clearing of land to pastures or plantation agriculture, the hummingbird's dry forest habitat is now limited to a few small, isolated ''islands'' of suitable habitat, which are surrounded by banana plantations or cattle ranches (Perez and Thorn 2012, pers. comm.). The Honduran emerald hummingbirds' current occupied and suitable range has been highly reduced and severely fragmented. This hummingbird species is expending more energy now in order to find food sources to meet its energy needs, and its suitable habitat is becoming more scarce and fragmented, causing these habitat islands to become farther apart.

Historically, the Honduran emerald hummingbird existed in much higher numbers in more continuous, connected habitat. Its suitable habitat is becoming increasingly limited, and its suitable habitat is not likely to expand in the future. Its population is estimated to be between 200 and 1,000 individuals. Lack of a sufficient number of individuals in a local area or a decline in their individual or collective fitness may cause a decline in the population size, despite the presence of suitable habitat patches. In cases where populations are very small, effects on the species are exacerbated. Any loss of potentially reproducing individuals could have a devastating effect on the ability of the population to increase. The Aguán Valley is currently considered to contain the largest extent of thorn forest. The four largest fragments are between 360 and 476 ha (890 and 1176 ac), for a combined total of 1,704 ha (Anderson 2010, p. 6). However, very recent estimates of the species' actual extent of occurrence is 150 km^2 (58 mi^2), and one of the best patches of optimal Honduran emerald hummingbird habitat, due to its proximity to a nearby town has

practically disappeared (Thorn 2012 pers. comm.).

A species may be affected by more than one threat; these factors can act in combination. Changes in Honduras' climate may be acting in combination with other factors to affect this species' habitat. Extreme weather events (an increase in the severity and frequency in hurricanes and increased periods of drought (factor E) may also affect this species' habitat. Both biotic and abiotic ecological interactions influence species distributions (Jankowski *et al.,* 2010; Dunn *et al.,* 2009). Many climate change models do not take into consideration interactions between species because data regarding these interactions are limited. Impacts typically operate synergistically, particularly when populations of a species are decreasing. Initial effects of one threat factor can later exacerbate the effects of other threat factors (Gilpin and Soulé 1986, pp. 25–26). Fragmentation of populations can decrease the fitness and reproductive potential of the species, which exacerbates other threats.

The species' small population size (factor E) combined with its highly restricted and severely fragmented range, increases the species' vulnerability to adverse natural events that destroy individuals and their habitat. The species' potential exposure to extreme weather events such as hurricanes, extended periods of drought, or flooding, in combination with habitat loss and degradation may add to factors affecting the continued existence of the species throughout its range now and in the future.

In conclusion, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats affecting this species. We have identified multiple factors that have interrelated impacts on this species; however the most significant threat is habitat loss and degradation, particularly since it has such a small and fragmented population, and it requires a variety of food sources. As a species' status continues to decline, often as a result of habitat loss or overutilization, the species will become increasingly vulnerable to other impacts. If this trend continues, its ultimate extinction due to one or more stochastic (random or unpredictable) events such as hurricanes, drought, or flooding becomes more likely. The species' small population size, its reproductive and life history traits, combined with its highly restricted and severely fragmented range, increases this species' vulnerability to other threats. These threats occur at a sufficient scale so that they are affecting the status of the species now and will in the future.

Our review of the information pertaining to the five threat factors supports a conclusion that the imminence, intensity, or magnitude of the factors affecting the Honduran emerald hummingbird, most significantly habitat loss, coupled with a small and declining population, place this species at risk of extinction throughout all of its range, such that a listing as endangered is warranted. We do not find that the factors affecting the species are likely to be sufficiently ameliorated in the foreseeable future. Therefore, on the basis of the best scientific and commercial information, we find that the Honduran emerald hummingbird meets the definition of an ''endangered species'' under the Act, and we are proposing to list the Honduran emerald hummingbird as endangered throughout its range.

Peer Review

In accordance with our joint policy with the National Marine Fisheries Service, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our final determination is based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment during the public comment period on our specific assumptions and conclusions regarding the proposal to list the Honduran emerald hummingbird.

We will consider all comments and information we receive during the comment period on this proposed rule during our preparation of a final determination. Accordingly, our final decision may differ from this proposal.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and encourages and results in conservation actions by Federal and State governments, private agencies and interest groups, and individuals.

The ESA and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, at 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to ''take'' (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, 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 commerce in the course of commercial activity; or 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 ESA. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits for endangered species are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species and for incidental take in connection with otherwise lawful activities.

Clarity of the Rule

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 names 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.

National Environmental Policy Act (NEPA)

We have determined that environmental assessments and environmental impact statements, as

defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this proposed rule is available on the Internet at *http://www.regulations.gov* or upon request from the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary author of this proposed rule is Amy Brisendine, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, 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 adding a new entry for ''Hummingbird, Honduran emerald'' in alphabetical order under BIRDS to 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:							
*	*	*	*	*	*	*	*
Humming-bird, Honduran emerald.	*Amazilia luciae*	Hon-duras.	Entire	E		NA	NA
*	*	*	*	*	*	*	*

* * * * *

Dated: December 14, 2012.

Rowan W. Gould.

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–31095 Filed 12–31–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 120313185–2727–01]

RIN 0648–BC01

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Trawl Rationalization Program; Reconsideration of Allocation of Whiting

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

ACTION: Proposed rule; request for comments.

SUMMARY: This action proposes revisions to several portions of the Pacific Coast Groundfish Fishery Trawl Rationalization Program regulations and requests comments on NMFS' preliminary conclusion that the Pacific Fishery Management Council's (Council's) selection of the no action alternative regarding the reconsideration of initial allocation of Pacific whiting (whiting) is consistent with the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Pacific Coast Groundfish Fishery Management Plan (FMP), and other applicable law.. This action is necessary to comply with a court order requiring NMFS to reconsider the initial allocation of whiting to the shorebased individual fishing quota (IFQ) fishery and the at-sea mothership fishery. These proposed regulatory changes would affect the transfer of quota share (QS) and individual bycatch quota (IBQ) between QS accounts in the shorebased IFQ fishery, and severability of catch history assignments in the mothership fishery, both of which would be allowed on specified dates with the exception of widow rockfish. Widow rockfish is no longer an overfished species and transfer of QS for this species will be reinstated pending reconsideration of the allocation of widow rockfish QS in a future action. The divestiture period for widow rockfish QS in the IFQ fishery is also proposed to be delayed indefinitely.

DATES: Comments on this proposed rule must be received no later than 5 p.m., local time on February 1, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2012–0063, by any of the following methods:

- *Electronic Submission: Submit* all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0063,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; Attn: Ariel Jacobs.
- *Fax:* 206–526–6736; Attn: Ariel Jacobs.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying

information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Ariel Jacobs, 206–526–4491; (fax) 206–526–6736; *Ariel.Jacobs@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

In January 2011, NMFS implemented the trawl rationalization program for the Pacific coast groundfish fishery's trawl fleet (*see* 75 FR 78344; Dec. 15, 2010). The program was adopted in 2010 through Amendments 20 and 21 to the FMP and consists of an IFQ program for the shorebased trawl fleet (including whiting and non-whiting fisheries); and cooperative (coop) programs for the at-sea mothership and catcher/processor trawl fleets (whiting only). The initial allocations of whiting were challenged in *Pacific Dawn* v. *Bryson,* No. C10–4829 TEH (N.D. Cal.) (*Pacific Dawn*). Following a decision on summary judgment that NMFS had not considered all of the required information and failed to provide an adequate basis in setting the initial whiting allocations, the court, on February 21, 2012, issued an order remanding the regulations establishing the initial allocations of whiting for the shorebased IFQ fishery and the at-sea mothership fishery ''for further consideration'' consistent with the court's December 22, 2011, summary judgment ruling. The order requires NMFS to implement revised regulations before the 2013 Pacific whiting fishing season begins on April 1, 2013.

On February 29, 2012, NMFS informed the Council of the order issued in *Pacific Dawn.* NMFS requested that the Council initiate the reconsideration of the initial allocations for QS of whiting in the shorebased IFQ fishery and for whiting catch history assignments in the at-sea mothership fishery. NMFS also determined that a rulemaking was needed to delay or revise portions of the existing regulations while the Council and NMFS reconsidered the initial allocation of whiting, and informed the Council of its intent to publish an Advance Notice of Proposed Rulemaking (ANPR) to notify the public of the reconsideration and the process the agency and Council would follow.

NMFS published the ANPR on April 4, 2012 (77 FR 20337), which, among other things, announced the court's order, the Council meetings that would be addressing the whiting reconsideration, and NMFS' plan to publish two rulemakings in response to the court order. These two rulemakings are referred to as Reconsideration of Allocation of Whiting, Rules 1 and 2 (RAW 1 and RAW 2, respectively).

RAW 1

NMFS used emergency action authority under the MSA section 305(c)(1), 16 U.S.C. 1855(c), for RAW 1, which was proposed on May 21, 2012 (77 FR 29955), with the final rule published on August 1, 2012 (77 FR 45508). RAW 1 delayed the ability to transfer QS and IBQ between QS accounts in the shorebased IFQ fishery, and to the ability to sever mothership/catcher vessel endorsement and its associated catch history assignment (CHA) from limited entry trawl permits in the mothership fishery, pending the outcome of the reconsideration. The August 1 emergency rule also delayed issuance of quota associated with whiting directed trips at the beginning of the 2013 fishing year, as recommended by the Council. The RAW 1 rule is effective through January 28, 2013, and may be extended for an additional 186 days, consistent with the MSA.

RAW 2

At its March 2–7, 2012, meeting, the Council received briefings from NMFS regarding the remedy order issued in *Pacific Dawn* and selected a three-meeting Council rulemaking process. On March 15, 2012, NMFS submitted a letter to the Council that provided a potential range of alternatives for reconsideration that NMFS believed was appropriate.

At its April 1–6, 2012, meeting, the Council received briefings from NMFS on the range of alternatives included in the March 15, 2012, letter, as well as guidance on allocation issues addressed in the MSA, agency guidance documents, and FMP goals and objectives. The Council received approximately two hours of public comment from nine individuals or groups of individuals and also received recommendations from its Groundfish Advisory Subpanel. After consideration of the public comment and advisory group recommendations, the Council added an additional alternative for analysis that would consider an allocation period of 2000–2010.

At the June 21–26, 2012, Council meeting, NMFS and Council staff gave an overview on the Draft Environmental Assessment (EA) and briefed the Council on the analysis of the range of alternatives. The Council, after listening to recommendations from its Groundfish Advisory Subpanel and public testimony, refined one alternative and asked staff to update the analyses over the summer based on this refinement. The Council did not select a preliminary preferred alternative, stating that it needed additional time to understand the analyses and information presented. The Council reconfirmed its intention to select a final preferred alternative at its September 2012 meeting.

At the September 13–18, 2012, Council meeting, the Council considered the Draft EA, which had been revised to incorporate more detailed information and analyzed a range of whiting allocation periods spanning the years between 1994 and 2010 for shoreside and mothership catcher vessels, and the years between 1998 and 2010 for shoreside processors. The Council listened to testimony from 24 individuals or groups of individuals, totaling nearly seven hours of public testimony and also received advisory body reports from both the Groundfish Advisory Subpanel and the Scientific and Statistical Committee. Following Council discussion, the Council voted to select the no-action alternative (initial whiting allocation qualifying years of 1994 through 2003 for the shoreside and mothership catcher vessels and 1998 through 2004 for shoreside whiting processors) as the final preferred alternative.

On October 30, 2012, the Council transmitted to NMFS its recommendation that the no-action alternative be adopted; the letter and its accompanying rationale are available at the Council's Web site at *http://www.pcouncil.org/wp-content/uploads/Xmit_WhtgRealloc_Ltr.pdf.*

Rationale for Proposing No Changes to the Initial Allocations of Whiting

The MSA requires NMFS to review all regulations that the Council submits to determine whether the regulations are consistent with the MSA, the FMP, and other applicable law (16 U.S.C. 1854(b)). NMFS reviewed the Council record and the proposed regulatory language and has preliminarily determined that the Council's recommendation to maintain the existing initial whiting allocations is consistent the MSA, the FMP, the court's order in *Pacific Dawn,* and other applicable law. NMFS requests comments on this conclusion; after review of the comments and the record as a whole, NMFS will make a final

decision that will be announced in the **Federal Register**. The reasons for NMFS' preliminary determination are discussed below.

The MSA establishes the general requirement that allocations be fair and equitable (*see e.g.,* 16 U.S.C. 1851(a)(4)). For allocations made in association with limited access privilege programs, the MSA further requires that the Council or NMFS must ''establish procedures to ensure fair and equitable initial allocations, including consideration of: (i) Current and historical harvests; (ii) employment in the harvesting and processing sectors; (iii) investments in, and dependence upon, the fishery; and (iv) the current and historical participation of fishing communities'' (16 U.S.C. 1853a(c)(5)(A)). Although the Council's recommendation must be consistent with the MSA as a whole when viewed in light of the FMP, the factors listed above were essential to the Council's and NMFS' decisions.

Ultimately, NMFS believes that irrespective of the qualifying years chosen as a result of the reconsideration, there is not one alternative that would be perceived as equally fair and equitable by all participants. Further, as long as the Council recommendation provides for a fair and equitable allocation by consideration of the required factors, and the Council and NMFS provide a reasonable explanation for that decision, then the requirements of 16 U.S.C. 1853a(c)(5)(A) are satisfied. Simply put, the MSA does not require a particular outcome for the allocation decision at issue here. This section addresses each factor from 16 U.S.C. 1853a(c)(5)(A) in a general fashion, followed by the overarching considerations that lead NMFS to preliminarily conclude that the initial whiting allocations are fair and equitable.

Current and Historical Harvests

The alternatives that the Council examined allocated quota using catch history based on a range of years—1994 through 2010—that is as wide as possible given the best available scientific information on the groundfish trawl fleet prior to implementation of Amendment 20. Under the existing qualifying period for harvesters of 1994 through 2003, previously qualifying permits with catch history post-2003 or new entrants after 2003 do not have that catch history count towards their initial allocation of whiting. However, in light of the overarching considerations, the whiting allocation to harvesters based on a qualifying period of 1994 through 2003 is fair and equitable, and furthers the purposes of Amendment 20.

Consideration of current and historical harvests appears less relevant to the issue of the qualifying period for processors because processors do not ''harvest'' fish. To the extent that current and historical harvests relate to the decision on an appropriate qualifying period for processors, this factor is considered by examining the current and historical harvests delivered to shorebased processors. Current and historical harvests and their relationship to processors are also considered indirectly through the other three factors. NMFS specifically requests comment on the relevance of ''current and historical harvests'' to the determination of the qualifying period for processors.

Employment in the Harvesting and Processing Sectors

The Draft EA concludes that rationalization brings changes in the nature and patterns of employment in both the processing and harvesting sectors. While there may be some initial local shifts or variations in employment depending on the whiting allocation alternative chosen, the analysis did not anticipate notable variation in the stability or level of employment overall among the identified alternatives. However, the Groundfish Advisory Subpanel and the Draft EA also noted that moving the end year of the qualifying periods to include more recent years could result in additional QS being allocated to processors in the north, which is where much of the whiting harvest and processing has more recently been taking place. Although the Draft EA indicates that the actual location of whiting harvest and delivery to processors appears to be predominately affected by factors other than the amount of whiting QS held in a given geographic area, the QS is still an asset for processors that can be used to offset the effects of some of the geographic shifts that may occur irrespective of QS distribution. Additionally, some processors testified as to the importance of their QS in attracting additional whiting deliveries to their facilities. Maintaining the 1998–2004 time period for processors and its broader geographic distribution may contribute to employment in coastal communities when paired with the 1994–2003 qualifying period for harvesters. Further, in light of the overarching considerations, the existing qualifying periods result in a fair and equitable allocation. NMFS specifically requests comments on the degree to which the existing qualifying periods, or the alternative qualifying periods considered, could affect employment in the harvesting and processing sectors.

Investments In, and Dependence Upon, the Fishery

The MSA does not provide a definition of ''dependence.'' In general terms, dependence upon the fishery relates to the degree to which participants rely on the whiting fishery as a source of wealth, income, or employment to financially support their business. Current harvests, historical harvests, levels of investment over time, and levels of participation over time are all aspects of dependence, as they can all be connected to the processes that fishers and processors use to generate income. The level of dependence could be viewed as a function of any number of metrics including: The number of the years an entity has participated in the fishery; the total whiting harvested or the amount processed by an entity; the sum total of all fish harvested or processed by an entity; the total income earning activities by an entity (for example, some processors process fish for other processors, or help in the trucking of fish); or an entity's relationship to other entities (for example, one company may own several processing plants or limited entry permits another company may be closely affiliated with another company either through ownership relationships or through sales agreements). However, these are all just individual measurements of factors that are related to dependence, not measures of dependence in and of themselves. Furthermore, it is difficult to calculate ''dependence'' per se even using all of these measures.

The extent to which participation in the harvesting or processing of whiting past the 2003–2004 end of the qualifying periods reflects dependence upon the fishery is largely reliant upon the metric used to evaluate dependence and the time periods during which that metric is applied. Although some of the alternatives considered would allocate more quota to the most recent participants in the fishery, even assuming recent participation in the fishery is the appropriate metric for evaluating the level of dependence, the overarching considerations lead NMFS to preliminarily conclude that the existing qualifying periods for harvesters and processors result in a fair and equitable allocation, consistent with the MSA. As discussed more fully below, the choice of ending the qualifying period for processors in 2004 rather than the 2003 control date was done to explicitly recognize investments

in processing while still furthering the purposes of Amendment 20.

Moreover, the fact that the existing qualifying period for harvesters results in some limited QS allocation to permits without activity in the whiting fishery post 2003 does not alter NMFS' conclusion. Under the status quo qualifying period, there were twenty-one limited entry trawl permits and 14 mothership/catcher vessel endorsed limited entry trawl permits that received whiting quota share or catch history assignments even though they did not fish after 2003. The analysis then researched whether these permits were fished in the other whiting sector, other Pacific groundfish fisheries, other west coast fisheries, or in other Alaska fisheries. After accounting for participation in other fisheries, there were a total of nine permits (shoreside or mothership) that apparently had no fishing activity off the West Coast or Alaska after 2003. These nine permits translate into 1.3 percent of the total shoreside whiting QS and 1.0 percent of the total mothership catch history assignments used for the 2011 and 2012 fisheries. However, the data set used for analysis may not have been complete as the permit may be owned by an entity that participates in fisheries other than west coast and Alaska fisheries. Furthermore, while some quota goes to harvester permits with no recent history under a 2003 end year for harvesters, the analysis in the record reflects that the extent of truly latent permits (not associated with an entity with recent whiting landings) is very small (roughly one percent for both shoreside and mothership harvesters). Awarding QS to these ''latent'' permits is consistent with the goal of reducing overcapitalization in the fishery and ending the ''race for fish'' because to do otherwise (i.e. award QS for activities beyond the control date) would create incentives for participants to expand their activities and investments after control dates are announced in the hope that they would be rewarded quota share.

The Council analysis characterizes the limited entry permit as an asset or investment, a highly fishery dependent investment. The EA states that ''after 2003, it is reported that permit prices varied substantially based on the history associated with the permit, in anticipation of the trawl program.'' Excluding changes due to company restructuring and changes due to death or divorce, eighteen permits changed hands after 2003 and before the end of 2010. Based on data recently collected by the NWFSC and public comment, during 2009–2010, three permits were sold at values that averaged about $315,000. The Council analysis also discussed the portfolio concept of permits. Fishermen frequently own several different types of permits as a business strategy to respond to the ups and downs of various fisheries. (A portfolio could include one or more limited entry trawl permits along with permits to crab, shrimp, or to fish in the Alaska Pollock fishery.) To participate in the trawl fishery, a person first needs to obtain one of a limited number of permits (at the time of implementation of the trawl rationalization program, there were 175 trawl endorsed permits). However, after investing in a permit, a permit owner has several options on how to use that investment. The permit owner can fish the permit with his vessel or lease the permit to another person. The owner can also sell the permit or choose not to fish the permit or have anyone else fish the permit. As evidence of the importance of this investment, the permit owner needs to renew and pay a permit fee annually. The Region has preliminarily concluded that these types of investments are an important factor in determining dependence on the fishery. NMFS is requesting comment on the extent that such investments reflect dependence on the fishery.

Some believe that most recent fishing history is the best reflection of dependence on the fishery. There is no NMFS guidance on the measurement of dependence. Equating dependence solely to recent fishing history could be in a sense ''double counting'' as the MSA already indicates that ''current'' harvests are to be considered as a separate factor. From review of other NMFS and Council analyses, indicators of dependence are typically based on measures that relate the IFQ fishery revenues (whiting) to total revenues earned by the entity (whiting, crab, shrimp, pollock, etc.). It is not NMFS policy to use recent fishing as the only reflection of dependence on the fishery, nor is it NMFS policy to use recent fishing as the sole basis for determining the allocation period; such a determination must always be based on the specific facts each time allocations are considered. NMFS specifically requests comments on the degree to which the existing qualifying periods, or the alternative qualifying periods considered, result in a fair and equitable allocation when considering investments in and dependence upon the fishery, including what metrics should be considered in measuring investment in and dependence on the fishery and why, based on those metrics, any of the alternatives result in a fair and equitable allocation.

The Current and Historical Participation of Fishing Communities

The Council considered the current and historical participation of fishing communities in several ways. Similar to the analysis for current and historical harvests, by examining alternatives with a wide range of years, the Council and NMFS were able to review the current and historical participation of communities as they changed over time. Further, the original decision on Amendment 20 contained measures that examined the role of fishing communities over time. For example, the 20 percent allocation to processors was intended to provide increased stability to communities by creating an added incentive for catcher vessels to land whiting in those communities and increase bargaining parity between harvesters and processors. The Draft EA also notes that:

> More certain than the initial allocation's effect on long-term distribution of fishing activity among communities is the one-time distribution of wealth in the form of quota shares going to members of the communities and the secondary effects that this one-time distribution of wealth may have as it affects expenditures within the community. Thus, what is at stake in the initial allocation is not necessarily a disruption to what entities are able to harvest, but rather an initial allocation of wealth and, through the wealth represented by the QS/CHA, an augmented ability to make up any shortfalls through QS/CHA acquisitions in the market place. Those receiving larger initial allocations, larger initial grants of wealth, will be better-positioned to finance or other wise make additional purchases of QS/CHA to make up for any shortfalls in their initial allocations.

NMFS preliminarily concludes that the existing qualifying periods reflect fair and equitable allocations that were intended to spread the impacts of the trawl rationalization program along the coast. NMFS specifically requests comments with respect to current and historical participation of fishing communities and how consideration of this factor supports the existing whiting allocations, or the other alternative qualifying periods considered.

Overarching Considerations

NMFS believes a crucial consideration that must be taken into account when reviewing the initial whiting allocation decision is the control date. Historically, the Council and other fishery management councils have announced and adopted control dates to prevent speculative participation in a fishery pending development of a limited access

program, with the intent that the developed program may use the control date as the end date of fishing history that would count toward establishing initial allocations, if appropriate. Since adopting the initial control date in 2003 (announced in a **Federal Register** notice in early 2004), the Council and NMFS have actively worked on developing and refining the groundfish trawl catch share program. As discussed in detail in the draft EA, beginning in 2003, the Council held numerous public committee meetings (averaging ten a year), conducted public discussions on the trawl program during numerous Council meetings, and worked consistently on the program over a seven year period (2003–2010).

In deciding to develop a catch share program for the groundfish trawl fishery, the Council was concerned with the problems of overcapitalization and ending the race for fish. By notifying existing and potential participants that the Council was seriously pursuing development of a catch share program, the Council intended to deter additional unwanted effort and capital in the fishery. NMFS recognizes that the plain language of the **Federal Register** notice announcing the control date does not ''guarantee'' that activity occurring in any specific period will count toward initial allocations. In addition, control dates have been abandoned in the past for various reasons by this Council and in other regions. However, NMFS also believes it was reasonable for participants to interpret the control date as signaling a potential end date for the qualifying period, and there was extensive public testimony reflecting the fact that many participants did in fact make business decisions based on the control date. Testimony from some participants indicated that had they thought the control date would not be used as the end of the qualifying period, they would have changed plans to increase their whiting harvests while leasing their quota in other fisheries. In addition, if fishermen believed that activity beyond the control date would result in more quota, they could have chosen to invest additional capital into their boats, thus increasing overcapitalization and exacerbating the race for fish. Accordingly, participants who made business decisions based on the assumption that the control date would be used as the end of the qualifying period acted in a manner consistent with the conservation goals of the Council. In addition, based on the fact that the control date modified at least some participants' fishing behavior, extending the qualifying period further into the future could result in participants in other fisheries disregarding any signal sent by announcing a new control date in a different program.

Although the length of time between the original control date and the agency approval in 2010, implementation of the program in 2011, and this proposed decision in 2012, is longer than the comparable time span in most programs that announce control dates, this is explained by the complexity of the program, which resulted in significant time needed to involve the public and fishery participants, develop alternatives, develop appropriate analytical documents, reach a final decision, and implement that decision. The trawl rationalization program includes multi-species trading in a diverse fleet composed of small trawlers, large motherships, and catcher-processors in communities along most of the West Coast of the United States. From the time the control date was announced, there was continuous and systematic effort by the Council and the agency to develop and implement, with full public participation, one of the most complex rationalization programs ever devised.

For the harvesters, the 1994–2003 period is the widest date range possible to base allocations on landings history while ending the qualifying period on the control date. Using this qualifying period recognizes the conservation benefits accruing from those whose fishing behavior did not change in an effort to gain more quota. While some public testimony indicated that their increased effort post-2003 was not a result of speculation, there is no mechanism available to separate out speculative behavior from non-speculative nor is there any way to quantify the extent to which the control date prevented additional speculative effort or capital. By maintaining the control date as the cut-off, however, those who did engage in such speculation are not rewarded and those who honored the control date are not penalized. Although the Council and NMFS were aware that new entrants had come into the whiting fishery since 2003, these entrants did so aware of the control date and that their activity after 2003 may not count toward any initial allocation decision. While maintaining the existing cutoffs for initial allocations excludes more current harvest and landings from the allocation formulas, the impacts to the dependence and investments of most participants are relatively modest. For example, the shift of whiting quota shares that would result from status quo to Alternative 4 (which most favors recent history) represents only 17 percent for shorebased catcher vessels, and 3.1 percent for shorebased processors. Therefore it is still fair and equitable to have some recent catch history not count toward initial allocations. Maintaining the control date as the end of the qualifying period for harvesters is fully consistent with the original purposes of Amendment 20, including reducing overcapitalization and ending the race for fish. However, for processors, the Council chose the end year of 2004, contrary to the 2003 control date, fairly late in the original decision-making process.

NMFS preliminarily concludes that the Council's recommendation to use 2004 as the end year for processors is supported by several rationales. First, the Council received testimony that there was a significant investment in whiting processing capability made in 2002 and 2003 before the control date was announced, and as discussed further below, before the applicability of the control date to processors was clarified. That investment did not begin to earn processing history until 2003 and 2004. The Council considered this information in making its original initial allocation, and in more detail during the reconsideration. The Council concluded that it would be unfair to not recognize this investment decision that was made prior to the control date. By extending the qualifying period for processors to 2004, some of the additional processing capabilities could be recognized as part of the qualifying history. Furthermore, testimony received during the Council's reconsideration revealed no significant change from their knowledge of processor investments in the whiting fishery, i.e., no testimony indicated other processors made a significant investment before the 2003 control that became operational in 2004 or later.

In addition, the originally published **Federal Register** notice of the 2003 control date did not clearly indicate that the date applied to processors. Subsequent clarifications were published in the middle of the 2004 season and just prior to the start of the 2005 fishing season. Accordingly, in addition to at least partially crediting investment decisions made prior to the control date, extending the end year of the qualifying period to 2004 reasonably accounts for the fact that processors may not have had adequate notice of the applicability of the 2003 control date until after the start of the 2004 whiting season.

Since the investment decision was made before the control date, changing the end year of the qualifying period for

processors to 2004 did not benefit those who decided to increase processing capacity after they were aware that 2003 control date could potentially apply to processors. While adopting 2004 for processors does move beyond the original control date, it only departs by a single year and does so for what NMFS preliminary concludes are valid justifications. NMFS specifically requests comment on the importance of using the control date as the end of the qualifying period for harvesters and the rationale for varying the end of the qualifying period for processor by one year to 2004.

Overall, there is a sufficient basis for NMFS to preliminarily conclude that the Council's initial whiting allocation recommendation, including using qualification years of 1994–2003 for whiting harvesters and 1998–2004 for whiting processors, is consistent with the requirements of the MSA, the FMP, and other applicable law, and provides for a fair and equitable initial allocation to the shoreside and mothership sectors of the whiting fishery. As the NOAA Technical Memorandum entitled ''The Design and Use of Limited Access Privilege Programs, (Anderson and Holliday, November 2007) suggests, the record to date confirms that it does not appear to be possible to devise whiting allocations that will be perceived as equally fair by all eligible entities. Consistent with that guidance, however, the Council and agency have followed a public and transparent process that involved all concerned stakeholders and allowed repeated opportunities to provide input. NMFS believes this process has been appropriate and essential to advancing a fair and equitable allocation. The record also establishes that in weighing the various factors identified under the MSA for initial allocations, there are inevitably tradeoffs that result under the various alternatives. In striking an overall balance, NMFS preliminarily finds that the reasons supporting maintaining the existing allocations for the shoreside and mothership whiting fisheries (*e.g.,* honoring the control date and the policy goals of Amendment 20, wide geographic distribution of the program benefits and costs along the coast and the corresponding fishing communities) outweigh those favoring more recent history (*e.g.,* reflection of the more current market and fishery conditions, providing greater amounts of quota to the most recent fishery participants, and reducing or eliminating quota shares to some pemit holders that do not have recent history). NMFS also notes that the draft EA indicates that the action alternatives result in a larger number of permits losing quota share to the benefit of a smaller number of permits that would gain quota share. NMFS requests comment on the overall balancing of the factors and impacts of this initial allocation decision.

Additional Considerations

NMFS requests comment on the following additional considerations relating to its preliminary determination that the proposed initial whiting allocations are fair and equitable and consistent with the MSA, FMP, and other applicable law.

Consideration of All the Relevant Factors and Information

NMFS finds that the relevant factors and best available information have been considered in compliance with requirements of the MSA in reaching its preliminary determination. NMFS requests comment over the degree to which there has been adequate consideration of the factors identified for initial allocations under the MSA including: current and historical harvests; employment in the harvesting and processing sectors; investments in, and dependence upon, the fishery; and, the current and historical participation of fishing communities. As reflected in the Council record and draft EA, additional factors have also been considered, and NMFS also requests comment on whether all other relevant factors and related information for each factor have been adequately considered.

Industry Support for Allocation

NMFS notes that at the time of the original initial allocation decision and during the reconsideration before the Council, it appeared that the most, but not all, of participants supported the use of the existing qualifying periods rather than any of the alternatives considered. NMFS finds that the industry support for the original allocations referred to in the earlier record and the court summary judgment order in *Pacific Dawn* as a ''compromise'' was in fact appropriate input from the affected industry that was developed as part of the overall transparent and public process that established the catch shares program. NMFS requests comment from the public on this issue, including on the degree to which industry supports the existing allocations, the extent to which NMFS should take into account the degree of industry support, and how the amount of support should inform consideration of the factors listed in the MSA for allocation decisions in light of the analysis provided in the draft EA.

Regulatory Proposals

NMFS proposes to revise the portions of the regulations that were temporarily delayed or revised by RAW 1. Additionally, to be consistent with Council action at its November 2012 meeting on a QS transfer provision affecting widow rockfish, NMFS proposes to extend the moratorium on transfer of widow rockfish QS in the IFQ fishery indefinitely pending the Council's reconsideration of the allocation of QS for widow rockfish. Specifically, NMFS proposes to:

(1) Allow transfer of QS or IBQ (except for widow rockfish QS) between QS permit holders in the shorebased IFQ fishery beginning January 1, 2014;

(2) Require QS permit holders in the shorebased IFQ fishery holding QS or IBQ in excess of the accumulation limits to divest themselves of excess QS (except for widow QS) or IBQ by November 30, 2015;

(3) Allow limited entry trawl permit holders in the mothership fishery to request a change (or transfer) of mothership/catcher vessel (MS/CV) endorsement and its associated catch history assignment (CHA) beginning September 1, 2014;

(4) Require MS/CV endorsed limited entry trawl permit owners to divest themselves of ownership in permits in excess of the accumulation limits by August 31, 2016; and

(5) Extend the divestiture period delay and moratorium on transfer of widow rockfish QS in the shorebased IFQ fishery indefinitely.

Each of these elements is described in further detail below.

Allow Transfer of QS or IBQ, Except Widow QS, Between QS Permit Holders Beginning January 1, 2014

The trawl rationalization program, as implemented in January 2011, delayed QS holders' ability to transfer QS and IBQ between QS accounts in the shorebased IFQ fishery through December 31, 2012 (i.e., transfer could begin in 2013). RAW 1 further delayed QS holders' ability to transfer QS and IBQ between QS accounts. This suspension of QS transfers was necessary to avoid complications which would occur if QS permit owners in the shorebased IFQ fishery were allowed to transfer QS percentages prior to the whiting allocation reconsideration. Since NMFS proposes to concur with the Council's no action recommendation, no changes to the initial whiting allocations are proposed. However, NMFS still requires adequate time to develop the regulations and software necessary to allow for transfer

of QS, and the Council has not taken final action regarding reallocation of widow rockfish quota. Therefore, the Council recommended and NMFS proposes to revise § 660.140(d)(3)(ii)(B)(*2*) to allow transfer of QS or IBQ (except for widow rockfish QS) between QS permit holders in the shorebased IFQ fishery, subject to accumulation limits and approval by NMFS, beginning January 1, 2014. Additionally, the rule would reinstate language that QS and IBQ cannot be transferred between December 1 and December 31 of each year, nor may QS and IBQ be transferred to a vessel account.

Require QS Permit Holders in the Shorebased IFQ Fishery Holding QS or IBQ in Excess of the Accumulation Limits To Divest Themselves of Excess QS (Except for Widow QS) or IBQ by November 30, 2015

The delayed implementation of regulations that allow for the transfer of QS necessitates a corresponding delay to the divestiture periods for those QS permit owners with QS over the accumulation limits (also called QS control limits) in the shorebased IFQ fishery. The current regulations, as revised by RAW 1, state that QS permit owners that have an initial allocation of QS or IBQ in excess of the accumulation limits will be allowed to receive that allocation, but must divest themselves of the excess QS or IBQ during the first two years once QS transfers are allowed. Maintaining the full two years for divestiture would provide QS permit owners with sufficient time to plan and arrange sales of excess QS, as originally recommended by the Council for this provision of the trawl rationalization program. While two years from January 1, 2014, is December 31, 2015, the regulations prior to RAW 1 and being proposed to be reinstated with this rule at § 660.140(d)(3)(ii)(B)(*2*) state that the transfer of QS between QS accounts and from a QS account to a vessel account is prohibited between December 1 through December 31. Therefore, this rule proposes to revise § 660.140(d)(4)(v) to require QS permit holders in the shoreside IFQ fishery holding QS or IBQ in excess of the accumulation limits to divest themselves of excess QS (except for widow rockfish QS) or IBQ by November 30, 2015. Widow rockfish QS in excess of the accumulation limit would not be subject to the November 30, 2015, deadline for divestiture because widow rockfish QS may be reallocated as described later in the preamble under the extended moratorium on widow QS transfers.

Allow Limited Entry Trawl Permit Holders in the Mothership Sector To Request a Change (or Transfer) of MS/CV Endorsement and Its Associated CHA Beginning September 1, 2014

RAW 1 instituted a delay in the ability of limited entry trawl permit owners in the mothership sector to transfer MS/CV endorsements and CHAs between limited entry trawl permits. The rationale for this action was similar to that for delaying QS transfers in the shorebased IFQ fishery; if permit owners were allowed to transfer ownership of CHAs before the reconsideration took place, then it would be difficult for NMFS to track changes to the initial allocations of whiting and other incidentally caught species. As recommended by the Council, consistent with the recommendation to make no changes to the initial allocations of whiting, NMFS proposes to revise § 660.150(g)(2)(iv)(B) and (C) to allow limited entry trawl permit holders in the mothership sector to request a change (or transfer) of MS/CV endorsement and its associated CHA beginning September 1, 2014.

Require MS/CV-Endorsed Limited Entry Trawl Permit Owners To Divest Themselves of Ownership in Permits in Excess of the Accumulation Limits by August 31, 2016

Delayed implementation of regulations that allow for severability of the MS/CV endorsement and its associated CHA from the limited entry trawl permit in the mothership sector necessitates a corresponding delay to the divestiture periods for those limited entry trawl permit owners with CHA in excess of the accumulation limits for that sector. As recommended by the Council, NMFS proposes to revise § 660.150(g)(3)(i)(D) to require MS/CV-endorsed limited entry trawl permit owners to divest themselves of ownership in permits that have CHA in excess of the accumulation limits by August 31, 2016. Additionally, NMFS proposes that after August 31, 2016, any MS/CV-endorsed permits owned by a person (including any person who has ownership interest in the owner named on the permit) in excess of the accumulation limits will not be issued (renewed) until the permit owner complies with the accumulation limits.

Extend Moratorium on Transfer of Widow Rockfish QS in the Shorebased IFQ Fishery Indefinitely

This rule proposes to extend the moratorium on transfer of widow rockfish QS in the IFQ fishery indefinitely pending reconsideration of the allocation of QS for widow rockfish. The Council intends to reconsider widow rockfish QS allocations in the future because widow rockfish is no longer an overfished species and will be managed as a healthy, rebuilt stock beginning in 2013. NMFS proposes this change at § 660.140(d)(3)(ii)(B)(*2*).

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pacific Coast Groundfish FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment. To the extent that the regulations in this rule differ from what was deemed by the Council, NMFS invokes its independent authority under 16 U.S.C. 1855(d).

The Council and NMFS prepared a draft environmental assessment (EA) for the reconsideration of initial whiting allocation that discusses the impact on the human environment of the proposed rule. While the draft EA considers more recent information, the Council recommended and NMFS is proposing the ''No Action'' alternative which retains the original initial allocations of whiting in the IFQ and mothership fisheries from Amendment 20. A copy of the EA is available on NMFS' Web site at *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Trawl-Program/index.cfm*. Aspects related to this action were previously discussed in the final environmental impact statement (EIS) for Amendments 20 to the Pacific Coast Groundfish FMP which discussed the structure and features of the original trawl rationalization program. A notice of availability for the final EIS published on June 25, 2010 (75 FR 36386). The Amendment 20 EIS is available on the Council's Web site at *http://www.pcouncil.org/* or on NMFS' Web site.

OMB has determined that this action is not significant for purposes of Executive Order 12866.

A Regulatory Impact Review (RIR) was prepared on the action in its entirety and is included as part of the initial regulatory flexibility analysis (IRFA) on the proposed regulatory changes. The IRFA and RIR describe the impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the IRFA is available from NMFS (*see* **ADDRESSES**).

Reconsideration of Initial Allocation of Whiting

The Council considered four alternatives for allocating whiting. The following analysis compares the ''status quo'' alternative to Alternative 4 as they show greatest differences between the pre-control date fishery and post-control date fishery. The ''status quo'' alternative allocates whiting using the years 1994 to 2003 for harvesters (shoreside and mothership) and 1998–2004 for processors. Alternative 4 allocates whiting using the years 2000–2010 for both harvesters (shoreside and mothership) and processors. Over the years 1994–2010, there were 65 fishing permit holders that participated in the shoreside fishery and 37 permit holders that participated in the mothership fishery. Over the years 1998 to 2010, there were 16 processors that participated in the fishery and that meet the recent participation criteria of the various alternatives.

Comparing the status quo alternative to Alternative 4 in terms of 2011 ex-vessel revenues, information on the gainers and losers in each of these affected groups can be developed from information in the Draft EA. The allocation of 98,000 mt to the 2011 shorebased whiting fishery was worth approximately $21 million (exvessel value). Based on the status quo allocations, eighty percent of these quota pounds were allocated to fishing permits ($17 million) and 20 percent to the shorebased processors ($4 million). The allocation of 57,000 mt whiting to the whiting mothership catcher vessels was worth $12 million in exvessel value. It is important to note that 2011 was a peak year for the shorebased fishery and a near-peak year for the mothership fishery (*see* Figure 3–5 of the Draft EA). (Note: although exprocessor or ''first wholesale'' revenues are higher than exvessel values and would be a better indicator of processing activity levels, data on exprocessor sales were not readily available for use by the Council. A better indicator of the gains and losses by groups would be changes in profits (revenues less operating costs)).

The NWFSC has developed an estimate of economic net revenue that is an indicator of profits. Economic net revenue seeks to measure economic profit, which includes the opportunity costs of operating a commercial fishing vessel. The NWFSC collected and assessed 2008 cost-earning data on vessels participating in the shoreside groundfish fisheries including whiting. Vessels that participate in the shoreside whiting fishery are typically classified as either ''whiting'' vessels or ''Alaska'' vessels depending on whether or not they operated in Alaska. Whiting vessels are defined as those with at least $100,000 revenue, of which at least 33% comes from whiting. Alaska vessels are defined at those vessels that earned at least $100,000 in revenue of which at least 50% comes from Alaska fisheries. The average economic net revenue of a whiting vessel in 2008 was $167,457, which represents 19.2% of revenue from all fisheries. Limited entry trawl vessels classified as Alaska vessels had an average economic net revenue of $493,915, 28.3% of the $1,744,793 revenue earned from all sources by these vessels. These estimates on based on revenue and cost information directly related to the operation of a commercial fishing vessel such as those associated with office space. Revenues are from West coast landings, Alaska landings, at-sea deliveries, sale and leasing of permits, chartering for research purposes and other activities related to the operation of the vessel. Compared to other years, these estimates may be high as whiting revenues and overall groundfish revenues were at their highest annual level during the 2001–2010 period during 2008. However, crab revenues during 2008 on the West Coast were at their lowest level since 2003.

Compared with the status quo alternative, under Alternative 4 approximately 17% ($3.7 million) of the allocation to shorebased catcher vessels would be transferred away from the status quo holders; twenty eight permit holders would gain quota share including six permits that did not qualify under the status quo alternative (Table 4–4 of the Draft EA). The largest gain by a single permit holder is 3.3% ($700,000). Alternative 4 would lead to 37 permits losing quota share including 12 permits that would not receive any quota share. The largest loss by a single permit holder would be 2.0% of quota share ($340,000). A total of 41 out of 65 permits will see a change of less than $100,000 (increase or decrease) in revenues in comparing Alternative 4 to the status quo alternative.

In comparing Alternative 4 to the Status Quo alternative for shorebased processors, approximately 3.1% ($660,000) of the allocation to shorebased processors would be transferred away from the status quo holders; nine processors would gain including seven processors that did not qualify under the status quo alternative (Table 4–29 of the Draft EA). The largest gain by a single processor would be 1.3% of quota share ($275,000). Alternative 4 would lead to seven processors losing quota share, including three processors that would not receive any quota share. The largest loss by a single processor would be 0.8% of quota share ($170,000). Nine out of 16 processors would see a change of less than $100,000.

In comparing Alternative 4 to the Status Quo alternative for whiting mothership catcher vessels, approximately 18% ($2 million) of the total catch history assignment would be transferred away from the status quo holders; 16 mothership catcher vessel endorsed permits would gain (Table 4–16 of the Draft EA). No new permits would qualify. The largest gain by a single permit holder would be 4.5% of catch history assignment ($545,000). Alternative 4 would lead to 21 permits with reduced catch history assignments, including 10 permits that would not receive any catch history assignment. The largest loss by a single catch history assignment holder would be 2.7% ($333,000). Eighteen out of 36 permits would see a change of less than $100,000.

However, in terms of net economic benefit to the nation, the effects of the alternatives are similar. According to the PSMFC's Scientific and Statistical Committee: ''The way the fisheries are actually prosecuted (geographic location of fishing and landings, timing of fishing, and participants) will in the long-term tend not to be affected by who receives the initial allocation of catch shares.'' Over time, the use of the catch shares will likely migrate through leases or sales to the participants who can put them to their most profitable use. This means that the eventual biological, ecological, and economic performance of the fisheries will be relatively independent of the initial allocation of catch shares. It has been the experience of many catch share programs that such transitions occur rather quickly, often within the first few years. As a consequence, the initial allocation of quota shares is not an effective tool to direct fishing or processing effort to particular geographic locations.''

The initial allocation of whiting is a one-time distribution of wealth in the form of quota shares and catch history assignments to members of the fishing industry. The initial allocation is essentially the granting of a capital asset that will affect harvester and processor competitiveness and assist existing participants in the transition to the new management system. To the degree that initial allocation match up with the harvesters that will use the quota, transition costs and disruption will be lessened as the fishery moves to its long-term, more efficient state.

Similarly, those processors who receive an initial allocation may experience a boost in their competitive advantage due to the infusion of new wealth (the value of the QS received).

The initial allocation does not affect the long-term efficiency and operation of the fishery. However, liquidity constraints, and perhaps other unknown constraints, may mean that there are some short-term inefficiencies. For example, this one time distribution of wealth may affect expenditures in the communities depending on location and spending patterns of recipients of these quota shares and catch history assignments. The Draft EA provides the following regarding impacts on communities: ''The effects of the initial allocations on the distribution of fishing among communities are difficult to predict. Quota is tradable and highly divisible, giving it a fluidity such that it will likely move toward those ports in which profit margins tend to be the highest, regardless of the initial allocations. Where profit margins are similar, allocations given to entities that are already invested in whiting fishery-dependent capital assets are likely to stay with those entities at least in the near term. Similarly, where profit margins are similar, there will likely be some tendency in the near term for quota that is traded to move toward locations where whiting fishery-dependent capital assets already exist. Regardless of how the quota is distributed, vessels may move operations between ports during the year based on the geographic distribution of fishing opportunities. Processors are likely to use their shares in the port in which their facilities are located, however, some processors have facilities in more than one port and so may shift harvest between ports in response to the location of fishing opportunities. At the same time, the recent shift of harvest toward more northern ports appears to be a response to investments in those ports, indicating that the location of fish is not the only factor driving the location of landings. Over the long term, it is expected that operations will move, or quota will be traded, to the ports in which the highest profits can be earned, taking into account all forms of costs such as average distance to fishing grounds and catch and bycatch rates.''

While the discussion above concerns the long run efficiency and operation of the fishery, short run effects matter. The initial allocation of quota shares affects each participant's business operation, investments, and community. With the choice of the status quo alternative over alternatives that reflect more recent history, NMFS and the Council are providing to those who have historically participated in the fishery (the majority of which are also recent participants) are anticipated to have a better chance to benefit from the market processes described above.

RAW 1

This action also would revise several regulations that were delayed on an emergency basis in response to the Court order. RAW 1 delayed the ability to transfer QS and IBQ between QS accounts in the shorebased IFQ fishery, and to the ability to sever mothership/catcher vessel endorsement and its associated catch history assignment (CHA) from limited entry trawl permits in the mothership fishery, pending the outcome of the reconsideration.

NMFS postponed the ability to trade quota shares as well as the ability of mothership catcher vessels to trade their endorsements and catch history assignments separately from their limited entry permits. NMFS also postponed a delay in all trading of QS species/species groups because for many affected parties, their QS allocations (especially for bycatch species) are a composite of whiting-trip calculations and non-whiting trip calculations. Postponing these activities, while NMFS and the Council reconsidered the whiting allocation, minimize confusion and disruption in the fishery from trading quota shares that have not yet been firmly established by regulation. For example, if QS trading was not delayed, QS permit owners would be transferring QS amounts that potentially could change (increase or decrease) after the reconsideration. For similar reasons, NMFS also delayed the ability to transfer a mothership catcher vessel (MS/CV) endorsement and associated catch history assignment from one limited entry trawl permit to another in the mothership sector. The ability to sell or trade a limited entry permit with the endorsement and catch history remains. The use of the catch history assignment to be assigned to a co-op to be fished continues. NMFS intends to announce any changes to the amount of catch history assignments associated with MS/CV-endorsed limited entry trawl permits by April 1, 2013 which is before the May 15 start date for the whiting mothership fishery. These delays were expected to be temporary in nature and to benefit both small and large entities as they help smooth the transition to any changes in how Pacific whiting is allocated, and reduce the uncertainty to existing and potential new holders of these allocations.

With these proposed regulations, those who find themselves with excess QS (except for widow QS) and IBQ, have until November 30, 2015, to divest. MS/CV-endorsed limited entry trawl permit owners will have to divest themselves of ownership in permits in excess of the accumulation limits by August 31, 2016. This rule allows limited entry trawl permit holders in the mothership sector to request a change (or transfer) of MS/CV endorsement and its associated CHA beginning September 1, 2014. Finally, this rule allows transfer of QS or IBQ, except widow rockfish QS, between QS permit holders beginning January 1, 2014.

The Small Business Administration has established size criteria for all major industry sectors in the US, including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of $4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the $4.0 million criterion for fish harvesting operations. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. For marinas and charter/party boats, a small business is one with annual receipts not in excess of $7.0 million.

Over the years 1994–2010, there were 65 limited entry trawl fishing permit holders that participated in the shoreside whiting fishery and 37 limited entry trawl fishing permit holders that participated in the mothership fishery. Over the years 1998 to 2010, 16 processors have participated in the fishery. NMFS NWR now collects small business information as part of its permit renewal processes. Based on that information and on other information, there are three large companies associated with the 16 processors and 13 small companies. Sixteen of the limited entry trawl permits that participated in the whiting fishery are associated with large companies and 49 of these permits are associated with small companies. In the mothership fishery 14 catcher vessel permits are

associated with large companies and 23 with small companies.

No Federal rules have been identified that duplicate, overlap, or conflict with the alternatives. Public comment is hereby solicited, identifying such rules. A copy of this analysis is available from NMFS (see **ADDRESSES**).

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the Pacific Coast groundfish PCGFMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the PCGFMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS issued a Supplemental Biological Opinion on March 11, 2006, concluding that neither the higher observed bycatch of Chinook in the 2005 whiting fishery nor new data regarding salmon bycatch in the groundfish bottom trawl fishery required a reconsideration of its prior ''no jeopardy'' conclusion. NMFS also reaffirmed its prior determination that implementation of the Groundfish PCGFMP is not likely to jeopardize the continued existence of any of the affected ESUs. Lower Columbia River coho (70 FR 37160, June 28, 2005) and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

On December 7, 2012, NMFS completed a biological opinion concluding that the groundfish fishery is not likely to jeopardize non-salmonid marine species including listed eulachon, green sturgeon, humpback whales, Steller sea lions, and leatherback sea turtles. The opinion also concludes that the fishery is not likely to adversely modify critical habitat for green sturgeon and leatherback sea turtles. An analysis included in the same document as the opinion concludes that the fishery is not likely to adversely affect green sea turtles, olive ridley sea turtles, loggerhead sea turtles, sei whales, North Pacific right whales, blue whales, fin whales, sperm whales, Southern Resident killer whales, Guadalupe fur seals, or the critical habitat for Steller sea lions.

As Steller sea lions and humpback whales are also protected under the Marine Mammal Protection Act, incidental take of these species from the groundfish fishery must be addressed under MMPA section 101(a)(5)(E). On February 27, 2012, NMFS published notice that the incidental taking of Steller sea lions in the West Coast groundfish fisheries was addressed in NMFS' December 29, 2010, Negligible Impact Determination (NID) and this fishery has been added to the list of fisheries authorized to take Steller sea lions (77 FR 11493, Feb. 27, 2012). NMFS is currently developing MMPA authorization for the incidental take of humpback whales in the fishery.

On November 21, 2012, the U.S. Fish and Wildlife Service (FWS) issued a biological opinion concluding that the groundfish fishery will not jeopardize the continued existence of the short-tailed albatross. The (FWS) also concurred that the fishery is not likely to adversely affect the marbled murrelet, California least tern, southern sea otter, bull trout, nor bull trout critical habitat.

This proposed rule was developed after meaningful consultation and collaboration, through the Council process, with the tribal representative on the Council. The proposed regulations have no direct effect on the tribes.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: December 27, 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.

For the reasons stated in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660–FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.140, revise paragraphs (d)(3)(ii)(B)(*2*) and (d)(4)(v) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(d) * * *

(3) * * *

(ii) * * *

(B) * * *

(*2*) *Transfer of QS or IBQ between QS accounts.* Beginning January 1, 2014, QS permit owners may transfer QS (except for widow rockfish QS) or IBQ to another QS permit owner, subject to accumulation limits and approval by NMFS. QS or IBQ is transferred as a percent, divisible to one-thousandth of a percent (i.e., greater than or equal to 0.001%). Until January 1, 2014, QS or IBQ cannot be transferred to another QS permit owner, except under U.S. court order or authorization and as approved by NMFS. QS or IBQ may not be transferred between December 1 through December 31 each year. QS or IBQ may not be transferred to a vessel account. The prohibition on transferability of widow rockfish QS is extended indefinitely pending final action on reallocation of widow rockfish QS.

* * * * *

(4) * * *

(v) *Divestiture.* Accumulation limits will be calculated by first calculating the aggregate non-whiting QS limit and then the individual species QS or IBQ control limits. For QS permit owners (including any person who has ownership interest in the owner named on the permit) that are found to exceed the accumulation limits during the initial issuance of QS permits, an adjustment period will be provided after which they will have to completely divest their QS or IBQ in excess of the accumulation limits. QS or IBQ will be issued for amounts in excess of accumulation limits only for owners of limited entry permits as of November 8, 2008, if such ownership has been registered with NMFS by November 30, 2008. The owner of any permit acquired after November 8, 2008, or if acquired earlier, not registered with NMFS by November 30, 2008, will only be eligible to receive an initial allocation for that permit of those QS or IBQ that are within the accumulation limits; any QS or IBQ in excess of the accumulation limits will be redistributed to the

remainder of the initial recipients of QS or IBQ in proportion to each recipient's initial allocation of QS or IBQ for each species. Any person that qualifies for an initial allocation of QS or IBQ in excess of the accumulation limits will be allowed to receive that allocation, but must divest themselves of the QS (except for widow rockfish QS) or IBQ in excess of the accumulation limits by November 30, 2015. Holders of QS or IBQ in excess of the control limits may receive and use the QP or IBQ pounds associated with that excess, up to the time their divestiture is completed. Once the divestiture period is completed, any QS or IBQ held by a person (including any person who has ownership interest in the owner named on the permit) in excess of the accumulation limits will be revoked and redistributed to the remainder of the QS or IBQ owners in proportion to the QS or IBQ. On or about January 1, 2016, NMFS will redistribute the revoked QS or IBQ excess percentages to the QS or IBQ owners in proportion to their QS or IBQ holdings based on ownership records as of January 1, 2016. No compensation will be due for any revoked shares.

* * * * *

■ 3. In § 660.150, revise paragraph (g)(2)(iv)(B) and add paragraph (g)(2)(iv)(C), and revise paragraph (g)(3)(i)(D) to read as follows:

§ 660.150 Mothership (MS) Coop Program.

* * * * *

(g) * * *

(2) * * *

(iv) * * *

(B) *Application.* NMFS will begin accepting applications for a change in MS/CV endorsement registration beginning September 1, 2014. A request for a change in MS/CV endorsement registration must be made between September 1 and December 31 of each year. Any transfer of MS/CV endorsement and its associated CHA to another limited entry trawl permit must be requested using a Change in Registration of a Mothership/Catcher Vessel Endorsement/Catch History Assignment Application form and the permit owner or an authorized representative of the permit owner must certify that the application is true and correct by signing and dating the form. In addition, the form must be notarized, and the permit owner selling the MS/CV endorsement and its CHA must provide the sale price of the MS/CV endorsement and its associated CHA. If any assets in addition to the MS/CV endorsement and its associated CHA are included in the sale price, those assets must be itemized and described.

(C) *Effective date.* Any change in MS/CV endorsement registration from one limited entry trawl permit to another limited entry trawl permit will be effective on January 1 in the year following the application period.

* * * * *

(3) * * *

(i) * * *

(D) *Divestiture.* For MS/CV-endorsed permit owners that are found to exceed the accumulation limits during the initial issuance of MS/CV-endorsed permits, an adjustment period will be provided after which they will have to completely divest of ownership in permits that exceed the accumulation limits. Any person that NMFS determines, as a result of the initial issuance of MS/CV-endorsed permits, to own in excess of 20 percent of the total catch history assignment in the MS Coop Program applying the individual and collective rule described at paragraph (g)(3)(i)(A) of this section will be allowed to receive such permit(s), but must divest themselves of the excess ownership by August 31, 2016. Owners of such permit(s) may receive and use the MS/CV-endorsed permit(s), up to the time their divestiture is completed. After August 31, 2016, any MS/CV-endorsed permits owned by a person (including any person who has ownership interest in the owner named on the permit) in excess of the accumulation limits will not be issued (renewed) until the permit owner complies with the accumulation limits.

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Notices

Federal Register

Vol. 78, No. 1

Wednesday, January 2, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT *COM020*OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2012–0053]

Codex Alimentarius Commission: Meeting of the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS)

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), Food Safety and Inspection Service (FSIS), is sponsoring a public meeting on January 24, 2013. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions that will be discussed at the 20th Session of the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS) of the Codex Alimentarius Commission (Codex), which will be held in Chiang Mai, Thailand, February 18–22, 2013. The Under Secretary for Food Safety recognizes the importance of providing interested parties the opportunity to obtain background information on the 20th Session of the CCFICS and to address items on the agenda.

DATES: The public meeting is scheduled for Thursday, January 24, 2013, from 2:00–4:00 p.m.

ADDRESSES: The public meeting will be held in the Jamie L. Whitten Building, USDA, 1400 Independence Avenue SW., Room 107–A, Washington, DC 20250. Documents related to the 20th Session of the CCFICS will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.org/meetings-reports/en.*

Mary Stanley, U.S. Delegate to the 20th Session of the CCFICS invites U.S. interested parties to submit their comments electronically to the following email address *Mary.Stanley@fsis.usda.gov.*

Call-In Number:

If you wish to participate in the public meeting for the 20th Session of the CCFICS by conference call, please use the call in number and participant code listed below.

Call-in Number: 1–888–858–2144

Participant Code: 6208658

For Further Information About the 20th Session of the CCFICS Contact: Mary Stanley, Director, International Policy Division, Office of Policy and Program Development, FSIS, USDA, Room 2925, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250, Phone: (202) 720–0287, Fax: (202) 720–4929, Email: *Mary.Stanley@fsis.usda.gov.*

For Further Information About the Public Meeting Contact: Kenneth Lowery, U.S. Codex Office, 1400 Independence Avenue SW., Room 4861, Washington, DC 20250, Phone: (202) 690–4042, Fax: (202) 720–3157, Email: *Kenneth.Lowery@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The CCFICS Committee is responsible for

(a) Developing principles and guidelines for food import and export inspection and certification systems with a view to harmonizing methods and procedures which protect the health of consumers, ensure fair trading practices, and facilitate international trade in foodstuffs

(b) Developing principles and guidelines for the application of measures by the competent authorities of exporting and importing countries to provide assurance where necessary that foodstuffs comply with requirements, especially statutory health requirements

(c) Developing guidelines for the utilization, as and when appropriate, of quality assurance systems to ensure that foodstuffs conform with requirements and promoting the recognition of these systems in facilitating trade in food products under bilateral/multilateral arrangements by countries

(d) Developing guidelines and criteria with respect to format, declarations and language of such official certificates as countries may require with a view towards international harmonization

(e) Making recommendations for information exchange in relation to food import/export control

(f) Consulting as necessary with other international groups working on matters related to food inspection and certification systems

(g) Considering other matters assigned to it by Codex in relation to food inspection and certification systems

The Committee is hosted by Australia.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 20th Session of the CCFICS will be discussed during the public meeting:

- Matters referred to the CCFICS by Codex and other Codex Committees and Task Forces
- Activities of the FAO and WHO relevant to the work of the CCFICS
- Activities of other international organizations relevant to the work of the CCFICS
- Draft and proposed draft principles and guidelines for national food control systems
- Discussion paper on burden of multiple questionnaires directed at exporting countries
- Discussion paper on monitoring regulatory performance of national food control systems
- Discussion paper on the need for further guidance on food safety emergencies and on the analysis of proposed change to the CCFICS texts on emergencies and rejections to address feed
- Other business and future work

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access copies of these documents (see **ADDRESSES**).

Public Meeting

At the January 24, 2013, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Mary Stanley, U.S. Delegate for the 20th Session of the CCFICS (see **ADDRESSES**). Written comments should state that they relate to activities of the 20th Session of the CCFICS.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

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To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Done at Washington, DC on: December 21, 2012.

MaryFrances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2012–31554 Filed 12–31–12; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Boniface U. Ibe, 11202 Trevor Court, Mitchellville, MD 20721

Order Denying Export Privileges

On July 11, 2011, in the U.S. District Court, District of Maryland, Boniface U. Ibe (''Ibe'') was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2000)) (''AECA'') and the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.* (2000)) (''IEEPA''). Specifically, Ibe was convicted of knowingly and willfully exporting, causing to be exported, and attempting to export from the United States to Nigeria, defense articles included on the United States Munitions List, namely, firearms and ammunition, without having first obtained from the Department of State a license for such export or written authorization for such export, in violation of AECA. Ibe was also convicted of knowingly and willfully exporting, causing to exported, and attempting to export from the United States to Nigeria shotguns without having first obtained a validated export license from the United States Department of Commerce, in violation of IEEPA. Ibe was sentenced to five months in prison followed by 10 months of supervised release. Ibe is also listed on the U.S. Department of State Debarred List.

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

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

Accordingly, it is hereby

Ordered

I. Until July 11, 2021, Boniface U. Ibe, with a last known address at: 11202 Trevor Court, Mitchellville, MD 20721, and when acting for or on behalf of Ibe, his representatives, assigns, agents or employees (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

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

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise

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

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

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

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

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

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

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

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

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

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

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

V. This Order is effective immediately and shall remain in effect until July 11, 2021.

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

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

Dated: Issued this 21st day of December 2012.

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2012–31471 Filed 12–31–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Emenike Charles Nwankwoala Currently Incarcerated at: Inmate Number 50756–037 FCI Elkton, Federal Correction Institution, P.O. Box 10, Lisbon, OH 44432 and With an Address at: Emenike Nwankwoala, 15028 Courtland Place, Laurel, MD 20707

Order Denying Export Privileges

On January 3, 2011, in the U.S. District Court, District of Maryland, Emenike Charles Nwankwoala (''Nwankwoala'') was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2000)) (''AECA'') and the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.* (2000)) (''IEEPA''). Specifically, Nwankwoala was convicted of knowingly and willfully exporting, causing to be exported, and attempting to export from the United States to Nigeria, defense articles included on the United States Munitions List, namely, firearms and ammunition, without having first obtained from the Department of State a license for such export or written authorization for such export, in violation of AECA. Nwankwoala was also convicted of knowingly and willfully exporting, causing to exported, and attempting to export from the United States to Nigeria shotguns without having first obtained a validated export license from the United States Department of Commerce, in violation of IEEPA. Nwankwoala was sentenced to 37 months in prison followed by 24 months of supervised release. Nwankwoala is also listed on the U.S. Department of State Debarred List.

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

I have received notice of Nwankwoala's conviction for violating AECA and IEEPA, and have provided notice and an opportunity for Nwankwoala to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have received a submission from Nwankwoala. Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Nwankwoala's export privileges under the Regulations for a period of 10 years from the date of Nwankwoala's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Nwankwoala had an interest at the time of his conviction.

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

Accordingly, it is hereby

Ordered

I. Until January 3, 2021, Emenike Charles Nwankwoala, with last known addresses at: currently incarcerated at: Inmate Number 50756–037, FCI Elkton, Federal Correctional Institution, P.O. Box 10, Lisbon, OH 44432, and with an address at: 15028 Courtland Place, Laurel, MD 20707, and when acting for or on behalf of Nwankwoala, his representatives, assigns, agents or employees (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

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

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

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

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

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

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

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

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

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

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

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

V. This Order is effective immediately and shall remain in effect until January 3, 2021.

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

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

Dated: Issued this 21st day of December, 2012.

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2012–31444 Filed 12–31–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of:

Henson Chua, 2945 Somerset Place, San Marino, CA 91108, and with an address at:

Henson Chua, 27 Cambridge Street, Hillsborough Village, Muntin Lupa City, Philippines, 1780,

Respondent; Celltron Marketing Company, a.k.a. Celltron Mktg. Co., 47A G. Araneta Ave, Quezon City, MM Philippines, 1105,

Related Person; Order Denying Export Privileges

A. Denial of Export Privileges of Henson Chua

On November 8, 2011, in the U.S. District Court, Middle District of Florida Tampa Division, Henson Chua (''Chua'') was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2000)) (''AECA''). Specifically, Chua was convicted of knowingly and willfully causing the temporary import into the United States, an unmanned aerial vehicle, which was designated as a defense article on the United States Munitions List, without having first obtained from the U.S. Department of State a license or written authorization for such temporary import.

Chua was sentenced to time served followed by three years of supervised release. Chua was ordered to pay a fine of $13,000 and a special assessment of $100.00. Chua is also listed on the U.S. Department of State Debarred List.

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

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2012). The Regulations issued pursuant to the EAA (50 U.S.C. app. §§ 2401–2420 (2000)). Since August 21, 2001, the Export Administration Act (''EAA'') has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 12, 2012 (77 FR 49699, August 16, 2012), has continued the Regulations in effect under International Emergency Economics Powers Act (50 U.S.C. 1701, *et seq.* (2000)).

the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Chua's conviction for violating the AECA, and have provided notice and an opportunity for Chua to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have received a submission from Chua. Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Chua's export privileges under the Regulations for a period of five years from the date of Chua's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Chua had an interest at the time of his conviction.

B. Denial of Export Privileges of Related Person

Pursuant to Sections 766.25(h) and 766.23 of the Regulations, the Director of BIS's Office of Exporter Services, in consultation with the Director of BIS's Office of Export Enforcement, may take action to name persons related to a Respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business in order to prevent evasion of a denial order. Celltron is the name of the company that Chua utilized in his dealing with Immigration and Customs Enforcement (''ICE''), Homeland Security Investigations (''HIS''). He used this company as the sender of the goods to HIS/ICE. Therefore Celltron is related to Chua by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. BIS believes that naming Celltron as a related person to Chua is necessary to avoid evasion of the denial order against Chua.

As provided in Section 766.23 of the Regulations, I gave notice to Celltron that its export privileges under the Regulations could be denied for up to 10 years due to its relationship with Chua and that BIS believes naming it as a person related to Chua would be necessary to prevent evasion of a denial order imposed against Chua. In providing such notice, I gave Celltron an opportunity to oppose its addition to the Chua Denial Order as a related party. Having received a submission from Chua, I have decided, following consultations with BIS's Office of Export Enforcement, including its Director, to name Celltron as a Related Person to the Chua Denial Order, thereby denying its export privileges for five years from the date of Chua's conviction.

I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which the Related Person had an interest at the time of Chua's conviction. The five-year denial period will end on November 8, 2016.

Accordingly, it is hereby

Ordered

I. Until November 8, 2016, Henson Chua, with last known addresses at: 2945 Somerset Place, San Marino, CA 91108, and 27 Cambridge Street, Hillsborough Village, Muntin Lupa City, Philippines, 1780, and when acting for or on behalf of Chua, his representatives, assigns, agents or employees (collectively referred to hereinafter as the ''Denied Person''), and the following person related to the Denied Person as defined by Section 766.23 of the Regulations: Celltron Marketing Company, a.k.a. Celltron Mktg. Co., with a last known address at: 47A G. Araneta Ave, Quezon City, MM Philippines, 1105, and when acting for or on behalf of Celltron, its successors or assigns, agents, or employees (''the Related Person'') (together, the Denied Person and the Related Person are ''Persons Subject to this Order''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including but not limited to:

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

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

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

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

A. Export or reexport to or on behalf of the Persons Subject to this Order any item subject to the Regulations;

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

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

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

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

III. In addition to the Related Person named above, after notice and opportunity for comment as provided in section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order if necessary to prevent evasion of the Order.

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

V. This Order is effective immediately and shall remain in effect until November 8, 2016.

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

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

VIII. A copy of this Order shall be delivered to the Denied Person and the Related Person. This Order shall be published in the **Federal Register**.

Issued this 21st day of December 2012.

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2012–31442 Filed 12–31–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–886]

Polyethylene Retail Carrier Bags From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2011–2012

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

SUMMARY: The Department of Commerce (the Department) is rescinding its administrative review of the antidumping duty order on polyethylene retail carrier bags (PRCBs) from the People's Republic of China (PRC) for the period August 1, 2011, through July 31, 2012.

DATES: *Effective Date:* January 2, 2013.

FOR FURTHER INFORMATION CONTACT: Jerrold Freeman at 202–482–0180 or Catherine Cartsos at 202–482–1757, AD/CVD Operations Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2012, we published a notice of opportunity to request an administrative review of the antidumping duty order on PRCBs from the PRC for the period of review August 1, 2011, through July 31, 2012.[1] On August 31, 2012, the petitioners, the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC, and Superbag Corporation, requested an administrative review of the order with respect to Dongguan Nozawa Plastics Products Co., Ltd. and United Power Packaging, Ltd. (collectively, Nozawa).[2] On September 26, 2012, in accordance with section 751(a) of the Tariff Act of 1930, as amended (Act) and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the order on PRCBs from the PRC with respect to Nozawa.[3]

On November 21, 2012, the petitioners withdrew their request for an administrative review.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, ''in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' The petitioners withdrew their request for review within the 90-day time limit. Because we received no other requests for review of Nozawa and no other requests for the review of the order on PRCBs from the PRC with respect to other companies subject to the order, we are rescinding the administrative review of the order in full. This rescission is in accordance with 19 CFR 351.213(d)(1).

Accordingly, the Department intends to issue appropriate assessment instructions to U.S. Customs and Border Protection 15 days after publication of this notice.

Notification to Importer

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

Notification Regarding Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under an 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 sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 (d)(4).

Dated: December 21, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–31542 Filed 12–31–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review; 2011–2012

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

SUMMARY: The Department of Commerce (Department) has determined that a request for a new shipper review (NSR) under the antidumping duty order on fresh garlic from the People's Republic of China (PRC) meets the statutory and regulatory requirements for initiation. The period of review (POR) is November 1, 2011, through October 31, 2012.

DATES: *Effective Date:* January 2, 2012.

FOR FURTHER INFORMATION CONTACT: Lingjun Wang, 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) 482–2316.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on fresh garlic from the PRC in the **Federal Register** on

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 77 FR 45580 (August 1, 2012).

[2] *See* letter from the petitioners to the Department, ''Polyethylene Retail Carrier Bags from the People's Republic of China: Request for Administrative Review'' (August 31, 2012).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 77 FR 59168 (September 26, 2012).

[4] *See* letter from the petitioners to the Department, ''Polyethylene Retail Carrier Bags from the People's Republic of China: Withdrawal of Request for Administrative Review'' (November 21, 2012).

November 16, 1994.[1] On November 27, 2012, the Department received a timely NSR request from Shijiazhuang Goodman Trading Co., Ltd. (Goodman) in accordance with section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(c).

Pursuant to the requirements set forth in 19 CFR 351.214(b), Goodman certified that it is the exporter and Jinxiang Zhongtian Business Co., Ltd. (a.k.a. Jinxiang Zhongtian Trade Co., Ltd.) (Zhongtian) certified that it is the producer of the fresh garlic exported by Goodman. Moreover, Goodman and Zhongtian each certified that: (1) They did not export fresh garlic for sale to the United States during the period of investigation (POI); (2) since the investigation was initiated, they have never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI, including those not individually examined during the investigation; and (3) their export activities are not controlled by the central government of the PRC. In addition, Goodman submitted documentation establishing the following: (1) The date on which fresh garlic was first entered; (2) the volume of that and subsequent shipments; and (3) the date of the first sale to an unaffiliated customer in the United States.

The Department queried the database of U.S. Customs and Border Protection (CBP) in an attempt to confirm that shipments reported by Goodman had entered the United States for consumption and that liquidation had been properly suspended for antidumping duties. The information which the Department examined was consistent with that provided by Goodman in its request.[2]

Period of Review

In accordance with 19 CFR 351.214(g)(1)(i)(A), the POR for an NSR initiated in the month immediately following the anniversary month will be the twelve-month period immediately preceding the anniversary month. Therefore, the POR for this NSR is November 1, 2011, through October 31, 2012. The sales and entries into the United States of subject merchandise exported by Goodman and produced by Zhongtian occurred during this twelve-month POR.

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(b), and the information on the record, the Department finds that Goodman's request meets the threshold requirements for initiation of an NSR. The Department intends to issue the preliminary result within 180 days after the date on which the review is initiated, and the final results within 90 days after the date on which we issue the preliminary results.[3]

It is the Department's usual practice, in cases involving non-market economies, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate (*i.e.,* a separate rate) provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, the Department will issue a questionnaire to Goodman that includes a separate rate section. The review will proceed if the response provides sufficient indication that the exporter and producer are not subject to either *de jure* or *de facto* government control with respect to their export of fresh garlic.

The Department will instruct CBP to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for certain entries of the subject merchandise from Goodman in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Specifically, the bonding privilege will only apply to entries of subject merchandise exported by Goodman and produced by Zhongtian, the sales of which are the basis for this NSR request.

Interested parties requiring access to proprietary information in this NSR should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: December 21, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–31447 Filed 12–31–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping Duty Order: Fresh Garlic From the People's Republic of China,* 59 FR 59209 (November 16, 1994).

[2] *See* Memorandum to The File regarding ''Initiation of Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China: Shijiazhuang Goodman Trading Co., Ltd.'' dated concurrently with this notice.

[3] *See* section 751(a)(2)(B)(iv) of the Act.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing an Open Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, February 13, 2013, from 8:00 a.m. until 5:00 p.m. Eastern Time, Thursday, February 14, 2013, from 8:00 a.m. until 5:00 p.m. Eastern Time, and Friday, February 15, 2013, from 8:00 a.m. until 12:00 p.m. Eastern Time. All sessions will be open to the public.

DATES: The meeting will be held on Wednesday, February 13, 2013, from 8:00 a.m. until 5:00 p.m. Eastern Time, Thursday, February 14, 2013, from 8:00 a.m. until 5:00 p.m. Eastern Time, and Friday, February 15, 2013, from 8:00 a.m. until 12:00 p.m. Eastern Time.

ADDRESSES: The meeting will take place at the United States Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Annie Sokol, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–2006, or by email at: *annie.sokol@nist.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, February 13, 2013, from 8:00 a.m. until 5:00 p.m. Eastern Time, Thursday, February 14, 2013, from 8:00 a.m. until 5:00 p.m. Eastern Time, and Friday, February 15, 2013, from 8:00 a.m. until 12:00 p.m. Eastern Time. All sessions will be open to the public. The ISPAB is authorized by 15 U.S.C. 278g–4, as amended, and advises the Secretary of Commerce, the Director of the Office of Management and Budget, and the Director of NIST on security and privacy issues pertaining to federal computer systems. Details regarding the ISPAB's activities are available at *http://csrc.nist.gov/groups/SMA/ispab/index.html.*

The agenda is expected to include the following items:

—Federal Information Security Management Act (FISMA) Policy,

—FISMA Implementation,

—FISMA Legislation,

—FISMA and Certification and Accreditation,

—FISMA and Continuous Monitoring,

—Controlled Unclassified Information,

—Automated Intelligence Sharing,

—Global Policy,

—Telecommunication technology—detection and filtering malicious traffic,

—Cybersecurity Updates from the White House,

—Legislative Updates, and

—Update of NIST Computer Security Division.

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters. The final agenda will be posted on the Web site indicated above. Seating will be available for the public and media. No registration is required to attend this meeting.

Public Participation: The ISPAB agenda will include a period of time, not to exceed thirty minutes, for oral comments from the public (Friday, February 15, 2013, between 10:00 a.m. and 10:30 a.m.). Speakers will be selected on a first-come, first-served basis. Each speaker will be limited to five minutes. Questions from the public will not be considered during this period. Members of the public who are interested in speaking are requested to contact Annie Sokol at the contact information indicated in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements. In addition, written statements are invited and may be submitted to the ISPAB at any time. All written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930.

Dated: December 21, 2012.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2012–31525 Filed 12–31–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–C–2012–0054]

National Medal of Technology and Innovation Call for 2013 Nominations

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice and request for nominations.

SUMMARY: The Department of Commerce (United States Patent and Trademark Office) is accepting nominations for the National Medal of Technology and Innovation (NMTI). Since establishment by Congress in the Stevenson-Wydler Technology Innovation Act of 1980, the President of the United States has awarded the annual NMTI (initially known as the National Medal of Technology) to our nation's leading innovators. Those wishing to nominate a candidate who has made an outstanding, lasting contribution to the economy may obtain a nomination form from: *http://go.usa.gov/1dU.*

ADDRESSES: The NMTI nomination form for the year 2013 may be obtained by visiting the USPTO Web site at *http://go.usa.gov/1dU.* Nomination applications should be submitted to John Palafoutas, Program Manager, National Medal of Technology and Innovation Program, by electronic mail to: *NMTI@uspto.gov* or by mail to: John Palafoutas, NMTI Program Manager, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450.

DATES: The deadline for submission of a nomination is April 1, 2013.

FOR FURTHER INFORMATION CONTACT: John Palafoutas, Program Manager, National Medal of Technology and Innovation Program, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314; telephone (571) 272–9821 or by electronic mail: *nmti@uspto.gov*.

SUPPLEMENTARY INFORMATION:

Background: Enacted by Congress in the Stevenson-Wydler Technology Innovation Act of 1980, the National Medal of Technology was first awarded in 1985. On August 9, 2007, the President signed the America COMPETES (Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science) Act of 2007. The Act amended Section 16 of the Stevenson-Wydler Technology Innovation Act of 1980, changing the name of the Medal to the ''National Technology and Innovation Medal.'' The Medal is the highest honor awarded by the President of the United States to America's leading innovators in the field of technology and is given annually to individuals, teams, or companies who have made outstanding contributions to the promotion of technology and the technological workforce for the improvement of the economic, environmental or social well-being of the United States. The primary purpose of the NMTI is to recognize American innovators whose vision, creativity, and brilliance in moving ideas to market has had a profound and lasting impact on our economy and way of life. The Medal highlights the national importance of fostering technological innovation resulting in commercially successful products and services.

Eligibility and Nomination Criteria: Nomination Guidelines and nomination criteria are available at *http://go.usa.gov/1dU.*

Dated: December 21, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–31524 Filed 12–31–12; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency National Intelligence University Board of Visitors Closed Meeting

AGENCY: National Intelligence University, Defense Intelligence Agency, Department of Defense.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the National Intelligence University Board of Visitors has been scheduled as follows:

DATES: Tuesday, January 8, 2013 (8 a.m. to 5 p.m.) and Wednesday, January 9, 2013 (8 a.m. to 12 p.m.).

ADDRESSES: National Intelligence University, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Dr. David R. Ellison, President, DIA National Intelligence University, Washington, DC 20340–5100 (202) 231–3344.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b (c) (1), Title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the National Intelligence University.

Due to difficulties, beyond the control of the National Intelligence University Board of Visitors or its Designated Federal Officer, the Board was unable to file a **Federal Register** notice for the January 8 through January 9, 2013 meeting of the National Intelligence University Board of Visitors as required by 41 CFR 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Dated: December 27, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–31529 Filed 12–31–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1847–001; ER10–1856–001; ER10–1890–001; ER11–2160–001; ER10–1906–001; ER10–1962–001; ER11–4677–002; ER10–1989–001; ER11–4678–002; ER10–1992–001; ER12–631–002; ER10–1971–009.

Applicants: Diablo Winds, LLC, FPL Energy Cabazon Wind, LLC, FPL Energy Green Power Wind, LLC, FPL Energy Montezuma Wind, LLC, FPL Energy New Mexico Wind, LLC, High Winds, LLC, NextEra Energy Montezuma II Wind, LLC, Sky River LLC, Vasco Winds, LLC, Victory Garden Phase IV, LLC, Windpower Partners 1993, LLC, NextEra Energy Power Marketing, LLC.

Description: NextEra Resources Entities submit Notification of Non-material Change in Status in the California ISO, Inc. balancing authority area.

Filed Date: 12/20/12.

Accession Number: 20121220–5274.

Comments Due: 5 p.m. ET 1/10/13.

Docket Numbers: ER10–1966–001; ER10–1976–001; ER11–2970–003; ER10–1985–001; ER10–1971–008.

Applicants: Logan Wind Energy LLC, Northern Colorado Wind Energy, LLC, Peetz Logan Interconnect, LLC, Peetz Table Wind Energy, LLC, NextEra Energy Power Marketing, LLC.

Description: NextEra Resources Entities submit Notification of Non-material Change in Status in the Public Service Company of Colorado balancing authority area.

Filed Date: 12/20/12.

Accession Number: 20121220–5263.

Comments Due: 5 p.m. ET 1/10/13.

Docket Numbers: ER10–2719–011; ER10–2718–011; ER10–2578–013; ER10–2633–011; ER10–2570–011; ER10–2717–011; ER10–3140–010; ER13–55–002.

Applicants: East Coast Power Linden Holding, L.L.C., Cogen Technologies Linden Venture, L.P., Fox Energy Company LLC, Birchwood Power Partners, L.P., Shady Hills Power Company, L.L.C., EFS Parlin Holdings, LLC, Inland Empire Energy Center, LLC, Homer City Generation, L.P.

Description: Notice of Non-Material Change in Status of East Coast Power Linden Holding, L.L.C., et. al.

Filed Date: 12/20/12.

Accession Number: 20121220–5277.

Comments Due: 5 p.m. ET 1/10/13.

Docket Numbers: ER11–3959–003.

Applicants: Post Rock Wind Power Project, LLC.

Description: Notice of Non-Material Change in Status for Post Rock Wind Power Project, LLC.

Filed Date: 12/20/12.

Accession Number: 20121220–5279.

Comments Due: 5 p.m. ET 1/10/13.

Docket Numbers: ER12–2570–001; ER01–138–010; ER10–3193–001.

Applicants: Panther Creek Power Operating, LLC, Brooklyn Navy Yard Cogeneration Partners, L.P., Delta Person Limited Partnership.

Description: Notice of Non-Material Change in Status of Panther Creek Operating, LLC, *et. al.*

Filed Date: 12/20/12.

Accession Number: 20121220–5276.

Comments Due: 5 p.m. ET 1/10/13.

Docket Numbers: ER12–2708–001.

Applicants: Potomac-Appalachian Highline Transmission LLC, LLC, PJM Interconnection, L.L.C.

Description: PATH submits Compliance Filing per 11/30/2012 Order in Docket No. ER12–2708 to be effective 12/1/2012.

Filed Date: 12/20/12.

Accession Number: 20121220–5204.

Comments Due: 5 p.m. ET 1/10/13.

Docket Numbers: ER13–593–000.

Applicants: PacifiCorp.

Description: Termination of BPA NITSA (Clark PUD) to be effective 12/7/2012.

Filed Date: 12/20/12.

Accession Number: 20121220–5130.

Comments Due: 5 p.m. ET 1/10/13.

Docket Numbers: ER13–594–000.

Applicants: Southwest Power Pool, Inc.

Description: 2479 Kansas Municipal Energy & Kansas City Power & Light Meter Agent Agreement to be effective 12/1/2012.

Filed Date: 12/20/12.

Accession Number: 20121220–5133.

Comments Due: 5 p.m. ET 1/10/13.

Docket Numbers: ER13–595–000.

Applicants: Spion Kop Wind, LLC.

Description: Notice of Cancellation of FERC Electric Tariff to be effective 12/21/2012.

Filed Date: 12/20/12.

Accession Number: 20121220–5146.

Comments Due: 5 p.m. ET 1/10/13.

Docket Numbers: ER13–596–000.

Applicants: Midwest Independent Transmission System Operator Inc.

Description: 12–20–12 MRES Schedule 7–8–9 to be effective 1/1/2013.

Filed Date: 12/20/12.

Accession Number: 20121220–5147.

Comments Due: 5 p.m. ET 1/10/13.

Docket Numbers: ER13–597–000.

Applicants: Alabama Power Company.

Description: Amendment of Southern's Tariff Vol. No. 4 in Compliance under Docket ER12–1721 to be effective 12/21/2012.

Filed Date: 12/20/12.

Accession Number: 20121220–5148.

Comments Due: 5 p.m. ET 1/10/13.

Docket Numbers: ER13–598–000.

Applicants: San Diego Gas & Electric Company.

Description: 2013 SDGE RS Update to Transmission Owner Tariff to be effective 1/1/2013.

Filed Date: 12/20/12.

Accession Number: 20121220–5151.

Comments Due: 5 p.m. ET 1/10/13.

Docket Numbers: ER13–599–000.

Applicants: New York Independent System Operator, Inc.

Description: 205 OATT & MST settlements and billing issues revisions to be effective 2/18/2013.

Filed Date: 12/20/12.

Accession Number: 20121220–5155.

Comments Due: 5 p.m. ET 1/10/13.

Docket Numbers: ER13–600–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Queue X2–076 ? Original Service Agreement Nos. 3459 and 3460 to be effective 11/27/2012.

Filed Date: 12/20/12.
Accession Number: 20121220–5182.
Comments Due: 5 p.m. ET 1/10/13.

Docket Numbers: ER13–601–000.
Applicants: Southwest Power Pool, Inc.
Description: 2208R2 Ensgin Wind, LLC GIA to be effective 11/30/2012.
Filed Date: 12/20/12.
Accession Number: 20121220–5188.
Comments Due: 5 p.m. ET 1/10/13.

Docket Numbers: ER13–602–000.
Applicants: San Diego Gas & Electric Company.
Description: 2013 SDGE TRBAA TACBAA Update to Transmission Owner Tariff to be effective 1/1/2013.
Filed Date: 12/20/12.
Accession Number: 20121220–5199.
Comments Due: 5 p.m. ET 1/10/13.

Docket Numbers: ER13–603–000.
Applicants: ITC Midwest LLC, Midwest Independent Transmission System Operator Inc.
Description: SA 2453 ITC Midwest-NSP Amended TIA to be effective 8/29/2012.
Filed Date: 12/20/12.
Accession Number: 20121220–5202.
Comments Due: 5 p.m. ET 1/10/13.

Docket Numbers: ER13–604–000.
Applicants: Alpaugh 50, LLC.
Description: Filing of Co-Tenancy Agreement and Request for Waivers to be effective 12/21/2012.
Filed Date: 12/20/12.
Accession Number: 20121220–5219.
Comments Due: 5 p.m. ET 1/10/13.

Docket Numbers: ER13–605–000.
Applicants: Alpaugh North, LLC.
Description: Filing of Co-Tenancy Agreement and Request for Waivers to be effective 12/21/2012.
Filed Date: 12/20/12.
Accession Number: 20121220–5224.
Comments Due: 5 p.m. ET 1/10/13.

Docket Numbers: ER13–606–000.
Applicants: Entergy Mississippi, Inc.
Description: First Rev. SA #591 to be effective 3/1/2013.
Filed Date: 12/20/12.
Accession Number: 20121220–5231.
Comments Due: 5 p.m. ET 1/10/13.

Docket Numbers: ER13–607–000.
Applicants: Potomac Electric Power Company, Delmarva Power & Light Company, PJM Interconnection, L.L.C.
Description: Pepco & DPL submit revisions to rates for recovery of abandonment costs to be effective 3/1/2013.
Filed Date: 12/21/12.
Accession Number: 20121221–5000.
Comments Due: 5 p.m. ET 1/11/13.

Docket Numbers: ER13–608–000.
Applicants: CPV Batesville, LLC.
Description: Notice of Cancellation of Market-Based Rate Tariff to be effective 12/22/2012.
Filed Date: 12/21/12.
Accession Number: 20121221–5040.
Comments Due: 5 p.m. ET 1/11/13.

Docket Numbers: ER13–609–000.
Applicants: LSP Energy Limited Partnership.
Description: Notice of Cancellation of Market-Based Rate Tariff to be effective 12/22/2012.
Filed Date: 12/21/12.
Accession Number: 20121221–5041.
Comments Due: 5 p.m. ET 1/11/13.

Docket Numbers: ER13–610–000.
Applicants: Northern Indiana Public Service Company.
Description: Filing of Amendment to WVPA CIAC Agreement to be effective 12/22/2012.
Filed Date: 12/21/12.
Accession Number: 20121221–5046.
Comments Due: 5 p.m. ET 1/11/13.

Docket Numbers: ER13–611–000.
Applicants: NorthWestern Corporation.
Description: NorthWestern Corporation submits tariff filing per 35.13(a)(2)(iii: SA 663 664 665—Unexecuted Transmission Service Agreements with PPL Montana to be effective 1/1/2014.
Filed Date: 12/21/12.
Accession Number: 20121221–5064.
Comments Due: 5 p.m. ET 1/11/13.

Docket Numbers: ER13–612–000.
Applicants: New England Power Pool Participants Committee, ISO New England Inc.
Description: New England Power Pool Participants Committee submits tariff filing per 35.13(a)(2)(iii: Revisions to FCM Rules Related to Static De-List Bids to be effective 2/19/2013.
Filed Date: 12/21/12.
Accession Number: 20121221–5068.
Comments Due: 5 p.m. ET 1/11/13.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH13–5–000.
Applicants: AltaGas Ltd.
Description: AltaGas Ltd. submits FERC–65A Exemption Notification.
Filed Date: 12/21/12.
Accession Number: 20121221–5030.
Comments Due: 5 p.m. ET 1/11/13.

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 21, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–31482 Filed 12–31–12; 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: RP13–411–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 12/21/12 Negotiated Rates—Emera Energy Services Incorporated to be effective 12/21/2012.
Filed Date: 12/21/12.
Accession Number: 20121221–5090.
Comments Due: 5 p.m. ET 1/2/13.

Docket Numbers: RP13–412–000.
Applicants: Northern Natural Gas Company.
Description: 20121228 Essar Negotiated Rate to be effective 12/31/2012.
Filed Date: 12/21/12.
Accession Number: 20121221–5185.
Comments Due: 5 p.m. ET 1/2/13.

Docket Numbers: RP13–413–000.
Applicants: TWP Pipeline LLC.
Description: TWP Pipeline Cost and Revenue Study, CP09–3–000 to be effective N/A.
Filed Date: 12/21/12.
Accession Number: 20121221–5300.
Comments Due: 5 p.m. ET 1/2/13.

Docket Numbers: RP13–414–000.
Applicants: BP Energy Company,Plains Exploration & Production Company,PXP Offshore LLC.
Description: Joint Petition of BP Energy Company, Plains Exploration & Production Company, and PXP Offshore LLC for Temporary Waiver of Capacity Release Regulations and Policies, and Request for Shortened Comment Period and Expedited Treatment.
Filed Date: 12/21/12.
Accession Number: 20121221–5321.

Comments Due: 5 p.m. ET 12/28/12.

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: RP09–427–006.

Applicants: Southern Natural Gas Company, L.L.C.

Description: Petition of Southern Natural Gas Company, L.L.C. to Amend Stipulation and Agreement and Motion for Shortened Answer Period and Expedited Action.

Filed Date: 12/21/12.

Accession Number: 20121221–5319.

Comments Due: 5 p.m. ET 12/28/2012.

Docket Numbers: RP13–54–001.

Applicants: Northern Border Pipeline Company.

Description: RP13–54–000 NAESB Compliance to be effective 12/1/2012.

Filed Date: 12/13/12.

Accession Number: 20121213–5028.

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 26, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–31481 Filed 12–31–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0524; FRL–9525–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Stationary Combustion Turbines (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before February 1, 2013.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2012–0524, to: (1) EPA online, using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 9, 2012 (77 *FR* 47631), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to both EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2012–0524, which is available for public viewing online at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidentiality of Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NSPS for Stationary Combustion Turbines (Renewal).

ICR Numbers: EPA ICR Number 2177.05, OMB Control Number 2060–0582.

ICR Status: This ICR is scheduled to expire on January 31, 2013. Under OMB regulations, the Agency may continue to either conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the Provisions specified at 40 CFR part 60, subpart KKKK.

Owners or operators of the affected facilities must make an initial notification report, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are also required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 38 hours per

response. ''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 which have subsequently changed; 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.

Respondents/Affected Entities: Owners and operators of stationary combustion turbines.

Estimated Number of Respondents: 448.

Frequency of Response: Semiannually.

Estimated Total Annual Hour Burden: 44,394.

Estimated Total Annual Cost: $4,298,616, which includes $4,298,616 in labor costs, no capital/startup costs, and no operation and maintenance (O&M) costs.

Changes in the Estimates: There is an increase in burden hours and costs for the respondents and the Agency from the most recently approved ICR. It should be noted that the increase is not due to any program changes. The increase is due to an adjustment in labor rates and in the number of new or modified sources. This ICR uses updated labor rates from the Bureau of Labor Statistics to calculate burden costs. Additionally, this ICR assumes the respondent universe subject to the regulation has continued to grow at a constant rate after the rule has been fully implemented.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–31530 Filed 12–31–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0506; FRL–9525–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Small Municipal Waste Combustors (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before February 1, 2013.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2012–0506, to: (1) EPA online, using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 9, 2012 (77 *FR* 47631), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to both EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2012–0506, which is available for either public viewing online at either *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidentiality of Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NSPS for Small Municipal Waste Combustors (Renewal) .

ICR Numbers: EPA ICR Number 1900.05, OMB Control Number 2060–0423.

ICR Status: This ICR is scheduled to expire on January 31, 2013. Under OMB regulations, the Agency may continue to either conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the Provisions specified at 40 CFR part 60, subpart AAAA.

Owners or operators of the affected facilities must make an initial notification report, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are also required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is

estimated to average 1,235 hours per response. ''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 which have subsequently changed; 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.

Respondents/Affected Entities: Owners and operators of small municipal waste combustors.

Estimated Number of Respondents: 3.

Frequency of Response: Initially, occasionally, semiannually and annually.

Estimated Total Annual Hour Burden: 12,351.

Estimated Total Annual Cost: $1,364,227, which includes $1,195,891 in labor costs, $66,000 in capital/startup costs, and $102,336 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is an increase in burden hours for the respondents from the most recently approved ICR due to an increase of one new source subject to the regulation (i.e. respondent universe). The growth in respondent universe also results in an increase in the respondent labor costs and O&M costs.

Additionally, there is an increase in burden costs for the Agency from the most recently approved ICR due to an adjustment in labor rates. This ICR uses updated labor rates from the Bureau of Labor Statistics to calculate all burden costs.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–31522 Filed 12–31–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0548; FRL–9372–3]

Notice of Receipt of Requests for Amendments To Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of request for amendments by registrants to delete uses in certain pesticide registrations. FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register**.

DATES: The deletions in Table 1 are effective February 1, 2013, because the registrants in Table 1 requested a waiver of the 180-day comment period. Unless the Agency receives a written withdrawal request on or before February 1, 2013. The Agency will consider a withdrawal request postmarked no later than February 1, 2013. The deletion in Table 2 is effective July 1, 2013, unless the Agency receives a written withdrawal request on or before July 1, 2013.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant in Table 1 on or before February 1, 2013, for the registrants that requested a waiver of the 180-day comment period or in Table 2 July 1, 2013.

ADDRESSES: Submit your withdrawal request, identified by docket identification (ID) number EPA–HQ–OPP–2012–0548, by one of the following methods:

- *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 visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Christopher Green, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0367; email address: *green.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0548, is available either electronically through *http://www.regulations.gov* or in hard copy at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, 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.*

II. What action is the agency taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in certain pesticide registrations. These registrations are listed in Table 1 and Table 2 of this unit by registration number, product name, active ingredient, and specific uses deleted:

TABLE 1—REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Registration No.	Product name	Active ingredient	Delete from label
2724–820	Propoxur Technical Insecticide	Propoxur	Outdoor Loose Granular Formulations.
3876–145	Slimicide C–74	Dodecylguanidine hydrochloride and N-Alkyl dimethylbenzyl ammonium chloride.	Once Through Cooling Tower Use.

TABLE 1—REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product name	Active ingredient	Delete from label
11603–30	Prometon Technical	Prometon	All Residential Uses.
59106–5	DBNPA Technical	2,2-dibromo-3-nitrilopropionamide	Once-Through Applications for Colling Water, Metal working Fluids, Paints and Coatings and Household/Institutional Cleaners/Detergents, etc.
59639–143	V–10162 VPP Fungicide	Propamocarb Hydrochloride and Fluopicolide	Ornamental Use Pattern.
66330–64	Fluoxastrobin 480 SC Fungicide	Fluoxastrobin	Approved Seed Treatment Use.
66330–65	Fluoxastrobin Technical	Fluoxastrobin	Approved Seed Treatment Use.
70506–198	TPTH Technical	Fentin hydroxide	Use on Peanuts and Carrots.
70506–288	Phoenix Cardinal	Ethephon	Apples, Blackberries, Blueberries, Cantaloupes, Cherries, Cotton, Grapes, Peppers, Pineapple, Sugarcane, Tobacco, Tomatoes, Walnuts, Lodging in Barley and Wheat.
70905–4	Buzz Ultra DF	Tebuconazole	Fruiting Vegetables and Mangos.
82326–1	D-Limonene Technical	Limonene	Outdoor Uses.

Users of these products in Table 1, who desire continued use on crops or sites being deleted should contact the applicable registrant before February 1, 2013, because the registrants waived the 180-day comment period, to discuss withdrawal of the application for amendment. This 30-day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

TABLE 2—REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Registration No.	Product name	Active ingredient	Delete from label
85904–1	Amitraz Insecticide	Amitraz	Use on Cattle and Swine.

Users of this product in Table 2, who desire continued use on crops or sites being deleted should contact the applicable registrant before July 1, 2013 to discuss withdrawal of the application for amendment. This 180-day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

Table 3 of this unit includes the names and addresses of record for all registrants of the products listed in Table 1 and Table 2 of this unit, in sequence by EPA company number.

TABLE 3—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Company No.	Company name and address
2724	Wellmark International, 1501 E. Woodfield Rd., Suite 200, West Schaumburg, IL 60173.
3876	GE Betz, Inc., 4636 Somerton Rd., Trevose, PA 19053.
11603	Agan Chem Mfg., Ltd., 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
59106	Clearwater International LLC, dba Weatherford Engineered Chemistry, 200 St. James Place, Houston, TX 77056.
59639	Valent U.S.A. Corporation, 1600 Riviera Ave., Suite 200, Walnut Creek, CA 94596.
66330	Arysta LifeScience North America, LLC, 15401 Weston Parkway, Suite 150, Cary, NC 27513.
70506	United Phosphorus, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.
70905	Sulphur Mills, Ltd., c/o Ag Chem Consulting, Clifton, VA 20124.
82326	Florida Chemical Company, Inc., 351 Winter Haven Blvd. NE., Winter Haven, FL 33881–9432.
85904	Arysta LifeScience America, Inc., 1450 Broadway, 7th Floor, New York, NY 10018.

III. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the EPA Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit the withdrawal in writing to Christopher Green using the methods in **ADDRESSES**. The Agency will consider written withdrawal requests postmarked no later than July 1, 2013, or February 1, 2013, for the registrants that requested to waive the 180-day comment period.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 12, 2012.

Oscar Morales,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2012–31545 Filed 12–31–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 12–2071]

Emergency Access Advisory Committee; Announcement of Date of Next Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the date of the Emergency Access Advisory Committee's (Committee or EAAC) next meeting. At the January 2013 meeting, the agenda will include discussion of final reports from the subcommittees and other activities needed to ensure access to 911 by individuals with disabilities.

DATES: The Committee's next meeting will take place on Friday, January 11, 2013, 10:30 a.m. to 3:30 p.m. (EST), at the headquarters of the Federal Communications Commission (FCC or Commission).

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, in the Commission Meeting Room.

FOR FURTHER INFORMATION CONTACT: Suzy Rosen Singleton, Consumer and Governmental Affairs Bureau, 202–810–1503, or *Suzanne.Singleton@fcc.gov* (email); and/or Zenji Nakazawa, Public Safety and Homeland Security Bureau, 202–418–7949, *Zenji.Nakazawa@fcc.gov* (email).

SUPPLEMENTARY INFORMATION: On December 7, 2010, in document DA 10–2318, Chairman Julius Genachowski announced the establishment and appointment of members and Co-Chairpersons of the EAAC, an advisory committee required by the Twenty-First Century Communications and Video Accessibility Act (CVAA), Public Law 11–260, for the purpose of achieving equal access to emergency services by individuals with disabilities as part of our nation's migration to a national Internet protocol-enabled emergency network, also known as the next generation 9–1–1 system (NG9–1–1). The purpose of the EAAC is to determine the most effective and efficient technologies and methods by which to enable access to Next Generation 911 (NG 9–1–1) emergency services by individuals with disabilities, and to make recommendations to the Commission on how to achieve those effective and efficient technologies and methods. During the spring of 2011, the EAAC conducted a nationwide survey of individuals with disabilities and released a report on that survey on June 21, 2011. Following release of the survey report, the EAAC developed recommendations, which it submitted to the Commission on December 7, 2011, as required by the CVAA. At the January 2013 EAAC meeting, the agenda will include discussion of final reports from the subcommittees and other activities needed to ensure access to 911 by individuals with disabilities.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Federal Communications Commission.

Karen Peltz Strauss,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2012–31496 Filed 12–31–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: *Tuesday, January 8, 2013 at 10:00 a.m.*

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2012–31624 Filed 12–28–12; 4:15 pm]

BILLING CODE 6715–01–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 17, 2013.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Barbara K. Ferry, Nevada, Missouri, individually and as trustee of the L. Ingles Ferry Trust A, Barbara Fowler Ferry Trust, Hubert L. Fowler Trust, and the Marguerite Fowler Trust, and as a member of a family control group which includes, David L. Ferry, Joseph D. Ferry, Patrick Ferry, Lindley G. Ferry, Barbara J. Benbrook, Scott D. Benbrook, Jeffrey L. Benbrook and Emily L. Benbrook,* all of Nevada, Missouri, to acquire control of Mid-Missouri Bancshares, Inc., and thereby acquire control of Mid-Missouri Bank, both of Springfield, Missouri.

Board of Governors of the Federal Reserve System, December 27, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–31473 Filed 12–31–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Determination Concerning a Petition To Add a Class of Employees to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a determination concerning a petition to add a class of employees from the United Nuclear Corporation in Hematite, Missouri, to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384q. On December 7, 2012, the Secretary of HHS determined that the following class of employees does not meet the statutory criteria for addition to the SEC as authorized under EEOICPA:

All site employees who worked in any area of the United Nuclear Corporation—Hematite, Missouri, site from January 1, 1958, through December 31, 1973, and the residual period January 1, 1974, through July 31, 2006.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 1–877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2012–31215 Filed 12–31–12; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Availability: Test Tools and Test Procedures Approved by the National Coordinator for the ONC HIT Certification Program

AGENCY: Office of the National Coordinator for Health Information Technology (ONC), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the availability of test tools and test procedures approved by the National Coordinator for Health Information Technology (the National Coordinator) for the testing of EHR technology to the 2014 Edition EHR certification criteria under the ONC HIT Certification Program. The approved test tools and test procedures are identified on the ONC Web site at: *http://www.healthit.gov/policy-researchers-implementers/2014-edition-final-test-method*.

FOR FURTHER INFORMATION CONTACT: Carol Bean, Director, Office of Certification, Office of the National Coordinator for Health Information Technology, 202–690–7151.

SUPPLEMENTARY INFORMATION: On January 7, 2011, the Department of Health and Human Services issued a final rule establishing a permanent certification program for the purposes of testing and certifying health information technology (''Establishment of the Permanent Certification Program for Health Information Technology,'' 76 FR 1262) (Permanent Certification Program final rule). The permanent certification program was renamed the ''ONC HIT Certification Program'' in a final rule published on September 4, 2012 (77 FR 54163) (''2014 Edition EHR Certification Criteria final rule''). In the preamble of the Permanent Certification Program final rule, we stated that when the National Coordinator had approved test tools and test procedures for certification criteria adopted by the Secretary ONC would publish a notice of availability in the **Federal Register** and identify the approved test tools and test procedures on the ONC Web site. In the 2014 Edition EHR Certification Criteria final rule the Secretary adopted the 2014 Edition EHR certification criteria. The National Coordinator has approved test tools and test procedures for testing EHR technology to the 2014 Edition EHR certification criteria under the ONC HIT Certification Program. These approved test tools and test procedures are identified on the ONC Web site at: *http://www.healthit.gov/policy-researchers-implementers/2014-edition-final-test-method*.

Authority: 42 U.S.C. 300jj–11.

Dated: December 19, 2012.

Farzad Mostashari M.D.,

National Coordinator for Health Information Technology.

[FR Doc. 2012–31484 Filed 12–31–12; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1456–NC]

Medicare and Medicaid Programs; Announcement of Application From a Hospital Requesting Waiver for Organ Procurement Service Area

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

ACTION: Notice with comment period.

SUMMARY: A hospital has requested a waiver of statutory requirements that would otherwise require the hospital to enter into an agreement with its designated Organ Procurement Organization (OPO). The request was made in accordance with section 1138(a)(2) of the Social Security Act (the Act). This notice requests comments from OPOs and the general public for our consideration in determining whether we should grant the requested waiver.

DATES: *Comment Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on March 4, 2013.

ADDRESSES: In commenting, please refer to file code CMS–1456–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

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

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov*. Follow the instructions under the ''More Search Options'' tab.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1456–NC, P.O. Box 8010, Baltimore, MD 21244–1850.

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

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Department of Health and Human Services, Attention: CMS–1456–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

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

a. For delivery in Washington, DC—

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

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

b. For delivery in Baltimore, MD—

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

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

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

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

FOR FURTHER INFORMATION CONTACT: Patricia Taft, (410) 786–4561.

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

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

I. Background

Organ Procurement Organizations (OPOs) are not-for-profit organizations that are responsible for the procurement, preservation, and transport of organs to transplant centers throughout the country. Qualified OPOs are designated by the Centers for Medicare & Medicaid Services (CMS) to recover or procure organs in CMS-defined exclusive geographic service areas, pursuant to section 371(b)(1) of the Public Health Service Act (42 U.S.C. 273(b)(1)) and our regulations at 42 CFR 486.306. Once an OPO has been designated for an area, hospitals in that area that participate in Medicare and/or Medicaid are required to work with that OPO in providing organs for transplant, pursuant to section 1138(a)(1)(C) of the Social Security Act (the Act) and our regulations at 42 CFR 482.45.

Section 1138(a)(1)(A)(iii) of the Act provides that a hospital must notify the designated OPO (for the service area in which it is located) of potential organ donors. Under section 1138(a)(1)(C) of the Act, every participating hospital must have an agreement only with its designated OPO to identify potential donors.

However, section 1138(a)(2)(A) of the Act provides that a hospital may obtain a waiver of the above requirements from the Secretary under certain specified conditions. A waiver allows the hospital to have an agreement with an OPO other than the one initially designated by CMS, if the hospital meets certain conditions specified in section 1138(a)(2)(A) of the Act. In addition, the Secretary may review additional criteria described in section 1138(a)(2)(B) of the Act to evaluate the hospital's request for a waiver.

Section 1138(a)(2)(A) of the Act states that in granting a waiver, the Secretary must determine that the waiver—(1) is expected to increase organ donations; and (2) will assure equitable treatment of patients referred for transplants within the service area served by the designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement under the waiver. In making a waiver determination, section 1138(a)(2)(B) of the Act provides that the Secretary may consider, among other factors: (1) Cost-effectiveness; (2) improvements in quality; (3) whether there has been any change in a hospital's designated OPO due to the changes made in definitions for metropolitan statistical areas; and (4) the length and continuity of a hospital's relationship with an OPO other than the hospital's designated OPO. Under section 1138(a)(2)(D) of the Act, the Secretary is required to publish a notice of any waiver application received from a hospital within 30 days of receiving the application, and to offer interested parties an opportunity to submit comments during the 60-day comment period beginning on the publication date in the **Federal Register**.

The criteria that the Secretary uses to evaluate the waiver in these cases are the same as those described above under sections 1138(a)(2)(A) and (B) of the Act and have been incorporated into the regulations at § 486.308(e) and (f).

II. Waiver Request Procedures

In October 1995, we issued a Program Memorandum (Transmittal No. A–95–11) detailing the waiver process and discussing the information hospitals must provide in requesting a waiver. We indicated that upon receipt of a waiver request, we would publish a **Federal Register** notice to solicit public comments, as required by section 1138(a)(2)(D) of the Act.

According to these requirements, we will review the comments received. During the review process, we may consult on an as-needed basis with the Health Resources and Services Administration's Division of Transplantation, the United Network for Organ Sharing, and our regional offices. If necessary, we may request additional clarifying information from the applying hospital or others. We will then make a final determination on the waiver request and notify the hospital and the designated and requested OPOs.

III. Hospital Waiver Request

As permitted by § 486.308(e), the following hospital has requested a waiver to enter into an agreement with a designated OPO other than the OPO designated for the service area in which the hospital is located: Bolivar Medical Center in Cleveland, Mississippi, is requesting a waiver to work with: Mississippi Organ Recovery Agency, 4400 Lakeland Drive, Flowood, MS 39232.

The Hospital's Designated OPO is: Mid-South Transplant Foundation, Inc., 8001 Centerview Parkway, Suite 302, Memphis, TN 38018.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance, and Program No. 93.778, Medical Assistance Program)

Dated: December 19, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2012–31535 Filed 12–31–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0523]

Guidance for Industry and Food and Drug Administration Staff; Refuse To Accept Policy for 510(k)s; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Refuse to Accept Policy for 510(k)s.'' The purpose of this document is to explain the procedures and criteria FDA intends to use in determining whether a 510(k) submission is administratively complete, which determines whether it should be accepted for substantive review and clearance. This guidance is applicable to 510(k)s reviewed in the Center for Devices and Radiological Health (CDRH) and the Center for Biologics Evaluation and Research (CBER).

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Refuse to Accept Policy for 510(k)s'' to the Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993–0002; or Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the guidance 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:

Geeta Pamidimukkala, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1564, Silver Spring, MD 20993–0002, 301–796–6453; or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPLEMENTARY INFORMATION:

I. Background

The purpose of the 510(k) acceptance review is to make a threshold determination whether a submission is administratively complete, which determines whether it should be accepted for substantive review to reach a determination regarding substantial equivalence under section 513(i) of the FD&C Act, 21 U.S.C. 360c(i). To find a device substantially equivalent under section 513(i) of the FD&C Act, FDA must find that it has the same intended use as the predicate device, and either: (1) Has the same technological characteristics as the predicate device, or (2) has different technological characteristics, as defined at section 513(i)(1)(B), and (3) the submission contains information, including appropriate clinical or scientific data if necessary, that demonstrates the device is as safe and effective as the predicate and does not raise different questions of safety and effectiveness from the predicate.

The purpose of this document is to explain the procedures and criteria FDA intends to use in determining whether a 510(k) submission is administratively complete and should be accepted for substantive review. This guidance document provides updated information to two existing guidance documents entitled ''Center for Devices and Radiological Health's Premarket Notification (510(k)) Refuse to Accept Policy'' issued on June 30, 1993 and ''510(k) Refuse to Accept Procedures, 510(k) Memorandum K94–1'' issued on May 20, 1994. Upon issuance as a final guidance document, this guidance will replace those documents.

To further focus the Agency's review resources on complete applications, which will provide a more efficient approach to ensuring that safe and effective medical devices reach patients as quickly as possible, we have modified the 1993 and 1994 guidances. For example, we have modified the 510(k) Refuse to Accept (RTA) policy to include an early review against specific acceptance criteria and to inform the submitter within the first 15 calendar days of receipt of the submission if the submission is administratively complete, or if not, to identify the missing element(s). In order to enhance the consistency of our acceptance decisions and to help submitters better understand the types of information FDA needs to conduct a substantive review, this guidance, including the checklists included in the appendices, clarifies the necessary elements and contents of a complete 510(k) submission. These elements are applicable to all devices reviewed through the 510(k) notification process in CDRH and CBER and have been compiled into checklists for use by FDA review staff.

In the **Federal Register** of August 13, 2012 (77 FR 48159), FDA announced the availability of the draft guidance document. Interested persons were invited to comment by September 27, 2012. Eleven sets of comments were received with multiple recommendations pertaining to the administrative processes and policies regarding 510(k) acceptance decisions.

A number of commenters expressed concern that the checklist questions related to performance data implied that FDA staff would need to conduct a level of substantive review in order to complete the checklist. FDA has revised the language in these questions and added further instructions to FDA staff to more specifically state that only the presence of the information is required for acceptance, and that the adequacy of the information should only be assessed after acceptance and as part of the substantive review.

Similar comments were received regarding questions in the checklists that identified an ''analysis'' or ''discussion'' as a criterion for acceptance. Commenters were concerned that FDA staff would be assessing the adequacy of the ''analysis'' or ''discussion'' in order to complete the checklist. These questions have also been modified to explain more clearly that the acceptance criterion requires only that the ''analysis'' or ''discussion'' be present; the adequacy of this information should be assessed during the substantive review.

FDA received comments regarding relevant prior submissions and how prior FDA feedback relevant to determining substantial equivalence has been addressed in the submission under

review. It was suggested that FDA identify a particular location within the submission for this information, noting that such information could be found in multiple locations. The guidance has been revised to suggest more specific locations within the submission where this information can be provided for the ease of compiling a 510(k) and to facilitate FDA staff's acceptance review.

Other comments provided editorial suggestions for clarity and for consistency with other FDA guidance documents. In response to these comments, FDA revised the guidance document to clarify the processes and policies as appropriate. This guidance supersedes the guidances ''Center for Devices and Radiological Health's Premarket Notification (510(k)) Refuse to Accept Policy'' issued on June 30, 1993 and ''510(k) Refuse to Accept Procedures, 510(k) Memorandum K94–1'' issued on May 20, 1994.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on the refuse to accept policy for 510(k)s. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available at *http://www.regulations.gov*. To receive ''Refuse to Accept Policy for 510(k)s,'' you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1793 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

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

V. Comments

Interested persons may submit either written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to *http://www.regulations.gov*. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

Dated: December 26, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–31477 Filed 12–31–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0524]

Guidance for Industry and Food and Drug Administration Staff; Acceptance and Filing Reviews for Premarket Approval Applications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Acceptance and Filing Reviews for Premarket Approval Applications (PMAs).'' The purpose of the acceptance and filing reviews is to make a threshold determination about whether an application is administratively complete. This guidance document is intended to clarify the criteria for accepting and filing a PMA, thereby assuring the consistency of our acceptance and filing decisions. This guidance is applicable to original PMAs and PMA panel-track supplements reviewed in the Center for Devices and Radiological Health (CDRH) and the Center for Biologics Evaluation and Research (CBER).

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Acceptance and Filing Reviews for Premarket Approval Applications (PMAs)'' to the Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002; or Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the guidance 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:

Nicole Wolanski, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1650, Silver Spring, MD 20993–0002, 301–796–6570; or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

I. Background

The PMA regulation (21 CFR 814.42(e)) identifies the criteria that, if not met, may serve as a basis for refusing to file a PMA. These criteria are discussed in the guidance document ''Guidance for Industry and FDA Staff Premarket Approval Application Filing Review,'' dated May 1, 2003. This document has been used by FDA staff and the device industry to help elucidate the broad preclinical and clinical issues that need to be addressed in a PMA and the key decisions to be made during the filing process. The guidance entitled ''Acceptance and Filing Reviews for Premarket Approval Applications (PMAs)'' supersedes the guidance entitled ''Guidance for Industry and FDA Staff Premarket Approval Application Filing Review.''

To further focus the Agency's review resources on complete applications, which will provide a more efficient approach to ensuring that devices that have a reasonable assurance of safety

and effectiveness reach patients as quickly as possible, we have modified the PMA filing guidance. In this guidance entitled, ''Acceptance and Filing Reviews for Premarket Approval Applications (PMAs),'' we have separated the requirements for PMA filing into: (1) Acceptance criteria and (2) filing criteria. Acceptance review involves an early assessment of the completeness of the application, and informing the applicant in a written response within the first 15 calendar days of receipt of the application whether any administrative elements are missing, and if so, identifying the missing administrative element(s).

In order to enhance the consistency of our acceptance and filing decisions and to help applicants understand the types of information FDA needs to conduct a substantive review of a PMA, this guidance and associated checklist clarify the necessary elements and contents of a complete PMA application. The process we outline is applicable to all devices reviewed in a PMA application. Acceptance and filing decisions will be made for all original PMA applications and panel-track PMA supplements.

This guidance is not significantly different from the 2003 PMA guidance document. The ''preliminary questions'' remain the same and the ''filing review questions'' have been separated into ''acceptance decision questions'' (i.e., is the file administratively complete) and ''filing decision questions'' (i.e., are data consistent with protocol, final device design, and proposed indications). In addition, it should be noted that this document is focused on the regulatory and scientific criteria for making an ''Accept'' or ''Refuse to Accept'' decision as well as ''File'' or ''Not File'' decision for a PMA. It specifically does not alter the following administrative aspects of the PMA filing process: (1) The time frame for the filing review phase (i.e., 45 days); (2) the processes for document tracking, distribution, and handling; and (3) the procedures for assembling the review team and setting up the filing meeting.

In the **Federal Register** of July 31, 2012 (77 FR 45357), FDA announced the availability of the draft guidance document. Interested persons were invited to comment by September 14, 2012. Nine comments were received with multiple recommendations pertaining to the administrative processes and policies regarding acceptance and filing review decisions. In response to these comments, FDA revised the guidance document to clarify the processes and policies as appropriate. This guidance supersedes the guidance entitled ''Guidance for Industry and FDA Staff Premarket Approval Application Filing Review,'' dated May 1, 2003.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on acceptance and filing reviews for PMAs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available at *http://www.regulations.gov* or from the CBER internet site at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm*. To receive ''Acceptance and Filing Reviews for Premarket Approval Applications (PMAs),'' you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1792 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

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

V. Comments

Interested persons may submit either written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to *http://www.regulations.gov*. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

Dated: December 26, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–31476 Filed 12–31–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–1056]

Guidance for Industry and Food and Drug Administration Staff; eCopy Program for Medical Device Submissions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''eCopy Program for Medical Device Submissions.'' The purpose of the guidance is to explain the new electronic copy (eCopy) Program for medical device submissions, which is intended to improve the efficiency of the review process by allowing for the immediate availability of an electronic version for review rather than relying solely on the paper version. The guidance describes how FDA has implemented the eCopy Program under the Federal Food, Drug, and Cosmetic Act (the FD&C Act). This guidance also provides the standards for a valid eCopy under the FD&C Act and identifies the submission types that must include an eCopy in accordance with these standards for the submission to be processed and accepted for review by FDA. This final guidance will be considered in effect on January 1, 2013, or at the time of publication, whichever is later.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''eCopy Program for Medical Device Submissions'' to the Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002. Send

one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the guidance 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:

Samie Allen, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1533, Silver Spring, MD 20993–0002, 301–796–6055; or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance for industry and FDA staff entitled ''eCopy Program for Medical Device Submissions.'' This guidance explains the new eCopy Program for medical device submissions. This final guidance will be considered in effect on January 1, 2013, or at the time of publication, whichever is later. After this date, submission of an eCopy for a medical device submission is no longer voluntary. Section 745A(b) of the FD&C Act, added by section 1136 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), requires the submission of an eCopy of certain device submissions after issuance of final guidance. This guidance describes how FDA has implemented the eCopy Program under section 745A(b) of the FD&C Act. The inclusion of an eCopy is expected to improve the efficiency of the review process by allowing for the immediate availability of an electronic version for review rather than relying solely on the paper version.

The eCopy Program is not intended to impact (reduce or increase) the type or amount of data the applicant includes in a submission to support clearance or approval. An eCopy is defined as an exact duplicate of the paper submission, created and submitted on a compact disc, digital video disc, or flash drive, accompanied by a copy of the signed cover letter and the complete paper submission.

In the **Federal Register** of October 17, 2012 (77 FR 63837), FDA announced the availability of the draft guidance document. Interested persons were invited to comment by November 16, 2012. Eight comments were received and in general were supportive of the eCopy Program. However, the comments contained multiple recommendations pertaining to the organization of the guidance and requests for clarification on details such as how many copies are needed for each submission type, for what types of submissions an eCopy is required, the necessity for a signed cover letter, how eCopy processing is conducted, when a submission begins the review process, and how to interpret some of the standards in the Attachment. In response to these comments, FDA revised the guidance document to clarify the primary points of confusion identified, and restructured the information for better readability.

II. Significance of Guidance

In section 745A(b), Congress granted explicit statutory authorization to FDA to implement the statutory eCopy requirement by providing standards, criteria for waivers, and exemptions in guidance. To the extent that this document provides requirements under section 745A(b)(2)(A) of the FD&C Act (i.e., standards, criteria for waivers, and exemptions), indicated by the use of the words *must* or *required,* this document is not subject to the usual restrictions in FDA's good guidance practice regulations, such as the requirement that guidances not establish legally enforceable responsibilities. (See 21 CFR 10.115(d).)

However, this document also contains guidance on implementing the eCopy Program. To the extent that this guidance describes recommendations that are not standards, criteria for waivers, or exemptions under section 745A(b)(2), it is being issued in accordance with FDA's good guidance practices regulation (21 CFR 10.115). Such parts of this guidance represent the Agency's current thinking on this topic, and do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used for these recommendations if such an approach satisfies the requirements of the applicable statutes and regulations. The use of the word *should* in this guidance means that something is suggested or recommended, but not required. This final guidance contains both binding and nonbinding provisions.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available at *http://www.regulations.gov*. To receive ''eCopy Program for Medical Device Submissions,'' you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1797 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120 (510(k)); the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078 (Investigational Device Exemptions); the collections of information in 21 CFR part 814 have been approved under OMB control number 0910–0231 (Premarket Approval); the collections of information in section 513(g) of the FD&C Act (21 U.S.C. 360c(g)) have been approved under OMB control number 0910–0705 (513(g)); the collections of information in 21 CFR part 814, subpart H, have been approved under OMB control numbers 0910–0332 and 0910–0661 (Humanitarian Use Devices); and the collections of information in section 564 of the FD&C Act (21 U.S.C. 360bbb–3) have been approved under OMB control number 0910–0595 (Emergency Use Authorization).

V. Comments

Interested persons may submit either written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to *http://www.regulations.gov*. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and

will be posted to the docket at *http://www.regulations.gov*.

Dated: December 26, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–31478 Filed 12–31–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Advisory Committees; Tentative Schedule of Meetings for 2013

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a tentative schedule of forthcoming meetings of its public advisory committees for 2013. During 1991, at the request of the Commissioner of Food and Drugs (the Commissioner), the Institute of Medicine (the IOM) conducted a study of the use of FDA's advisory committees. In its final report, one of the IOM's recommendations was for the Agency to publish an annual tentative schedule of its meetings in the **Federal Register**. This publication implements the IOM's recommendation.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hays, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5290, Silver Spring, MD 20993, 301–796–8220.

SUPPLEMENTARY INFORMATION: The IOM, at the request of the Commissioner, undertook a study of the use of FDA's advisory committees. In its final report in 1992, one of the IOM's recommendations was for FDA to adopt a policy of publishing an advance yearly schedule of its upcoming public advisory committee meetings in the **Federal Register**; FDA has implemented this recommendation. The annual publication of tentatively scheduled advisory committee meetings will provide both advisory committee members and the public with the opportunity, in advance, to schedule attendance at FDA's upcoming advisory committee meetings. Because the schedule is tentative, amendments to this notice will not be published in the **Federal Register**. However, changes to the schedule will be posted on the FDA advisory committees' Internet site located at *http://www.fda.gov/AdvisoryCommittees/default.htm*. FDA will continue to publish a **Federal Register** notice 15 days in advance of each upcoming advisory committee meeting, to announce the meeting (21 CFR 14.20).

The following list announces FDA's tentatively scheduled advisory committee meetings for 2013. You may also obtain up-to-date information by calling the Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area) or on the FDA Internet Web site under our 2013 tentative scheduled meeting listing at *http://www.fda.gov/AdvisoryCommittees/Calendar/ucm153468.htm*.

TABLE 1

Committee name	Tentative date(s) of meeting(s)
OFFICE OF THE COMMISSIONER	
Pediatric Advisory Committee	March 14–15, September 19–20.
Risk Communication Advisory Committee	February 11–12, April 29–30, August 15–16, December 16–17.
Science Board to FDA	February 27, June 24, November 20.
CENTER FOR BIOLOGICS EVALUATION AND RESEARCH	
Allergenic Products Advisory Committee	November 5–6.
Blood Products Advisory Committee	February 12–13, April 8–9, August 1–2.
Cellular, Tissue and Gene Therapies Advisory Committee	January 15, April 17–18, June 27–28, October 24–25.
Transmissible Spongiform Encephalopathies Advisory Committee	March 14–15.
Vaccines and Related Biological Products Advisory Committee	February 27, May 8–9 or July 17–18 (Backup date), September 18–19, November 13–14.
CENTER FOR DRUG EVALUATION AND RESEARCH	
Anesthetic and Analgesic Drug Products Advisory Committee	Date(s), if needed, to be determined.
Anti-Infective Drugs Advisory Committee	Date(s), if needed, to be determined.
Antiviral Drugs Advisory Committee	May and October dates to be determined.
Arthritis Advisory Committee	July or August and fall dates to be determined.
Cardiovascular and Renal Drugs Advisory Committee	April 17 and other date(s) to be determined.
Dermatologic and Ophthalmic Drugs Advisory Committee	Date(s), if needed, to be determined.
Drug Safety and Risk Management Advisory Committee	January 24–25, March 5.
Endocrinologic and Metabolic Drugs Advisory Committee	January 10, July, and August dates to be determined.
Gastrointestinal Drugs Advisory Committee	March 19 and other date(s) to be determined.
Medical Imaging Drugs Advisory Committee	February 14 and May date to be determined.
Nonprescription Drugs Advisory Committee	Date(s), if needed, to be determined.
Oncologic Drugs Advisory Committee	April 5, May, June, July, September date(s) to be determined.
Pharmacy Compounding Drugs Advisory Committee	Date(s), if needed, to be determined.
Peripheral and Central Nervous System Drugs Advisory Committee	May 22.
Advisory Committee for Pharmaceutical Science and Clinical Pharmacology.	Date(s), if needed, to be determined.
Psychopharmacologic Drugs Advisory Committee	Date(s), if needed, to be determined.
Pulmonary-Allergy Drugs Advisory Committee	January 29–30, March 7.
Advisory Committee for Reproductive Health Drugs	March 4–5, July 9.

TABLE 1—Continued

Committee name	Tentative date(s) of meeting(s)
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH	
Medical Devices Advisory Committee (Comprised of 18 Panels)	
Anesthesiology and Respiratory Therapy Devices Panel	Date(s), if needed, to be determined.
Circulatory System Devices Panel	May 17, May 24, June 27, September 27, November 22.
Clinical Chemistry and Clinical Toxicology Devices Panel	April 25.
Dental Products Panel	Date(s), if needed, to be determined.
Ear, Nose, and Throat Devices Panel	July 12.
Gastroenterology-Urology Devices Panel	April 24, May 16.
General and Plastic Surgery Devices Panel	June 13.
General Hospital and Personal Use Devices Panel	June 28, August 30.
Hematology and Pathology Devices Panel	Date(s), if needed, to be determined.
Immunology Devices Panel	Date(s), if needed, to be determined.
Medical Devices Dispute Resolution Panel	Date(s), if needed, to be determined.
Microbiology Devices Panel	June 14.
Molecular and Clinical Genetics Panel	September 13.
Neurological Devices Panel	February 22.
Obstetrics and Gynecology Devices Panel	September 20.
Ophthalmic Devices Panel	June 14, August 23.
Orthopaedic and Rehabilitation Devices Panel	April 5, September 26.
Radiological Devices Panel	September 12.
Device Good Manufacturing Practice Advisory Committee	April 11.
National Mammography Quality Assurance Advisory Committee	October 25.
Technical Electronic Product Radiation Safety Standards Committee	Date(s), if needed, to be determined.
CENTER FOR FOOD SAFETY AND APPLIED NUTRITION	
Food Advisory Committee	July 15–16, August 29–30, September 23–24.
CENTER FOR TOBACCO PRODUCTS	
Tobacco Products Scientific Advisory Committee	Feb 11–12, April 30–May 1.
CENTER FOR VETERINARY MEDICINE	
Veterinary Medicine Advisory Committee	Date(s), if needed, to be determined.
NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH (NCTR)	
Science Advisory Board to NCTR	December 10–11.

Dated: December 26, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–31475 Filed 12–31–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES\

National Institutes of Health

Proposed Collection; Comment Request (60-Day FRN); A Generic Submission for Formative Research, Pretesting, and Customer Satisfaction of NCI's Communication and Education Resources (NCI)

SUMMARY: Under the provisions 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 Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) The quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To submit comments in writing, request more information on the proposed project, or to obtain a copy of the data collection plans and instruments, contact: Nina Goodman, Public Health Advisor, Office of Communications and Education (OCE), NCI, NIH, 6116 Executive Blvd., Suite 400, Rockville, MD 20892, call non-toll-free number (301) 435–7789 or email your request, including your address to: *goodmann@mail.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: A Generic Submission For Formative Research, Pretesting, and Customer Satisfaction of NCI's Communication and Education Resources, 0925–0046, Expiration Date 2/28/2013—EXTENSION—National Cancer Institute, National Institutes of Health (NIH).

Need and Use of Information Collection: In order to carry out NCI's

legislative mandate to educate and disseminate information about cancer prevention, detection, diagnosis, and treatment to a wide variety of audiences and organizations, it is beneficial for NCI through its Office of Communications and Education (OCE), to pretest NCI communications strategies, concepts, and messages while they are under development. This pretesting, or formative evaluation, helps ensure that the messages, communication materials, and information services created by NCI have the greatest capacity of being received, understood, and accepted by their target audiences. Since NCI's OCE also is responsible for the design, implementation, and evaluation of education programs over the entire cancer continuum, and management of NCI initiatives that address specific challenges in cancer research and treatment, it is also necessary to ensure that customers are satisfied with programs. This customer satisfaction research helps ensure the relevance, utility, and appropriateness of the many educational programs and products that OCE and NCI produce. OCE will use a variety of qualitative (focus groups, interviews) and quantitative (paper, phone, in-person, and web surveys) methodologies to conduct this formative and customer satisfaction research, allowing NCI to: (1) Understand characteristics (attitudes, beliefs, and behaviors) of the intended target audience and use this information in the development of effective communication tools and strategies; (2) use a feedback loop to help refine, revise, and enhance messages, materials, products, and programs—ensuring that they have the greatest relevance, utility, appropriateness, and impact for/to target audiences; and (3) expend limited program resource dollars wisely and effectively. The participants may include, but are not limited to, cancer patients, their families, the general public, health providers, the media, voluntary groups, scientific and medical organizations (affected public could include individuals or households; businesses or other for profit; not-for-profit institutions; and Federal Government; State, Local, or Tribal Government).

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 6,600.

ESTIMATED ANNUALIZED BURDEN HOURS

Category of respondents	Number of respondents	Frequency of response per respondent	Time per response (in hours)	Burden hours
Individuals, Households, Local, State, and Federal Governments, and Private Sector	33,000	1	12	6,600
Totals	33,000			6,600

Dated: December 20, 2012.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, NCI, NIH.

[FR Doc. 2012–31503 Filed 12–31–12; 8:45 am]

BILLING CODE 4101–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke, Interagency Pain Research Coordinating Committee; Call for Committee Membership Nominations

The Department of Health and Human Services (Department) has created the Interagency Pain Research Coordinating Committee and is seeking nominations for this committee. As specified in Public Law 111–148 (''Patient Protection and Affordable Care Act'') the Committee will: (a) Develop a summary of advances in pain care research supported or conducted by the Federal agencies relevant to the diagnosis, prevention, and treatment of pain and diseases and disorders associated with pain; (b) identify critical gaps in basic and clinical research on the symptoms and causes of pain; (c) make recommendations to ensure that the activities of the National Institutes of Health and other Federal agencies are free of unnecessary duplication of effort; (d) make recommendations on how best to disseminate information on pain care; and (e) make recommendations on how to expand partnerships between public entities and private entities to expand collaborative, cross-cutting research.

Membership on the committee will include six (6) non-Federal members from among scientists, physicians, and other health professionals and six (6) non-Federal members of the general public who are representatives of leading research, advocacy, and service organizations for individuals with pain-related conditions. Members will serve overlapping three year terms. It is anticipated that the committee will meet at least once a year.

The Department strives to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that the views of women, all ethnic and racial groups, and people with disabilities are represented on HHS Federal advisory committees and, therefore, the Department encourages nominations of qualified candidates from these groups. The Department also encourages geographic diversity in the composition of the Committee. Appointment to this Committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

The Department is soliciting nominations for two non-federal members from among scientists, physicians, and other health professionals and for two non-federal members of the general public who are representatives of leading research, advocacy, and service organizations for people with pain-related conditions. These candidates will be considered to fill positions opened through completion of member terms. Nominations are due by COB, January 25, 2013, and should be sent to Linda Porter, Ph.D., NINDS/NIH, 31 Center Drive, Room 8A03, Bethesda, MD 20892, *porterl@ninds.nih.gov* by either USPS mail or email. Nominations should include contact information, and a current curriculum vitae or resume.

Dated: November 18, 2012.

Linda L. Porter,

Health Science Policy Advisor for Pain, National Institute of Neurological Disorders and Stroke, National Institutes of Health.

[FR Doc. 2012–31508 Filed 12–31–12; 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 Biophysics and Biochemistry of Membranes.

Date: January 23, 2013.

Time: 1:00 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Nitsa Rosenzweig, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7760, Bethesda, MD 20892, (301) 435–1747, *rosenzweign@csr.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group Macromolecular Structure and Function A Study Section.

Date: January 25, 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: David R. Jollie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7806, Bethesda, MD 20892, (301) 435–1722, *jollieda@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Cardiovascular Sciences.

Date: January 25, 2013.

Time: 12:00 p.m. to 3:00 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: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, MD 20892, 301–435–0904, *sara.ahlgren@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 21, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–31453 Filed 12–31–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee CIDR Access Conflict.

Date: January 16, 2013.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, 3rd Floor Conference Room, 5635 Fishers Lane, Rockville, MD 20851 (Telephone Conference Call).

Contact Person: Ken D. Nakamura, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, 301–402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitationsimposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: December 26, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–31454 Filed 12–31–12; 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 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: Center for Scientific Review Special Emphasis Panel Member Conflict: Dementia, Cognitive Dysfunction, and Stroke.

Date: January 8, 2013.

Time: 5:00 p.m. to 7:00 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: Samuel C Edwards, Ph.D., IRG CHIEF, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.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. 93.306, 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 26, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–31458 Filed 12–31–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; 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 Biomedical Imaging and Bioengineering Special Emphasis Panel, 2013–05 ZEB1 OSR–D(M1)S/Low-Dose CT Imaging (U01).

Date: February 22, 2013.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892 (Teleconference).

Contact Person: John K. Hayes, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Boulevard, Room 959, Bethesda, MD 20892, 301–451–3398, *hayesj@mail.nih.gov*.

Dated: December 26, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–31456 Filed 12–31–12; 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 NIAID Science Education Awards (R25).

Date: January 22, 2013.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Yong Gao, Ph.D., Scientific Review Officer, Scientific Review Program, DHHS/NIH/NIAID/DEA, 6700B Rockledge Drive, Room 3127, Bethesda, MD 20892, 301–443–8115, *gaol2@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel NIAID Investigator Initiated Program Project Application (P01).

Date: January 23, 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: Yong Gao, Ph.D., Scientific Review Officer, Scientific Review Program, DHHS/NIH/NIAID/DEA, 6700B Rockledge Drive, Room 3127, Bethesda, MD 20892, 301–443–8115, *gaol2@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel ''NIAID Investigator Initiated Program Applications (P01)''.

Date: January 23, 2013.

Time: 11:30 a.m. to 3:30 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: Nancy Vazquez-Maldonado, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–496–3253, *nvazquez@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Immunobiology of Host Defense.

Date: January 25–28, 2013.

Time: 11:00 a.m. to 5:00 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: Quirijn Vos, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–451–2666, *qvos@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel NIAID Investigator Initiated Program Project Applications.

Date: February 14, 2013.

Time: 11:00 a.m. to 5:00 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: Paul A. Amstad, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–7098, *pamstad@niaid.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 26, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–31455 Filed 12–31–12; 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: Molecular and Cellular Hematology.

Date: January 22–23, 2013.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ai-Ping Zou, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9497, *zouai@csr.nih.gov*.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group Health Disparities and Equity Promotion Study Section.

Date: January 28–29, 2013.

Time: 8:00 a.m. to 5:00 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: Delia Olufokunbi Sam, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0684, *olufokunbisamd@csr.nih.gov*.

Name of Committee: Oncology 1-Basic Translational Integrated Review Group Tumor Cell Biology Study Section.

Date: January 28–29, 2013.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Charles Morrow, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, 301–451–4467, *morrowcs@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Rehabilitation Sciences SEP.

Date: January 30, 2013.

Time: 2:00 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: Aruna K Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–435–6809, *beheraak@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Molecular Genetics and Imaging in Neuroscience.

Date: January 30, 2013.

Time: 2:30 p.m. to 4:30 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: Paek-Gyu Lee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4201, MSC 7812, Bethesda, MD 20892, (301) 613–2064, *leepg@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Endocrinology, Reproduction and Pregnancy.

Date: January 30, 2013.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Dianne Camp, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–1044, *campdm@mail.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 26, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–31457 Filed 12–31–12; 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 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: Center for Scientific Review Special Emphasis Panel; Program Project: Conus Peptides.

Date: January 10–11, 2013.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Peter B Guthrie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.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. 93.306, 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 21, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–31452 Filed 12–31–12; 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: Bioengineering Sciences & Technologies Integrated Review Group Nanotechnology Study Section.

Date: January 31–February 1, 2013.

Time: 7:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: James J Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–806–8065, *lijames@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group Psychosocial Development, Risk and Prevention Study Section.

Date: January 31–February 1, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Anna L Riley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301–435–2889, *rileyann@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group Molecular Genetics B Study Section.

Date: January 31–February 1, 2013.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Richard A Currie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219, *currieri@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group Cellular Signaling and Regulatory Systems Study Section.
Date: January 31–February 1, 2013.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street NW., Washington, DC 20036.
Contact Person: Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–357–9112, *smirnove@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group Clinical Neuroplasticity and Neurotransmitters Study Section.
Date: January 31–February 1, 2013.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037.
Contact Person: Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

Name of Committee: Oncology 1-Basic Translational Integrated Review Group Cancer Etiology Study Section.
Date: January 31, 2013.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Westin Riverwalk, 420 W. Market Street, San Antonio, TX 78205.
Contact Person: Elaine Sierra-Rivera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Bioengineering Sciences and Technology.
Date: January 31, 2013.
Time: 2:00 p.m. to 5:00 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: Kee Hyang Pyon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7806, Bethesda, MD 20892, *pyonkh2@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 26, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–31451 Filed 12–31–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Supplemental Record of Decision; Final Supplementary Risk Assessment for the Boston University National Emerging Infectious Diseases Laboratories

Responsible Official: Daniel G. Wheeland, Director, Office of Research Facilities Development and Operations, National Institutes of Health.

SUMMARY: The Department of Health and Human Services, the National Institutes of Health (NIH), has decided, after completion of a Final Supplementary Risk Assessment and a thorough consideration of public comments on the Draft and Final Supplementary Risk Assessment, to implement the Proposed Action, which is identified as the Preferred Alternative in the Final Environmental Impact Statement (EIS). This action reaffirms the NIH's previous decision to partially fund the construction of a state-of-the-art National Biocontainment Laboratory (NBL), the National Emerging Infectious Diseases Laboratories (NEIDL), at the Boston University Medical Campus (BUMC) in Boston, Massachusetts.

FOR FURTHER INFORMATION CONTACT: *For further information on the Record of Decision:* Valerie Nottingham, Chief, Environmental Quality Branch, Office of Research Facilities, National Institutes of Health, 9000 Rockville Pike, Bld. 13/2S11, Bethesda, MD 20892 *nihnepa@mail.nih.gov.*

For further information on the Supplementary Risk Assessment: Kelly Fennington, Senior Health Policy Analyst, Office of Science Policy, National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, 301–496–9838 *NIH_BRP@od.nih.gov.*

SUPPLEMENTARY INFORMATION: The National Institutes of Health (NIH), an operating division of the Department of Health and Human Services (HHS), has decided, after completion of a Final Supplementary Risk Assessment for the Boston University (BU) National Emerging Infectious Diseases Laboratories (NEIDL) and a thorough consideration of the public comments on the Draft and Final Supplementary Risk Assessments, that the NEIDL, in its current location in the BioSquare Research Park, poses minimal risk to the community surrounding the facility. The Final Supplementary Risk Assessment extensively evaluated scenarios involving the potential human health consequences of an exposure to laboratory workers and members of the general public as a result of unintentional or malevolent events. The Final Supplementary Risk Assessment also analyzed the potential human health impacts of siting the NEIDL at two alternate locations from the current site in Boston. The Final Supplementary Risk Assessment concluded that the risk to the public was generally low, regardless of where the facility was located. The analysis also showed there was no disproportionate impact to the residents living in the environmental justice communities adjacent to the NEIDL's current location or to any environmental justice communities at either of the two alternative locations analyzed. Based on the results of the Final Supplementary Risk Assessment, NIH is reaffirming its prior Record of Decision of January 26, 2006, published in the **Federal Register** on February 2, 2006.

On January 26, 2006, the NIH signed the Record of Decision (ROD) to partially fund the construction of a state-of the-art National Biocontainment Laboratory, which is now known as the NEIDL, on the Boston University Medical Campus in Boston, Massachusetts. The NEIDL is a research facility that was designed to include high- and maximum-containment laboratories for research on emerging and re-emerging infectious diseases. The ROD was posted in the **Federal Register** on February 2, 2006, and described the Proposed Action and alternatives considered in the NIH's Environmental Impact Statement for the NEIDL. The ROD also described many of the physical characteristics of the NEIDL and the safeguards that would be in place for research conducted in the building.

After the ROD was released, some members of the public continued to have concerns about the safety and environmental impact of the facility. Several citizens and public interest groups filed lawsuits in Federal court to stop the NIH's partial funding of the NEIDL's construction. Opponents also filed a lawsuit in Massachusetts state court challenging the state's approval of the project. Both lawsuits alleged failure to adequately assess the potential impacts of the NEIDL on public health in alternative locations. In the Federal court proceedings, questions were raised specifically about the potential risks of the biosafety level 4 (BSL–4) laboratory. To address the concerns raised in these lawsuits, NIH established an independent Blue Ribbon Panel to advise the agency on comprehensively responding to the concerns raised by members of the community and by the

courts. The Blue Ribbon Panel was established as a working group of the Advisory Committee to the NIH Director and was comprised of experts in infectious diseases, public health and epidemiology, risk assessment, environmental justice, risk communications, biosafety, and infectious disease modeling. At multiple points during the preparation of the Supplementary Risk Assessment, the NIH also consulted the National Research Council (NRC) Committee on Technical Input that had been critical of a previous draft NIH risk assessment for the NEIDL. With the technical and scientific guidance of the Blue Ribbon Panel and the NRC Committee on Technical Input as well as extensive public input, NIH prepared a Draft Supplementary Risk Assessment, which was published in the **Federal Register** on February 24, 2012. The publication of the Draft Supplementary Risk Assessment in the **Federal Register** began a 67-day public comment period. After a thorough consideration of comments received on the Draft Supplementary Risk Assessment, including those comments received during a public meeting held in Boston on April 19, 2012, NIH prepared a Final Supplementary Risk Assessment, notice of which was published in the **Federal Register** on July 6, 2012.

Decision

After careful consideration of the information and analyses presented in the Final Supplementary Risk Assessment, including the potential impacts on public health and safety arising from research involving infectious agents, as well as all public comments received during and after the assessment's preparation, the NIH has decided to reaffirm the decision reached in the agency's initial Record of Decision to implement the Selected Alternative, to partially fund the construction of a state-of-the-art National Biocontainment Laboratory (NBL), the National Emerging Infectious Diseases Laboratories (NEIDL), at the Boston University Medical Campus (BUMC) in Boston, Massachusetts described in the December 2005 Final EIS. The additional information provided from the Final Supplementary Risk Assessment results has reinforced the agency's original decision. The NIH's decision to reaffirm the ROD does not commit the NIH to support any specific research in the NEIDL in the future.

Alternatives Considered

The Final Supplementary Risk Assessment considered and compared the potential public health impacts of a biocontainment failure at three separate, proposed locations for the NEIDL. Those locations included an urban (the current BUMC site), a suburban (Tyngsborough, MA), and a rural (Peterborough, NH) setting. The results of the Supplementary Risk Assessment showed minimal differences in the risks of infections or fatalities to lab workers at the three different sites because the laboratory and its operations would be the same at all three sites. There are differences in the three sites with regard to population density and other features of the environment, such as availability of medical care. The possible effects of these differences on risks to the public were evaluated. The results show that no statistically significant differences can be concluded at the suburban and rural sites (Peterborough and Tyngsborough) compared to the urban site (Boston).

Factors Involved in the Decision

Throughout the course of the project, NIH engaged in extensive consultations with the Boston community. During the development of the Supplementary Risk Assessment for the NEIDL, public input was sought and considered multiple times before the report was finalized. In preparing its advice to the NIH for the Supplementary Risk Assessment, the Blue Ribbon Panel held multiple public meetings, including several in Boston at locations suggested by community members, to hear the concerns of the community and to solicit input on what scenarios and agents the community wished to see analyzed in the document. The approach taken to perform the Supplementary Risk Assessment, as well as the types of scenarios and agents studied in the Supplementary Risk Assessment, were thoroughly discussed and publicly vetted through the Blue Ribbon Panel and the NRC Committee on Technical Input. These two independent bodies provided technical advice that was then used to guide NIH through the risk assessment process. In order to help ensure that the Supplementary Risk Assessment was as comprehensive and technically and scientifically sound as possible, the NIH contracted with a leading consulting firm to perform the assessment. This firm engaged outside experts in infectious diseases and modeling to assist in preparing the assessment.

After extensive consultations with the Blue Ribbon Panel, the NRC Committee on Technical Input, and the public, the contractor preparing the Supplementary Risk Assessment identified and considered approximately 300 events that could potentially lead to loss of containment. The contractor grouped these 300 events initially into 30 categories of related events. Based on their likely risk, several of these events were selected to represent the overall group. The selected events include higher- and lower-risk events that occur in a variety of ways and expose different groups of people or the environment. Taking these factors into account, the possible events selected for detailed analysis in the Final Supplementary Risk Assessment were a needlestick accident, a centrifuge aerosol release, an earthquake, and transportation accidents.

To ensure examination of consequences with the most negative possible outcomes, mitigating features of the building systems, fully functional personal protective equipment, and standard operating procedures were not taken into account in the Supplementary Risk Assessment, which increased the risk by posing failures without taking into account mitigating features. For example, for purposes of the risk assessment, it was assumed that a needlestick would not be recognized and reported. Similarly, the risk assessment considered what would happen if a centrifuge release went undetected and unreported. In reality, lab personnel are trained to recognize and report such incidents, thus mitigating the consequences should such a lab accident occur.

The Final Supplementary Risk Assessment examined a variety of possible situations—including those that posed the maximum realistically expected risk that might expose laboratory workers and the general public to disease-causing microbes that will be studied in the NEIDL. While there is no such thing as ''no risk'', the results of the analysis showed that the risk of infections or fatalities resulting from accidents or malevolent acts at the NEIDL are generally very low to only remotely possible. The risk assessment evaluated the NEIDL and proposed activities in its laboratories as well as the potential impacts to site-specific populations in the three alternative geographic locations.

Practicable Means To Avoid or Minimize Potential Environmental Harm From the Selected Alternative

All practicable means to avoid or minimize adverse environmental effects from the selected action have been identified and adopted. The NEIDL will be subject to oversight by numerous federal, state, and local entities including, but not limited to, the Centers for Disease Control (CDC) and

Prevention, the NIH, and the Boston Public Health Commission. The NEIDL will also be subject to federal, state, and local pollution prevention, waste management, and environmental regulations. This level of oversight and regulation, in addition to NEIDL-specific laboratory standard operating procedures and researcher training should greatly minimize any chance of a pathogen being released into the environment.

Monitoring and Enforcement Program for Mitigation Measures

Boston University has established policies and procedures to ensure that the NEIDL complies with all applicable Federal, state, and local regulations. In addition, trained biosafety staff at Boston University will perform periodic laboratory inspections to ensure safety standards are rigorously upheld. Laboratory inspections will also be performed by the Boston Public Health Commission. The CDC will also perform inspections for those laboratories performing research with Select Agents. Projects requiring the use of BSL–3 and BSL–4 containment must be reviewed and approved by the Boston University Institutional Biosafety Committee (IBC). The Boston University IBC includes at least two members from the public who are not affiliated with Boston University. The Boston Public Health Commission will also review and approve projects requiring BL3 or BL4 containment. Finally, as an NIH grantee, Boston University is required to comply with the grant terms and conditions. These terms and conditions require Boston University to file an annual progress report with NIH that describes the use of any highly pathogenic agents or Select Agents in the past year.

Conclusion

The Final Supplementary Risk Assessment examined a variety of possible scenarios, including those that posed the maximum realistic risk that might result in laboratory workers or the general public having primary or secondary infections resulting from release of pathogens that might be studied in the NEIDL. While there can be no such thing as ''no risk,'' the results of this analysis show that the risk of infections resulting from accidents or malevolent acts at the NEIDL are generally very low to only remotely possible. This is largely due to the safeguards built into the facility, the low amounts of pathogens that will be present, and the culture of biosafety and training that will be integrated into everyday practice at the NEIDL and as well as due to oversight of the NEIDL by regulatory authorities, like the Boston Public Health Commission and the Centers for Disease Control and Prevention. The greatest risk posed by research in the NEIDL is to individuals conducting research in the building, not to the general public. The analysis did not show any statistically significant increase in risk to medically vulnerable populations when analyzed as a group or individually, as compared to what those risks would be at alternate sites. Based on these factors, NIH is reaffirming its prior Record of Decision, dated January 26, 2006, and concludes that high and maximum containment research could be conducted safely at the NEIDL based upon the current safeguards and engineering controls in place at the facility.

Dated: December 18, 2012.

Daniel G. Wheeland,

Director, Office of Research Facilities Development and Operations, National Institutes of Health.

[FR Doc. 2012–31509 Filed 12–31–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2012–N304; FXIA16710900000P5–123–FF09A30000]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibit activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before February 1, 2013.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and

in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

A. Endangered Species

Applicant: Dallas World Aquarium, Dallas, TX; PRT–73328A

The applicant requests a permit to import two captive-bred specimens of resplendent quetzal (*Pharomachrus mocinno*) from Mexico for the purpose of enhancement of the survival of the species.

Applicant: St. Catherine's Island, Midway, GA; PRT–86728A

The applicant requests a permit to export biological samples derived from captive-bred specimens of Ring-tailed lemur (*Lemur catta*) to Canada for the purpose of enhancement of the survival of the species.

Applicant: Cinco Canyon Ranch, Fredericksburg, TX; PRT–89185A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Cinco Canyon Ranch, Fredericksburg, TX; PRT–89184A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Chahinkapa Park Zoo, Wahpeton, ND; PRT–81771A

The applicant requests a permit to import one captive-bred female Snow leopard (*Uncia uncia*) from Canada for the purpose of enhancement of the survival of the species.

Applicant: Greenville Zoo, Greenville SC; PRT–86831A

The applicant requests a permit to export two female captive-bred ring-tailed lemurs (*Lemur catta*) to Bermuda for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Leland Hodges, Fort Worth, TX; PRT–92039A

Applicant: Robert Marwick, Johns Island, SC; PRT–86855A

Applicant: Robert Salmon, Downey CA; PRT–80554A

Applicant: Steven Hanlon, Memphis, TN; PRT–92768A

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2012–31488 Filed 12–31–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2012–N303; FXIA16710900000P5–123–FF09A30000]

Endangered Species; Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) The application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
Endangered Species			
75492A	John Farham	77 FR 34059; June 8, 2012	August 27, 2012.
75399A	Eric Moore	77 FR 34059; June 8, 2012	August 15, 2012.
073403, 114454, and 206853.	Ferdinand Fercos Hantig and Anton Fercos Hantig.	77 FR 64121; October 18, 2012	December 13, 2012.
88048A	George Harms	77 FR 66476; November 5, 2012	December 19, 2012.
89040A	Armand Brachman	77 FR 68809; November 16, 2012	December 19. 2012.
89172A	Thomas Hoffmann	77 FR 68809; November 16, 2012	December 19. 2012.

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
Marine Mammals			
039386	U.S. Fish and Wildlife Service, Marine Mammals Management.	77 FR 44264; July 27, 2012	December 12, 2012.
186914	Monterey Bay Aquarium	77 FR 46514; August 3, 2012	December 21, 2012.

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2012–31487 Filed 12–31–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; Enterprise Rancheria of Maidu Indians of California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Agency Determination; Correction.

SUMMARY: This document contains a correction to the land description contained in the notice regarding the final agency determination to acquire approximately 40 acres of land into trust for gaming purposes for the Enterprise Rancheria of Maidu Indians of California, which published on Monday, December 3, 2012, 77 FR 71612.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Bureau of Indian Affairs, MS–3657 MIB, 1849 C Street NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: As published, the land description in the December 3, 2012, notice contains an error. On page 71612 of the December 3, 2012, **Federal Register**, in the first column, beginning on line 56 and continuing through to the second column, line 26, correct to read as follows:

A portion of the East half of Section 22, Township 14 North, Range 4 East, M.D.B.&M., described as follows:

Commence at the quarter section corner common to said Section 22 and Section 15, Township 14 North, Range 4 East, M.D.B.&M., and being marked by a brass monument stamped LS3341 in a monument well as shown on Record of Survey No. 2000–15 filed in Book 72 of Maps, Page 34, Yuba County Records; thence South 00°28′11″ East along the line dividing said Section 22 in to East and West halves 2650.73 feet to a brass monument stamped LS3341 in a monument well as shown on said Record of Survey No. 2000–15 and marking the center of said Section 22; thence North 89°31′24″ East 65.00 feet to a point on the East right-of-way line of Forty Mile Road; thence North 00°28′11″ West along said East right-of-way line of Forty Mile Road 45.53 feet to the point of beginning; thence from said point of beginning continue along said East right-of-way line of Forty Mile Road the following courses and distances: North 00°28′11″ West 1133.70 feet, thence North 05°14′27″ East 50.25 feet; thence North 00°28′11″ West 136.91 feet; thence leaving said East right-of-way line of Forty Mile Road North 87°00′10″ East 1315.48 feet; thence South 00°28′11″ East 1320.48 feet; thence South 87°59′10″ West 1320.48 feet to the point of beginning.

The above-described parcel is referred to as Yuba County Assessor's Parcel Number 014–280–095 (portion) containing approximately 40.00 acres, more or less.

Dated: December 26, 2012.

Lawrence S. Roberts,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2012–31523 Filed 12–31–12; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–GATE–11468; PPNEGATEB0, PPMVSCS1Z.Y00000]

Notice of January 23 and 24, 2013 Meeting for Fort Hancock 21st Century Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: This notice sets forth the date of the first meeting of the Fort Hancock 21st Century Advisory Committee.

DATES: The public meeting of the Fort Hancock 21st Century Advisory Committee will be held on January 23 and 24, 2013, at 8:30 a.m. (EASTERN).

ADDRESSESS: The Committee members will meet at Monmouth University, 400 Cedar Avenue, West Long Branch, NJ 07764. Please check *www.forthancock21stcentury.org* for exact building and room number.

Agenda: Committee meeting will consist of the following:

1. Welcome and introductions
2. Administrative briefings, including legal and ethics requirements
3. Discussion of the Committee's charter, goals and procedures
4. The effect of Hurricane Sandy and its implications for the Committee
5. Identifying key issues to be addressed by the Committee
6. Future Committee activities, meeting schedule, work plan
7. Public comment and
8. Adjournment

The final agenda will be posted on *www.forthancock21stcentury.org* prior to each meeting.

FOR FURTHER INFORMATION CONTACT: Further information concerning the meeting may be obtained from Robert Vohden, Office of Business Services, Gateway National Recreation Area, 210 New York Avenue, Staten Island, NY 10305, at (718) 354–4710 or email: *admin@forthancock21stcentury.org,* or visit the Advisory Committee *Web site at www.forthancock21stcentury.org.*

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.). The

purpose of the Committee is to provide advice to the Secretary of the Interior, through the Director of the National Park Service, on the development of a reuse plan and on matters relating to future uses of certain buildings at Fort Hancock within Gateway National Recreation Area.

The meeting is open to the public. Interested members of the public may present, either orally or through written comments, information for the Committee to consider during the public meeting. Attendees and those wishing to provide comment are strongly encouraged to preregister through the contact information provided. The public will be able to comment on the first day from 4:00 p.m. to 4:45 p.m. and on the second day from 2:00 p.m. to 2:45 p.m. Written comments will be accepted prior to, during or after the meeting. Due to time constraints during the meeting, the Committee is not able to read written public comments submitted into the record. Individuals or groups requesting to make oral comments at the public Committee meeting will be limited to no more than 5 minutes per speaker.

Before including your address, telephone number, email address, or other personal indentifying information in your written comments, you should be aware that your entire comment including your personal identifying information may be made publicly available. 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. All comments will be made part of the public record and will be electronically distributed to all Committee members.

Dated: December 20, 2012.

Linda Canzanelli,

Superintendent, Gateway National Recreation Area.

[FR Doc. 2012–31428 Filed 12–31–12; 8:45 am]

BILLING CODE 4310–WV–P

INTERNATIONAL TRADE COMMISSION

[DN 2926]

Certain Wireless Communications Equipment and Articles Therein; Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Wireless Communications Equipment and Articles Therein,* DN 2926; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Samsung Electronics Co., Ltd. and Samsung Telecommunications America, LLC on December 21, 2012. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wireless communications equipment and articles therein. The complaint names as respondents Ericsson Inc. of TX and Telefonaktiebolaget LM Ericsson of Sweden.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2926'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the

Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10 and 210.8(c)).

Issued: December 27, 2012.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2012–31483 Filed 12–31–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[DN 2927]

Certain Cases for Portable Electronic Devices: Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Cases For Portable Electronic Devices,* DN 2927; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Speculative Product Design, LLC on December 26, 2012. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cases for portable electronic devices. The complaint names as respondents Global Digital Star Industry, Ltd. of China; JWIN Electronics Corp., (d/b/a iLuv) of NY; Project Horizon, Inc. (d/b/a InMotion Entertainment) of FL; Superior Communications, Inc. (d/b/a PureGear) of CA; and Jie Sheng Technology of Taiwan.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2927'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: December 27, 2012.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2012–31472 Filed 12–31–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–857]

Certain Reduced Folate Nutraceutical Products and L- Methylfolate Raw Ingredients Used Therein: Notice of Commission Determination Not To Review an Initial Determination Granting Complainants' Unopposed Motion for Leave To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an ID (Order No. 4) of the administrative law judge (''ALJ'') granting Complainants' unopposed motion for leave to amend the complaint and notice of investigation in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 16, 2012, based on a complaint filed on September 10, 2012, on behalf of South Alabama Medical Science Foundation of Mobile, Alabama; Merck & Cie of Altdorf, Switzerland; and Pamlab LLC of Covington, Louisiana LLC (collectively, ''Complainants''). 77 FR 63336 (October 16, 2012). The complaint alleged violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the sale for importation, importation, or sale after importation into the United States of certain folate nutraceutical products and l-methylfolate raw ingredients used therein that infringe one or more of claims 37, 39, 40, 47, 66, 67, 73, 76,78–81, 83, 84, 86–89, 91, 92, 94–97, 99, 100, 110, 111, 113, 117, and 121 of U.S. Patent No. 5,997,915 (''the '915 patent''); claims 22, 26, and 32–38 of U.S. Patent No. 6,673,381 (''the '381 patent''); claims l, 4–6, and 15 of U.S. Patent No. 7,172,778; and claims 1–3, 5, 6, 8, 9, 11–15, and 19–22 of U.S. Patent No. 6,011,040 (''the '040 patent''). The Commission's notice of investigation named as respondents Gnosis SpA of Desio, Italy; Gnosis Bioresearch SA of Sant'Antonino, Switzerland; Gnosis USA Inc. of Doylestown, Pennsylvania; and Macoven Pharmaceuticals LLC of Magnolia, Texas.

On November 14, 2012, Complainants filed an unopposed motion for leave to amend the Complaint and Notice of Investigation to add Viva Pharmaceuticals LLC as a respondent in this investigation and to assert additional claims of inducement of infringement with regard the '915 patent, the '381 patent, and the '040 patent against respondents Gnosis SpA, Gnosis Bioresearch SA, and Gnosis USA, Inc. The Complainants argued good cause exists because the alleged activity was not previously known to them, and that there would be no prejudice to the parties or to the public interest.

On November 15, 2012, the ALJ issued the ID, granting the motion. No petitions for review were filed.

Having considered the ID and the relevant portions of the record, the Commission has determined not to review the subject ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of section 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

By order of the Commission.

Issued: December 13, 2012.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2012–31474 Filed 12–31–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on December 6, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Interchangeable Virtual Instruments Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Spectrum Systementwicklung Microelectronic GmbH, Grosshansdorf, GERMANY, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Interchangeable Virtual Instruments Foundation, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 29, 2001, Interchangeable Virtual Instruments Foundation, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on January 26, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 16, 2012 (77 FR 9266).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–31468 Filed 12–31–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 ; PXI Systems Alliance, Inc.

Notice is hereby given that, on December 6, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Conduant Corporation,

Longmont, CO; 4Links Limited, Milton Keynes, UNITED KINGDOM; MagiQ Technologies, Somerville, MA; Tracewell Systems, Westerville, OH; Beijing HWA–TECH Information System Co. Ltd., Beijing, Shuguanghuayuan, PEOPLE'S REPUBLIC OF CHINA; and Simbol Test Systems, Inc., Gatineau, Quebec, CANADA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on June 28, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 25, 2012 (77 FR 43615).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–31469 Filed 12–31–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on December 3, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), DVD Copy Control Association (''DVD CCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, CSR Technology Inc., Sunnyvale, CA; Guangdong Coagent Electronics S&T Co., Ltd., Guangdong, PEOPLE'S REPUBLIC OF CHINA; Hong Kong ASA Multimedia Co., Ltd., Kowloon, HONG KONG–CHINA; National Semiconductor Corporation, Santa Clara, CA; sMedio, Inc., Tokyo, JAPAN; and VIXS Systems Inc., Toronto, CANADA, have been added as parties to this venture.

Also, Arts Electronics Co., Ltd., Guangdong, PEOPLE'S REPUBLIC OF CHINA; DVD Club Ltd., Moscow, RUSSIA; Forworld Electronics Co., Ltd., Taichung City, TAIWAN; Mimeos VoF, Baarlo Noord Limburg, THE NETHERLANDS; Sonic Solutions, Novato, CA; and Zoran Corporation, Santa Clara, CA, have withdrawn as parties to this venture.

In addition, Cinram International has changed its name to Cinram Group Inc., Toronto, CANADA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notifications disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on August 24, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 24, 2012 (77 FR 58870).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–31467 Filed 12–31–12; 8:45 am]

BILLING CODE P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before February 1, 2013 to be assured of consideration.

ADDRESSES: Send comments to Mr. Nicholas A. Fraser, Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5167; or electronically mailed to *Nicholas_A._Fraser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on August 21, 2012 (77 FR 50532). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (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 the use of information technology; and (e) whether small businesses are affected by these collections. In this notice, NARA is soliciting comments concerning the following information collection:

1. *Title:* Forms Relating to Civilian Service Records.

OMB number: 3095–0037.

Agency form number: NA Forms 13022, 13064, 13068.

Type of review: Regular.

Affected public: Former Federal civilian employees, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 32,060.

Estimated time per response: 5 minutes.

Frequency of response: On occasion, when individuals desire to acquire information from Federal civilian employee personnel or medical records.

Estimated total annual burden hours: 2,671 hours.

Abstract: In accordance with rules issued by the Office of Personnel Management, the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers Official Personnel

Folders (OPF) and Employee Medical Folders (EMF) of former Federal civilian employees. When former Federal civilian employees and other authorized individuals request information from or copies of documents in OPF or EMF, they must provide in forms or in letters certain information about the employee and the nature of the request. The NA Form 13022, Returned Request Form, is used to request additional information about the former Federal employee. The NA Form 13064, Reply to Request Involving Relief Agencies, is used to request additional information about the former relief agency employee. The NA Form 13068, Walk-In Request for OPM Records or Information, is used by members of the public, with proper authorization, to request a copy of a Personnel or Medical record.

2. *Title:* Volunteer Service Application.

OMB number: 3095–0060.

Agency form number: NA Forms 6045, 6045a, 6045b. and 6045c.

Type of review: Regular.

Affected public: Individuals or households.

Estimated number of respondents: 500.

Estimated time per response: 25 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 208 hours.

Abstract: NARA uses volunteer resources to enhance its services to the public and to further its mission of providing ready access to essential evidence. Volunteers assist in outreach and public programs and provide technical and research support for administrative, archival, library, and curatorial staff. NARA uses a standard way to recruit volunteers and assess the qualifications of potential volunteers. The NA Form 6045, Volunteer Service Application, is used by members of the public to signal their interest in being a NARA volunteer and to identify their qualifications for this work. Once the applicant has been selected, the NA Form 6045a, Standards of Conduct for Volunteers, NA Form 6045b, Volunteer or Intern Emergency and Medical Consent, NA Form 6045c, Volunteer or Intern Confidentiality Statement, are filled out.

Dated: December 6, 2012.

Michael L. Wash,

Executive for Information Services/CIO.

[FR Doc. 2012–31438 Filed 12–31–12; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446; NRC–2012–0301]

Consideration of Approval of Application Containing Sensitive Unclassified Non-Safeguards Information Regarding Proposed Energy Future Holdings Corporation Internal Restructuring

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for indirect license transfer; opportunity for hearing, to petition for leave to intervene, and to comment; order.

DATES: Comments must be filed by February 1, 2013. Requests for a hearing or leave to intervene must be filed by January 22, 2013. Any potential party as defined in § 2.4 of Title 10 of the *Codes of Federal Regulations* (10 CFR) who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) is necessary to respond to this notice must request document access by January 14, 2013.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0301. You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0301. 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.

FOR FURTHER INFORMATION CONTACT: Balwant K. Singal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–3016; email: *Balwant.Singal@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0301 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0301.
- *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.* Portions of the application dated October 11, 2012, contain proprietary information, and accordingly, those portions are being withheld from public disclosure. A redacted version of the October 11, 2012, application is available in ADAMS under Accession No. ML12312A157. The supplemental letter dated October 24, 2012, is publicly available in ADAMS under Accession No. ML12312A071.
- *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–2012–0301 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include

identifying or contact information that they do not want to be publicly disclosed in their comment submissions. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an order under § 50.80 approving the indirect transfer of control of the Facility Operating License Nos. NPF–87 and NPF–89, respectively, for the Comanche Peak Nuclear Power Plant, Units 1 and 2 (CPNPP), currently held by Luminant Generation Company LLC, as owner and licensed operator. The indirect transfer of control would result from the proposed conversion of Energy Future Competitive Holdings Company (EFCH) converting from a Texas corporation to a Delaware limited liability corporation.

According to the application dated October 11, 2012, filed by Luminant Generation Company LLC, acting on behalf of Energy Future Holdings Corporation (EFH), EFCH, Texas Competitive Electric Holdings Company LLC, and Luminant Holding Company LLC, the applicants, seek approval pursuant to 10 CFR 50.80 of the indirect transfer of control of CPNPP, Facility Operating License Nos. NPF–87 and NPF–89. The transfers also involve the general license for CPNPP Independent Spent Fuel Storage Facility Installation Facility.

The EFCH will convert from a Texas corporation to a Delaware limited liability corporation. Following the conversion, EFCH will remain a wholly owned subsidiary of EFH, and EFH will retain the same assets, liabilities, owners, board of directors, and management. There will be no change of control of EFH, EFCH, or Luminant Power as a result of this internal restructuring.

No physical changes to the CPNPP facilities or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed transfer will not affect the qualifications of the licensee to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

III. Opportunity to Request a Hearing; Petition for Leave To Intervene

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected by the Commission's action on the application may request a hearing and intervention via electronic submission through the NRC's E-filing system. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR, Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309, which is available at the NRC's PDR, located at O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC's public Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.*

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1) and (2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by January 22, 2013. The petition must be filed in accordance with the filing instructions in section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian tribe does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 20-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.

IV. Electronic Submissions (E-Filing)

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'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 NRC'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 public 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'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 NRC'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 public Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email to *MSHD.Resource@nrc.gov,* or by a toll-free call to 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 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.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this application, see the application dated October 11, 2012, as supplemented by letter dated October 24, 2012.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation.

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are

Hearing.Docket@nrc.gov and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 20 days after the requestor is granted access to that information. However, if more than 20 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. This provision does not extend the time for filing a request for a hearing and petition to intervene, which must comply with the requirements of 10 CFR 2.309.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 26th day of December, 2012.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in This Proceeding

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
20	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/activity
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 23	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 48	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 55	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 55	Decision on contention admission.

[FR Doc. 2012–31527 Filed 12–31–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–26; NRC–2012–0312]

Diablo Canyon, Independent Spent Fuel Storage Installation; License Amendment Request, Opportunity To Request a Hearing, Petition for Leave To Intervene, and Commission Order Imposing Procedures for Document Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of amendment and opportunity to request a hearing and petition for leave to intervene, and order.

DATES: A request for hearing and/or petition for leave to intervene must be filed by March 4, 2013. Any potential party as defined in § 2.4 of Title 10 of the *Code of Federal Regulations* (10 CFR) who believes access to Sensitive Unclassified Non-Safeguards Information is necessary to respond to this notice must request document access by January 14, 2013.

ADDRESSES: Please refer to Docket ID NRC–2012–0312 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0312. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John M. Goshen, Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: 301–492–3325; fax number: 301–492–3348; email: *john.goshen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has received, by letter dated July 31, 2012, a license amendment application from Pacific Gas and Electric Company (PG&E), requesting amend its Special Nuclear Material License No. SNM–2511, (ADAMS Accession No. ML12227A575) under the provisions of 10 CFR Part 72 at its Diablo Canyon Independent Spent Fuel Storage Installation (ISFSI) site located in San Luis Obispo County, California. Special Nuclear Material License No. SNM–2511 authorizes the licensee to receive, possess, store and transfer spent fuel, reactor-related Greater than Class C waste and other radioactive materials associated with spent fuel storage at the Diablo Canyon ISFSI. Specifically, the amendment, if granted, will revise Materials License No. SNM–2511 as follows:

1. Changes to Technical Specifications (TS):

a. Tables 2.1–7, 2.1–8, and 2.1–9 in TS 2.0, "Approved Contents," are revised allowing up to a 28.74kW heat load for uniform loading and 25.572kW

heat load for regionalized loading. This changes the maximum allowable decay heat per storage location, in watts, determined from Table 2.1–7 or 2.1–9 to be consistent with this proposed license amendment request. Table 2.1–8 is revised to delete the note that limits Zirlo clad fuel to a burnup of 45,000 MWD/MTU and replace the existing Note 3 with a note that refers to TS 2.3, ''Alternate MPC–32 Fuel Selection Criteria.''

b. TS 2.3, ''Alternate MPC–32 Fuel Selection Criteria,'' is revised to add reference to Table 2.1–9 as regionalized loading of high burn-up fuel.

c. TS 3.1.1, ''Multi-Purpose Canister (MPC),'' Surveillance Requirement (SR) 3.1.1.2 is revised to add a new helium backfill pressure range for MPCs with heat loads less than or equal to 28.74kW.

d. TS 3.1.4, ''Supplemental Cooling System,'' Applicability is changed to only be applicable for unloading of high burnup fuel loaded in 2012 under the provisions of SNM–2511, Amendment No. 2.

An NRC administrative review, documented in a letter to PG&E dated November 5, 2012, found the application acceptable to begin a technical review. If the NRC approves the amendment, the approval will be documented in an amendment to NRC SNM–2511. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment. The licensee has stated that the license amendment qualifies for a categorical exclusion in accordance with 10 CFR 51.22.

II. Opportunity To Request a Hearing

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, ''Hearing requests, petitions to intervene, requirements for standing, and contentions.'' Interested persons should consult 10 CFR 2.309, which is available at the NRC's PDR, located at O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 or call the PDR at 1–800–397–4209 or 301–415–4737. The NRC's regulations are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.*

III. Petitions for Leave To Intervene

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. 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 must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license amendment in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

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 with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board (the Licensing Board) will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Requests for hearing, petitions for leave to intervene, and motions for leave to file contentions that are filed after the deadline in 10 CFR 2.309(b) will not be entertained absent a determination by the presiding officer that the new or amended 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.

A State, local governmental body, federally recognized Indian Tribe, or agency thereof may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1) and (2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by March 4, 2013. The petition must be filed in accordance with the filing instructions in section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under 2.309(h)(2) a State, local governmental body, or federally recognized Indian tribe does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, federally recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance under 10 CFR 2.315(a), by making an oral or written statement of his or her position on the issues at any session of the hearing or at any pre-hearing conference, within the limits and conditions fixed by the presiding officer.

IV. Electronic Submissions (E-Filing)

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 NRC'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'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 NRC'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 public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call to 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.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered

absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

VI. Further Information

Documents related to this action, including the application for renewal and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are: License Renewal Application documents dated July 31, 2012, are available in ADAMS under Accession No. ML12227A575 and ML12227A576. The acceptance review letter dated November 5, 2012 is available in ADAMS under Accession No. ML12311A101. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

It is so ordered.

Dated at Rockville, Maryland, this 27th day of December 2012.

For the Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2012–31528 Filed 12–31–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of December 31, 2012, January 7, 14, 21, 28, February 4, 2013.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of December 31, 2012

There are no meetings scheduled for the week of December 31, 2012.

Week of January 7, 2013—Tentative

Tuesday, January 8, 2013

9:00 a.m. Briefing on Fort Calhoun (Public Meeting) (Contact: Michael Hay, 817–200–1527)

This meeting will be webcast live at the Web address— *www.nrc.gov.*

Wednesday, January 9, 2013

9:00 a.m. Briefing on Venting Systems for Mark I and Mark II Containments (Public Meeting) (Contact: William Reckley, 301–415–7490)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of January 14, 2013—Tentative

There are no meetings scheduled for the week of January 14, 2013.

Week of January 21, 2013—Tentative

There are no meetings scheduled for the week of January 21, 2013.

Week of January 28, 2013—Tentative

Thursday, January 31, 2013

9:00 a.m. Briefing on Public Participation in NRC Regulatory Decision-Making (Public Meeting) (Contact: Lance Rakovan, 301–415–2589)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Friday, February 1, 2013

9:30 a.m. Briefing on Equal Employment Opportunity (EEO) and Small Business Programs (Public Meeting) (Contact: Sandra Talley, 301–415–8059)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of February 4, 2013—Tentative

There are no meetings scheduled for the week of February 4, 2013.

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* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability

Program Manager, at 301–287–0727, or by email at *kimberly.meyer-chambers@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov*.

Dated: December 27, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–31613 Filed 12–28–12; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 15c3–4; OMB Control No. 3235–0497, SEC File No. 270–441.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (the ''Paperwork Reduction Act''), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 15c3–4 (17 CFR 240.15c3–4) (the ''Rule'') under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the ''Exchange Act'') requires certain broker-dealers that are registered with the Commission as OTC derivatives dealers, or who compute their net capital charges under Appendix E to Rule 15c3–1 (17 CFR 240.15c3–1) (''ANC firms''), to establish, document, and maintain a system of internal risk management controls. The Rule sets forth the basic elements for an OTC derivatives dealer or an ANC firm to consider and include when establishing, documenting, and reviewing its internal risk management control system, which are designed to, among other things, ensure the integrity of an OTC derivatives dealer's or an ANC firm's risk measurement, monitoring, and management process, to clarify accountability at the appropriate organizational level, and to define the permitted scope of the dealer's activities and level of risk. The Rule also requires that management of an OTC derivatives dealer or an ANC firm must periodically review, in accordance with written procedures, the firm's business activities for consistency with its risk management guidelines.

The staff estimates that the average amount of time a new OTC derivatives dealer will spend establishing and documenting its risk management control system is 2,000 hours and that, on average, a registered OTC derivatives dealer will spend approximately 200 hours each year to maintain (*e.g.,* reviewing and updating) its risk management control system.[1] Currently, four firms are registered with the Commission as OTC derivatives dealers. The staff estimates that approximately four additional OTC derivatives dealers may become registered within the next three years. Thus, the estimated annualized burden would be 800 hours for the four OTC derivatives dealers currently registered with the Commission to maintain their risk management control systems,[2] 2,666 hours for the four new OTC derivatives dealers to establish and document their risk management control systems,[3] and 400 hours for the four new OTC derivatives dealers to maintain their risk management control systems.[4] Accordingly, the staff estimates the total annualized burden associated with Rule 15c3–4 for the eight OTC derivatives dealers will be approximately 3,866 hours annually.

The staff believes that the cost of complying with Rule 15c3–4 will be approximately $279 per hour.[5] This per hour cost is based upon an annual average hourly salary for a compliance manager who would be responsible for ensuring compliance with the requirements of Rule 15c3–4. Accordingly, the total annualized cost for all affected OTC derivatives dealers is estimated to be $1,078,614.[6]

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

Comments should be directed to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 26, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31466 Filed 12–31–12; 8:45 am]

BILLING CODE 8011–01–P

[1] This notice does not cover the hour burden associated with ANC firms, because the hour burden for ANC firms is included in the Paperwork Reduction Act collection for Rule 15c3–1, which requires ANC firms to comply with specific provisions of Rule 15c3–4 in Appendix E to Rule 15c3–1. *See* 17 CFR 240.15c3–1(a)(7)(iii), 17 CFR 240.15c3–1e(a)(1)(ii), and 17 CFR 240.15c3–1e(a)(1)(viii)(C).

[2] (200 hours × 4 firms) = 800.

[3] (2000 hours × 1.333 firms) = 2,666.

[4] (200 hours × 4 firms x/2) = 400 {the number is divided by two to show an average, since it is assumed that the four new OTC derivatives dealers will register in even intervals over the three years}.

[5] The $279 per hour salary figure for a compliance manager is from SIFMA's Management & Professional Earnings in the Securities Industry 2011, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[6] 3,866 hours × $279 per hour = $1,078,614.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68536; File No. SR–SCCP–2012–02]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing of Proposed Rule Change With Respect to the Amendment of the By-Laws of Its Parent Corporation, The NASDAQ OMX Group, Inc.

December 26, 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

19, 2012, Stock Clearing Corporation of Philadelphia (''SCCP'') 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 SCCP. 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

SCCP proposes a rule change with respect to the amendment of the by-laws of its parent corporation, The NASDAQ OMX Group, Inc. (''NASDAQ OMX'' or the ''Corporation''). The text of the proposed rule change is available at *http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/sccp/,* at SCCP's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Corporation 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 Corporation 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

NASDAQ OMX is proposing amendments to provisions of its By-Laws pertaining to the compositional requirements of the NASDAQ OMX Board. The changes are primarily focused on amending the definition of ''Industry Director'' (and ''Industry committee member'')[3] to make the definition less restrictive, but in a manner that the Corporation believes will continue to serve the purpose of ensuring that members and member organizations of Self-Regulatory Subsidiaries[4]—the self-regulatory organizations owned by NASDAQ OMX—do not have disproportionate influence on its governance. In making the change, NASDAQ OMX is adapting concepts already approved by the Commission in its review of the Independence Policy of the NYSE Euronext Board of Directors (the ''Independence Policy'').[5] The proposed rule change also makes several other changes to provisions pertaining to the Board's compositional requirements and categorization of Directors.

Definitions

The By-Laws require Directors to be assigned to certain defined categories, based on their current and past affiliations.[6] Specifically, Directors may be categorized as ''Industry Directors,'' ''Non-Industry Directors,'' ''Public Directors,'' and/or ''Staff Directors.'' Currently, an Industry Director is defined as a Director who:

(1) Is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer;

(2) Is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity;

(3) Owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer;

(4) Provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership;

(5) Provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; or

(6) Has a consulting or employment relationship with or provides professional services to the Corporation or any affiliate[7] thereof (including any Self-Regulatory Subsidiary) or to the Financial Industry Regulatory Authority (''FINRA'') (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years. Thus, the current definition focuses on a Director's affiliation with any broker-dealer, regardless of whether the broker-dealer is a member or member organization of a Self-Regulatory Subsidiary. The definition also features a three-year ''look-back'' period during which a Director formerly associated with a broker-dealer would continue to be deemed an Industry Director. In lieu of this definition, NASDAQ OMX is proposing to adopt a definition that focuses on whether a Director is affiliated with a member or a member organization of a Self-Regulatory Subsidiary. Under the revised definition, an Industry Director will be defined as a Director who:

(1) Is, or within the last year was, or has an immediate family member[8] who is, or within the last year was, a member of a Self-Regulatory Subsidiary;[9]

(2) Is, or within the last year was, employed by a member or a member

[3] The term ''committee member'' in the By-Laws refers to membership in the committees authorized under Section 4.13 of the By-Laws, such as the Executive Committee and the Audit Committee. Under the By-Laws and the Delaware General Corporation Law, all members of committees with the power and authority to act on behalf of the Board in the management of the business and affairs of NASDAQ OMX must themselves be Directors. Accordingly, the definitions of ''Industry Director'' and ''Industry committee member'' are coterminous as applied to any member of these committees. The By-Laws do not presently contemplate any committees with non-Director members.

[4] The By-Laws define each of The NASDAQ Stock Market LLC (''NASDAQ''), NASDAQ OMX BX, Inc. (''BX''), NASDAQ OMX PHLX LLC (''Phlx''), the Boston Stock Exchange Clearing Corporation (''BSECC''), and SCCP as a ''Self-Regulatory Subsidiary.''

[5] Securities Exchange Act Release No. 51217 (February 16, 2005), 70 FR 9688 (February 28, 2005) (SR–NYSE–2004–54); Securities Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR–NYSE–2006–120); Securities Exchange Act Release No. 67564 (August 1, 2012), 77 FR 47161) (SR–NYSE–2012–17; SR–NYSEArca–2012–59; SR–NYSEMKT–2012–07).

[6] As discussed above, the categories also govern the classification of members of committees of NASDAQ OMX, as provided for in the By-Laws.

[7] NASDAQ OMX is adding a definition of ''affiliate'' as follows: ''An 'affiliate' of, or a person 'affiliated' with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.'' The definition is identical to the definition of the term in SEC Rule 12b–2, 17 CFR 240.12b–2.

[8] NASDAQ OMX is adding a definition of ''immediate family member'' as follows: '' 'Immediate family member' means a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home.'' The definition is identical to the definition of ''family member'' contained in NASDAQ listing standards, as provided in NASDAQ Rule 5605.

[9] This provision would apply to an individual that was a member of Phlx, the only Self-Regulatory Subsidiary that allows natural persons to become members.

organization of a Self-Regulatory Subsidiary; [10]

(3) Has an immediate family member who is, or within the last year was, an executive officer of a member or a member organization [11] of a Self-Regulatory Subsidiary;

(4) Has within the last year received from any member or member organization of a Self-Regulatory Subsidiary more than $100,000 per year in direct compensation, or received from such members or member organizations in the aggregate an amount of direct compensation that in any one year is more than 10 percent of the Director's annual gross compensation for such year, excluding in each case director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service); or

(5) Is affiliated, directly or indirectly, with a member or member organization of a Self-Regulatory Subsidiary.

NASDAQ OMX believes that the change is warranted to ensure that the definition of Industry Director is appropriately focused on the mitigation of potential conflicts of interest associated with Directors who are currently or were very recently employed by members or member organizations of Self-Regulatory Subsidiaries, or that otherwise have material affiliations with such members or member organizations. The current definition covers individuals who are employed by broker-dealers that are not members of Self-Regulatory Subsidiaries, or who retired from service at a broker-dealer more than one, but less than three years in the past. The Corporation believes that by deeming such potential Directors to be Industry Directors, the current By-Laws unnecessarily restrict highly qualified individuals with extensive knowledge of the financial services industry from serving on the Board.

In addition to this change, NASDAQ OMX is also proposing the following additional changes to the definitions applicable to categories of Directors:

(1) NASDAQ OMX proposes a new definition of ''Staff Director.'' Currently, the definition of ''Staff Director'' is included within the definition of ''Industry Director,'' and is defined as ''any two officers of the Corporation, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors.'' By virtue of being designated as Staff Directors, these Directors are not considered to be Industry Directors for purposes of the compositional requirements of the By-Laws. Instead, NASDAQ OMX proposes a separate definition of ''Staff Director'' as ''an officer of the Corporation that is serving as a Director.'' [12] As discussed below, however, Section 4.3 of the By-Laws is to be amended to provide that only one Staff Director may serve on the Board, unless the Board consists of ten or more Directors, in which case no more than two Staff Directors may serve. Thus, the change will further restrict the number of possible Staff Directors in instances where the Board is smaller than ten Directors, while retaining the current limit for a larger Board.

(2) NASDAQ OMX is adopting a new definition of ''Issuer Director'' and ''Issuer committee member.'' The By-Laws currently provide that the number of ''Non-Industry Directors'' (*i.e.,* Directors who are not Industry Directors) must equal or exceed the number of Industry Directors, and shall include at least one ''issuer representative,'' unless the Board consists of ten or more Directors, in which case it must include at least two issuer representatives. The Corporation believes that requiring the representation of issuers on the Board is consistent with the goal of promoting a diversity of viewpoints and skills among Directors and the requirement of Section 6(b)(3) of the Act [13] to provide for representation of issuers among the directors of a national securities exchange. The term ''issuer representative'' is not directly defined in the By-Laws, but is implicitly defined in the definition of ''Non-Industry Director'' as ''an officer, director, or employee of an issuer of securities listed on a national securities exchange operated by any Self-Regulatory Subsidiary.'' The new proposed definition is ''a Director (excluding any Staff Director) or committee member who is an officer or employee of an issuer of securities listed on a national securities exchange operated by any Self-Regulatory Subsidiary, excluding any Director or committee member who is a director of such an issuer but is not also an officer or employee of such an issuer.'' The exclusion of Staff Directors from the definition is necessary because NASDAQ OMX is listed on NASDAQ, but the purposes of the By-Laws in requiring issuer representation to promote a diversity of viewpoints among Directors would not be well served by deeming Staff Directors also to be Issuer Directors. The definition is also being changed to exclude persons who are directors of issuers but not also officers or employees. This change is intended to make it clear that a Director is not barred from being considered a Public Director [14] merely because the Director serves as an independent director of another listed company.

(3) The definition of ''Public Director'' and ''Public committee member'' is being restated as follows: ''a Director or committee member who (1) Is not an Industry Director or Industry committee member, (2) is not an Issuer Director or Issuer committee member, and (3) has no material business relationship with a member or member organization of a Self-Regulatory Subsidiary, the Corporation or its affiliates, or FINRA.'' The definition currently covers a person who ''has no material business relationship with a broker or dealer, the Corporation or its affiliates, or FINRA.'' Thus, the changes make it clear that any Industry Director or Issuer Director would not be considered a Public Director. As noted above, however, an independent director of an issuer of securities listed on NASDAQ could be considered a Public Director. In addition, in keeping with the change to the definition of Industry Director discussed above, the final clause of the definition is being revised to focus on the existence of a material business relationship with a member or member organization of a Self-Regulatory Subsidiary, rather than any broker or dealer. Thus, for example, a Director that had a material business relationship with a non-U.S. broker or dealer that was not a member or a member organization of a Self-Regulatory Subsidiary might be eligible to be a Public Director.

(4) The definition of ''Non-Industry Director'' or ''Non-Industry committee member'' is proposed to be amended to cover any ''Director (excluding any Staff Director) or committee member who is (1) A Public Director or Public committee member; (2) an Issuer Director or Issuer committee member; or

[10] A broker-dealer that is admitted to membership in Phlx is referred to as a ''member organization;'' broker-dealers admitted to membership in the other Self-Regulatory Subsidiaries are referred to as ''members.''

[11] An ''Executive Officer'' of a member or member organization means those officers covered in Rule 16a–1(f) under the Act, as if the member or member organization were an issuer within the meaning of such Rule. 17 CFR 240.16a–1(f).

[12] The definition of ''Industry Director'' will continue to exclude Staff Directors, who might otherwise be considered Industry Directors by virtue of affiliation with NASDAQ Exchange Services LLC and NASDAQ Options Services, LLC, registered broker-dealers that are members or NASDAQ and BX and member organizations of Phlx.

[13] 15 U.S.C. 78f(b)(3).

[14] The definition of Public Director is discussed below.

(3) any other individual who would not be an Industry Director or Industry committee member.'' The revised definition is generally consistent with the current definition, but reflects the adoption of a definition for ''Issuer Director or Issuer committee member.''

(5) NASDAQ OMX is making conforming changes to the letter designations of paragraphs in Article I of the By-Laws.

Qualifications of Directors

NASDAQ OMX is proposing to amend Section 4.3 of the By-Laws, which governs the qualifications and compositional requirements of the Board of Directors, to (i) increase the required number of Public Directors from one to two, (ii) replace the requirement to include at least one issuer representative (or at least two issuer representatives if the Board consists of ten or more Directors) with a requirement to include at least one, but no more than two, Issuer Directors, and (iii) provide that the number of Staff Directors may not exceed one, unless the Board consists of ten or more Directors, in which case the number may not exceed two. The section will continue to require that the number of Non-Industry Directors equals or exceeds the number of Industry Directors. Although these changes will not significantly modify the Board's compositional requirements, they will continue to ensure a diversity of representation among Industry, Staff, Issuer, and Public Directors, will place more stringent caps on the number of Issuer and Staff Directors, and will increase the requirement for Public Directors. NASDAQ OMX also proposes to make a conforming change to add the term ''Issuer Director'' to Section 4.8 and Section 4.13(h), which govern the filling of vacancies on the Board and the determination of Directors' qualifications by NASDAQ OMX's Secretary.

The changes to the compositional requirements imposed specifically by the By-Laws do not alter in any respect the compositional requirements imposed by NASDAQ listing standards on NASDAQ OMX as a public company. Specifically, NASDAQ Rule 5605 requires that the board of directors of a company listed on NASDAQ must have a majority of directors that are ''independent'' within the meaning of that rule. As provided in NASDAQ Rule 5605(a)(2) with respect to a company listed on NASDAQ (a ''Company''), '' 'Independent Director' means a person other than an Executive Officer [15] or employee of the Company or any other individual having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.'' The rule goes on to provide that directors having certain defined relationships with a Company may not be considered independent. Thus, while Staff Directors are clearly not independent within the meaning of Rule 5605, other Directors may or may not be considered independent, depending on the specific facts of their relationship to NASDAQ OMX. The proposed rule change does not alter in any respect the obligations of the NASDAQ OMX Board under NASDAQ Rule 5605.

Composition of Executive Committee

NASDAQ OMX is proposing a minor amendment to the compositional requirements of its Executive Committee. Currently, Section 4.13(d) of the By-Laws provides that the percentage of Public Directors on the Executive Committee must be at least as great as the percentage of Public Directors on the whole Board. As noted above, however, the By-Laws currently require only one Public Director on the whole Board (a requirement that NASDAQ OMX is proposing to raise to two Public Directors). Thus, the By-Laws currently reflect a standard under which voluntary inclusion of additional Public Directors on the full Board translates into a requirement to include ever increasing numbers of Public Directors on the Executive Committee, even though the requirements for the full Board itself may be satisfied with only one Public Director. Accordingly, NASDAQ OMX is proposing to make the requirements consistent by requiring at least two Public Directors on the Executive Committee.

Composition of the Audit Committee

Earlier this year, the Commission approved changes to the provisions of NASDAQ OMX's By-Laws pertaining to the composition of the Management Compensation Committee of its Board of Directors. NASDAQ OMX is now proposing comparable changes to the compositional requirements of its Audit Committee. Specifically, NASDAQ OMX is proposing to amend Section 4.13(g) to replace a requirement that the Audit Committee be composed of a majority of Non-Industry Directors with a requirement that the number of Non-Industry Directors on the committee equal or exceed the number of Industry Directors. Thus, in the case of a committee composed of four Directors, the current By-Law provides that only one Director may be an Industry Director, while the amended By-Law would allow up to two Directors to be Industry Directors. The proposed compositional requirement for the committee with regard to the balance between Industry Directors and Non-Industry Directors would be the same as that already provided for in the By-Laws with respect to the Executive Committee, the Nominating and Governance Committee, the Management Compensation Committee, and the full Board of Directors.

The Corporation believes that the change will provide greater flexibility to NASDAQ OMX with regard to populating a committee that includes Directors with relevant expertise and that is not excessively large in relation to the size of the full Board of Directors, while continuing to ensure that Directors associated with members and member organizations of the Self-Regulatory Subsidiaries do not exert disproportionate influence of the governance of NASDAQ OMX. As required by Section 10A of the Act,[16] SEC Rule 10A–3 thereunder,[17] and NASDAQ Rule 5605(c), the committee would continue at all times to be composed solely of Directors who are independent within the meaning of those provisions.

2. Statutory Basis

The Corporation believes that that the proposed rule change is consistent with provisions of Section 17A of the Act.[18] In particular, the Corporation believes that the change to the definition of Industry Director is warranted to ensure that it is appropriately focused on the mitigation of potential conflicts of interest associated with Directors who are currently or were very recently employed by members or member organizations of Self-Regulatory Subsidiaries, or that otherwise have material affiliations with such members or member organizations, without unnecessarily restricting highly qualified individuals with extensive knowledge of the financial services industry from serving on the Board. The Corporation further believes that the other definitional changes and the changes to the compositional requirements of the NASDAQ OMX Board and the Executive Committee will

[15] NASDAQ Rule 5605(a)(1) provides that '' 'Executive Officer' means those officers covered in Rule 16a–1(f) under the Act.'' 17 CFR 240.16a–1(f).

[16] 15 U.S.C. 78j–1.

[17] 17 CFR 240.10A–3.

[18] 15 U.S.C. 78q–1.

enhance the clarity of these provisions and promote a diversity of backgrounds and viewpoints on the NASDAQ OMX Board. The Corporation believes that these changes will collectively promote the capacity of the NASDAQ OMX Board to fulfill its responsibilities.

With respect to the proposed changes to the Audit Committee's compositional requirements, the Corporation believes that the change will provide greater flexibility to NASDAQ OMX with regard to populating a committee that includes Directors with relevant expertise and that is not excessively large in relation to the size of the full Board of Directors, while continuing to ensure that Directors associated with members and member organizations of Self-Regulatory Subsidiaries do not exert disproportionate influence of the governance of NASDAQ OMX. The change would not affect NASDAQ OMX's compliance with Section 10A of the Act,[19] SEC Rule 10A–3 thereunder,[20] and NASDAQ Rule 5605(c), as the committee would continue at all times to be composed solely of Directors who are independent within the meaning of those provisions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Corporation 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. Specifically, the Corporation believes that the By-Laws of its holding company, NASDAQ OMX, do not directly affect competition, since they do not affect the availability or pricing of goods and services. Moreover, the Corporation is not currently operational, so the change will not in any event have any impact on its competitive standing. To the extent that the proposed change to the By-Laws may be construed to have any bearing on competition, the Corporation believes that the change will promote competition, since the change will allow NASDAQ OMX to have greater flexibility in the selection of its Directors in a manner similar to the flexibility available to NYSE Euronext under its Independence Policy.

(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.

[19] 15 U.S.C. 78j–1.

[20] 17 CFR 240.10A–3.

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–SCCP–2012–02 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–SCCP–2012–02. 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 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 SCCP. 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–SCCP–2012–02, and should be submitted on or before January 23, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31464 Filed 12–31–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68537; File No. SR–BSECC–2012–002]

Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; Notice of Filing of Proposed Rule Change With Respect to the Amendment of the By-Laws of Its Parent Corporation, The NASDAQ OMX Group, Inc.

December 26, 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 19, 2012, Boston Stock Exchange Clearing Corporation (''BSECC'') 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 BSECC. 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

BSECC proposes a rule change with respect to the amendment of the by-laws of its parent corporation, The NASDAQ OMX Group, Inc. (''NASDAQ OMX'' or the ''Corporation''). The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com/*, at BSECC's principal office, and at the Commission's Public Reference Room.

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Corporation 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 Corporation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ OMX is proposing amendments to provisions of its By-Laws pertaining to the compositional requirements of the NASDAQ OMX Board. The changes are primarily focused on amending the definition of ''Industry Director'' (and ''Industry committee member'')[4] to make the definition less restrictive, but in a manner that BSECC believes will continue to serve the purpose of ensuring that members and member organizations of Self-Regulatory Subsidiaries[5]—the self-regulatory organizations owned by NASDAQ OMX—do not have disproportionate influence on its governance. In making the change, NASDAQ OMX is adapting concepts already approved by the Commission in its review of the Independence Policy of the NYSE Euronext Board of Directors (the ''Independence Policy'').[6] The proposed rule change also makes several other changes to provisions pertaining to the Board's compositional requirements and categorization of Directors.

Definitions

The By-Laws require Directors to be assigned to certain defined categories, based on their current and past affiliations.[7] Specifically, Directors may be categorized as ''Industry Directors,'' ''Non-Industry Directors,'' ''Public Directors,'' and/or ''Staff Directors.'' Currently, an Industry Director is defined as a Director who:

(1) Is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer;

(2) Is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity;

(3) Owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer;

(4) Provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership;

(5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; or

(6) Has a consulting or employment relationship with or provides professional services to the Corporation or any affiliate[8] thereof (including any Self-Regulatory Subsidiary) or to the Financial Industry Regulatory Authority (''FINRA'') (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years.

Thus, the current definition focuses on a Director's affiliation with any broker-dealer, regardless of whether the broker-dealer is a member or member organization of a Self-Regulatory Subsidiary. The definition also features a three-year ''look-back'' period during which a Director formerly associated with a broker-dealer would continue to be deemed an Industry Director.

In lieu of this definition, NASDAQ OMX is proposing to adopt a definition that focuses on whether a Director is affiliated with a member or a member organization of a Self-Regulatory Subsidiary. Under the revised definition, an Industry Director will be defined as a Director who:

(1) Is, or within the last year was, or has an immediate family member[9] who is, or within the last year was, a member of a Self-Regulatory Subsidiary;[10]

(2) Is, or within the last year was, employed by a member or a member organization of a Self-Regulatory Subsidiary;[11]

(3) Has an immediate family member who is, or within the last year was, an executive officer of a member or a member organization[12] of a Self-Regulatory Subsidiary;

(4) Has within the last year received from any member or member organization of a Self-Regulatory Subsidiary more than $100,000 per year in direct compensation, or received from such members or member organizations in the aggregate an amount of direct compensation that in

[3] The Commission staff has modified the text of the summaries prepared by the Corporation.

[4] The term ''committee member'' in the By-Laws refers to membership in the committees authorized under Section 4.13 of the By-Laws, such as the Executive Committee and the Audit Committee. Under the By-Laws and the Delaware General Corporation Law, all members of committees with the power and authority to act on behalf of the Board in the management of the business and affairs of NASDAQ OMX must themselves be Directors. Accordingly, the definitions of ''Industry Director'' and ''Industry committee member'' are coterminous as applied to any member of these committees. The By-Laws do not presently contemplate any committees with non-Director members.

[5] The By-Laws define each of The NASDAQ Stock Market LLC (''NASDAQ''), NASDAQ OMX BX, Inc. (''BX''), NASDAQ OMX PHLX LLC (''Phlx''), BSECC, and the Stock Clearing Corporation of Philadelphia (''SCCP'') as a ''Self-Regulatory Subsidiary.''

[6] Securities Exchange Act Release No. 51217 (February 16, 2005), 70 FR 9688 (February 28, 2005) (SR–NYSE–2004–54); Securities Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR–NYSE–2006–120); Securities Exchange Act Release No. 67564 (August 1, 2012), 77 FR 47161) (SR–NYSE–2012–17; SR–NYSEArca–2012–59; SR–NYSEMKT–2012–07).

[7] As discussed above, the categories also govern the classification of members of committees of NASDAQ OMX, as provided for in the By-Laws.

[8] NASDAQ OMX is adding a definition of ''affiliate'' as follows: ''An 'affiliate' of, or a person 'affiliated' with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.'' The definition is identical to the definition of the term in SEC Rule 12b–2, 17 CFR 240.12b–2.

[9] NASDAQ OMX is adding a definition of ''immediate family member'' as follows: '' 'Immediate family member' means a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home.'' The definition is identical to the definition of ''family member'' contained in NASDAQ listing standards, as provided in NASDAQ Rule 5605.

[10] This provision would apply to an individual that was a member of Phlx, the only Self-Regulatory Subsidiary that allows natural persons to become members.

[11] A broker-dealer that is admitted to membership in Phlx is referred to as a ''member organization;'' broker-dealers admitted to membership in the other Self-Regulatory Subsidiaries are referred to as ''members.''

[12] An ''Executive Officer'' of a member or member organization means those officers covered in Rule 16a–1(f) under the Act, as if the member or member organization were an issuer within the meaning of such Rule. 17 CFR 240.16a–1(f).

any one year is more than 10 percent of the Director's annual gross compensation for such year, excluding in each case director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service); or

(5) Is affiliated, directly or indirectly, with a member or member organization of a Self-Regulatory Subsidiary.

NASDAQ OMX believes that the change is warranted to ensure that the definition of Industry Director is appropriately focused on the mitigation of potential conflicts of interest associated with Directors who are currently or were very recently employed by members or member organizations of Self-Regulatory Subsidiaries, or that otherwise have material affiliations with such members or member organizations. The current definition covers individuals who are employed by broker-dealers that are not members of Self-Regulatory Subsidiaries, or who retired from service at a broker-dealer more than one, but less than three years in the past. The Corporation believes that by deeming such potential Directors to be Industry Directors, the current By-Laws unnecessarily restrict highly qualified individuals with extensive knowledge of the financial services industry from serving on the Board.

In addition to this change, NASDAQ OMX is also proposing the following additional changes to the definitions applicable to categories of Directors:

(1) NASDAQ OMX proposes a new definition of ''Staff Director.'' Currently, the definition of ''Staff Director'' is included within the definition of ''Industry Director,'' and is defined as ''any two officers of the Corporation, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors.'' By virtue of being designated as Staff Directors, these Directors are not considered to be Industry Directors for purposes of the compositional requirements of the By-Laws. Instead, NASDAQ OMX proposes a separate definition of ''Staff Director'' as ''an officer of the Corporation that is serving as a Director.'' [13] As discussed below, however, Section 4.3 of the By-Laws is to be amended to provide that only one Staff Director may serve on the Board, unless the Board consists of ten or more Directors, in which case no more than two Staff Directors may serve. Thus, the change will further restrict the number of possible Staff Directors in instances where the Board is smaller than ten Directors, while retaining the current limit for a larger Board.

(2) NASDAQ OMX is adopting a new definition of ''Issuer Director'' and ''Issuer committee member.'' The By-Laws currently provide that the number of ''Non-Industry Directors'' (*i.e.,* Directors who are not Industry Directors) must equal or exceed the number of Industry Directors, and shall include at least one ''issuer representative,'' unless the Board consists of ten or more Directors, in which case it must include at least two issuer representatives. The Corporation believes that requiring the representation of issuers on the Board is consistent with the goal of promoting a diversity of viewpoints and skills among Directors and the requirement of Section 6(b)(3) of the Act [14] to provide for representation of issuers among the directors of a national securities exchange. The term ''issuer representative'' is not directly defined in the By-Laws, but is implicitly defined in the definition of ''Non-Industry Director'' as ''an officer, director, or employee of an issuer of securities listed on a national securities exchange operated by any Self-Regulatory Subsidiary.'' The new proposed definition is ''a Director (excluding any Staff Director) or committee member who is an officer or employee of an issuer of securities listed on a national securities exchange operated by any Self-Regulatory Subsidiary, excluding any Director or committee member who is a director of such an issuer but is not also an officer or employee of such an issuer.'' The exclusion of Staff Directors from the definition is necessary because NASDAQ OMX is listed on NASDAQ, but the purposes of the By-Laws in requiring issuer representation to promote a diversity of viewpoints among Directors would not be well served by deeming Staff Directors also to be Issuer Directors. The definition is also being changed to exclude persons who are directors of issuers but not also officers or employees. This change is intended to make it clear that a Director is not barred from being considered a Public Director [15] merely because the Director serves as an independent director of another listed company.

(3) The definition of ''Public Director'' and ''Public committee member'' is being restated as follows: ''a Director or committee member who (1) is not an Industry Director or Industry committee member, (2) is not an Issuer Director or Issuer committee member, and (3) has no material business relationship with a member or member organization of a Self-Regulatory Subsidiary, the Corporation or its affiliates, or FINRA.'' The definition currently covers a person who ''has no material business relationship with a broker or dealer, the Corporation or its affiliates, or FINRA.'' Thus, the changes make it clear that any Industry Director or Issuer Director would not be considered a Public Director. As noted above, however, an independent director of an issuer of securities listed on NASDAQ could be considered a Public Director. In addition, in keeping with the change to the definition of Industry Director discussed above, the final clause of the definition is being revised to focus on the existence of a material business relationship with a member or member organization of a Self-Regulatory Subsidiary, rather than any broker or dealer. Thus, for example, a Director that had a material business relationship with a non-U.S. broker or dealer that was not a member or a member organization of a Self-Regulatory Subsidiary might be eligible to be a Public Director.

(4) The definition of ''Non-Industry Director'' or ''Non-Industry committee member'' is proposed to be amended to cover any ''Director (excluding any Staff Director) or committee member who is (1) a Public Director or Public committee member; (2) an Issuer Director or Issuer committee member; or (3) any other individual who would not be an Industry Director or Industry committee member.'' The revised definition is generally consistent with the current definition, but reflects the adoption of a definition for ''Issuer Director or Issuer committee member.''

(5) NASDAQ OMX is making conforming changes to the letter designations of paragraphs in Article I of the By-Laws.

Qualifications of Directors

NASDAQ OMX is proposing to amend Section 4.3 of the By-Laws, which governs the qualifications and compositional requirements of the Board of Directors, to (i) increase the required number of Public Directors from one to two, (ii) replace the requirement to include at least one issuer representative (or at least two issuer representatives if the Board consists of ten or more Directors) with

[13] The definition of ''Industry Director'' will continue to exclude Staff Directors, who might otherwise be considered Industry Directors by virtue of affiliation with NASDAQ Exchange Services LLC and NASDAQ Options Services, LLC, registered broker-dealers that are members or NASDAQ and BX and member organizations of Phlx.

[14] 15 U.S.C. 78f(b)(3).

[15] The definition of Public Director is discussed below.

a requirement to include at least one, but no more than two, Issuer Directors, and (iii) provide that the number of Staff Directors may not exceed one, unless the Board consists of ten or more Directors, in which case the number may not exceed two. The section will continue to require that the number of Non-Industry Directors equals or exceeds the number of Industry Directors. Although these changes will not significantly modify the Board's compositional requirements, they will continue to ensure a diversity of representation among Industry, Staff, Issuer, and Public Directors, will place more stringent caps on the number of Issuer and Staff Directors, and will increase the requirement for Public Directors. NASDAQ OMX also proposes to make a conforming change to add the term ''Issuer Director'' to Section 4.8 and Section 4.13(h), which govern the filling of vacancies on the Board and the determination of Directors' qualifications by NASDAQ OMX's Secretary.

The changes to the compositional requirements imposed specifically by the By-Laws do not alter in any respect the compositional requirements imposed by NASDAQ listing standards on NASDAQ OMX as a public company. Specifically, NASDAQ Rule 5605 requires that the board of directors of a company listed on NASDAQ must have a majority of directors that are ''independent'' within the meaning of that rule. As provided in NASDAQ Rule 5605(a)(2) with respect to a company listed on NASDAQ (a ''Company''), '' 'Independent Director' means a person other than an Executive Officer [16] or employee of the Company or any other individual having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.'' The rule goes on to provide that directors having certain defined relationships with a Company may not be considered independent. Thus, while Staff Directors are clearly not independent within the meaning of Rule 5605, other Directors may or may not be considered independent, depending on the specific facts of their relationship to NASDAQ OMX. The proposed rule change does not alter in any respect the obligations of the NASDAQ OMX Board under NASDAQ Rule 5605.

Composition of Executive Committee

NASDAQ OMX is proposing a minor amendment to the compositional requirements of its Executive Committee. Currently, Section 4.13(d) of the By-Laws provides that the percentage of Public Directors on the Executive Committee must be at least as great as the percentage of Public Directors on the whole Board. As noted above, however, the By-Laws currently require only one Public Director on the whole Board (a requirement that NASDAQ OMX is proposing to raise to two Public Directors). Thus, the By-Laws currently reflect a standard under which voluntary inclusion of additional Public Directors on the full Board translates into a requirement to include ever increasing numbers of Public Directors on the Executive Committee, even though the requirements for the full Board itself may be satisfied with only one Public Director. Accordingly, NASDAQ OMX is proposing to make the requirements consistent by requiring at least two Public Directors on the Executive Committee.

Composition of the Audit Committee

Earlier this year, the Commission approved changes to the provisions of NASDAQ OMX's By-Laws pertaining to the composition of the Management Compensation Committee of its Board of Directors. NASDAQ OMX is now proposing comparable changes to the compositional requirements of its Audit Committee. Specifically, NASDAQ OMX is proposing to amend Section 4.13(g) to replace a requirement that the Audit Committee be composed of a majority of Non-Industry Directors with a requirement that the number of Non-Industry Directors on the committee equal or exceed the number of Industry Directors. Thus, in the case of a committee composed of four Directors, the current By-Law provides that only one Director may be an Industry Director, while the amended By-Law would allow up to two Directors to be Industry Directors. The proposed compositional requirement for the committee with regard to the balance between Industry Directors and Non-Industry Directors would be the same as that already provided for in the By-Laws with respect to the Executive Committee, the Nominating and Governance Committee, the Management Compensation Committee, and the full Board of Directors.

The Corporation believes that the change will provide greater flexibility to NASDAQ OMX with regard to populating a committee that includes Directors with relevant expertise and that is not excessively large in relation to the size of the full Board of Directors, while continuing to ensure that Directors associated with members and member organizations of the Self-Regulatory Subsidiaries do not exert disproportionate influence of the governance of NASDAQ OMX. As required by Section 10A of the Act,[17] SEC Rule 10A–3 thereunder,[18] and NASDAQ Rule 5605(c), the committee would continue at all times to be composed solely of Directors who are independent within the meaning of those provisions.

2. Statutory Basis

The Corporation believes that the proposed rule change is consistent with provisions of Section 17A of the Act.[19] In particular, the Corporation believes that the change to the definition of Industry Director is warranted to ensure that it is appropriately focused on the mitigation of potential conflicts of interest associated with Directors who are currently or were very recently employed by members or member organizations of Self-Regulatory Subsidiaries, or that otherwise have material affiliations with such members or member organizations, without unnecessarily restricting highly qualified individuals with extensive knowledge of the financial services industry from serving on the Board. The Corporation further believes that the other definitional changes and the changes to the compositional requirements of the NASDAQ OMX Board and the Executive Committee will enhance the clarity of these provisions and promote a diversity of backgrounds and viewpoints on the NASDAQ OMX Board. The Corporation believes that these changes will collectively promote the capacity of the NASDAQ OMX Board to fulfill its responsibilities.

With respect to the proposed changes to the Audit Committee's compositional requirements, the Corporation believes that the change will provide greater flexibility to NASDAQ OMX with regard to populating a committee that includes Directors with relevant expertise and that is not excessively large in relation to the size of the full Board of Directors, while continuing to ensure that Directors associated with members and member organizations of Self-Regulatory Subsidiaries do not exert disproportionate influence of the governance of NASDAQ OMX. The change would not affect NASDAQ OMX's compliance with Section 10A of

[16] NASDAQ Rule 5605(a)(1) provides that '' 'Executive Officer' means those officers covered in Rule 16a-1(f) under the Act.'' 17 CFR 240.16a–1(f).

[17] 15 U.S.C. 78j-1.

[18] 17 CFR 240.10A–3.

[19] 15 U.S.C. 78q-1.

the Act,[20] SEC Rule 10A–3 thereunder,[21] and NASDAQ Rule 5605(c), as the committee would continue at all times to be composed solely of Directors who are independent within the meaning of those provisions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes the Act. Specifically, the Corporation believes that the By-Laws of its holding company, NASDAQ OMX, do not directly affect competition, since they do not affect the availability or pricing of goods and services. Moreover, the Corporation is not currently operational, so the change will not in any event have any impact on its competitive standing. To the extent that the proposed change to the By-Laws may be construed to have any bearing on competition, the Corporation believes that the change will promote competition, since the change will allow NASDAQ OMX to have greater flexibility in the selection of its Directors in a manner similar to the flexibility available to NYSE Euronext under its Independence Policy.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period 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.

[20] 15 U.S.C. 78j-1.

[21] 17 CFR 240.10A–3.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commissions Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BSECC–2012–002 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–BSECC–2012–002. 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 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 BSECC. 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–BSECC–2012–002, and should be submitted on or before January 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31465 Filed 12–31–12; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68519; File No. SR–NASDAQ–2012–143]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Extension of the Exchange's Penny Pilot Program and Replacement of Penny Pilot Issues That Have Been Delisted

December 21, 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 20, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is filing with the Commission a proposal for the NASDAQ Options Market (''NOM'') to amend Chapter VI, Section 5 (Minimum Increments) of the rules of NOM to: extend through June 30, 2013, the Penny Pilot Program in options classes in certain issues (''Penny Pilot'' or ''Pilot''), and to change the date when delisted classes may be replaced in the Penny Pilot.[3]

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b–4(f)(6)(iii)[4] to the extent needed for timely industry-wide implementation of the proposal.

Proposed new language is *italicized* and proposed deleted language is [bracketed].

NASDAQ Stock Market Rules

Options Rules

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Penny Pilot was established in March 2008 and last extended in June 2012. *See* Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–NASDAQ–2008–026) (notice of filing and immediate effectiveness establishing Penny Pilot); and 67325 (June 29, 2012), 77 FR 40127 (July 6, 2012) (SR–NASDAQ–2012–175) (notice of filing and immediate effectiveness extending the Penny Pilot through December 31, 2012).

[4] 17 CFR 240.19b–4(f)(6)(iii).

Chapter VI Trading Systems

* * * * *

Sec. 5 Minimum Increments

(a) The Board may establish minimum quoting increments for options contracts traded on NOM. Such minimum increments established by the Board will be designated as a stated policy, practice, or interpretation with respect to the administration of this Section within the meaning of Section 19 of the Exchange Act and will be filed with the SEC as a rule change for effectiveness upon filing. Until such time as the Board makes a change in the increments, the following principles shall apply:

(1)–(2) No Change.

(3) For a pilot period scheduled to expire on [December 31, 2012]*June 30, 2013,* if the options series is trading pursuant to the Penny Pilot program one (1) cent if the options series is trading at less than $3.00, five (5) cents if the options series is trading at $3.00 or higher, unless for QQQQs, SPY and IWM where the minimum quoting increment will be one cent for all series regardless of price. A list of such options shall be communicated to membership via an Options Trader Alert (''OTA'') posted on the Exchange's Web site.

The Exchange may replace any pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the pilot, based on trading activity for the six month period beginning [December]*June* 1, [2011]*2012,* and ending [May 31]*November 30,* 2012. The replacement issues may be added to the pilot on the second trading day following [July]*January* 1, [2012]*2013.*

(b) No Change.

* * * * *

The text of the proposed rule change is available from NASDAQ's Web site at *http://nasdaq.cchwallstreet.com,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ 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. NASDAQ has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Chapter VI, Section 5 to: extend the Penny Pilot through June 30, 2013, and to change the date when delisted classes may be replaced in the Penny Pilot.

Under the Penny Pilot, the minimum price variation for all participating options classes, except for the Nasdaq-100 Index Tracking Stock (''QQQQ''), the SPDR S&P 500 Exchange Traded Fund (''SPY'') and the iShares Russell 2000 Index Fund (''IWM''), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. QQQQ, SPY and IWM are quoted in $0.01 increments for all options series. The Penny Pilot is currently scheduled to expire on December 31, 2012.

The Exchange proposes to extend the time period of the Penny Pilot through June 30, 2013, and to provide revised dates for adding replacement issues to the Penny Pilot. The Exchange proposes that any Penny Pilot Program issues that have been delisted may be replaced on the second trading day following January 1, 2013. The replacement issues will be selected based on trading activity for the six month period beginning June 1, 2012, and ending November 30, 2012.[5]

This filing does not propose any substantive changes to the Penny Pilot Program; all classes currently participating in the Penny Pilot will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the potential increase in quote traffic.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act in particular, in that it is designed to 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. In particular, the proposed rule change, which extends the Penny Pilot for an additional six months through June 30, 2013, will enable public customers and other market participants to express their true prices to buy and sell options for the benefit of all market participants. The Exchange is also changing the date for replacing Penny Pilot issues that were deleted.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ 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. To the contrary, this proposal is pro-competitive because it allows Penny Pilot issues to be traded on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] 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[8] and Rule 19b–4(f)(6)(iii) thereunder.[9]

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.[10] However,

[5] The replacement issues will be announced to the Exchange's membership via an Options Trader Alert (OTA) posted on the Exchange's Web site.

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule

Continued

pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.[12] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–143 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–NASDAQ–2012–143.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number *SR–NASDAQ–2012–143* and should be submitted on or before January 23, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31462 Filed 12–31–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68539; File No. SR–CBOE–2012–125]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Exchange's Credit Option Margin Pilot Program

December 27, 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 17, 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. 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 extend its Credit Option Margin Pilot Program through January 17, 2014. 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

On February 2, 2011, the Commission approved the Exchange's proposal to establish a Credit Option Margin Pilot Program (''Program'').[3] The proposal became effective on a pilot basis to run on a parallel track with Financial Industry Regulatory Authority

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change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca-2009–44). *See also supra* note 3.

[13] 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).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63819 (February 2, 2011), 76 FR 6838 (February 8, 2011) order approving (SR–CBOE–2010–106). To implement the Program, the Exchange amended Rule 12.3(l), *Margin Requirements,* to make CBOE's margin requirements for Credit Options consistent with Financial Industry Regulatory Authority (''FINRA'') Rule 4240, *Margin Requirements for Credit Default Swaps.* CBOE's Credit Options (*i.e.,* Credit Default Options and Credit Default Basket Options) are analogous to credit default swaps.

(''FINRA'') Rule 4240 that similarly operates on an interim pilot basis.[4]

On January 17, 2012, the Exchange filed a rule change to, among other things, decouple the Program with the FINRA program and to extend the expiration date of the Program to January 17, 2013.[5] The Program, however, continues to be substantially similar to the provisions of the FINRA program. The Exchange believes that extending the expiration date of the Program will allow for further analysis of the Program and a determination of how the Program should be structured in the future. Thus, the Exchange is now currently proposing to extend the duration of the Program.

The Exchange notes that there are currently Credit Options listed for trading on the Exchange that have open interest. As a result, the Exchange believes that is in the public interest for the Program to continue uninterrupted.

In the future, if the Exchange proposes an additional extension of the Credit Option Margin Pilot Program or proposes to make the Program permanent, then the Exchange will submit a filing proposing such amendments to the Program.

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.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the Exchange believes that the proposed rule change will further the purposes of the Act because, consistent with the goals of the Commission at the initial adoption of the program, the margin requirements set forth by the proposed rule change will help to stabilize the financial markets. In addition, the proposed rule change is substantially similar to existing FINRA Rule 4240.

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. Specifically, the Exchange believes that, by extending the expiration of the Program, the proposed rule change will allow for further analysis of the Program and a determination of how the Program shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

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

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. Impose any significant burden on competition; and

C. 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[9] and Rule 19b–4(f)(6)[10] 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–2012–125 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–*2012–125.* 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–CBOE-*2012–125* and should be submitted on or before January 23, 2013.

[4] *See* Securities Exchange Act Release No. 59955 (May 22, 2009), 74 FR 25586 (May 28, 2009) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change; SR–FINRA–2009–012).

[5] *See* Securities and Exchange Act Release No. 66163 (January 17, 2012), 77 FR 3318 (January 23, 2012) (SR–CBOE–2012–007).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–31533 Filed 12–31–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68535; File No. SR–OCC–2012–24]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Its By-Laws and Rules Consistent With Recent System Changes to the Stock Loan/Hedge Program and Market Loan Program and Delete Certain Terms and Provisions No Longer Applicable

December 26, 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 13, 2012, The Options Clearing Corporation (''OCC'' or the ''Corporation'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which items have been prepared primarily by OCC. OCC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(4)(i)[4] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this Notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

OCC is amending its By-Laws and Rules to make them consistent with recent system changes to the Stock Loan/Hedge Program and Market Loan Program and delete certain terms and provisions that are no longer applicable.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the 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. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[5]

A. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the rule change is to make certain technical changes to the By-Laws and Rules governing OCC's Stock Loan/Hedge Program and Market Loan Program (collectively, the ''Programs'') in order to make them consistent with recent system changes to the Programs and to delete certain terms and provisions that are no longer applicable.

Background

OCC's Stock Loan/Hedge Program is provided for in Article XXI of the By-Laws and Chapter XXII of the Rules, and provides a means for OCC clearing members to submit broker-to-broker stock loan transactions to OCC for clearance. Broker-to-broker transactions are independently-executed stock loan transactions that are negotiated directly between two OCC clearing members. OCC's Market Loan Program, provided for in Article XXIA of the By-Laws and Chapter XXIIA of the Rules, accommodates securities loan transactions executed through electronic trading platforms that match lenders and borrowers on an anonymous basis. Anonymous stock loan transactions are initiated when a lender or borrower, who is either an OCC clearing member participating in the Market Loan Program or a non-clearing member who has a clearing relationship with an OCC clearing member participating in the Market Loan Program, accepts a bid/offer displayed on a trading platform. A clearing member participating in the Market Loan Program will be obligated to OCC as principal with respect to transactions effected by its customers that are non-clearing members of a trading platform.

Where a stock loan transaction is submitted to, and accepted by, OCC for clearance, OCC substitutes itself as the lender to the borrower and the borrower to the lender, thus serving a function for the stock loan market similar to the one it serves within the listed options market. OCC thereby guarantees the future daily mark-to-market payments between the lending clearing member and borrowing clearing member, which are effected through OCC's cash settlement system, and the return of the loaned stock to the lending clearing member and the collateral to the borrowing clearing member upon close-out of the stock loan transaction. OCC leverages The Depository Trust Company's (''DTC'' or the ''Depository'') infrastructure to transfer loaned stock and collateral between OCC clearing members.

Recently, OCC performed a series of procedural changes and system enhancements designed to automate processes that had previously been performed manually and improve the allocation process for stock loan and borrow positions of OCC members who participate in the Stock Loan/Hedge Program and the Market Loan Program. For example, OCC has simplified the process in which stock loan positions are allocated or transferred across a clearing member's account structure. Clearing members now specify a ''default'' account into which stock loan and borrow positions are automatically allocated, and from which transfers and returns are processed, unless otherwise specified in an instruction submitted by the clearing member. Additionally, OCC now has the functionality to receive messages from DTC in real-time, including reclaim requests (*i.e.,* requests submitted by a lender or borrower to DTC to reverse an initial delivery order). Although OCC had previously processed such messages on a manual basis, system changes now enable OCC to automatically process reclaim requests received from DTC on a real-time basis throughout the day. As such, clearing members may now view their positions in real-time, and perform transfers throughout the day based on real-time position information. OCC system changes also provide clearing members with additional mark-to-market rounding flexibility, allowing clearing members to now round their mark-to-market pay and collect amounts to decimals. Finally, the system changes provide clearing members the ability to use sub-accounting functionality that already exists for other products cleared by OCC. In particular, the use of sub-accounting functionality allows a clearing member to segregate individual accounts within its customer, firm, or market-maker ranges, providing greater flexibility in how the clearing member manages individual account positions and margin requirements.

While these system changes and procedural changes increase the efficiency and accuracy of the processes by which stock loan and borrow transactions are processed and positions are maintained, OCC believes they have

[11] 17 CFR 200.30–3(a)(12).

[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)(4)(i).

[5] The Commission has modified the text of the summaries prepared by OCC.

no impact on the substantive rights or obligations of OCC or any clearing member.

Description of Rule Change

1. Designation of Accounts for Stock Loan Transactions and Transfers Between Accounts

The current versions of Rules 2201(a) and 2201A(a) describe a process by which clearing members provide OCC with standing instructions designating one or more accounts in which the clearing member's stock loan and borrow positions may be carried. OCC is amending these provisions to conform with recent system changes to the Programs, as described in the Background section above. Under the system changes, clearing members are required to designate one default account, which can be any of the clearing member's accounts or sub-accounts thereof (*e.g.,* Customers', Firm, or Market Maker) that are eligible under Article XXI, Section 5, Interpretation .01 of the By-Laws to hold stock loan and borrow positions, to which the Corporation can allocate new stock loan and borrow positions in the absence of executable instructions from the clearing member to allocate the new positions to a different account. When a clearing member effects a new loan or borrow, the clearing member can designate an account (or a sub-account thereof) to which the position is to be allocated. If, however, there is no such designation, or the designation is invalid for any reason, the position is allocated to the default account. The clearing member may thereafter transfer stock loan or borrow positions among eligible accounts by submitting an appropriate instruction to OCC.

Interpretation .01 under each of Rule 2201 and Rule 2201A provides details of the process by which a clearing member may transfer existing stock loan or borrow positions (in whole or in part) among its accounts and permits the clearing member to specify a sequence of accounts for the allocation by OCC of its positions if the clearing member attempts to transfer more or fewer shares than its end-of-day loan or borrow position. Under the new system, in connection with a transfer of an existing stock loan or borrow position, shares are taken from the account or sub-account specified by the clearing member. If there are not enough shares in a stock loan or borrow position in that account, the transfer instruction will be rejected. The Corporation is revising Interpretation .01 under Rules 2201 and 2201A to make it consistent with this new system for processing transfers among accounts.

Interpretation .01 to each of Rule 2201 and Rule 2201A also currently uses the term ''allocated'' when describing how a clearing member can move positions among its accounts. The Corporation is changing the term ''allocate'' to ''transfer'' as ''transfer'' is a more accurate description that distinguishes the process from the initial ''allocation'' of a transaction to a designated account.

With respect to returns of stock, Interpretation .02 under each of Rule 2201 and Rule 2201A describes the current system which relies in part upon the sequence of accounts specified by a clearing member (referred to in the preceding paragraph) to allocate returns among the clearing member's accounts with stock loan or borrow positions in the returned stock. Under the new system, returns are reflected in the clearing member's account or sub-account specified on the original delivery order submitted by DTC. If there are not enough shares in the position in that account, the excess shares to be returned are reflected in the clearing member's default account. If there are not enough shares in the applicable position in the default account, the remaining shares are rejected and the return instruction is void to that extent. If no account is designated in the DTC delivery order, then shares are taken from the clearing member's default account and any excess shares are rejected and the return instruction is void to that extent. The Corporation is amending Interpretation .02 under Rules 2201 and 2201A to reflect the new process.

2. Reclaim Transactions

Reclaim transactions are submitted to DTC by either the borrower (to reclaim new loans) or the lender (to reclaim returns) to reverse initial Delivery Orders (''DO'') for a variety of reasons (*e.g.,* DK, wrong quantity, wrong security, wrong money). When DTC receives a reclaim for a previously submitted Stock Loan/Hedge transaction, DTC attempts to match the reclaim to a DO from the same day. Previously, this process occurred throughout the day at DTC, and OCC received only a final positions file after all transactions were processed. As such, the end-of-day file received by OCC did not contain information about reclaims.

OCC now receives messages in real-time from DTC, which include reclaim transactions. Although OCC previously handled reclaim transactions automatically, OCC's system changes now enable OCC to process reclaims systemically. More specifically, OCC system changes enable OCC to begin processing intra-day real-time messages, rather than end-of-day batch files. Under the new process: (i) If OCC receives a reclaim message, the system will attempt to match it to a new loan, borrow or return that occurred that same day and, if a match is found, the system will void the original transaction; (ii) OCC will reject any attempted reclaim of a new loan, borrow or return done on a previous day; and (iii) OCC will reject reclaims that create excess shares (*i.e.,* not enough shares in the account to reduce). Rejected reclaims will not be processed, but will be provided to the clearing member through an on-demand report listing rejected reclaims, along with the basis for the rejection. In connection with reclaim transactions, OCC proposes to include provisions in the Rules to provide certain protections for OCC in the situation where DTC sends a notice to OCC to reverse an initial DO. Specifically, the Corporation is adding to Rule 2202(b) a provision that, if OCC determines that it is able to process a reclaim, OCC may disregard the initial DO and such DO shall be deemed null and void and given no effect for purposes of OCC's By-Laws and Rules. In addition, amended Rule 2202(b) would provide that OCC shall have no obligation or liability to any clearing member in acting, or failing to act, pursuant to a DTC notification to reverse an initial DO. OCC may not process a reclaim for various reasons, including but not limited to: (i) Securities that are not eligible for stock loan transactions; (ii) invalid clearing member; or (iii) reclaim is received not on the same day as the initial delivery order. Finally, the Corporation is adding Interpretation .01 to Rule 2202 to provide that although the Corporation now makes updated stock loan and borrow position information available to each clearing member during a business day, such updated position information is considered provisional and informational only and is subject to revision at any time, and that only the official daily position report may be relied upon as definitely reflecting a clearing member's final stock loan and borrow positions because positions may be altered during the day, for example, to reflect reclaim transactions.

3. Margin-Ineligible Accounts and Stock Loan and Borrow Baskets

The current By-Laws and Rules contain references to ''margin-ineligible'' and ''margin-eligible'' accounts. As there are no longer any margin-ineligible accounts (*i.e.,* all stock loan and borrow positions are now

included in margin calculations),[6] the Corporation is removing references to ''margin-ineligible'' and ''margin-eligible'' accounts from the By-Laws and Rules.

The By-Laws and Rules also currently contain references to ''stock loan baskets'' and ''stock borrow baskets.'' As OCC no longer allows these products,[7] the Corporation is removing references to ''stock loan baskets'' and ''stock borrow baskets'' from the By-Laws and Rules.

4. Receiver Authorized Delivery Processing

DTC has made changes to its systems such that transactions that OCC submits to DTC via the Market Loan Program will no longer be subject to DTC's Receiver Authorized Delivery (''RAD'') processing.[8] To ensure that deliveries in the Market Loan Program flowed through to OCC unimpeded, Interpretation .07A under Article V, Section 1 of the By-Laws requires each clearing member that is a Market Loan Participant to set its RAD limit to the highest level permitted under DTC's rules. DTC has made system changes such that transactions that OCC submits to DTC via the Market Loan Program will no longer be subject to RAD processing. Accordingly, all transactions will flow through unimpeded without the need for Market Loan Participants to set RAD limits.[9] As a result, OCC is removing Interpretation .07A under Article V, Section 1 of the By-Laws.

OCC believes the rule change is consistent with the purposes and requirements of Section 17A of the Act because they are designed to promote the prompt and accurate clearance and settlement of stock loan and borrow transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions[10] by automating processes that had previously been performed manually and improving the allocation process for stock loan and borrow positions of OCC members. The rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the rule change would 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

Written comments were not and are not intended to be solicited with respect to the rule change and none have been 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)(iii) [11] of the Act and Rule 19b–4(f)(4)(i) [12] thereunder on the basis that the rule change effect a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. OCC will delay the implementation of the rule change until it is deemed certified under CFTC Regulation § 40.6. At any time within 60 days of the filing of the 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.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–OCC–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–OCC–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 rule change that are filed with the Commission, and all written communications relating to the 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 OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_12_24.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–OCC–2012–24 and should be submitted on or before January 23, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31463 Filed 12–31–12; 8:45 am]

BILLING CODE 8011–01–P

[6] Securities Exchange Act Release No. 59036 (Dec. 1, 2008), 73 FR 74554 (Dec. 8, 2008) (SR–OCC–2008–06).

[7] Securities Exchange Act Release No. 34–47898 (May 21, 2003), 68 FR 32164 (May 29, 2003) (SR–OCC–2002–11).

[8] Securities Exchange Act Release No. 66179 (Jan. 18, 2012), 77 FR 3531 (Jan. 24, 2012) (SR–DTC–2011–08). RAD is generally a control mechanism of DTC that allows users to review and either approve or cancel incoming deliveries before they are processed to avoid reclamations. DTC's system establishes a minimum RAD limit of $15 million for delivery orders, and each firm is responsible for setting its own RAD limits for each counterparty.

[9] Exclusion of Market Loan Program transactions from RAD limits will in no way impede OCC's ability to manage risk of stock loan and borrow positions because OCC never relied on the DTC RAD limits as a risk management tool.

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(4)(i).

[13] 15 U.S.C. 78s(b)(3)(C).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Desert Mining, Inc., Eagle Broadband, Inc., Endovasc, Inc., Environmental Oil Processing Technology Corp., Falcon Ridge Development, Inc., Fellows Energy Ltd., Forster Drilling Corp. (n/k/a Phoenix Drilling Corporation), and Golden Autumn Holdings, Inc.; Order of Suspension of Trading

December 28, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Desert Mining, 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 Eagle Broadband, Inc. because it has not filed any periodic reports since the period ended May 31, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Endovasc, Inc. 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 Environmental Oil Processing Technology Corp. because it has not filed any periodic reports since the period ended September 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Falcon Ridge Development, Inc. because it has not filed any periodic reports since the period ended March 31, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Fellows Energy Ltd. because it has not filed any periodic reports since the period ended December 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Forster Drilling Corp. (n/k/a Phoenix Drilling Corporation) because it has not filed any periodic reports since the period ended February 29, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Golden Autumn Holdings, Inc. because it has not filed any periodic reports since the period ended June 30, 2007.

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 28, 2012, through 11:59 p.m. EST on January 11, 2013.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–31593 Filed 12–28–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

File No. 500–1, Southridge Enterprises, Inc.; Order of Suspension of Trading

December 28, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Southridge Enterprises, Inc. (''Southridge'') because of questions regarding the accuracy of statements made by Southridge in press releases to investors concerning, among other things, the company's business operations and arrangements, including certain claims regarding a joint partnership and an arrangement to obtain funding and to change the listing venue for Southridge stock. Southridge is a Nevada corporation purportedly based in Dallas, Texas, and its stock is currently traded over the counter and quoted on OTC Link under the symbol SRGE.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Southridge.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST, on December 28, 2012 through 11:59 p.m. EST, on January 11, 2013.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–31595 Filed 12–28–12; 4:15 pm]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2012–0007]

Notice of Solicitation of Public and Federal Agency Comments for Collaboration on Evaluating the World Health Organization (WHO) International Classification of Functioning, Disability and Health (ICF) Standard for Coding Functional Capability in Federal Programs

AGENCY: Social Security Administration.

ACTION: Notice of solicitation for collaboration.

SUMMARY: We are seeking information and comments from other Federal agencies' regarding their intention to use the WHO ICF [1] as a standard for coding functional capacity with broad potential for application to the business processes of other Federal agencies and researchers throughout the world. We invite other interested Federal agencies involved in disability monitoring to collaborate with us to evaluate an ICF-based standard for coding functional capacity in Federal disability programs. We also invite interested public and private parties to comment on appropriate Federal direction on capturing data on functioning.

DATES: To ensure that your comments are considered, we must receive them no later than March 4, 2013.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which of the following methods you choose, please state that your comments refer to Docket No. SSA–2012–0007 so that we may associate your comments with the correct document.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the Search function of the Web page to find docket number SSA–2012–0007. The system will issue you a tracking number to confirm your submission. It may take up to one week for your comment to be viewable.

[1] WHO ICF link: *http://apps.who.int/classifications/icfbrowser/*

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Mail your comments to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

FOR FURTHER INFORMATION CONTACT: Rosemary Hall, Social Security Administration, Office of Disability Programs, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–5021. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION: The WHO ICF is a classification of health and health-related domains, including a list of body functions and a list of domains of activity and participation (see *www.who.int/classification/icf/en/*). The ICF for Children and Youth (ICF–CY) is a derived version of the ICF designed to record characteristics of the developing child and the influence of environments surrounding the child. The ICF and the ICF–CY reflect WHO's framework for measuring health and disability at both individual and population levels.

Multiple organizations have officially supported the ICF.

- In May 2001, the 191 WHO Member States officially endorsed it for their use as the international standard to describe and measure health and disability.
- The WHO members accepted ICF–CY on October 31, 2006.
- The Institute of Medicine (IOM) supports the use of ICF to help standardize how agencies describe and measure different aspects of disability. In its 2007 report, ''The Future of Disability in America,'' the IOM encouraged Federal agencies involved in disability monitoring to adopt the ICF as their conceptual framework.[2]
- The Health Information Technology (HIT) Policy Committee, a public advisory body on HIT to the Office of the National Coordinator for Health Information Technology of the U.S. Department of Health & Human Services, recently recommended the ICF, along with Systematized Nomenclature of Medicine-Clinical Terms (SNOMED–CT) and Logical Observation Identifiers Names and Codes (LOINC), for reporting clinical quality measures on the concept of functional status.[3]

We are studying several uses for ICF coding. We could use it, for example, to describe function in activities of daily living, to describe residual functional capacity (to satisfy a specific set of disability criteria), or to develop a compendium of job descriptions that includes mental and physical functional requirements.

We invite comment on this notice from members of the public and from Federal agencies. We also request that Federal agencies involved in making disability assessments share information with us regarding their review of the ICF as a standard for coding functional capacity, and we invite them to collaborate with us in evaluation of the ICF for use in the business process for Federal disability programs.

Arthur R. Spencer,

Associate Commissioner, Office of Disability Programs.

[FR Doc. 2012–31479 Filed 12–31–12; 8:45 am]

BILLING CODE 4191–02–P

[2] Institute of Medicine (IOM). 2007. *The Future of Disability in America.* Washington, DC: The National Academies Press.

[3] U.S. Department of Health & Human Services, Health IT Standards Committee, A Public Advisory Body on Health Information Technology to the National Coordinator for Health IT, Transmittal Letter. September 9, 2011. Available at: *http://healthit.hhs.gov/portal/server.pt/gateway/PTARGS_0_12811_955546_0_0_18/HITSC_CQMWG_VTF_Transmit_090911.pdf.*

DEPARTMENT OF STATE

[Public Notice 8139]

Culturally Significant Objects Imported for Exhibition—Determinations: ''Girl With a Pearl Earring: Dutch Paintings From the Mauritshuis

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Girl with a Pearl Earring: Dutch Paintings from the Mauritshuis,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Fine Arts Museums of San Francisco, San Francisco, CA, from on or about January 26, 2013, until on or about June 2, 2013; the High Museum of Art, Atlanta, Georgia, from on or about June 23, 2013, until on or about September 29, 2013; The Frick Collection, New York, NY, from on or about October 22, 2013, until on or about January 21, 2014, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: December 26, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–31548 Filed 12–31–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8138]

Application for a Presidential Permit To Operate and Maintain Pipeline Facilities on the Border of the United States and Canada; Enbridge Energy, LP

AGENCY: Department of State.

ACTION: Notice of Receipt of Enbridge Energy, Limited Partnership Application for a Presidential Permit to Operate and Maintain Pipeline Facilities on the Border of the United States and Canada.

SUMMARY: Notice is hereby given that the Department of State (DOS) has received from Enbridge Energy, Limited Partnership (''Enbridge''), a Presidential Permit application to amend the August 3, 2009 Presidential Permit issued to Enbridge by the DOS authorizing the construction, operation, and maintenance of the Line 67 (''Line 67'') Pipeline across the U.S.-Canada border. Enbridge requests an amendment to its permit in order to operate the Line 67 up to its full design capacity of 880,000 barrels per day (bpd) of crude oil with an average annual capacity of 800,000 bpd of heavy crude.

FOR FURTHER INFORMATION CONTACT: Office of Energy Diplomacy, Energy Resources Bureau (ENR/EDP/EWA) Department of State, 2201 C St. NW Ste 4843, Washington, DC 20520 Attn: Michael Brennan, Tel: 202–647–7553.

SUPPLEMENTARY INFORMATION: Enbridge is a limited partnership duly organized under the laws of the State of Delaware. Enbridge owns and operates the ''Lakehead System'', the U.S. portion of an operationally integrated pipeline system which connects producers and shippers of crude oil and natural gas liquids in western Canada with markets in the United States and eastern Canada. Enbridge is a wholly owned subsidiary of Enbridge Energy Partners, L.P. (''Enbridge Partners''), which is a Delaware master limited partnership headquartered at 1100 Louisiana, Suite 3300, Houston, Texas 77002 (ph. 713–821–2000; www.enbridgepartners.com). Enbridge Partners provides pipeline transportation of petroleum and natural gas in the mid-continent and Gulf Coast regions of the United States, in addition to gathering, processing, and other related operations.

The 2009 Presidential Permit that authorized the construction, operation and maintenance of Line 67 from the U.S.-Canada border near Neche, North Dakota to the first mainline shut-off valve in the United States, was issued following the DOS's issuance of a Final Environmental Impact Study (''FEIS'') on June 5, 2009. Line 67 is a 36-inch pipeline that transports crude oil from Enbridge's facilities in Hardisty, Alberta to an Enbridge terminal in Superior, Wisconsin (''Superior Terminal''). In the United States, Line 67 extends 326.9 miles from the U.S.-Canada border through North Dakota, Minnesota and Wisconsin to the Superior Terminal. From there, the crude oil is transported primarily to Midwestern markets and mid-central and Gulf Coast markets, as well as points in the eastern United States and Canada. The U.S. portion of Line 67 facilities also consist of a total of 32 mainline valves with current pumping units located in Minnesota at stations in Clearbrook, Viking, and Deer River.

While the Line 67 expansion would not require any modifications to the facilities at the border, Enbridge intends to increase the capacity of Line 67 in at least two stages. The capacity will initially be increased up to 570,000 bpd by adding horsepower to existing pumping units inside of the current footprint of Enbridge's pump stations in Minnesota. Enbridge further seeks authority to increase the capacity from 570,000 bpd to an average annual capacity of 800,000 bpd at a point in the future by constructing additional pumping units at Enbridge's pump stations in Minnesota.

Under E.O. 13337 the Secretary of State is designated and empowered to receive all applications for Presidential Permits for the construction, connection, operation, or maintenance at the borders of the United States, of facilities for the exportation or importation of liquid petroleum, petroleum products, or other non-gaseous fuels to or from a foreign country. The Department of State is circulating this application to concerned federal agencies for comment. The Department of State has the responsibility to determine whether issuance of a new Presidential Permit to Enbridge in order to expand Line 67 would be in the U.S. national interest.

The Department of State intends to issue additional **Federal Register** notices inviting public comment on whether issuance of the requested amended Presidential Permit would be in the national interest, and addressing plans for reviewing the application consistent with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and other relevant law, by preparing a supplemental environmental impact statement to the final EIS for the Alberta Clipper permit application, issued on June 5, 2009. A separate Notice of Intent to Prepare a Supplemental Environmental Impact Statement will follow this notice in due course. The application is available at *http://www.state.gov/e/enr.*

Dated: December 21, 2012.

Douglas R. Kramer,

Acting Director, Office of Europe, Western Hemisphere and Africa, Bureau of Energy Resources, U.S. Department of State.

[FR Doc. 2012–31557 Filed 12–31–12; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 8137]

Suggestions for Environmental Cooperation Pursuant to the United States-Korea Environmental Cooperation Agreement

AGENCY: Department of State.

ACTION: Notice of preparation of and request for comments regarding the 2013–2014 United States-Korea Work Program for Environmental Cooperation.

SUMMARY: The Department invites the public, including NGOs, educational institutions, private sector enterprises and other interested persons, to submit written comments or suggestions regarding items for inclusion in the first Work Program implementing the U.S.-Korea Environmental Cooperation Agreement (ECA), signed on January 23, 2012. In preparing such comments or suggestions, we encourage submitters to refer to: (1) The U.S.-Korea ECA, (2) the U.S.-Korea Free Trade Agreement (FTA) Environment Chapter, and (3) the Environmental Review of the FTA. These documents are available at: *http://www.state.gov/e/oes/env/trade/c49687.htm.*

DATES: To be assured of timely consideration, all written comments or suggestions are requested no later than January 21, 2013.

ADDRESSES: Written comments or suggestions should be emailed to *GroutDZ@state.gov* or faxed to (202) 647–5947 to the attention of Deborah Grout, Office of Environmental Quality and Transboundary Issues, Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, with the subject line ''U.S.-Korea Environmental Cooperation.'' If you have access to the Internet, you can view and comment on this notice by going to: *http://www.regulations.gov/#!home* and searching on docket number: DOS–2012–0061.

FOR FURTHER INFORMATION CONTACT: Deborah Grout, telephone (202) 647–6777.

SUPPLEMENTARY INFORMATION:

U.S.-Korea Environmental Cooperation Agreement

The United States and Korea signed the Environmental Cooperation Agreement on January 23, 2012. The United States and Korea negotiated the ECA in parallel with the U.S.-Korea Free Trade Agreement. In Articles 3 and 4 of the ECA, the Governments state that they plan to meet to develop and update, as appropriate, a Work Program for Environmental Cooperation. The Work Program will identify and outline environmental cooperation priorities, on-going efforts, and possibilities for future cooperation. Please refer to Article 4 of the ECA for a list of possible areas for cooperation.

We are requesting suggestions for items to include in the 2013–2014 Work Program. For additional information, please visit: *http://www.state.gov/e/oes/env/trade/c49687.htm.*21014 Work Program. There is no expectation of resources or funding associated with any comments or suggestions for the Work Program.

Dated: December 20, 2012.

George N. Sibley,

Director, Office of Environmental Quality and Transboundary Issues, Department of State.

[FR Doc. 2012–31555 Filed 12–31–12; 8:45 am]

BILLING CODE 4710–09–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination of Trade Surplus in Certain Sugar and Syrup Goods and Sugar-Containing Products of Chile, Morocco, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Peru, Colombia, and Panama; Correction

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; Correction.

SUMMARY: The Office of the United States Trade Representative published a document in the **Federal Register** of December 17, 2012 concerning the determination of the trade surplus in certain sugar and syrup goods and sugar containing products of Determination of Trade Surplus in Certain Sugar and Syrup Goods and Sugar-Containing Products of Chile, Morocco, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Peru, Colombia, and Panama. The document contained an error.

FOR FURTHER INFORMATION CONTACT: Ann Heilman-Dahl, Office of Agricultural Affairs, telephone: 202–395–6127 or facsimile: 202–395–4579.

Correction to Previous Notice

In the **Federal Register** of December 17, 2012, Volume 77, Pages 74726–74729, a correction is being made to the information in the information with regard to the Dominican Republic on page 74727, column three, paragraph three. The notice incorrectly states that during Calendar Year 2011, the Dominican Republic's *imports* of the sugar and syrup goods and sugar-containing products exceeded its exports by 3,066 metric tons. The correct statement is that during Calendar Year 2011, the Dominican Republic's *exports* of the sugar and syrup goods and sugar-containing products exceeded its imports by 3,066 metric tons. All other information remains unchanged and will not be repeated in this correction.

Ann Heilman-Dahl,

Director for Agriculture Affairs, Office of the U.S. Trade Representative.

[FR Doc. 2012–31441 Filed 12–31–12; 8:45 am]

BILLING CODE 3290–F3–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket ID PHMSA–2012–0175]

Notice of Availability of Final Environmental Assessment and Finding of No Significant Impact for the Longhorn Pipeline Reversal Project

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of Availability of Final Environmental Assessment and Finding of No Significant Impact for the Longhorn Pipeline Reversal Project.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347, and the Council on Environmental Quality NEPA implementing regulations, 40 CFR parts 1500–1508, the Pipeline and Hazardous Materials Safety Administration (PHMSA) is announcing the availability of the Final Environmental Assessment (FEA) and Finding of No Significant Impact (FONSI) for the Longhorn Pipeline Reversal Project (Project).

PHMSA has posted the FEA and FONSI online at *http://www.regulations.gov* in docket number PHMSA–2012–0175.

FOR FURTHER INFORMATION CONTACT: Amelia Samaras, Attorney, Pipeline and Hazardous Materials Safety Administration, Office of Chief Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590; by phone at 202–366–4362; or email at *amelia.samaras@dot.gov*.

SUPPLEMENTARY INFORMATION: The Longhorn Pipeline runs from El Paso, Texas to Houston, Texas and is owned and operated by Magellan Pipeline Company, L.P. (Magellan). The Longhorn Pipeline currently transports refined petroleum products from east to west (Houston to El Paso). The Project will convert the segment of the Longhorn Pipeline that runs from Crane, Texas to Houston, Texas to crude oil service and will reverse the flow so that crude oil flows from west to east (Crane to Houston). At Crane, refined products will enter the pipeline and move west to El Paso, Texas. The refined products will enter the Longhorn Pipeline via an existing pipeline segment that connects the Longhorn Pipeline to the existing Orion West Pipeline located to the north of the Longhorn Pipeline. The Orion West Pipeline runs from Frost, Texas to El Paso and is also owned and operated by Magellan.

PHMSA regulates the transportation of hazardous liquids via pipeline and also issues and enforces pipeline safety regulations that dictate requirements for construction, design, testing, operation, and maintenance of natural gas and hazardous liquid (including crude oil, petroleum products, and anhydrous ammonia) pipelines. PHMSA does not typically serve as lead agency for pipeline construction projects, as it has no authority over pipeline siting and does not issue any approval or authorization to commence a pipeline construction project. However, a settlement agreement specific to the Longhorn Pipeline titled ''The Longhorn Mitigation Plan'' (LMP) resulted from litigation associated with changes made to the Longhorn Pipeline in 1999. The LMP provides PHMSA with broader responsibility and oversight of the Longhorn Pipeline than it would have under normal circumstances. Accordingly, PHMSA has issued an FEA in order to analyze the impacts of the Project.

The Project requires upgrades to the pipeline and will include construction of a six-mile refined product pipeline segment in El Paso, a three-mile crude oil pipeline segment from 9th Street Junction to Speed Junction in Houston, and an eight-mile refined product pipeline segment from East Houston to Holland Avenue in Houston. As part of the Project, in order to facilitate reversal and increased capacity, Magellan will modify and upgrade existing infrastructure by constructing new pump stations and terminals at various locations along the Longhorn and Orion Pipelines' right-of-ways. Although not originally included in the LMP, activities along the Orion West Pipeline and the segment from Odessa to Crane that will take place as a result of the Project are analyzed in the FEA as connected actions.

PHMSA published the draft environmental assessment for this project for public comment on July 31, 2012. PHMSA received 48 comments. All but three of the comments were form letters in support of the project. Two comments raised environmental concerns about the project.

The FEA analyzes the changes that will take place as a result of the Project and connected actions and how the changes could impact the human environment during construction, normal operations, and in the unlikely event of a release. The FEA also analyzes the condition of the Longhorn Pipeline and how the change in product and direction will affect the pipeline. Based on the analysis presented in the FEA, PHMSA has determined that the

Project will not result in significant environmental impacts.

Issued in Washington, DC, on December 27, 2012.

Alan K. Mayberry,

Deputy Associate Administrator for Field Operations.

[FR Doc. 2012–31520 Filed 12–31–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Proposed Collections; Comment Requests

AGENCY: Departmental Offices; Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on revisions of an information collection that are proposed for approval by the Office of Management and Budget. The Office of International Affairs within the Department of the Treasury is soliciting comments concerning Treasury International Capital Forms CQ–1 and CQ–2, ''Financial and Commercial Liabilities to, and Claims on, Unaffiliated Foreigners.''

DATES: Written comments should be received on or before March 4, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 5422, 1500 Pennsylvania Avenue NW., Washington DC 20220. In view of possible delays in mail delivery, please also notify Mr. Wolkow by email (*comments2TIC@treasury.gov*), fax (202–622–2009) or telephone (202–622–1276).

FOR FURTHER INFORMATION CONTACT: Copies of the proposed forms and instructions are available on the Treasury's TIC Web page for forms, *http://www.treasury.gov/resource-center/data-chart-center/tic/Pages/forms.aspx.* Requests for additional information should be directed to Mr. Wolkow.

SUPPLEMENTARY INFORMATION:

Title: Treasury International Capital Form CQ–1, ''Financial Liabilities to, and Claims on, Unaffiliated Foreigners;'' and Treasury International Capital Form CQ–2, ''Commercial Liabilities to, and Claims on, Unaffiliated Foreigners.''

OMB Number: 1505–0024.

Abstract: Forms CQ–1 and CQ–2 are part of the Treasury International Capital (TIC) reporting system, which is required by law (22 USC 286f; 22 USC 3103; EO 10033; 31 CFR 128), and is designed to collect timely information on international portfolio capital movements. Forms CQ–1 and CQ–2 are quarterly reports filed by nonbanking and non-securities broker and dealer enterprises in the U.S. to report their international portfolio transactions with unaffiliated foreigners. This information is necessary for compiling the U.S. balance of payments accounts and the U.S. international investment position, and for use in formulating U.S. international financial and monetary policies.

Current Actions: As a consequence of the recent global financial crisis, international reporting standards for collecting and reporting economic and financial data have been enhanced, especially regarding each country's external claims and liabilities. TIC forms are consequently revised to meet the new standards. (a) The ''who must report'' section of the instructions is revised. Beginning with the reports as of June 30, 2013, the types of organizations required to file the TIC CQ–1 and CQ–2 reports (the TIC C reports) will include all U.S. residents except U.S.-resident financial institutions. This means that those financial institutions that previously reported on the TIC C forms (they are all financial institutions except banks, other depository institutions, bank and financial holding companies, and brokers and dealers that already report on the TIC B forms; this group includes, but is not limited to investment banks, insurance companies, credit card issuers, money market funds, pension funds, private equity funds, hedge funds, trusts, finance companies, mortgage companies, commodity brokers and dealers, investment advisors and managers, loan brokers), will instead begin reporting on the TIC B forms. As a result, beginning with the reports as of June 30, 2013, the organizations required to file the TIC B reports will include all types of U.S.-resident financial institutions (including, but not limited to banks, other depository institutions, brokers/dealers, bank/financial holding companies, investment banks, insurance companies, credit card issuers, money market funds, pension funds, private equity funds, hedge funds, trusts, finance companies, mortgage companies, commodity brokers and dealers, investment advisors and managers, loan brokers). This change affecting many U.S.-resident financial institutions, from reporting on the TIC C forms to reporting on the TIC B forms, is designed to improve the coverage of international financial transactions and positions in the U.S. balance of payments and in the U.S. international investment position, and reflects the change in the international statistical standards to include in portfolio investment (PI) most international positions between financial institutions. All financial positions between U.S. residents and foreign residents are either PI or direct investment (DI), and all organizations with such positions (above the amounts declared exempt in the reporting instructions), must report them to either the TIC (which collects PI information) or BEA (which collects DI information). (b) In ''Foreign Currency Items,'' which is after the ''Grand Total'' row (9999–6) near the end of both Form CQ–1 and Form CQ–2, a new row has been added to collect information on claims and liabilities ''Denominated in Swiss Francs.'' Data are reportable in all six columns of the CQ–1 and all five columns of the CQ–2. (c) After the ''Grand Total'' row (9999–6) near the end of both Form CQ–1 and Form CQ–2, a new sub-section has been added called ''Remaining Maturities (claims).'' The new sub-section in the CQ–1 has three rows labeled: ''Demand Deposits, Arrears, Resale Agreements Under Continuing Contract, and Items With No Fixed Maturity;'' ''Maturing in 1 Year or Less;'' and ''Maturing In Over 1 Year.'' Data are reportable in all six columns. The new sub-section in the CQ–2 has three rows labeled: ''Items With No Fixed Maturity;'' ''Maturing in 1 Year or Less;'' and ''Maturing In Over 1 Year.'' Data are reportable in all five columns. (d) Just after the Grand Total row (9999–6) near the end of both Form CQ–1 and Form CQ–2, the caption ''Section (B) Memorandum Items:'' is replaced by '' ''Of Which'' Items:''. Just before ''Europe'' on page two of both forms, the caption ''Section A: Selected Positions with Unaffiliated Foreigners:'' is deleted. (e) The instructions for these forms add instructions for reporting on the new rows described in (b) and (c) above. (f) The General Instructions have been reorganized and contain new guidance on reporting accrued interest and on where to report. (g) Several sections of the instructions, including the glossary, incorporate changes to clarify the reporting requirements, such as the consolidation/combination rules, valuation rules, and reporting the location of foreign counterparties. (h) On all TIC reporting forms, the list of countries for reporting the location of

foreign counterparties will be increased by six. This is the result of deleting Netherlands Antilles (3720–6), removing ''Montenegro'' from ''Serbia and Montenegro (1321–8)'', and adding Kosovo (1347–1), Montenegro (1362–5), Bonaire, Sint Eustatius and Saba (3616–1), Curaçao (3618–8), St. Martin and St. Barthelemy (3647–1), Sint Maarten (3619–6), and South Sudan (5339–2). (i) These changes will be effective beginning with the reports as of June 30, 2013.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Forms CQ–1 and CQ–2 (1505–0024)

Estimated Number of Respondents: 204

Estimated Average Time per Respondent: Six and nine-tenths (6.9) hours per respondent per filing. This average time varies from 13 hours for the approximately 12 major data reporters to 6.5 hours for the other reporters.

Estimated Total Annual Burden Hours: 5,616 hours, based on 4 reporting periods per year.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether Forms CQ–1 and CQ–2 are necessary for the proper performance of the functions of the Office, including whether the information will have practical uses; (b) the accuracy of the above estimate of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation, maintenance and purchase of services to provide information.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. 2012–31547 Filed 12–31–12; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations of Individuals Pursuant to Executive Order 13581

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of three individuals whose property and interests in property have been blocked pursuant to Executive Order 13581 of July 24, 2011, ''Blocking Property of Transnational Criminal Organizations'' (''the Order'').

DATES: The designation by the Director of OFAC of the five individuals identified in this notice pursuant to Executive Order 13581 is effective on December 20, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

On July 24, 2011, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), issued the Order. In the Order, the President declared a national emergency to deal with the threat posed by significant transnational criminal organizations and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and the Secretary of State, that constitutes a significant transnational criminal organization, or materially to assist in, or provide financial or technological support for or goods or services in support of, persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On December 20, 2012, the Director of OFAC, in consultation with the Departments of Justice, and State, designated 3 individuals, whose property and interests in property are blocked pursuant to the Order.

The list of designees is as follows:

Individuals

1. KALASHOV, Zakhary Knyazevich (a.k.a. KALACHOV, Zakhar; a.k.a. KALASCHOV, Sachary Knyasevich; a.k.a. KALASCHOW, Zachari; a.k.a. KALASH, Zakhary; a.k.a. KALASHOV, Sergio; a.k.a. KALASHOV, Zachari; a.k.a. KALASHOV, Zahar; a.k.a. KALASHOV, Zahariy; a.k.a. KALASHOV, Zajar; a.k.a. KALASHOV, Zakaria Kniaz; a.k.a. KALASHOV, Zakhar; a.k.a. KALASHOV, Zakhar Kniezivich; a.k.a. KALASHOV, Zakhari; a.k.a. KALASHOV, Zakhariy; a.k.a. KALASIIOV, Zakhariy Kniazevich; a.k.a. KALASOV, Zacharias; a.k.a. KALASOV, Zaxar; a.k.a. ''SHAKRO JUNIOR''; a.k.a. ''SHAKRO KURTI''; a.k.a. ''SHAKRO MALADOI''; a.k.a. ''SHAKRO MOLODOY''; a.k.a. ''SHAKRO THE YOUNG''), General Tyulenev Street, 7, Building 2, Apartment 277, Moscow, Russia; Varketili Masivi, 4th Block, 1st Building, Flat #30, Tbilisi, Georgia; DOB 20 Mar 1953; POB Tbilisi, Georgia; citizen Georgia; alt. citizen Russia; Passport 60–4145924 (Russia); alt. Passport 60–4145934 (Russia) (individual) [TCO]
2. ANAPIYAEV, Almanbet Mamadaminovich (a.k.a. ANAPIYAEV, Almanbaet; a.k.a. ANAPIYAEVA, Almambet; a.k.a. ANAPIYAYEV, Almanbet; a.k.a. ANAPIYEV, Almanbet; a.k.a. ''ALMANBET ALAISKII''; a.k.a. ''ALMANBET ALAY''); DOB 17 Aug 1973; POB Osh Region, Kyrgyzstan; alt. POB Zhkendi Village, Alai Region, Kyrgyzstan; nationality Kyrgyzstan (individual) [TCO]
3. KASENOV, Adilet Zhakypovich; DOB 08 Jun 1983; POB Naryn, Kyrgyzstan; nationality Kyrgyzstan; Passport AC1049097 (Kyrgyzstan) (individual) [TCO]

Dated: December 20, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–31519 Filed 12–31–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Release.

DATES: Written comments should be received on or before March 1, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@bpd.treas.gov.* The opportunity to make comments online is also available at *www.pracomment.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Bruce A. Sharp, Bureau of the Public Debt, 200 Third Street A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Release.

OMB Number: 1535–0089.

Form Number: PD F 2001.

Abstract: The information is requested to ratify payment of savings bonds/notes and release the United States of America from any liability.

Current Actions: None.

Type of Review: Revision.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 10.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 27, 2012.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2012–31534 Filed 12–31–12; 8:45 am]

BILLING CODE 4810–39–P

FEDERAL REGISTER

Vol. 78 Wednesday,

No. 1 January 2, 2013

Part II

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Test Procedures for Residential Clothes Dryers; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2011–BT–TP–0054]

RIN 1904–AC63

Energy Conservation Program: Test Procedures for Residential Clothes Dryers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (DOE) proposes to revise its test procedures for residential clothes dryers established under the Energy Policy and Conservation Act. The proposed amendments to appendix D1 would include testing methods for more accurately measuring the effects of automatic cycle termination. In addition, the proposed amendments would update the reference to the latest edition of the International Electrotechnical Commission (IEC) Standard 62301, ''Household electrical appliances—Measurement of standby power,'' Edition 2.0 2011–01. For the test procedures at both appendix D and appendix D1, DOE proposes to clarify the cycle settings used for the test cycle and the requirements for the gas supply for gas clothes dryers.

DATES: DOE will hold a public meeting on Wednesday, February 6, 2013 from 9 a.m. to 4 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than March 18, 2013. See section V, ''Public Participation,'' for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245 1000 Independence Avenue SW., Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. For more information, refer to the Public Participation, section V, near the end of this notice.

Any comments submitted must identify the NOPR on Test Procedures for Residential Clothes Dryers, and provide docket number EERE–2011–BT–TP–0054 and/or regulatory information number (RIN) 1904–AC63. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov*. Follow the instructions for submitting comments.

2. *Email: RCDAT-2011-TP-0054@ee.doe.gov*. Include docket number EERE–2011–BT–TP–0054 and/or RIN 1904–AC63 in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. *Telephone:* (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

Docket: The docket is available for review at *www.regulations.gov*, including **Federal Register** notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket web page can be found at: *http://www.regulations.gov/#!docketDetail;dct=FR%252BPR%252BN%252BO%252BSR;rpp=10;po=0;D=EERE-2011-BT-TP-0054*. This web page will contain a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* web page contains instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *www.regulations.gov*.

For further information on how to submit a comment or review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or email: *Brenda.Edwards@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Witkowski, U.S. Department of Energy, Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Tel.: (202) 586–7463. Email: *Stephen.Witkowski@ee.doe.gov*.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Tel.: (202) 586–7796, Email: *Elizabeth.Kohl@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Authority and Background
A. General Test Procedure Rulemaking Process
B. DOE Clothes Dryer Test Procedure
1. January 2011 TP Final Rule
2. August 2011 RFI
II. Summary of the Notice of Proposed Rulemaking
III. Discussion
A. Products Covered by This Test Procedure Rulemaking
B. Automatic Cycle Termination
1. August 2011 RFI
2. Product Testing
3. Energy Consumption versus RMC
4. Water Supply Testing
5. Proposed Amendments
C. Incorporating by Reference IEC Standard 62301 Second Edition for Measuring Standby Mode and Off Mode Power
1. Stable Power Consumption
2. Unstable, Non-Cyclic Power Consumption
3. Cyclic Power Consumption
4. Conclusions on Test Methodology
D. Technical Correction to the Calculation of the Per-Cycle Combined Total Energy Consumption
E. Clarifications to Test Conditions
F. Effects of Proposed Test Procedure Revisions on Compliance With Standards
1. Active Mode
2. Standby Mode and Off Mode
G. Compliance With Other EPCA Requirements
1. Test Burden
2. Certification Requirements
IV. Procedural Issues and Regulatory Review
A. Review Under Executive Order 12866
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act of 1995
D. Review Under the National Environmental Policy Act of 1969
E. Review Under Executive Order 13132
F. Review Under Executive Order 12988
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under Executive Order 12630
J. Review Under the Treasury and General Government Appropriations Act, 2001
K. Review Under Executive Order 13211
L. Review Under Section 32 of the Federal Energy Administration Act of 1974
V. Public Participation

A. Attendance at Public Meeting
B. Procedure for Submitting Prepared General Statements for Distribution
C. Conduct of Public Meeting
D. Submission of Comments
E. Issues on Which DOE Seeks Comment
1. Test Load
2. Automatic Cycle Termination Test Cycle
3. Timed Dry Test Cycle
4. Characteristics of Water for Wetting Test Load
5. Incorporation by Reference of IEC Standard 62301 (Second Edition)
6. Technical Correction to the Calculation of the Per-cycle Combined Total Energy Consumption
7. Clarifications to Test Conditions
8. Effects of Proposed Amendments for Automatic Cycle Termination on Energy Conservation Standards
9. Test Burden
VI. Approval of the Office of the Secretary

I. Authority and Background

Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291, *et seq.;* ''EPCA'' or ''the Act'') sets forth a variety of provisions designed to improve energy efficiency. (All references to EPCA refer to the statute as amended through the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140 (Dec. 19, 2007)). Part B of title III, which for editorial reasons was re-designated as Part A upon codification in the U.S. Code (42 U.S.C. 6291–6309), establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' Covered consumer products include clothes dryers, the subject of today's notice. (42 U.S.C. 6292(a)(8))

Under EPCA, this program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use (1) as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) for making representations about the efficiency of those products. Similarly, DOE must use these test requirements to determine whether the products comply with any relevant standards promulgated under EPCA.

A. General Test Procedure Rulemaking Process

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA provides in relevant part that any test procedures prescribed or amended under this section must be reasonably designed to produce test results that measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) In any rulemaking to amend a test procedure, DOE must also determine to what extent, if any, the proposed test procedure would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e))

EPCA also requires DOE to amend the test procedures for all residential covered products to include measures of standby mode and off mode energy consumption. Specifically, EPCA provides definitions of ''standby mode'' and ''off mode'' (42 U.S.C. 6295(gg)(1)(A)) and permits DOE to amend these definitions in the context of a given product (42 U.S.C. 6295(gg)(1)(B)). The statute requires integration of such energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product, unless DOE determines that—

(i) The current test procedures for a covered product already fully account for and incorporate the standby mode and off mode energy consumption of the covered product; or

(ii) Such an integrated test procedure is technically infeasible for a particular covered product, in which case the Secretary shall prescribe a separate standby mode and off mode energy use test procedure for the covered product, if technically feasible. (42 U.S.C. 6295(gg)(2)(A))

In any test procedure amendment, DOE must consider the most current versions of IEC Standard 62301, ''Household electrical appliances—Measurement of standby power,'' and IEC Standard 62087, ''Methods of measurement for the power consumption of audio, video, and related equipment.'' *Id.*

B. DOE Clothes Dryer Test Procedure

DOE's test procedures for clothes dryers are codified in appendix D and appendix D1 to subpart B of Title 10 of the Code of Federal Regulations (CFR). DOE established its test procedure for clothes dryers at appendix D in a final rule published in the **Federal Register** on September 14, 1977 (the September 1977 TP Final Rule). 42 FR 46145. On May 19, 1981, DOE published a final rule (the May 1981 TP Final Rule) to amend the test procedure by establishing a field-use factor for clothes dryers with automatic termination controls, clarifying the test cloth specifications and clothes dryer preconditioning, and making editorial and minor technical changes. 46 FR 27324. The test procedure includes provisions for determining the energy factor (EF) for clothes dryers, which is a measure of the total energy required to dry a standard test load of laundry to a ''bone dry'' [1] state.

1. January 2011 TP Final Rule

On January 6, 2011, the U.S. Department of Energy (DOE) published in the **Federal Register** a final rule for the residential clothes dryer and room air conditioner test procedure rulemaking (76 FR 972) (January 2011 TP Final Rule), in which it (1) adopted the provisions for the measurement of standby mode and off mode power use for those products; and (2) adopted several amendments to the clothes dryer and room air conditioner test procedures concerning the active mode for these products. 76 FR 972 (Jan. 6, 2011). DOE created a new appendix D1 in 10 CFR part 430 subpart B that contained the amended test procedure for clothes dryers. Manufacturers must use the test procedures in appendix D1 to demonstrate compliance with the amended energy conservation standards for clothes dryers as of January 1, 2015 (76 FR 52852 (Aug. 24, 2011), 76 FR 52854 (Aug. 24, 2011))

For clothes dryer standby mode and off mode, the January 2011 TP Final Rule amended the DOE clothes dryer test procedure to incorporate by reference specific clauses from the International Electrotechnical Commission (IEC) Standard 62301, ''Household electrical appliances–Measurement of standby power,'' (first edition June 2005) regarding test conditions and test procedures for measuring standby mode and off mode power consumption, as well as language to clarify application of these provisions for measuring standby mode and off mode power consumption in clothes dryers. In addition, DOE adopted definitions of modes based on the relevant provisions from IEC Standard 62301 Second Edition Committee Draft

[1] ''Bone dry'' is defined in the DOE clothes dryer test procedure as a condition of a load of test clothes which has been dried in a dryer at maximum temperature for a minimum of 10 minutes, removed and weighed before cool down, and then dried again for 10-minute periods until the final weight change of the load is 1 percent or less. (10 CFR subpart B, appendix D, section 1.2)

for Vote (IEC Standard 62301 CDV). DOE established the Combined Energy Factor (CEF) for clothes dryers to integrate energy use in the standby mode and off mode with the energy use of the main functions of the product.[2] 76 FR 972, 975–6 (Jan. 6, 2011).

For clothes dryer active mode, DOE adopted amendments in the January 2011 TP Final Rule to include provisions for the testing of ventless clothes dryers. 76 FR 972, 976–7 (Jan. 6, 2011). The amendments also included the following changes to reflect the current usage and capabilities of products: (1) Changing the annual clothes dryer use cycles from 416 to 283 cycles per year, (2) changing the initial remaining moisture content (RMC)[3] of clothes dryer loads from 70 percent ± 3.5 percent to 57.5 percent ± 3.5 percent, and (3) changing the clothes dryer test load size from 7.00 pounds (lbs) ± .07 lbs to 8.45 ± .085 lbs for standard-size clothes dryers. 76 FR 972, 977 (Jan. 6, 2011). The January 2011 TP Final Rule also amended the DOE clothes dryer test procedure by updating test cloth preconditioning provisions; revising the water temperature for test load preparation from 100 degrees Fahrenheit (°F) ± 5 °F to 60 °F ± 5 °F; updating the reference to the relevant industry test standard (Association of Home Appliance Manufacturers (AHAM) Standard HLD–1–2009); eliminating reference to an obsolete industry test standard (AHAM Standard HLD–2EC); clarifying the required gas supply conditions for testing gas clothes dryers; clarifying the provisions for measuring the drum capacity; clarifying the definition of ''automatic termination control'' for clothes dryers; and adding the calculations of EF and CEF to 10 CFR part 430, subpart B, appendix D1. 76 FR 972, 978 (Jan. 6, 2011).

In the January 2011 TP Final Rule, DOE did not adopt the amendments to more accurately measure automatic cycle termination that were originally proposed in the test procedure supplemental notice of proposed rulemaking (SNOPR) (June 2010 TP SNOPR) (75 FR 37594, 37612–20 (June 29, 2010)).[4] As further discussed in the January 2011 TP Final Rule, DOE conducted testing of representative residential clothes dryers using the automatic cycle termination test procedure proposed in the June 2010 TP SNOPR. The results of the testing revealed that all of the clothes dryers tested significantly over-dried the DOE test load[5] to near bone dry and, as a result, the measured EF values were significantly lower than EF values obtained using the existing DOE test procedure. The test data also indicated that clothes dryers equipped with automatic termination controls would be considered less efficient than timer dryers. 76 FR 972, 977 (Jan. 6, 2011).

In the January 2011 TP Final Rule, DOE concluded that the test procedure amendments for automatic cycle termination proposed in the June 2010 TP SNOPR do not adequately measure the energy consumption of clothes dryers equipped with such systems using the test load specified in the DOE test procedure. DOE stated that clothes dryers with automatic termination sensing control systems, which infer the RMC of the load from the properties of the exhaust air such as temperature and humidity, may be designed to stop the cycle when a load of varying weights, composition, and size has a higher RMC than the RMC obtained using the proposed automatic cycle termination test procedure in conjunction with the existing DOE test load. In considering whether other test loads would be appropriate to incorporate into the DOE test procedure to produce both representative and repeatable test results, however, DOE noted that manufacturers indicated that test load types and test cloth materials different than those specified in the DOE test procedure do not produce results as repeatable as those obtained using the test load as currently specified. 76 FR 977 (Jan. 6, 2011).

2. August 2011 RFI

On August 12, 2011, DOE published a Request for Information (RFI) to further investigate the effects of automatic cycle termination on the energy efficiency (August 2011 RFI). 76 FR 50145. DOE sought information, data, and comments regarding methods for more accurately measuring the effects of automatic cycle termination in the clothes dryer test procedure. In particular, DOE sought comment on the following: (1) The characteristics of loads of varying weights, composition, and size, (2) the accuracy of different automatic cycle termination sensors and controls, (3) the target final RMC used by manufacturers to maintain consumer satisfaction, (4) the effects of the characteristics of water (*i.e.,* hardness and conductivity) used for wetting the test load prior to testing, and (5) the cycle settings selected by consumers for automatic termination cycles. In response to the August 2011 RFI, interested parties commented that DOE should amend the clothes dryer test procedure to include provisions to account for the effectiveness of automatic cycle termination and amend the relevant energy conservation standards based on the effects of the test procedure changes according to EPCA.

II. Summary of the Notice of Proposed Rulemaking

Automatic Termination Control Procedures

In this notice of proposed rulemaking (NOPR), DOE proposes to modify the test procedures for clothes dryers in 10 CFR part 430, subpart B, appendix D1 to include methods for more accurately measuring the effects of automatic cycle termination. The proposed method would require that clothes dryers with automatic cycle termination controls be tested using the ''Normal'' automatic termination cycle setting. Where the drying temperature setting can be chosen independently, it shall be set to the maximum. Where the dryness level setting can be chosen independently, it shall be set to the ''normal'' or ''medium'' dryness level setting.[6] The proposed amendments would then specify that the clothes dryer be allowed to run until the completion of the drying cycle, including the cool down period, to achieve a final RMC of no more than 2 percent. If the final measured RMC is above 2 percent, the test would be considered invalid and the proposed amendments would require that a new test cycle be run using the highest dryness level setting. DOE notes that a final RMC of 2 percent using the DOE test load would be more representative of clothes dryers currently on the market and representative of the maximum consumer-accepted final

[2] The CEF is defined as the clothes dryer test load weight in pounds divided by the sum of the per-cycle standby and off mode energy consumption and either the total per-cycle electric dryer energy consumption or the total per-cycle gas dryer energy consumption expressed in kilowatt hours (kWh).

[3] RMC is the ratio of the weight of water contained by the test load to the bone-dry weight of the test load, expressed as a percent.

[4] The test method proposed in the June 2010 TP SNOPR involved testing clothes dryers with automatic termination controls using the ''normal'' setting (and where the temperature setting can be chosen independently of the program, it shall be set to the highest level) and a test load with a starting moisture content of 57.5 ± 0.33 percent, allowing the dryer to run until the heater switches off for the final time at the end of the drying cycle to achieve a final remaining moisture content of no more than 5 percent.

[5] The DOE test load is composed of cotton momie test cloths that are each 24 inches by 36 inches in dimensions and are a blend of 50-percent cotton and 50-percent polyester.

[6] Most clothes dryers available on the market provide separate settings for the ''temperature level'' and ''dryness level.'' The temperature level refers to the temperature of the hot air used to dry the load in the drum. The dryness level refers to the desired remaining moisture content of the load at the completion of the drying cycle.

RMC. Finally, DOE is proposing to apply a field use factor of 0.80 for clothes dryers with automatic cycle termination to account for the measured energy consumption at the end of the automatic termination cycle drying the DOE test load below 2-percent RMC.

For clothes dryers with only timed dry control settings, the proposed amendments would require that the existing timed dry test cycle in appendix D1 be used, but change the final RMC from 2.5–5 percent to 1–2.5 percent. DOE also proposes to change the normalization in the calculation of the per-cycle energy consumption to represent the energy consumption required to dry the test load to 2-percent RMC. Both of these changes are proposed to be consistent with the test method for automatic cycle termination and to be representative of the final RMC of clothes dryers currently on the market using the DOE test load.

Incorporation of IEC Standard 62301 (Second Edition)

The IEC published IEC Standard 62301, ''Household electrical appliances—Measurement of standby power,'' Edition 2.0 2011–01 (IEC Standard 62301 (Second Edition) or ''Second Edition'') on January 27, 2011. Consistent with EPCA requirements for amending test procedures to include standby and off mode procedures (42 U.S.C. 6295(gg)(2)(A)), DOE analyzed IEC Standard 62301 (Second Edition) for today's NOPR. DOE has reviewed this latest draft of the IEC standard and believes that it provides for improvement for some measurements of standby mode and off mode energy use. Accordingly, DOE proposes in today's NOPR to incorporate certain provisions of the IEC Standard 62301 (Second Edition), along with clarifying language, into the DOE clothes dryer test procedure.

Clarifications to Test Conditions

DOE received a number of inquiries from independent test laboratories requesting clarification on testing according to the DOE clothes dryer test procedure. Based on these inquiries, DOE is proposing in today's NOPR to amend both 10 CFR part 430, subpart B, appendix D and appendix D1 to clarify the cycle settings used for the test cycle and the requirements for the gas supply for gas clothes dryers.

III. Discussion

A. Products Covered by This Test Procedure Rulemaking

Today's proposed amendments to DOE's clothes dryer test procedure cover both electric and gas clothes dryers. DOE defines a clothes dryer to mean a cabinet-like appliance designed to dry fabrics in a tumble-type drum with forced air circulation, with blower(s) driven by an electric motor(s) and either gas or electricity as the heat source. 10 CFR 430.2. DOE is not proposing in today's NOPR to change the definition for clothes dryers in DOE's regulations.

B. Automatic Cycle Termination

In today's NOPR, DOE is proposing amendments to the clothes dryer test procedure in 10 CFR part 430, subpart B, appendix D1 to more accurately measure the effects of automatic cycle termination. The current DOE test procedures for clothes dryers in 10 CFR part 430, subpart B, appendices D and D1 currently require manufacturers to apply a field use factor to the per-cycle drying energy consumption to determine the performance of clothes dryers equipped with both automatic cycle termination and timers. For dryers with automatic termination control, the test procedures do not distinguish between the type of sensing control system (*e.g.,* temperature-sensing or moisture-sensing controls) and the sophistication and accuracy of the control system. Gas or electric clothes dryers with time termination control (*i.e.,* those dryers equipped with a timer to determine the end of a drying cycle) are assigned a field use factor of 1.18, while dryers with automatic termination are assigned a field use factor of 1.04. The field use factors are assigned to account for drying beyond the 2.5–5 percent RMC specified in the test procedure. The field use factor for timer dryers was derived from a field study conducted by the Oklahoma Gas and Electric Company in 1971, consisting of 64 households and 33,000 loads of clothing, as well as data reported by AHAM representing the energy consumption in 1972 of 2,983,200 production units of clothes dryers. 42 FR 46145, 46146 (Sept. 14, 1977). For automatic termination control dryers, the field use factor was derived from a field study conducted by AHAM in 1977 involving 72 households. 45 FR 46762–3 (July 10, 1980); 46 FR 27324 (May 19, 1981).

In the January 2011 TP Final Rule, DOE did not adopt the amendments to more accurately measure automatic cycle termination that were originally proposed in June 2010 TP SNOPR. 76 FR 972, 977–78 (Jan. 6, 2011). In that June 2010 TP SNOPR, DOE proposed to revise its clothes dryer test procedure to include definitions of and provisions for testing both timer dryers and automatic termination control dryers based on the methodology provided in Australia/New Zealand (AS/NZS) Standard 2442.1: 1996, ''Performance of household electrical appliances—Rotary clothes dryers, Part 1: Energy consumption and performance'' (AS/NZS Standard 2442.1) and AS/NZS Standard 2442.2: 2000, ''Performance of household electrical appliances—Rotary clothes dryers, Part 2: Energy labeling requirements'' (AS/NZS Standard 2442.2). 75 FR 37594, 37598 (June 29, 2010). DOE proposed to incorporate the testing methods from these international test standards, along with a number of clarifications, to measure the energy consumption for both timer dryers and automatic termination control dryers. The measurement would account for the energy consumed by the clothes dryer after the load reaches an RMC of 5 percent. 75 FR 37594, 37599 (June 29, 2010). The proposed test method in the June 2010 TP SNOPR specified that a clothes dryer with automatic cycle termination controls be tested using the ''normal'' cycle setting, and where the temperature setting can be chosen independently of the program, it would be set to the highest level. The clothes dryer would then be allowed to run until the heater switched off for the final time at the end of the drying cycle. If the final RMC was higher than 5 percent, the test would be re-run using the highest dryness level setting. *Id.*

In addition to the provisions for automatic cycle termination clothes dryers, DOE also proposed testing methods in the June 2010 TP SNOPR for timer dryers based on AS/NZS Standard 2442.1. The proposed test method specified that the clothes dryer be operated at the maximum temperature setting until the final RMC of the load was between 5 and 6 percent. The procedure would then be repeated to dry the load until the final RMC was between 4 and 5 percent, with the results from these two tests used to interpolate the value of the per-cycle energy consumption required to dry the test load to exactly 5-percent RMC. 75 FR 37594, 37617 (June 29, 2010).

As discussed in the January 2011 TP Final Rule, DOE conducted testing of representative residential clothes dryers using the automatic cycle termination test procedure proposed in the June 2010 TP SNOPR. The results of the testing revealed that all of the clothes dryers tested significantly over-dried the DOE test load to near bone dry and, as a result, the measured EF values were significantly lower than EF values obtained using the existing DOE test procedure in appendix D. 76 FR 972, 977 (Jan. 6, 2011). In the January 2011

TP Final Rule, DOE concluded that the test procedure amendments for automatic cycle termination proposed in the June 2010 TP SNOPR do not adequately measure the energy consumption of clothes dryers equipped with such systems using the test load specified in the DOE test procedure. DOE stated that clothes dryers with automatic termination sensing control systems, which infer the RMC of the load from the properties of the exhaust air such as temperature and humidity, may be designed to stop the cycle when a load of varying weights, composition, and size has a higher RMC than the RMC obtained using the proposed automatic cycle termination test procedure in conjunction with the existing DOE test load. In considering whether other test loads would be appropriate to incorporate into the DOE test procedure to produce both representative and repeatable test results, however, DOE noted that manufacturers indicated that test load types and test cloth materials different than those specified in the DOE test procedure do not produce results as repeatable as those obtained using the test load as currently specified. 76 FR 972, 977 (Jan. 6, 2011).

1. August 2011 RFI

As discussed in section I of this notice, DOE published the August 2011 RFI to further investigate the effects of automatic cycle termination on the energy efficiency. 76 FR 50145 (Aug. 12, 2011). DOE sought information, data, and comments regarding methods for more accurately measuring the effects of automatic cycle termination in the residential clothes dryer test procedure. In particular, DOE sought comment on the following: (1) The characteristics of loads of varying weights, composition, and size, (2) the accuracy of different automatic cycle termination sensors and controls, (3) the target final RMC used by manufacturers to maintain consumer satisfaction, (4) the effects of the characteristics of water (*i.e.,* hardness and conductivity) used for wetting the test load prior to testing, and (5) the cycle settings selected by consumers for automatic termination cycles.

In response to the August 2011 RFI, DOE received the ''Joint Petition to Amend the Test Procedure for Residential Clothes Dryers to Include Provisions Related to Automatic Termination Controls'' (the ''Joint Petition''), a comment submitted by groups representing manufacturers (AHAM, Whirlpool Corporation (Whirlpool), General Electric Company (GE), Electrolux, LG Electronics, Inc. (LG), BSH Home Appliances (BSH), Alliance Laundry Systems (ALS), Viking Range, Sub-Zero Wolf, Friedrich A/C, U-Line, Samsung, Sharp Electronics, Miele, Heat Controller, AGA Marvel, Brown Stove, Haier, Fagor America, Airwell Group, Arcelik, Fisher & Paykel, Scotsman Ice, Indesit, Kuppersbusch, Kelon, and DeLonghi); energy and environmental advocates (American Council for an Energy Efficient Economy (ACEEE), Appliance Standards Awareness Project (ASAP), Natural Resources Defense Council (NRDC), Alliance to Save Energy (ASE), Alliance for Water Efficiency (AWE), Northwest Power and Conservation Council (NPCC), and Northeast Energy Efficiency Partnerships (NEEP)); and consumer groups (Consumer Federation of America (CFA) and the National Consumer Law Center (NCLC)) (collectively, the ''Joint Petitioners''). The Joint Petitioners commented that DOE should amend the clothes dryer test procedure to include provisions to account for the effectiveness of automatic cycle termination. (Joint Petition, No. 2 at pp. 1, 4–5) [7]

DOE notes that AHAM withdrew its support for the petition in a letter dated May 29, 2012, stating that the petition was predicated on DOE adoption of test procedure provisions to account for automatic termination controls by December 31, 2011. DOE acknowledges AHAM's withdrawal but considers the substantive provisions to account for such controls in the discussion that follows. (AHAM, No. 5 at pp. 1–2)

The Joint Petitioners recognized DOE's concerns that the amendments for automatic cycle termination proposed in the June 2010 TP SNOPR may not properly measure the effectiveness of automatic termination controls, particularly in light of data that suggested that automatic termination control dryers may in fact be drying clothes to approximately 5-percent RMC rather than the less than 2-percent RMC resulting from testing using the DOE test cloth. The Joint Petitioners noted that the DOE test cloth is uniform, for purposes of repeatability and reproducibility, but likely dries faster and more uniformly than a load of varying weights, composition, and size. (Joint Petition, No. 2 at p. 5)

As part of the Joint Petition, AHAM members provided test data on clothes dryers with automatic termination controls representing 60 percent of shipments, measuring the final RMC at the completion of a ''normal'' automatic cycle, including cool down, using the DOE test load. The data, presented below in Figure III.1, show that all tested models had a final RMC below 2 percent. The Joint Petitioners stated that the testing assumed that the current market ending RMC is appropriate. The Joint Petitioners commented that the test results demonstrated that an ending RMC of 2 percent using the DOE test cloth best approximates the maximum consumer-accepted final RMC. (Joint Petition, No. 2 at pp. 5–6)

[7] A notation in the form ''Joint Petition, No. 2 at pp. 1, 4–5'' identifies a written comment: (1) Made by the Joint Petition; (2) recorded in document number 2 that is filed in the docket of the residential dishwasher, dehumidifier, and conventional cooking products test procedures rulemaking (Docket No. EERE–2011–BT–TP–0054) and available for review at *www.regulations.gov;* and (3) that appears on pages 1 and 4–5 of document number 2.

[8] Joint Petition, No. 2 at p. 6

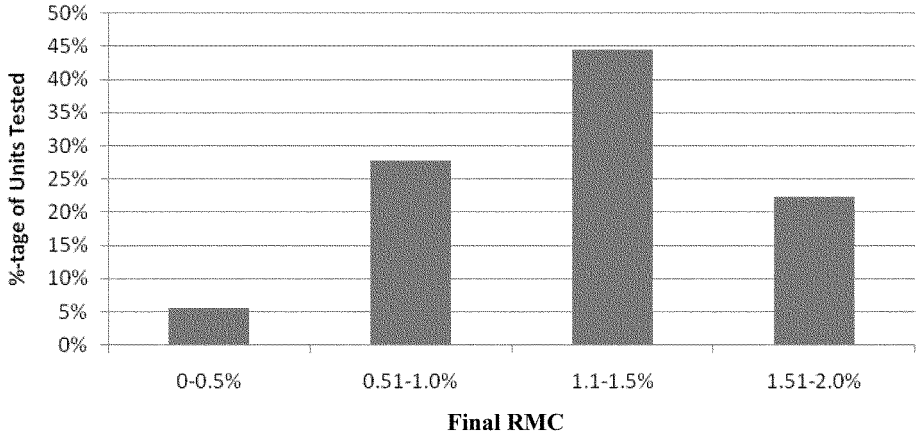

Figure III.1 AHAM Test Data – Final RMC[8]

Based on this data, the Joint Petitioners stated that DOE should amend the clothes dryer test procedure to include the full automatic termination cycle, including cool down. The Joint Petitioners stated that testing the entire cycle is more representative of actual consumer use and is less of a test burden for manufacturers than DOE's proposal in the June 2010 TP SNOPR to stop the dryer when the heater switches off for the final time at the end of the drying cycle. In addition, the Joint Petitioners commented that the test procedure should be amended to state that the final RMC when testing units with automatic termination controls shall be no more than 2 percent when testing with the DOE test load to be representative of clothes dryers currently on the market. Any test in which the final RMC is 2 percent or less should be considered valid. If the final RMC is greater than 2 percent, the test would be invalid and a new test run would be conducted using the highest dryness level setting. (Joint Petition, No. 2 at p. 6)

ALS commented that it supports the continued use of the DOE test cloth and that attempting to use the IEC/AHAM test load that is composed of more all-cotton material of varying shapes and sizes will add more variability and uncertainty to the test results. ALS stated that the DOE test procedure needs to be repeatable, and that changing to a different test cloth is not appropriate. (ALS, No. 3 at p. 1)

2. Product Testing

To evaluate potential amendments for automatic cycle termination, DOE selected a representative sample of 20 clothes dryers encompassing all clothes dryer product classes. DOE considered features such as rated energy factor, rated capacity, control type (*i.e.,* electromechanical versus electronic), and automatic cycle termination sensor technology (if advertised) when selecting units to be most representative of products currently available on the U.S. market. The test units and key features are presented below in Table III.1. Unless otherwise noted, the test unit numbers presented in Table III.1 are used in other tables of results in today's notice.

TABLE III.1—CLOTHES DRYER TEST UNITS AND FEATURES

Product class	Test unit	Rated EF [1] (lbs/kWh)	Drum airflow direction	Controls	Sensor type
Vented Electric Standard	1	3.1	Back to Front	Electronic	Moisture
	2	3.19	Back to Front	ElectroMechanical	Temp
	3	3.03	Back to Front	Electronic	Moisture
	4	3.04	Back to Back	Electronic	Moisture
	5	3.4	Back to Front	Electronic	Moisture
	6	3.1	Back to Back	ElectroMechanical	Moisture
	7	3.1	Back to Back	ElectroMechanical	Moisture
	8	3.08	Back to Front	Electronic	Moisture
Vented Electric Compact (240 Volt (V)).	9	2.95	Back to Front	Electronic	Moisture
	10	2.98	Back to Back	ElectroMechanical	Temp
Vented Electric Compact (120V)	11	3.15	Back to Back	ElectroMechanical	Moisture
Vented Gas	12	2.77	Back to Front	ElectroMechanical	Temp
	13	2.68	Back to Front	Electronic	Moisture
	14	2.71	Back to Front	Electronic	Moisture
	15	2.85	Back to Back	Electromechanical	Moisture
	16	2.76	Back to Front	Electronic	Moisture
	17	2.8	Back to Front	Electronic	Moisture
Ventless Electric Compact (240V).	18	Not Listed	Back to Front	Electronic	Moisture
Ventless Electric Combination Washer/Dryer.	19	Not Listed	Front to Back	Electronic	None—Timed Dry Only

TABLE III.1—CLOTHES DRYER TEST UNITS AND FEATURES—Continued

Product class	Test unit	Rated EF [1] (lbs/kWh)	Drum airflow direction	Controls	Sensor type
	20	Not Listed	Front to Back	Electronic	Temp

[1] The Rated EF is based on the DOE clothes dryer test procedure in 10 CFR part 430, subpart B, appendix D.

DOE initially conducted testing for all test units according to the DOE clothes dryer test procedure in 10 CFR part 430, subpart B, appendix D1. Appendix D1 requires that the DOE test load, initially soaked with an RMC of 57.5 ± 3.5 percent, be dried using the timed dry and maximum temperature settings until the test load has reached a final RMC of 2.5 to 5 percent without allowing the dryer to advance into a cool-down phase. A field use factor is then applied to the measured per-cycle energy consumption to account for the over-drying energy consumption associated with the use of either timer clothes dryers or automatic cycle termination clothes dryers. DOE then conducted testing of these units using automatic cycle termination test methodologies with different test loads to evaluate the effects of these potential test procedure amendments on the measured efficiency as compared to the existing DOE test procedure in 10 CFR part 430, subpart B, appendix D1. DOE also conducted additional testing to evaluate repeatability and reproducibility of the test results.

In conducting the testing, DOE used the DOE test load and the test load specified in both the AHAM clothes dryer test standard HLD–1–2009, ''Household Tumble Type Clothes Dryers,'' and the IEC test standard 61121, ''Tumble dryers for household use—Methods for measuring the performance,'' Edition 3 (2005), which consists of cotton bed sheets, towels, and pillowcases. DOE concluded in the August 2011 RFI that clothes dryers with automatic termination sensing control systems may be designed to stop the cycle when a load of varying weights, composition, and size has a higher RMC than the RMC obtained using the automatic termination drying cycle in conjunction with the existing DOE test load. 76 FR 50145, 50146 (Aug. 12, 2011). In addition, the Northwest Energy Efficiency Alliance (NEEA) supplied DOE with data from a residential laundry field use study that NEEA conducted. The field study, which included 50 households in the northwest United States metered from January 2012 to March 2012, gathered data on the energy use and usage habits for residential clothes dryers, including information on the type of fabrics composing household laundry loads for each laundry cycle. The data, presented below in Table III.2, show the frequency of various load compositions, ranging from ''light'' to ''heavy,'' for the average household surveyed.

TABLE III.2—LAUNDRY LOAD FABRIC COMPOSITION FOR THE AVERAGE HOUSEHOLD SURVEYED IN THE NEEA FIELD USE STUDY

Laundry load description	Percentage of laundry cycles for average household surveyed (%)
Light	6.8
Mixed Light/Medium	19.9
Medium	23.5
Mixed Light/Medium/Heavy	13.1
Mixed Medium/Heavy	23.3
Heavy	13.5

Light = permanent press, light socks, light/casual shirts, pillow cases, underwear, light weight/smaller sheets.

Medium = heavy shirts, medium weight/larger sheets, casual pants, light weight sweatpants and shirts, heavy socks, pullovers.

Heavy = towels, heavy work clothing, flannel sheets, heavy sweatpants and shirts, jeans.

DOE conducted the testing for the proposed automatic cycle termination test methodology according to the DOE test procedure, with the following modifications. The test load was prepared with a starting RMC of 57.5 percent ± 0.33 percent. The controls were set as follows:

- Instead of using the timed dry cycle setting, the ''normal'' automatic termination cycle setting was selected. If a ''normal'' cycle setting was not provided, then the test cycle recommended by manufacturers for drying cotton or linen clothes was used.
- Where the temperature setting could be chosen independently of the program, the highest level was selected.
- Where the dryness level setting could be chosen independently of the program, it was set to the ''normal'' or ''medium'' level. If such designation was not provided, then the dryness level was set at the mid-point between the minimum and maximum settings.

The clothes dryer was then allowed to run until the completion of the cycle, including the cool-down period. At the completion of the cycle, the clothes were weighed to determine the final RMC. If the final RMC was below 2 percent for the DOE test load, the test was considered valid. If the RMC was higher than 2 percent (*i.e.,* the test load contained more moisture than would be acceptable to consumers), the test was considered invalid and was re-run using the highest dryness level setting. DOE selected the 2-percent RMC threshold based on data presented in the Joint Petitioners' comment regarding RMC levels acceptable to consumers, discussed above. For the IEC/AHAM test load, similar test conditions were applied except that the threshold value for the final RMC was changed from 2 percent to 5 percent because of the more varied composition of the IEC/AHAM test load.

Table III.3 presents the key features of the automatic cycle termination testing methodology as compared to the DOE clothes dryer test procedure in 10 CFR part 430, subpart B, appendix D1.

TABLE III.3—TESTS METHODS FOR DOE TESTING

Test condition	DOE test procedure (Appendix D1)	Automatic cycle termination testing methodology	
Test Load	DOE	DOE	IEC/AHAM
Permitted Number of Test Runs per Test Cloth.	Less than 25 test runs for individual test cloth.	Less than 25 test runs for individual test cloth.	Less than 80 test runs for individual test cloth. Weighted average age of test load between 30 and 50 test runs.

TABLE III.3—TESTS METHODS FOR DOE TESTING—Continued

Test condition	DOE test procedure (Appendix D1)	Automatic cycle termination testing methodology	
Test Load	DOE	DOE	IEC/AHAM
Test Load Preconditioning	10 CFR part 430, subpart B, appendix D1, section 2.6.3.	10 CFR part 430, subpart B, appendix D1, section 2.6.3.	AHAM Standard HLD–1–2009 Section 3.2.3.
Test Load Normalization	N/A	N/A	After each 9 test cycles, normalize using AHAM Standard HLD–1–2009 Section 3.2.3.
Cycle and Settings Used for Test	Timed Dry Cycle, Maximum Temperature (if separately selectable).	"Normal" Automatic Dry Cycle; Maximum Temperature (if separately selectable); "Normal" or "Medium" Dryness (or, if no such designations, at mid-point between min. and max. settings)	
Starting RMC of Test Load	57.5 ± 3.5 percent	57.5 ± 0.33 percent	
RMC of Test Load at Which Test is Stopped.	Stopped manually at 2.5–5 percent RMC.	Allowed to run until completion of automatic cycle. Must be below 2-percent RMC or additional test with highest dryness level setting must be run.	Allowed to run until completion of automatic cycle. Must be below 5-percent RMC or additional test with highest dryness level setting must be run.
Cool Down	Clothes dryer not permitted to advance into cool down.	Cool down period included in automatic cycle test	
Field Use Factor (multiplied by per-cycle energy consumption to account for over drying).	= 1.04 for automatic cycle termination dryers = 1.18 for timer dryers.	No field use factor for automatic cycle termination dryers. = 1.18 for timer dryers	

For each specific testing methodology described above, DOE conducted a series of three identical tests for each model to evaluate the repeatability of test results. The results, presented in Table III.4, show both the average measured CEF for each test unit and the percentage change in the measured CEF for the automatic cycle termination tests as compared to appendix D1. For the automatic cycle termination tests using the DOE test load, all of the tests resulted in a lower measured CEF (*i.e.,* higher per-cycle energy use) compared to the DOE test procedure, ranging from a 3.5 percent to 41.9 percent decrease in CEF. Similarly, for the automatic cycle termination tests using the IEC/AHAM test load, all of the tests resulted in a lower measured CEF compared to the DOE test procedure, ranging from a 6.1 percent to 40.3 percent decrease. In addition, the majority of tested units had a lower CEF for the automatic cycle termination test with the IEC/AHAM test load than with the DOE test load. DOE notes that for this series of tests, it did not make any modifications to the water used to wet the test loads. As discussed in section III.B.4 of this notice, DOE subsequently conducted testing with modifications to the water used to wet the test loads.

TABLE III.4—DOE TEST PROCEDURE AND AUTOMATIC CYCLE TERMINATION TEST RESULTS

Product class	Test unit	DOE test procedure (Appendix D1)	Automatic cycle termination—DOE test load		Automatic cycle termination—IEC/AHAM test load	
		CEF (*lbs/kWh*)	CEF (*lbs/kWh*)	% Change	CEF (*lbs/kWh*)	% Change
Vented Electric Standard	1	3.58	3.16	−11.6	3.13	−12.6
	2	3.93	2.73	−30.6	2.76	−29.8
	3	3.83	3.49	−9.1	3.08	−19.6
	4	3.71	3.48	−6.1	3.44	−7.3
	5	3.90	3.51	−10.0	3.40	−12.9
	6	3.80	2.71	−28.7	2.42	−36.3
	7	3.84	3.06	−20.2	3.02	−21.3
	8	3.71	3.11	−16.1	2.97	−19.9
	Avg	3.79	3.16	−16.6	3.03	−20.0
Vented Electric Compact (240V)	9	3.53	3.32	−6.1	3.24	−8.4
	10	3.56	2.27	−36.1	2.12	−40.3
	Avg	3.54	2.79	−21.1	2.68	−24.4
Vented Electric Compact (120V)	11	3.75	2.18	−41.9	2.42	−35.6
Vented Gas	12	3.43	2.70	−21.3	2.66	−22.4
	13	3.31	2.87	−13.3	2.64	−20.2
	14	3.49	3.07	−12.0	2.93	−16.2

TABLE III.4—DOE TEST PROCEDURE AND AUTOMATIC CYCLE TERMINATION TEST RESULTS—Continued

Product class	Test unit	DOE test procedure (Appendix D1)	Automatic cycle termination—DOE test load		Automatic cycle termination—IEC/AHAM test load	
		CEF (*lbs/kWh*)	CEF (*lbs/kWh*)	% Change	CEF (*lbs/kWh*)	% Change
	15	3.39	2.69	−20.5	2.64	−22.0
	16	3.37	3.25	−3.5	2.99	−11.0
	17	3.37	2.94	−12.7	2.89	−14.3
	Avg	3.39	2.92	−13.9	2.79	−17.7
Ventless Electric Compact (240V)	18	2.98	2.73	−8.4	2.63	−11.9
Ventless Electric Combination Washer/Dryer	19	2.81	2.70	−3.9	2.44	−13.3
	20	2.28	2.19[1]	−3.9	2.14	−6.1
	Avg	2.54	2.45	−3.9	2.29	−9.7

Table III.5 presents the average final RMC from the automatic cycle termination tests with both the DOE and IEC/AHAM test loads, as well as the cycle settings used for each test unit. DOE notes that for nearly all of the test units, the average final RMC is higher for the tests using the IEC/AHAM test load. The higher measured per-cycle energy use and final RMC for the IEC/AHAM test load compared to the DOE test load is likely due to the ability of the IEC/AHAM test load to retain more water during the drying process than the DOE test load, which gives off moisture more readily and terminates the drying cycle sooner. In addition, as discussed above, clothes dryers with automatic termination sensing control systems may be designed to stop the cycle when a load of varying weights, composition, and size has a higher RMC than the RMC obtained using the DOE test load.

TABLE III.5—AUTOMATIC CYCLE TERMINATION TEST RESULTS—FINAL RMC

Product class	Test unit	Automatic cycle setting	Automatic cycle termination—final RMC (%)	
			DOE load	IEC/AHAM load
Vented Electric Standard	1	Normal Cycle, High Temp, Normal Dry	1.3	2.2
	2	Cottons Cycle, High Heat, Optimum Dry	0.7	1.5
	3	Cotton/Normal Cycle, Medium Heat, Normal Dry.	0.6	1.3
	4	Sensor Normal Cycle, Medium Temp	0.7	3.1
	5	Normal Cycle	0.9	3.9
	6	Energy Preferred Plus Cycle, High Temp	1.9	2.4
	7	Energy Preferred Plus Cycle, High Heat	1.3	1.5
	8	Normal Cycle, Medium Heat, Normal Dry	0.4	1.6
Vented Electric Compact (240V)	9	Cottons Cycle, High Temp, Sensor Dry	1.3	4.3
	10	Perm Press/Normal	2.0	3.2
Vented Electric Compact (120V)	11	Perm Press	2.0	2.5
Vented Gas	12	Cottons Regular Cycle, Optimum Dry	1.8	1.6
	13	Normal Cycle, High Temp, Normal Dry	0.9	1.9
	14	Normal Cycle, Medium Heat, Normal Dry	0.7	1.6
	15	Energy Preferred Plus Cycle, High Temp	1.3	2.2
	16	Normal Cycle, Medium Temp, Normal Dry	0.8	2.6
	17	Normal Cycle, Medium Temp, Normal Dry	0.9	2.3
Ventless Electric Compact (240V)	18	Cottons Cycle, High Temp, More Dry[1]	2.0	4.7
Ventless Electric Combination Washer/Dryer	19	Timed Dry Only	.....	.....
	20	Normal Dry	1.7	3.4

[1] Original test using Cottons Cycle, High Temp, Normal Dry gave an average RMC of 3.1 percent for DOE test load, with all tests above 2-percent RMC. As a result, test was re-run using highest dryness setting.

As noted in section III.B.1 of this notice, manufacturers have indicated that test load types and test cloth materials different than those specified in the DOE test procedure do not produce results as repeatable as those obtained using the DOE test load. Therefore, for each test unit, DOE examined the test-to-test variation in CEF among the three tests conducted using the DOE test procedure and among the three tests using the automatic cycle termination test methodology. Table III.6 presents the test-to-test variation expressed as the percent standard error. The analysis shows that the test-to-test variation for the automatic cycle termination tests with the DOE test load is slightly lower than the test-to-test variation with the IEC/AHAM test load, and that both are higher than the test-to-test variation for the DOE test procedure. DOE notes that the more consistent results for the current DOE test procedure are likely due to the use of the timed dry cycle rather than the automatic termination cycles, which may have additional variation in results due to the performance of temperature and moisture sensors and the automatic termination control strategies.

TABLE III.6—CEF TEST-TO-TEST VARIATION

Product class	Test unit	CEF test-to-test variation standard error (%)		
		DOE test procedure (Appendix D1)	Automatic cycle termination—DOE test load	Automatic cycle termination—IEC/AHAM test load
Vented Electric Standard	1	1.35	0.50	2.26
	2	0.57	2.95	0.50
	3	0.89	1.46	0.62
	4	0.37	1.14	6.44
	5	1.02	2.10	0.77
	6	0.46	0.72	3.68
	7	0.70	2.20	1.59
	8	1.12	0.16	1.73
	Avg	0.81	1.40	2.20
Vented Electric Compact (240V)	9	1.60	4.25	2.42
	10	0.18	5.70	4.39
	Avg	0.89	4.98	3.40
Vented Electric Compact (120V)	11	0.51	2.12	2.25
Vented Gas	12	1.31	0.48	3.07
	13	0.82	0.81	1.95
	14	2.08	1.58	0.92
	15	1.23	2.08	1.73
	16	0.61	0.68	1.91
	17	0.52	2.73	1.94
	Avg	1.10	1.39	1.92
Ventless Electric Compact (240V)	18	0.32	2.00	1.50
Ventless Electric Combination Washer/Dryer	19	0.75	0.55	0.16
	20	0.90	3.22	1.58
	Avg	0.82	1.88	0.87
Total Average	.....	0.87	1.87	2.07

To evaluate the effect of test load composition on repeatability, DOE then ran appendix D1 again for a subset of 10 of the clothes dryers in its test sample, using the IEC/AHAM test cloth instead of the DOE test cloth. For each of these units, DOE conducted three repeat tests. DOE believes that using the timed dry cycle and requiring that the dryer be stopped manually allow for better evaluation of the actual test load by limiting other factors, such as automatic termination sensor performance, that may contribute to variability of results from test to test. The results from this testing, presented in Table III.7, show an average test-to-test variation in CEF (expressed in terms of standard error) of 1.02 percent for the IEC/AHAM test load as compared to the 0.87 percent test-to-test variation for the DOE timed dry test procedure with the DOE test load, presented above in Table III.6.

TABLE III.7—CEF TEST-TO-TEST VARIATION FOR APPENDIX D1 WITH IEC/AHAM TEST LOADS

Product class	Test unit	Timed dry—IEC/AHAM test load—CEF test-to-test standard error (%)
Vented Electric Standard	1	1.42
	3	1.21
	6	1.28
	8	0.96
Vented Electric Compact (240V)	9	0.90
	10	1.28
Vented Electric Compact (120V)	11	0.31
Vented Gas	13	1.17
	14	1.10
	17	0.55
Average	.....	1.02

DOE notes that in addition to the use of the IEC/AHAM test load producing less repeatable results from test to test, the reproducibility of test results from lab to lab must also be considered because different test laboratories may be using different lots of test cloth. To evaluate the reproducibility of test results from lab to lab, DOE conducted testing of 9 units at an independent test laboratory with different lots of the DOE and IEC/AHAM test loads using the automatic cycle termination test method. The results, presented below in Table III.8, show that the use of the IEC/AHAM test load also results in lower reproducibility of test results than the use of the existing DOE test load.

TABLE III.8—LAB-TO-LAB REPRODUCIBILITY OF AUTOMATIC CYCLE TERMINATION TEST RESULTS

Product class	Test unit	Automatic cycle termination, DOE test load—average CEF			Automatic cycle termination, IEC/AHAM Test load—average CEF		
		DOE lab	Independent lab	% Difference	DOE lab	Independent lab	% Difference
Vented Electric Standard	1	3.10	3.16	2.2	2.85	3.13	9.8
	2	2.73	3.02	10.8	2.76	2.79	1.0
Vented Electric Compact (240V)	10	2.26	2.27	0.3	2.12	2.12	0.0
Vented Gas	13	2.86	2.87	0.4	2.87	2.64	7.8
	15	2.72	2.69	1.0	2.73	2.64	3.2
	16	3.29	3.25	1.2	3.23	2.99	7.2
	17	3.03	2.94	2.8	3.03	2.89	4.5
Ventless Electric Compact (240V)	18	2.90	2.73	6.0	2.74	2.63	4.2
Ventless Electric Combination Washer/Dryer	20	2.19	2.23	2.0	Not Tested	Not Tested	.....
Average	.....	.....	.....	3.0	.....	.....	4.7

3. Energy Consumption Versus RMC

As noted in section III.B.2 of this notice, the automatic cycle termination test method using the DOE test load resulted in a lower measured CEF value compared to the CEF measured using appendix D1. As part of the automatic cycle termination testing discussed in section III.B.2, DOE tested a number of units in the test sample at an independent test laboratory that measured and recorded the energy consumption and an estimated instantaneous RMC of the test load throughout the test cycle. The estimated RMC was determined based on the weight of the test load, measured in place during the test cycle, and the rotation of the drum. Based on this testing, DOE decided to develop a field use factor to account for the over-drying energy consumption using the automatic cycle termination test method with the DOE test load at the end of the cycle when the load is dried below 2-percent RMC.

Using the independent test laboratory's data, DOE evaluated the measured energy consumption at different times during the cycle—when the test load initially reached 5-percent RMC, when it reached 2-percent RMC, and at the end of the cycle (including cool down). The test data, presented below in Table III.9, show that the energy consumption measured over a full automatic termination dry cycle is 11–72 percent greater than the energy consumption during the test cycle when the test load initially reaches 5-percent RMC, and 4–62 percent greater than the energy consumption when the test load initially reaches 2-percent RMC (before any moisture regain during cool down/tumbling). DOE also noted that while the final RMC of the DOE test load using the automatic cycle termination test method was between 0.4 percent and 2.0 percent at the completion of the test cycle for all of the clothes dryers in DOE's test sample, this RMC was achieved either after the end of a cool-down period, during which the dryer tumbles with no added heat after the conclusion of the heated drying, or after an extended period of operation at nearly 0-percent RMC when the heater is cycled off and on. The independent test laboratory's data showed that during cool-down or non-heated tumbling, the test load regains moisture from the room air. As a result, the final RMC of the test load at the completion of the cycle after the cool-down/tumbling period is higher than the RMC of the load when the heater turns off for the final time.

TABLE III.9—MEASURED AUTOMATIC CYCLE TERMINATION ENERGY CONSUMPTION AT SPECIFIC RMC LEVELS

Product class	Test unit	Automatic cycle termination sensor technology	Energy consumption (*kWh*)		
			5% RMC	2% RMC	End of cycle (measured RMC (%)[1]
Vented Electric Standard	1	Moisture	1.945	2.070	2.624 (1.2)
	2	Temperature	2.068	2.233	3.119 (0.9)
	4	Moisture	2.160	2.318	2.405 (0.7)
	6	Moisture	2.091	2.280	3.141 (1.9)
Vented Electric Compact (240V)	10	Temperature	0.823	0.875	1.418 (2.0)
Vented Gas	13	Moisture	2.375	2.569	2.905 (0.8)
	15	Moisture	2.347	2.532	3.161 (1.2)
	17	Moisture	2.300	2.482	2.843 (1.2)

[1] As noted above, the test load regained moisture during the cool-down/tumbling period.

Figure III.2 presents the measured energy consumption during the test cycle for the units tested at the independent testing laboratory. The regions of the graphs that have a nearly horizontal slope correspond to periods when the clothes dryer is tumbling with no heat. DOE notes that most clothes dryers have a temperature set point, likely based on measurements from a temperature sensor in the exhaust duct, at which point the heater will cycle on and off. At the end of the cycle, the nearly horizontal slope corresponds to the cool-down period.

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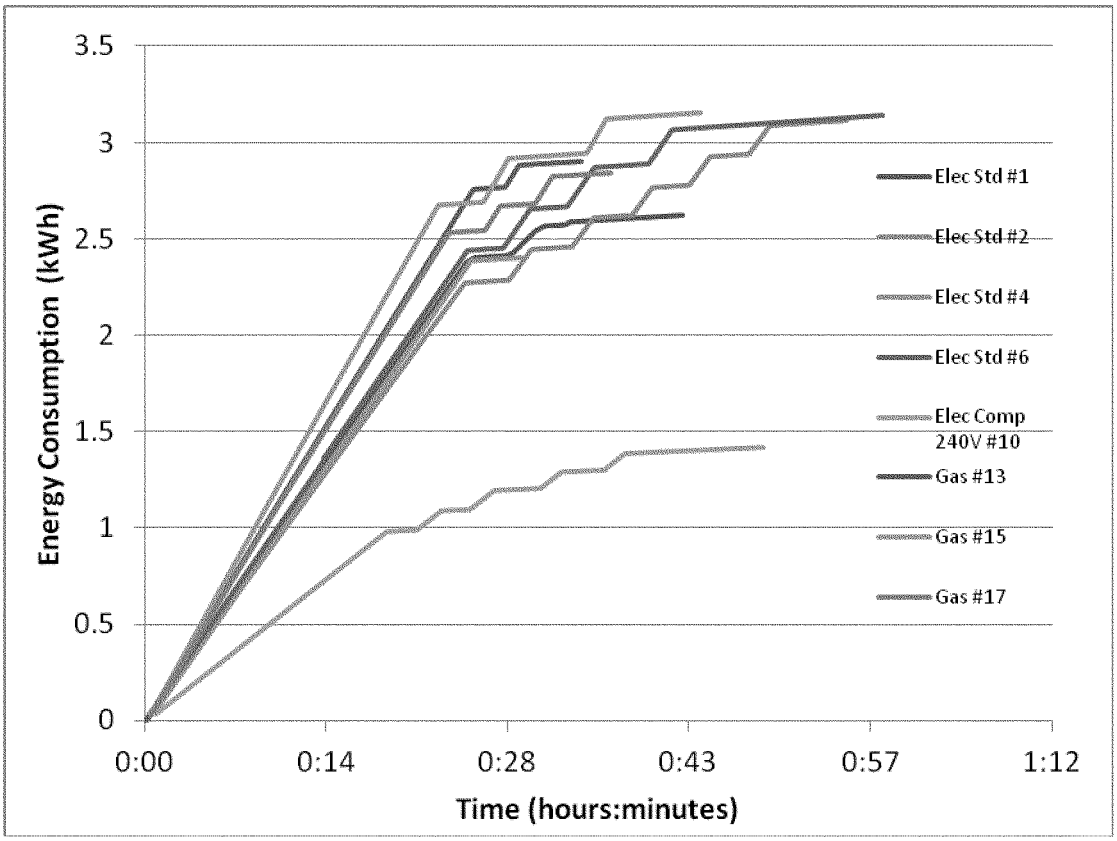

Figure III.2 DOE Automatic Cycle Termination Test Energy Consumption Results for the Full Cycle

Figure III.3 through Figure III.5 present, for each product class, the latter part of the test cycle when the test load is nearly dry. Each curve starts where the test load has initially reached 5-percent RMC. The curves also identify where the test load initially reaches 2-percent RMC. DOE noted that for all of the dryers tested at the independent test laboratory, the DOE test load reached 2-percent RMC before the clothes dryer initially began cycling the heater on and off.

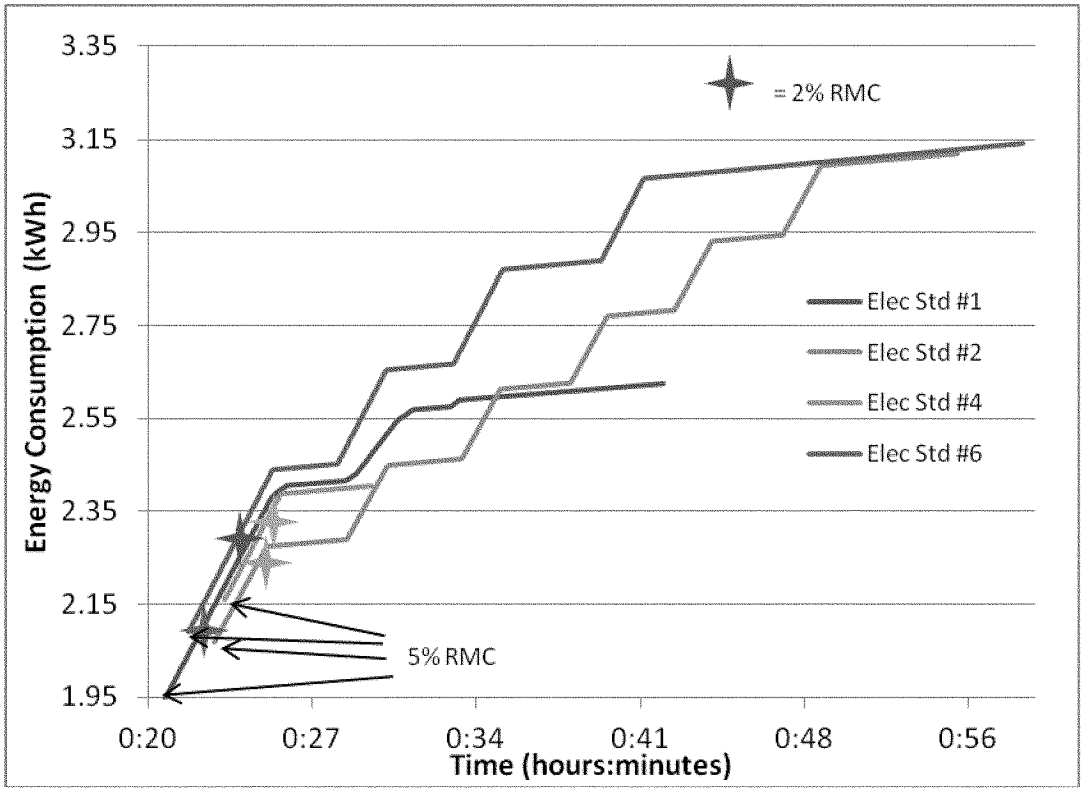

Figure III.3 Vented Electric Standard Dryer Test Cycle Energy Consumption Below 5-percent RMC

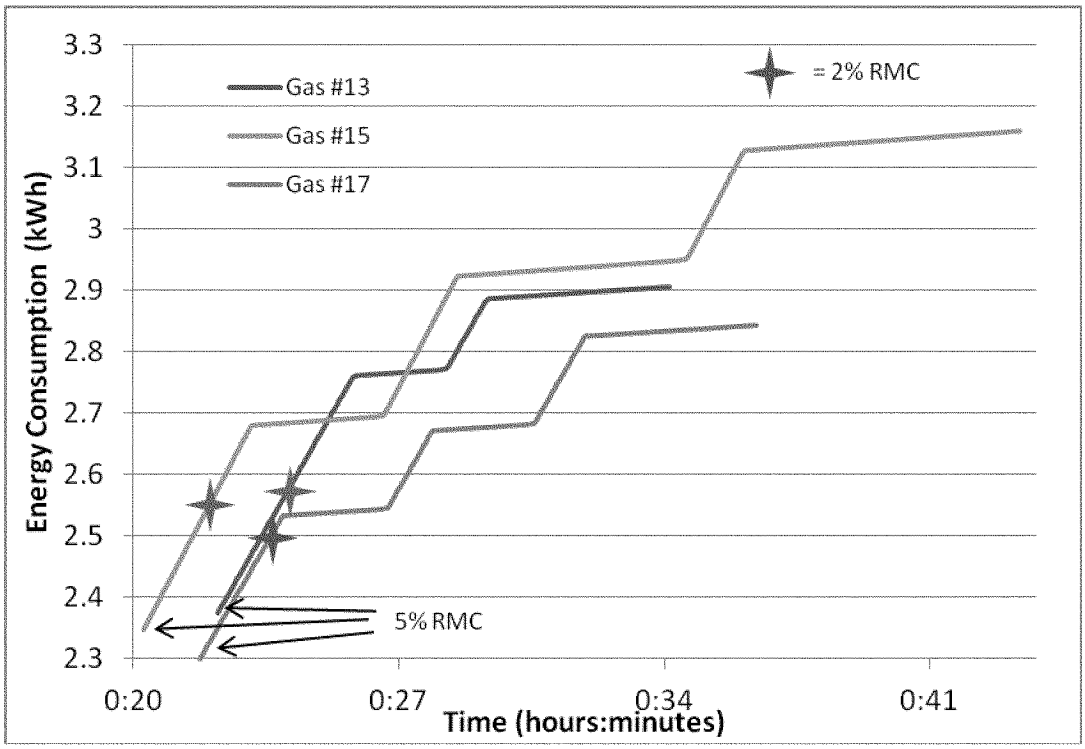

Figure III.4 Vented Gas Dryer Test Cycle Energy Consumption Below 5-percent RMC

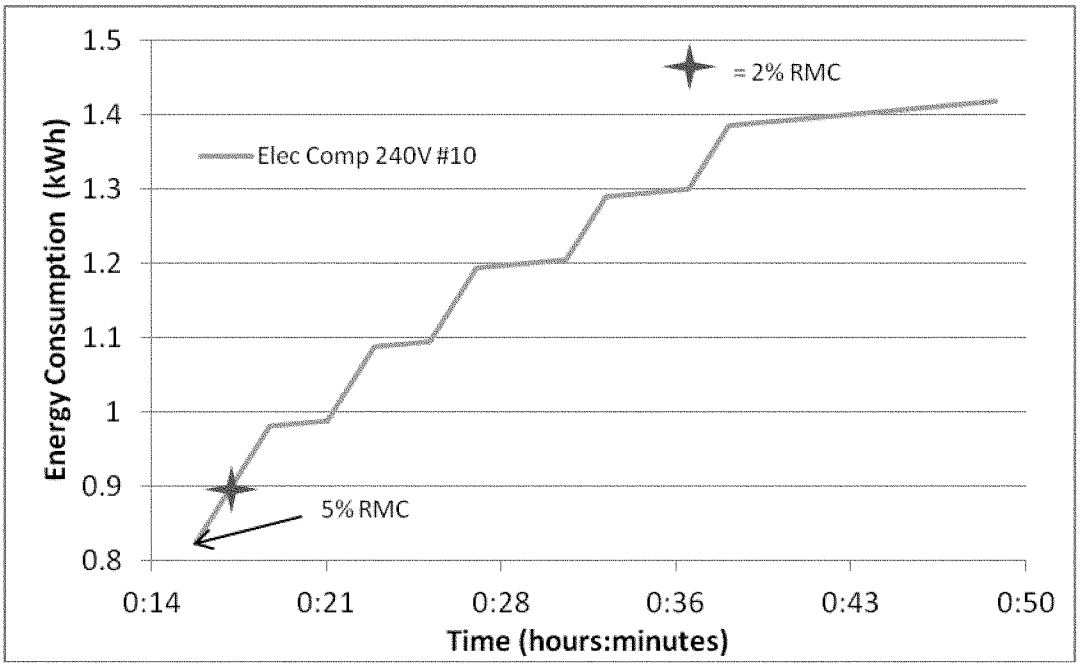

Figure III.5 Vented Electric Compact (240V) Dryer Test Cycle Energy Consumption below 5-percent RMC

Figure III.6 shows the measured energy consumption as a function of RMC for the portion of the test cycle below 5-percent RMC for two vented electric standard clothes dryers. The cycles proceed in time from the right side of the curves, with the RMC generally decreasing as energy consumption increases until the start of any cool down or tumbling. The data show that the cool-down/tumbling period can contribute a significant amount of energy consumption associated with over-drying and moisture regain when using the DOE test load. DOE observed that these two test units, both of which used the same moisture sensor technology and dried the test load to final RMCs of close to 1 percent at the end of the cycle, had significantly different total measured energy consumption. One of these test units achieved this final RMC with only a brief cool-down period, while the other test unit repeatedly heated, tumbled, and regained moisture before the final cool down. DOE believes that the difference in energy consumption between these two units is most likely a function of the control strategy rather than the accuracy of the sensors.

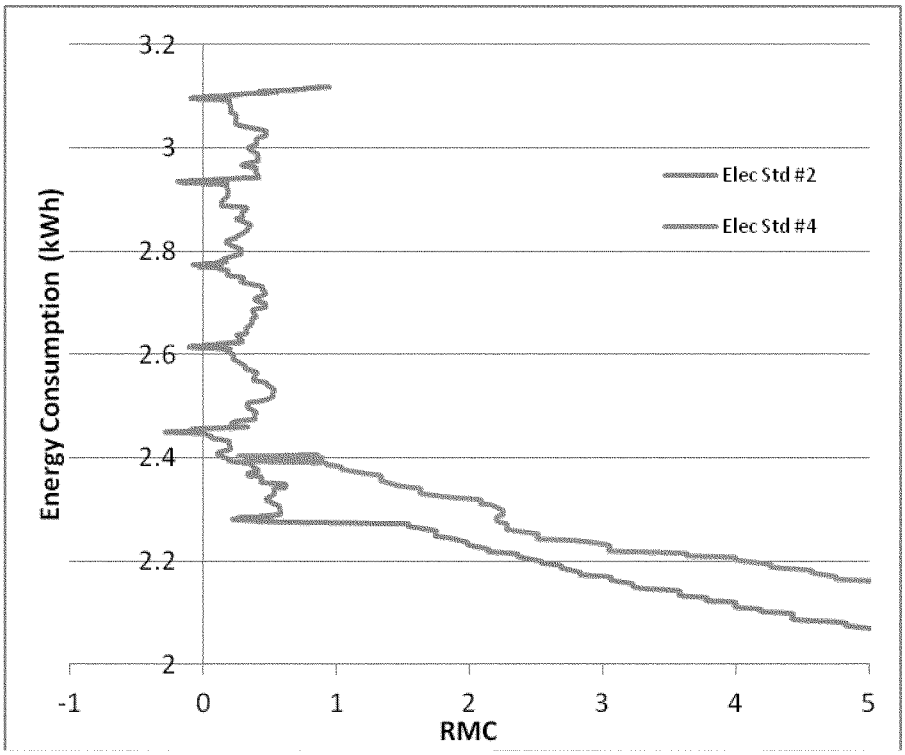

Figure III.6 Comparison of Energy Consumption versus RMC at the End of the Cycle for Two Representative Vented Electric Standard Dryers[9]

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DOE conducted further analysis to develop an appropriate field use factor to account for the measured energy consumption at the end of the automatic termination cycle below 2-percent RMC using the DOE test load (including any cool-down/tumbling period). Using the data presented in Table III.9, DOE calculated a field use factor of 0.80 for automatic termination control dryers by taking the average of the difference between the measured energy consumption to initially reach 2-percent RMC and the measured energy consumption at the end of the test cycle. The results of this analysis showing the application of the 0.8 field use factor are presented in Table III.10.

TABLE III.10—AUTOMATIC CYCLE TERMINATION TEST RESULTS WITH ADJUSTED FIELD USE FACTOR

Product class	Test unit	Per-cycle energy consumption (*kWh*)		
		2% RMC	End of test—measured	End of test—field adjusted
Vented Electric Standard	1	2.070	2.624	2.099
	2	2.233	3.119	2.495
	4	2.318	2.405	1.924
	6	2.280	3.141	2.513
Vented Electric Compact (240V)	10	0.875	1.418	1.134
Vented Gas	13	2.569	2.905	2.324
	15	2.532	3.161	2.528
	17	2.482	2.843	2.274

4. Water Supply Testing

In the August 2011 RFI, DOE noted that the IEC is currently revising its test standard for clothes dryers, IEC Standard 61121. 76 FR 50145, 50147 (Aug. 12, 2011). As part of the IEC Standard 61121 Fourth Edition Committee Draft for Vote (IEC Standard 61121 CDV), the most recent version available at the time of the August 2011 RFI analysis, the IEC noted that the characteristics of the water used for wetting the test load prior to the test, particularly the conductivity, can influence the test results when testing automatic cycle termination clothes dryers with moisture sensors. Clothes dryers with moisture sensors use conductivity sensor bars to determine the amount of moisture in the load when the load comes in contact with the sensors. DOE more recently learned that IEC Standard 61121 Fourth Edition published in February 2012 using the same methodology provided in IEC Standard 61121 CDV. Table III.11 provides the characteristics of either soft

[9] The apparent excursions below 0-percent RMC result from the method used to calculate instantaneous RMC, which may be less accurate at very low RMCs.

or hard water to be used for appliance testing under IEC Standard 61121.

TABLE III.11—IEC STANDARD 61121 REQUIREMENTS FOR COMPOSITION OF SOFT AND HARD WATER FOR CLOTHES DRYER TESTING

Property	Unit	Water type	
		Standard soft water	Standard hard water
Total hardness	Millimols per liter (mmol/l) (Ca^{2+}/Mg^{2+})	0.50 ± 0.20	2.50 ± 0.20
Conductivity (at 20 °C)	Microsiemens per centimeter (μS/cm)	150 ± 50	750 ± 150

In the August 2011 RFI, DOE requested information and data on these effects of the characteristics of the water used to wet the test load on the measured efficiency, as well as any potential testing burden associated with the requirements for modifying the water supply used for wetting the test load. DOE did not receive any comments or information on this issue. DOE conducted testing to evaluate the effects of using supply water modified to meet the specifications in the IEC Standard 61121 on the measured efficiency compared to using supply water according to the requirements of appendix D1. For this series of tests, DOE conducted tests on 16 units using the same automatic cycle termination methodology presented in Table III.3, except that the water used to wet the test load prior to the test met the conditions presented in Table III.8 for standard soft water. DOE selected the soft water requirements from IEC Standard 61121 rather than the hard water requirements to more closely match the existing DOE clothes dryer test procedure, which also requires the use of soft water.[10] For each test method, DOE again conducted three identical tests for each test units. The test results, presented in Table III.12 and Table III.13, did not show a correlation between the average measured CEF and water supply specifications for the automatic cycle termination tests with either the DOE or IEC/AHAM test loads.

TABLE III.12—AUTOMATIC CYCLE TERMINATION TESTS—WATER SUPPLY INVESTIGATION—DOE TEST CLOTH

Product class	Test unit	Appendix D1	Automatic cycle termination, Appendix D1 water—DOE test cloth		Automatic cycle termination, IEC soft water—DOE test cloth	
		CEF (*lbs/kWh*)	CEF (*lbs/kWh*)	% Change	CEF (*lbs/kWh*)	% Change
Vented Electric Standard	1	3.58	3.16	−11.6	3.15	−11.9
	3	3.83	3.49	−9.1	3.44	−10.3
	4	3.71	3.48	−6.1	3.45	−6.9
	6	3.80	2.71	−28.7	2.68	−29.5
	7	3.84	3.06	−20.2	3.05	−20.7
	8	3.71	3.11	−16.1	3.24	−12.9
	Avg	3.75	3.17	−15.3	3.17	−15.3
Vented Electric Compact (240V)	9	3.53	3.32	−6.1	3.32	−6.2
	10	3.56	2.27	−36.1	2.37	−33.4
	Avg	3.54	2.79	−21.1	2.84	−19.8
Vented Electric Compact (120V)	11	3.75	2.18	−41.9	2.27	−39.6
Vented Gas	13	3.31	2.87	−13.3	2.91	−12.2
	14	3.49	3.07	−12.0	3.24	−7.3
	15	3.39	2.69	−20.5	2.77	−18.2
	16	3.37	3.25	−3.5	Not Tested	Not Tested
	17	3.37	2.94	−12.7	2.92	−13.2
	Avg	3.39	2.97	−12.4	2.96	−12.7
Ventless Electric Compact (240V)	18	2.98	2.73	−8.4	2.85	−4.3
Ventless Electric Combination Washer/Dryer	20	2.28	2.19	−3.9	2.19	−3.9

TABLE III.13—AUTOMATIC CYCLE TERMINATION TESTS—WATER SUPPLY INVESTIGATION—IEC/AHAM TEST CLOTH

Product class	Test unit	Appendix D1	Automatic cycle termination, Appendix D1 water—IEC/AHAM test cloth		Automatic cycle termination, IEC soft water—IEC/AHAM test cloth	
		CEF (*lbs/kWh*)	CEF (*lbs/kWh*)	% Change	CEF (*lbs/kWh*)	% Change
Vented Electric Standard	1	3.58	3.13	−12.6	3.16	−11.8
	3	3.83	3.08	−19.6	3.13	−18.3
	4	3.71	3.44	−7.3	3.49	−5.8
	6	3.80	2.42	−36.3	2.58	−32.2
	7	3.84	3.02	−21.3	2.96	−23.0

[10] 10 CFR part 430, subpart B, appendix D1, section 2.6.3 requires the use of soft water with 17 parts per million hardness or less.

TABLE III.13—AUTOMATIC CYCLE TERMINATION TESTS—WATER SUPPLY INVESTIGATION—IEC/AHAM TEST CLOTH—Continued

Product class	Test unit	Appendix D1	Automatic cycle termination, Appendix D1 water—IEC/AHAM test cloth		Automatic cycle termination, IEC soft water—IEC/AHAM test cloth	
		CEF (*lbs/kWh*)	CEF (*lbs/kWh*)	% Change	CEF (*lbs/kWh*)	% Change
	8	3.71	2.97	−19.9	3.02	−18.5
	Avg	3.75	3.01	−19.5	3.06	−18.3
Vented Electric Compact (240V)	9	3.53	3.24	−8.4	3.22	−8.8
	10	3.56	2.12	−40.3	2.05	−42.3
	Avg	3.54	2.68	−24.4	2.64	−25.5
Vented Electric Compact (120V)	11	3.75	2.42	−35.6	2.48	−33.8
Vented Gas	13	3.31	2.64	−20.2	2.73	−17.5
	14	3.49	2.93	−16.2	2.82	−19.2
	15	3.39	2.64	−22.0	2.74	−19.3
	16	3.37	2.99	−11.0	3.08	−8.3
	17	3.37	2.89	−14.3	2.85	−15.3
	Avg	3.39	2.82	−16.7	2.85	−15.9
Ventless Electric Compact (240V)	18	2.98	2.63	−11.9	2.81	−5.6
Ventless Electric Combination Washer/Dryer	20	2.28	2.14	−6.1	2.15	−5.8

Table III.14 presents the average final RMC for water supply investigative tests. Similar to the measured CEF discussed above, there was no definitive correlation between the average measured final RMC and the water supply specifications.

TABLE III.14—AUTOMATIC CYCLE TERMINATION TESTS—WATER SUPPLY INVESTIGATION—FINAL RMC

Product class	Test unit	Final RMC (%)					
		DOE test cloth			IEC/AHAM test cloth		
		Appendix D1 water	IEC soft water	% Change	Appendix D1 water	IEC soft water	% Change
Vented Electric Standard	1	1.3	1.2	−7.7	2.2	2.2	0.0
	3	0.6	0.6	0.0	1.3	1.2	−7.7
	4	0.7	0.8	14.3	3.1	3.5	12.9
	6	1.9	1.9	0.0	2.4	2.7	12.5
	7	1.3	1.1	−15.4	1.5	1.2	−20.0
	8	0.4	0.5	25.0	1.6	1.3	−18.8
Vented Electric Compact (240V)	9	1.3	1.3	0.0	4.3	4.4	2.3
	10	2.0	2.0	0.0	3.2	3.3	3.1
Vented Electric Compact (120V)	11	2.0	1.5	−25.0	2.5	2.1	−16.0
Vented Gas	13	0.9	0.9	0.0	1.9	1.9	0.0
	14	0.7	0.8	14.3	1.6	1.6	0.0
	15	1.3	1.5	15.4	2.2	2.2	0.0
	16	0.8	Not Tested	.....	2.6	2.7	3.8
	17	0.9	0.9	0.0	2.3	1.9	−17.4
Ventless Electric Compact (240V)	18	2.0	2.4	20.0	4.7	7.1	51.1
Ventless Electric Combination Washer/Dryer	20	1.7	1.5	−11.8	3.4	3.4	0.0

Table III.15 presents the test-to-test variation for each water supply investigative test. DOE noted that there was again no definitive correlation between the test-to-test variation and whether the water supply was unmodified or modified.

TABLE III.15—AUTOMATIC CYCLE TERMINATION TESTS—WATER SUPPLY INVESTIGATION—CEF TEST-TO-TEST VARIATION

Product class	Test unit	CEF Test-to-test variation standard error (%)					
		DOE Test cloth			IEC/AHAM Test cloth		
		Appendix D1 water	IEC Soft water	% Change	Appendix D1 water	IEC Soft water	% Change
Vented Electric Standard	1	0.50	1.15	130.0	2.26	2.65	17.3
	3	1.46	2.03	39.0	0.62	3.94	535.5
	4	1.14	0.04	−96.5	6.44	1.13	−82.5

TABLE III.15—AUTOMATIC CYCLE TERMINATION TESTS—WATER SUPPLY INVESTIGATION—CEF TEST-TO-TEST VARIATION—Continued

Product class	Test unit	CEF Test-to-test variation standard error (%)					
		DOE Test cloth			IEC/AHAM Test cloth		
		Appendix D1 water	IEC Soft water	% Change	Appendix D1 water	IEC Soft water	% Change
	6	0.72	3.93	445.8	3.68	4.81	30.7
	7	2.20	No Repeat Tests	.....	1.59	No Repeat Tests	.....
	8	0.16	2.49	1456.3	1.73	0.20	−88.4
	Avg	1.03	1.93	87.4	2.72	2.55	−6.3
Vented Electric Compact (240V)	9	4.25	0.04	−99.1	2.42	2.23	−7.9
	10	5.70	1.05	−81.6	4.39	4.62	5.2
	Avg	4.98	0.54	−89.2	3.40	3.43	0.9
Vented Electric Compact (120V)	11	2.12	1.60	−24.5	2.25	0.79	−64.9
Vented Gas	13	0.81	4.42	445.7	1.95	3.91	100.5
	14	1.58	0.54	−65.8	0.92	4.83	425.0
	15	2.08	2.68	28.8	1.73	1.26	−27.2
	16	0.68	Not Tested	.....	1.91	1.12	−41.4
	17	2.73	0.67	−75.5	1.94	0.60	−69.1
	Avg	1.57	2.08	32.5	1.69	2.34	38.5
Ventless Electric Compact (240V)	18	2.00	2.56	28.0	1.50	1.71	14.0
Ventless Electric Combination Washer/Dryer	20	3.22	3.27	1.6	1.58	0.81	−48.7
Total Average	.....	1.96	1.89	−3.6	2.31	2.31	0.0

DOE determined that the modifications to the water supply specified in IEC Standard 61121 did not have a definitive effect on the measured CEF as compared to the water requirements specified in the existing DOE test procedure. In addition, the repeatability testing showed that the IEC water hardness specifications did not improve overall the test-to-test repeatability.

DOE conducted additional testing on two clothes dryers to evaluate the lab-to-lab reproducibility using both supply water specifications in automatic cycle termination tests with the IEC/AHAM test load. The results, presented in Table III.16, showed that the IEC supply water may produce more reproducible results from lab to lab with the IEC/AHAM test load. DOE notes, however, that the percentage difference in test results from lab to lab is within the test-to-test variation for a given lab using the IEC/AHAM test load (presented in Table III.15). For these reasons, DOE is not proposing amendments in today's NOPR to include in the amendments to appendix D1 the supply water specifications from IEC Standard 61121. If additional test results are made available showing that IEC supply water characteristics produce more repeatable and reproducible test results than the requirements in appendix D1, DOE may consider such amendments in a future test procedure rulemaking.

TABLE III.16—LAB-TO-LAB REPRODUCIBILITY OF AUTOMATIC CYCLE TERMINATION TESTS WITH IEC/AHAM TEST LOAD—WATER SUPPLY INVESTIGATION

Product class	Test unit	Automatic cycle termination, Appendix D1 water—IEC/AHAM test cloth—average CEF			Automatic cycle termination, IEC soft water—IEC/AHAM test cloth—average CEF		
		DOE lab	Independent lab	% Difference	DOE lab	Independent lab	% Difference
Vented Gas	17	3.03	2.89	4.5	2.96	2.85	3.6
Ventless Electric Compact (240V)	18	2.74	2.63	4.2	2.76	2.81	1.9

5. Proposed Amendments

Based on the testing and analysis discussed above, DOE is proposing amendments to the clothes dryer test procedure in 10 CFR part 430, subpart B, appendix D1 in today's NOPR to more accurately measure the energy consumption of automatic termination control clothes dryers. The proposed amendments are discussed in detail in the following sections.

Definitions

DOE is proposing in today's NOPR to amend the clothes dryer test procedure to add definitions for both automatic termination control dryers and timer dryers. DOE is proposing to define ''automatic termination control dryer'' as a clothes dryer that can be preset to carry out at least one sequence of operations to be terminated by means of a system assessing, directly or indirectly, the moisture content of the load. An automatic termination control dryer with a supplementary timer or that may also be manually controlled shall be tested as an automatic termination control dryer. DOE is proposing to define ''timer dryer'' as a clothes dryer that can be preset to carry out at least one operation to be terminated by a timer, but may also be manually controlled, and does not

include any automatic termination function.

Test Load

The current DOE test procedure in 10 CFR part 430, subpart B, appendix D1, section 2.7 requires that test loads be prepared with a starting RMC of 57.5 percent ± 3.5 percent. DOE is proposing amendments in today's NOPR to change the starting RMC from 57.5 percent ± 3.5 percent to 57.5 percent ± 0.33 percent. DOE believes that the starting RMC of 57.5 percent ± 0.33 percent, which was used for the testing presented above and originally proposed in the June TP 2010 SNOPR, would produce the most repeatable results, particularly for automatic cycle termination dryers. DOE notes that allowing a wide range in the starting RMC, such as the ± 3.5 percent specified in the current DOE test procedure, would result in significantly different results using the proposed automatic cycle termination test procedure because a test load with a starting RMC of 61 percent would contain approximately 0.6 lbs. of water more than a test load with a starting RMC of 54 percent for standard size loads.

As a result, DOE is specifically proposing to amend 10 CFR part 430, subpart B, appendix D1, section 2.7.1, ''Compact size dryer load,'' and section 2.7.2, ''Standard size dryer load,'' to require that water be extracted from the wet test loads by spinning the load until the moisture content of the load is 52.5–57.5 percent of the bone-dry weight of the test load. Final mass adjustments would be made, such that the moisture content is 57.5 percent ± 0.33 percent by adding water uniformly to the load in a very fine spray. DOE notes that requiring water to be extracted to achieve an RMC between 52.5 percent and 57.5 percent would serve as an initial preparation step prior to the final mass adjustments to obtain a test load with an RMC of 57.5 ± 0.33 percent proposed above.

Test Cycle

DOE is proposing in today's NOPR to change the clothes dryer test cycle specified in 10 CFR part 430, subpart B, appendix D1, section 3.3 to require separate test methods for automatic cycle termination dryers and timer dryers.

For automatic cycle termination dryers, DOE is proposing to amend the clothes dryer test procedure to require the use of the control settings, presented in section III.B.2 of this notice, that were used for DOE testing. Specifically, DOE is proposing to require that the ''normal'' automatic termination cycle program be selected for the test cycle, and that for dryers that do not have a ''normal'' program, the cycle recommended by the manufacturer for drying cotton or linen clothes would be selected. Where the drying temperature can be chosen independently of the program, it would be set to the maximum temperature setting. In addition, the proposed amendments would require that where the dryness level setting can be chosen independently of the program, the dryness level would be set to the ''normal'' or ''medium'' setting. If such designation is not provided, then the dryness level would be set at the mid-point between the minimum and maximum settings. The proposed amendments would also require that the cycle settings used for the test cycle be recorded.

For the reasons explained below, the clothes dryer would then be allowed to run until the completion of the cycle, including any cool-down period. After the cycle is complete, the test load would be weighed to determine the final RMC. If the final RMC is below 2 percent, the test would be considered valid. If the RMC is higher than 2 percent, the test would be considered invalid and would be re-run using the highest dryness level setting. DOE is also proposing in today's NOPR that the measured test cycle energy consumption be multiplied by a field use factor of 0.80 to calculate the per-cycle energy consumption for automatic cycle termination clothes dryers.

DOE is proposing in today's NOPR to measure the full automatic termination cycle, including any cool-down period, to be more representative of actual consumer use. DOE has determined that the proposed provision to include a cool-down period would result in less testing burden than the January 2011 TP Final Rule proposal to stop the test cycle when the heater switches off for the final time immediately before the cool-down period begins (76 FR 972, 998 (Jan. 6, 2011)), which would require the tester to monitor the dryer and possibly run multiple test cycles to determine when the heater has switched off for the final time.

As discussed above, DOE also proposes to base the calculations for automatic termination control dryers on a nominal final RMC of 2 percent. This is a change from the existing test procedure, which requires that the clothes dryer test cycle be stopped when the final RMC is between 2.5 percent and 5 percent. Based on the data submitted in the Joint Petition and DOE's analysis, DOE tentatively concludes that a final RMC of 2 percent using the DOE test load would be more representative of clothes dryers currently on the market and representative of the maximum consumer-accepted final RMC.

DOE is proposing in today's NOPR to revise the field use factor in the per-cycle energy consumption calculation for dryers with automatic termination controls to 0.80 based on the data presented above in section III.B.3. DOE notes that this field use factor would account for the measured energy consumption at the end of the automatic termination cycle drying the DOE test load below 2-percent RMC, which DOE determines to be representative of consumer-acceptable drying levels with loads of varying weights, composition, and size.

As discussed in section III.B.2 of this notice, NEEA supplied DOE with data from its residential laundry field use study, which included 50 households in the northwest United States metered from January 2012 to March 2012. Although the NEEA field study did not provide data to closely determine the final RMC of laundry loads, the study did provide data on the weights of the laundry loads both before and after the drying cycle. As a result, DOE was able to determine the amount of moisture removed from the laundry load during each dry cycle, to compare with the proposed DOE test procedure. The NEEA field study showed that the average initial weight of the laundry load prior to the drying cycle for the average household surveyed was approximately 12.1 lbs, and that, on average, 4.8 lbs of water was removed during the drying cycle. Comparing this to the proposed DOE test procedure for a standard-size test load with a bone-dry weight of 8.45 lbs, the starting RMC of 57.5 percent would result in an initial weight of the test load of approximately 13.3 lbs. The proposed test procedure, which requires that the laundry load be dried to below 2-percent RMC, would require approximately 4.7 lbs of water to be removed from the load during the drying cycle. Based on the information from the NEEA field use study, DOE concludes that the weight of the test load and amount of moisture removed during the drying cycle in the proposed test procedure are fairly representative of consumer use.

Data from the NEEA study also showed that the average household surveyed used the ''normal'' or an equivalent program cycle setting for nearly 60 percent of all drying cycles. The remaining drying cycles used other automatic termination cycle settings, or timed dry or manual cycles. Based on these usage patterns, DOE tentatively

concludes that using the ''normal'' automatic termination program cycle setting for automatic termination control clothes dryers would be most representative of consumer use. DOE is not proposing to require additional program cycle settings, which would also require specifying different load types for each setting, in today's NOPR to minimize testing burden.

For timer dryers, DOE is proposing to use the test method currently specified in 10 CFR part 430, subpart B, appendix D1, section 3.3 with a revised final RMC requirement. The proposed test method would require that the clothes dryer be operated using the highest temperature setting and maximum time setting. The clothes dryer would then be allowed to run until the final RMC of the load is between 1.0 percent and 2.5 percent, at which point the test cycle is stopped without permitting the clothes dryer to advance into the cool-down period. After stopping the test run, test technicians would remove and weigh the test load. DOE is also proposing to add a clarification that the clothes dryer should not be stopped intermittently in the middle of the test cycle for any reason. This clarification would ensure that test technicians are not stopping the dryer intermittently to weigh the test load to check whether it is within the target range for the final RMC. Such a practice would alter the measured results because of the heat loss from the dryer when the cycle is stopped.

DOE is proposing in today's NOPR to include separate calculations for the per-cycle energy consumption for timer dryers. The calculations would be similar to the calculations provided in the current DOE test procedure in 10 CFR part 430, subpart B, appendix D1, sections 4.1–4.3, except that the normalization of the per-cycle energy consumption to represent the energy consumption required to dry the test load to 4-percent RMC would be changed to represent the new target RMC of 2 percent. The per-cycle energy consumption calculation in the current test procedure applies a scaling factor of 53.5 to be representative of the percentage change from the nominal initial RMC of 57.5 percent to the nominal ending RMC of 4 percent. The proposed amendments would change this scaling factor to 55.5 to reflect the new ending RMC of 2 percent. DOE proposes a range of 1.0 percent to 2.5 percent for the allowable ending RMC during the test cycle to reduce testing burden. DOE tentatively concludes that requiring the tester to dry the test load to an exact RMC during the test cycle would be unduly burdensome because it could require the test to be repeated a significant number of times until the exact RMC is achieved. For the test procedure to produce repeatable results, the measured test cycle energy consumption is normalized to calculate the energy consumption required to dry the test load from exactly 57.5-percent RMC to 2-percent RMC, which is representative of clothes dryers currently on the market and of the maximum consumer-accepted final RMC.

DOE proposes in today's NOPR that manufacturers continue to apply the field use factor needed to account for the energy consumption of drying beyond the 2-percent RMC specified in the test procedure. DOE is not proposing any changes to the 1.18 field use factor for timer dryers because DOE is not aware of any data or studies more recent than the studies on which it was originally based that would indicate that this value is not currently representative of consumer use. DOE seeks comment on the field use factors for both automatic termination control dryers and timer dryers in section V.E of this notice.

DOE is not proposing to include the cool-down period as part of the timed dry test cycle because the proposed test method requires drying the load to a specified RMC, at which point the test cycle is stopped by the test technician. DOE has determined that specifying a timed dry cycle that includes the cool-down period to achieve a target final RMC would add significant testing burden on test technicians to determine and preset the appropriate time setting. It would also be difficult to ensure that testing results are repeatable and reproducible because different combinations of timed dry cycle length and cool-down period may be selected to dry a test load to the same final RMC. For these reasons, DOE is not amending the timed dry test cycle to include the cool-down period in today's NOPR.

C. Incorporating by Reference IEC Standard 62301 Second Edition for Measuring Standby Mode and Off Mode Power

The January 2011 TP Final Rule incorporated in the test procedures for clothes dryers relevant provisions from IEC Standard 62301 (First Edition) for measuring standby mode and off mode power. 76 FR 972, 979–80 (Jan. 6, 2011). DOE reviewed the IEC Standard 62301 (First Edition) and concluded that it would be generally applicable to clothes dryers, although some clarification would be needed. Specifically, DOE adopted amendments for standby mode and off mode power measurements to provide a stabilization period of 30 to 40 minutes followed by an energy use measurement period of 10 minutes. 76 FR 986 (Jan.6, 2011). With these clarifications in place, the January 2011 TP Final Rule referenced IEC Standard 62301 (First Edition) for the standby mode and off mode wattage measurements. DOE also incorporated into the clothes dryer test procedure definitions of ''active mode,'' ''standby mode,'' and ''off mode'' based on the definitions provided in IEC Standard 62301 CDV. 76 FR 76 FR 981–85 (Jan. 6, 2011).

IEC Standard 62301 (Second Edition) published on January 27, 2011. Consistent with EPCA requirements for amending test procedures to include standby and off mode procedures, DOE considered IEC Standard 62301 (Second Edition) in today's NOPR for amendments to the standby mode and off mode test procedures for clothes dryers. (42 U.S.C. 6295(gg)(2)(A)) IEC Standard 62301 (Second Edition) is an internationally-accepted test procedure for measuring standby power in residential appliances, and it provides clarification to certain sections as compared to the First Edition, as discussed in the following paragraphs.

Section 4, paragraph 4.4 of the Second Edition revises the power measurement accuracy provisions of the First Edition. A more comprehensive specification of required accuracy is provided in the Second Edition, which depends upon the characteristics of the power being measured. Testers using the Second Edition are required to measure the crest factor and power factor of the input power, and to calculate a maximum current ratio (MCR) (paragraph 4.4.1 of the Second Edition). The Second Edition then specifies calculations to determine permitted uncertainty in MCR. DOE notes, however, that the allowable uncertainty is the same or less stringent than the allowable uncertainty specified in the First Edition, depending on the value of MCR and the power level being measured (see Table III.17 for examples). This change in the allowable uncertainty, however, maintains sufficient accuracy of measurements under a full range of possible measured power levels without placing undue demands on the instrumentation. These power measurement accuracy requirements were based upon detailed technical submissions to the IEC in the development of IEC Standard 62301 Final Draft International Standard (FDIS), which showed that commonly-used power measurement instruments were unable to meet the original requirements for certain types of loads. The incremental testing burden

associated with the additional measurements and calculations is offset by the more reasonable requirements for testing equipment, while maintaining measurement accuracy deemed acceptable and practical by voting members for IEC Standard 62301 (Second Edition). For these reasons, DOE proposes in today's notice to incorporate by reference in 10 CFR part 430, subpart B, appendix D1, section 2.4.7 the power equipment specifications in section 4, paragraph 4.4 of IEC Standard 62301 (Second Edition).

TABLE III.17—COMPARISON OF ALLOWABLE UNCERTAINTY IN MEASURED POWER

Measured Power *(W)*	Allowable Uncertainty *(W)*		
	IEC 62301 (First Edition)	IEC 62301 (Second Edition)	
		MCR = 5	MCR = 15
5.0	0.1	0.1	0.14
2.0	0.04	0.04	0.056
1.0	0.02	0.02	0.028
0.5	0.01	0.02	0.02
0.2	0.01	0.02	0.02

Section 5, paragraph 5.2 of IEC Standard 62301 (Second Edition) maintains the installation and setup procedures incorporated by reference in the clothes dryer test procedure in the January 2011 TP Final Rule from the First Edition. These provisions require that the appliance be prepared and set up in accordance with manufacturer's instructions, and that if no instructions are given, then the factory or ''default'' settings shall be used, or where there are no indications for such settings, the appliance is tested as supplied. Additionally, IEC Standard 62301 (Second Edition) adds certain clarifications to the installation and setup procedures in section 5, paragraph 5.2 of the First Edition regarding products equipped with a battery recharging circuit for an internal battery, as well as instructions for testing each relevant configuration option identified in the product's instructions for use. DOE is not aware of any clothes dryer with an internal battery, or with a recharging circuit for such a battery. DOE also believes that a requirement to separately test each configuration option could substantially increase test burden and potentially conflicts with the requirement within the same section to set up the product in accordance with the instructions for use or, if no such instructions are available, to use the factory or ''default'' settings. Therefore, DOE tentatively concludes that the portions of the installation instructions in section 5, paragraph 5.2 of IEC Standard 62301 (Second Edition) pertaining to batteries and the requirement for the determination, classification, and testing of all modes associated with every combination of available product configuration options (which may be more numerous than the modes associated with operation at the default settings) are not appropriate for the clothes dryer test procedures. Accordingly, DOE is proposing qualifying language in the test procedure amendments in 10 CFR part 430, subpart B, appendix D1, section 2.1 to disregard those portions of the installation instructions.

The Second Edition also contains provisions for the power supply (section 4.3) and power-measuring instruments (section 4.4). Paragraph 4.3.2 requires that the value of the harmonic content of the voltage supply be recorded during the test and reported. As described previously, paragraph 4.4.1 requires the instrument to measure the crest factor and maximum current ratio. Paragraph 4.4.3 requires the instrument to be capable of measuring the average power or integrated total energy consumption over any operator-selected time interval. DOE is aware of commercially available power measurement instruments that can perform each of these required measurements individually. However, DOE is also aware that certain industry-standard instruments, such as the Yokogawa WT210/WT230 digital power meter and possibly others, are unable to measure harmonic content or crest factor while measuring average power or total integrated energy consumption. DOE is concerned that laboratories currently using power-measuring instruments without this capability would be required to purchase, at potentially significant expense, additional power-measuring instruments that are able to perform all these measurements simultaneously. Therefore, DOE proposes in 10 CFR part 430, subpart B, appendix D1, sections 2.3.1.1 and 2.4.7 that if the power-measuring instrument is unable to perform these measurements during the actual test measurement, it would be acceptable to measure the total harmonic content, crest factor, and maximum current ratio immediately before and immediately after the actual test measurement to determine whether the requirements for the power supply and power measurement have been met.

The other major changes in the Second Edition related to the measurement of standby mode and off mode power consumption in covered products involve measurement techniques and specification of the stability criteria required to measure that power. The Second Edition contains more detailed techniques to evaluate the stability of the power consumption and to measure the power consumption for loads with different stability characteristics. According to the Second Edition, the user is given a choice of measurement procedures, including sampling methods, average reading methods, and a direct meter reading method. DOE evaluated these new methods in terms of test burden and improvement in results as compared to the methods adopted in the January 2011 TP Final Rule, which were based on IEC Standard 62301 (First Edition).

In the January 2011 TP Final Rule, DOE adopted provisions requiring that clothes dryer standby mode and off mode power be measured using section 5, paragraph 5.3 of IEC Standard 62301 (First Edition), clarified by requiring the product to stabilize for 30 to 40 minutes and using an energy use measurement period of 10 minutes. Further, for any clothes dryer in which the power varies over a cycle, as described in section 5, paragraph 5.3.2 of the First Edition, the January 2011 TP Final Rule adopted amendments to require the use of the average power approach in section 5, paragraph 5.3.2(a), with a 30- to 40-minute stabilization period and a 10-minute minimum measurement period, as long as the measurement period comprises one or more complete cycles. 76 FR 972, 979–980, 985–986 (Jan. 6, 2011).

For today's notice, to determine the potential impacts of referencing methodology from IEC Standard 62301 (Second Edition) rather than from the First Edition, DOE compared the provisions allowed by each under different scenarios of power consumption stability, as discussed in the following sections.

1. Stable Power Consumption

According to section 5, paragraph 5.3.1 of IEC Standard 62301 (First Edition), after an initial stabilization period of 5 minutes, power consumption is defined as stable if it varies by less than 5 percent over a subsequent measurement period of 5 minutes. In such a case, a direct reading may be made at the end of the measurement period. With the clarifications adopted in the January 2011 TP Final Rule, the total test time would be 40 to 50 minutes (comprised of a 30- to 40-minute stabilization period, followed by a 10-minute period during which the stability criterion could be evaluated and a direct power reading taken.) Alternatively, the tester may select an average power or accumulated energy approach, again with a 30- to 40-minute stabilization period and a 10-minute measurement period. The average power approach would simply require a different reading to be taken from the instrument (true average power instead of a direct reading of instantaneous power), while the accumulated energy approach would require the calculation of power by dividing an accumulated energy by the duration of the measurement period.

In comparison, section 5, paragraph 5.3.4 of IEC Standard 62301 (Second Edition) specifies a direct meter reading method that can be used for stable power consumption, in which a minimum 30-minute stabilization period must be observed, followed by a first power measurement. After an additional period of 10 minutes, a second power measurement is taken. If the average of the two measurements divided by the time interval between them meets certain threshold criteria, then the power consumption is considered to be the average of the two power measurements. Thus, the total test period would still be at minimum 40 minutes. DOE believes that this method likely improves the validity of the test results, as it is a more stringent measure of the stability of the power consumption over a longer period of time than the First Edition requires. However, if the threshold criteria are not met at the end of the test, a different measurement method must be used, increasing test time and complexity. Further, the Second Edition specifies that the direct reading method shall not be used for verification purposes. Both of these qualifications potentially increase test burden as compared to the First Edition, possibly requiring the tester to conduct the more complex methodology of the methods available under the Second Edition.

Section 5, paragraph 5.3.2 of IEC Standard 62301 (Second Edition) identifies a sampling method as the preferred means for all power consumption measurements and the fastest test method when the power is stable. For any non-cyclic power consumption, power readings are initially recorded over a period of at least 15 minutes after energizing the product. Data from the first third of the measurement period are discarded, and stability is evaluated by a linear regression through all power readings in the second two-thirds of the data. If the slope of the linear regression is less than 10 milliwatts per hour (mW/h) for input power less than or equal to 1.0 W, or less than 1 percent of the input power per hour for input power greater than 1.0 W, the power consumption is calculated as the average of the power readings during the second two-thirds of the measurement period. If the slope of the linear regression does not meet these stability criteria, the total period is continuously extended until the stability criteria are met for the second two-thirds of the data. In some cases, this is a more stringent requirement than the stability criteria of IEC Standard 62301 (First Edition). The lack of a definitive test period means that the test duration could extend past 15 minutes for certain products—up to 3 hours is allowed in the Second Edition—and could introduce added test burden as compared to the First Edition.

2. Unstable, Non-Cyclic Power Consumption

Section 5, paragraph 5.3 from IEC Standard 62301 (First Edition), which DOE incorporated by reference in the clothes dryer test procedure in the January 2011 TP Final Rule with clarification, specifies that either an average power method or accumulated energy approach could be used for measuring non-cyclic unstable power consumption. As described previously, this methodology, as adopted in the January 2011 TP Final Rule, would limit total test duration to 40–50 minutes.

In contrast, the Second Edition requires the use of either a sampling method or average reading method for measuring power consumption in standby mode or off mode. The sampling method is the same as described previously, but the measurement period must be at least 60 minutes, and the cumulative average of all data points recorded during the second two-thirds of the total period must fall within a band of ±0.2 percent.

The average reading method in section 5, paragraph 5.3.3 IEC Standard 62301 (Second Edition) comprises both an average power method and accumulated energy method, either of which may be selected for unstable, non-cyclic power. For both methods, a 30-minute stabilization period is specified, followed by two comparison measurement periods of not less than 10 minutes each. The average power values, either measured directly or calculated from accumulated energy during each period, are compared to determine whether they agree to within certain threshold criteria. If the threshold is not achieved, the comparison periods are each extended in approximately equal increments until the threshold is met. If agreement is not achieved after reaching 30 minutes for each comparison period, the sampling method must then be used. Therefore, the minimum test period is 50 minutes, but may extend up to 90 minutes, at which time an additional test may be required.

DOE believes that the stability criteria in either method improves the accuracy and representativeness of the measurement as compared to the First Edition, but would cause the required test time to increase, with a corresponding increase in manufacturer burden due to the additional time and complexity of the test.

3. Cyclic Power Consumption

As noted previously, DOE adopted amendments in the January 2011 TP Final Rule to require that for any clothes dryer in which the power varies over a cycle, the average power approach of section 5, paragraph 5.3.2(a) in IEC Standard 62301 (First Edition) shall be used, with a 30- to 40-minute stabilization period and minimum 10-minute measurement period. The First Edition also requires that at least one or more complete cycles be measured.

In the Second Edition, cyclic power must be measured according to the sampling method in section 5, paragraph 5.3.2, but this method requires a measurement period of at least four complete cycles (for a total of at least 40 minutes) divided into two comparison periods, with stability criteria evaluated by calculating the difference in average power measured in each comparison period divided by the time difference of the mid-point of each

comparison period. Similar to the sampling method for stable power consumption measurements described previously, this ''slope'' must be less than 10 mW/h for input powers less than or equal to 1 W, and less than 1 percent of the input power per hour for input powers greater than 1 W. If the appropriate stability criterion is not met, additional cycles are added to each comparison period until the criterion is achieved. Once stability has been reached, the power consumption is calculated as the average of all readings from both comparison periods. DOE believes that this methodology produces an improved measurement over the methodology from the First Edition, but the test duration could be extended, again potentially introducing issues of increased test burden.

4. Conclusions on Test Methodology

DOE, in evaluating IEC Standard 62301 (Second Edition) in comparison to the First Edition, considers the substantial body of comments on and input to the provisions and methodology that IEC developed as part of its latest revision process. DOE recognizes that, in some cases, test burden and complexity would be increased by requiring the use of the test methods specified in the Second Edition. AHAM and manufacturers involved in the IEC review process have commented that IEC Standard 62301 (Second Edition) test methods improve the accuracy and representativeness of the test measurements and would not be unduly burdensome to conduct. 77 FR 28805, 28812 (May 16, 2012); 76 FR 58346, 58350 (Sept. 20, 2011); 77 FR 13888, 13893 (March 7, 2012). As a result, and for the reasons discussed above, DOE proposes incorporation by reference of the relevant paragraphs of section 5.3 of IEC Standard 62301 (Second Edition) in the clothes dryer test procedure in 10 CFR part 430, subpart B, appendix D1, section 3.6.

Further, DOE observes that although the Second Edition allows the choice of multiple test methods for both stable and unstable non-cyclic power consumption, the sampling method provides for a test duration that is approximately the same or similar to the allowable alternative methods and does not require classification of the nature of the power consumption (*e.g.,* stable or unstable, non-cyclic) in advance of the test. By monitoring the variation in power consumption during the test, the test operator could determine whether it is stable or unstable, and thereby establish the required duration of the sampling periods. For cyclic power consumption, the Second Edition also requires the use of the sampling method. Thus, DOE proposes to require in 10 CFR part 430, subpart B, appendix D1, section 3.6 the use of the sampling method in section 5.3.2 of the Second Edition for all standby mode and off mode power measurements.

DOE is also proposing to amend the reference in 10 CFR 430.3 to add IEC Standard 62301 (Second Edition). DOE is not proposing to replace the reference to the First Edition in 10 CFR 430.3, because several test procedures for other covered products not addressed in today's notice incorporate provisions from it. In addition, there are a number of editorial changes necessary in appendix D1 to allow for the correct referencing to the Second Edition. For example, the definition sections need to define the IEC Standard 62301 as the Second Edition instead of the First Edition. Also, there are some section numbering differences in the Second Edition that impact the text of the measurement provisions of the relevant test procedures.

D. Technical Correction to the Calculation of the Per-Cycle Combined Total Energy Consumption

DOE notes that 10 CFR part 430, subpart B, appendix D1, section 4.6, regarding the calculation of the per-cycle combined total energy consumption contains a reference to an incorrect section number. The per-cycle standby mode and off mode energy consumption, E_{TSO}, which is contained in section 4.5, is incorrectly referenced in the per-cycle combined total energy consumption as section 4.7. DOE is proposing in today's NOPR to correct this section number reference.

E. Clarifications to Test Conditions

DOE notes that it received a number of inquiries from independent test laboratories requesting clarification on testing according to the DOE clothes dryer test procedure in 10 CFR part 430, subpart B, appendix D. DOE is proposing amendments in today's NOPR to clarify the cycle settings used for the test cycle and the requirements for the gas supply for gas clothes dryers.

Section 3.3 in 10 CFR part 430, subpart B, appendix D specifies that the maximum temperature setting and, if a tested unit is equipped with a timer, the maximum time setting must be used for the drying test cycle. DOE received an inquiry from an independent test laboratory regarding how to test a clothes dryer that has timed dry cycle length settings, but no temperature settings on the control panel. DOE is proposing to clarify in 10 CFR part 430, subpart B, appendix D, section 3.3, that if the clothes dryer does not have a separate temperature setting selection on the control panel, the maximum time setting should be used for the drying test cycle. In today's NOPR, DOE is proposing to amend 10 CFR part 430, subpart B, appendix D1, to require separate test methods for timer dryers and automatic termination control dryers. Because the proposed timed dry test method maintains the same cycle settings as specified in 10 CFR part 430, subpart B, appendix D, DOE is also proposing to include the clarification discussed above in section 3.3.1 in 10 CFR part 430, subpart B, appendix D1, for the timer dryer test method. Because the proposed test method for automatic termination control dryers requires using an automatic cycle termination program where the drying temperature and dryness level settings are modified only if they can be chosen independently of the cycle program, DOE is not proposing to include the clarification discussed above.

DOE also received an inquiry regarding how to test a clothes dryer that has an optional cycle setting, other than the temperature and time settings, that is activated by default in the condition as shipped by the manufacturer. DOE is proposing to clarify in both 10 CFR part 430, subpart B, appendix D, section 3.3, and appendix D1, section 3.3.1, that the test procedures specify requirements only for the temperature setting and time setting, and do not specify modifications to any other optional settings that do not affect the temperature setting and time setting. Similarly in 10 CFR part 430, subpart B, appendix D1, section 3.3.2, DOE is proposing to clarify for automatic termination control dryers, the test procedures specify requirements only for the automatic termination cycle program, temperature setting, and dryness setting, and do not specify modifications to any other optional settings that do not affect the automatic termination cycle program, temperature setting, and dryness setting.

Section 2.3.2 in 10 CFR part 430, subpart B, appendix D and appendix D1, specifies that gas supply to the clothes dryer should be maintained at a normal inlet test pressure at 7 to 10 inches of water column, and that the hourly British thermal unit (Btu) rating of the burner shall be maintained within ±5 percent of the rating specified by the manufacturer. DOE received an inquiry from an independent testing laboratory noting that during its testing, the gas dryer under test did not meet the requirement to maintain the Btu rating within 5 percent of the rating specified

by the manufacturer under the allowable range in gas inlet test pressure. DOE is proposing to add a clarification in both 10 CFR part 430, subpart B, appendix D and appendix D1 that if the requirement to maintain the hourly Btu rating of the burner within ±5 percent of the rating specified by the manufacturer cannot be achieved under the allowable range in gas inlet test pressure, the orifice of the gas burner should be modified as necessary to achieve the required Btu rating.

Section 2.3.2 in 10 CFR part 430, subpart B, appendix D and appendix D1, also specifies that if a clothes dryer is equipped with a gas appliance pressure regulator, the regulator outlet pressure at the normal test pressure shall be approximately that recommended by the manufacturer. DOE notes that the test procedures for similar gas heating products, such as gas water heaters, specifies that the regulator outlet pressure must be within ±10 percent of the value specified by the manufacturer. DOE is proposing to clarify the term ''approximately'' by specifying that the regulator outlet pressure shall be within ±10 percent of the value specified by the manufacturer.

F. Effects of Proposed Test Procedure Revisions on Compliance With Standards

In any rulemaking to amend a test procedure, DOE must determine to what extent, if any, the proposed test procedure would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2)) In determining the amended energy conservation standard, the Secretary shall measure, pursuant to the amended test procedure, the energy efficiency, energy use, or water use of a representative sample of covered products that minimally comply with the existing standard. The average of such energy efficiency, energy use, or water use levels determined under the amended test procedure shall constitute the amended energy conservation standard for the applicable covered products. (42 U.S.C. 6293(e)(2)) Models of covered products in use before the date on which the amended energy conservation standard becomes effective (or revisions of such models that come into use after such date and have the same energy efficiency, energy use or water use characteristics) that comply with the energy conservation standard applicable to such covered products on the day before such date shall be deemed to comply with the energy conservation standard. (42 U.S.C. 6293(e)(3)) DOE's authority to amend energy conservation standards does not affect DOE's obligation to issue any final standards as described in 42 U.S.C. 6295. (42 U.S.C. 6293(e)(4))

1. Active Mode

As discussed in section III.E, DOE is only proposing to amend 10 CFR part 430 subpart B, appendix D in today's NOPR to clarify the cycle settings used for testing and the requirements for the gas supply. Because the proposed amendments to appendix D would not change the actual testing method, DOE determined that these proposed amendments would not affect the measured efficiency according to appendix D and would not affect a manufacturer's ability to demonstrate compliance with the current energy conservation standards at 10 CFR 430.32(h)(2).

Because the January 1, 2015 energy conservation standards for clothes dryers are based on CEF as measured according to 10 CFR part 430 subpart B, subpart D1, DOE investigated how the proposed amendments for automatic cycle termination would affect the measured CEF.

In response to the August 2011 RFI, the Joint Petitioners commented that if DOE adopts the petition's proposed test procedure amendments, it must also revise the relevant energy conservation standards to reflect the new test procedure, ensuring that for clothes dryers with effective automatic termination controls, there is no change in stringency of the standards. The Joint Petitioners stated that the procedures in 42 U.S.C. 6293(e)(2) should be used, with the clarification that for the purposes of establishing a representative sample of products, DOE should select a sample of minimally compliant clothes dryers that automatically terminate the drying cycle at 1.5- to 2-percent RMC. The Joint Petitioners stated that by selecting products that terminate at 1.5- to 2-percent RMC, DOE will assure that the revised standard is based upon dryers that do not over-dry and that the tested sample yields valid results under both the current and proposed revised test procedure. The Joint Petitioners also stated that if DOE does not consider dryers that terminate the drying cycle at 1.5- to 2-percent RMC to be a representative sample, the proposed test procedure in the Joint Petition should still be adopted. In that case, the Joint Petitioners stated that DOE could revise the energy conservation standards without limiting the representative sample of dryers based on automatic termination performance. However, the Joint Petitioners noted that this approach would reduce, but not eliminate, the benefits from this test procedure change. (Joint Petition, No. 2 at pp. 6–7)

DOE conducted testing on 20 clothes dryers according to the current DOE clothes dryer test procedure in appendix D1 and then according to the proposed automatic cycle termination test procedure. The results of this testing, presented in Table III.18, showed that specific models resulted in either a lower or higher measured CEF as compared to the measured CEF using the current test procedure, ranging from a 27.4 percent decrease to a 20.4 percent increase in CEF with an average of a 3.8 percent increase. DOE also evaluated the effects of the proposed amendments for the products in DOE's test sample that minimally comply with the existing energy conservation standards (based on rated EF). The results for the 10 minimally compliant units in DOE's test sample showed a 27.4 percent decrease to a 16.9 percent increase in CEF as compared to the CEF using the test procedure in 10 CFR part 430 subpart B, subpart D1, with an average of a 4.1 percent increase.

TABLE III.18—EFFECTS OF PROPOSED AUTOMATIC CYCLE TERMINATION TEST METHOD

Product class	Test unit	Current Appendix D1 CEF (*lbs/kWh*)	Proposed automatic cycle termination test method	
			CEF (*lbs/kWh*)	% Change from appendix D1 CEF
Vented Electric Standard	*1	3.58	3.94	10.2
	2	3.93	3.41	−13.2

TABLE III.18—EFFECTS OF PROPOSED AUTOMATIC CYCLE TERMINATION TEST METHOD—Continued

Product class	Test unit	Current Appendix D1 CEF (*lbs/kWh*)	Proposed automatic cycle termination test method	
			CEF (*lbs/kWh*)	% Change from appendix D1 CEF
	*3	3.83	4.35	13.6
	*4	3.71	4.34	16.9
	5	3.90	4.37	12.0
	*6	3.80	3.39	−10.9
	*7	3.84	3.83	−0.2
	*8	3.71	3.87	4.4
Vented Electric Compact (240V)	*9	3.53	4.12	16.7
	10	3.56	2.84	−20.2
Vented Electric Compact (120V)	*11	3.75	2.72	−27.4
Vented Gas	12	3.43	3.37	−1.7
	*13	3.31	3.58	8.1
	*14	3.49	3.84	9.8
	15	3.39	3.37	−0.7
	16	3.37	4.05	20.4
	17	3.37	3.66	8.6
Ventless Electric Compact (240V)	18	2.98	3.40	14.0
Ventless Electric Combo Washer/Dryer	19	2.81	2.70	−3.9
	20	2.28	2.74	20.2
Total Average				3.8

* Minimally compliant test units.

Based on these results and consistent with 42 U.S.C. 6293(e)(1) and (2), DOE tentatively concludes that the proposed amendments to the active mode test procedure will on average not impact the measured efficiency as compared to the current test procedure for models currently available on the market. As a result, DOE is not considering amendments to the energy conservation standards that will be required on January 1, 2015.

2. Standby Mode and Off Mode

DOE also investigated how the proposed amendments for standby mode and off mode would affect the measured efficiency. Because the proposed amendments to the DOE clothes dryer test procedure in 10 CFR part 430 subpart B, appendix D1 for measuring standby mode and off mode energy consumption would not alter the existing measure of energy consumption for clothes dryers (EF), the proposed amendments would not affect a manufacturer's ability to comply with the current energy conservation standards.

DOE's amendments in the January 2011 TP Final Rule specified that manufacturers will not be required to use the test procedure provisions for standby mode and off mode until the mandatory January 1, 2015 compliance date of the amended clothes dryer energy conservation standards. (10 CFR 430.32(h)(3)) The January 1, 2015 amended energy conservation standards are based on CEF, which accounts for standby mode and off mode energy consumption. Because today's proposed amendments would revise the provisions used to measure standby mode and off mode energy consumption, and thus CEF, DOE investigated how the proposed test procedure amendments would affect the amended energy conservation standards at 10 CFR 430.32(h)(3). DOE believes the proposed changes to the testing methods for measuring standby mode and off mode energy consumption do not vary significantly from the methods in the amended DOE clothes dryer test procedure in appendix D1 for measuring standby power and would not alter the measured efficiency. To confirm this assertion, DOE conducted testing on four clothes dryers (three of which minimally comply with the existing energy conservation standards) according to both the existing appendix D1 and the proposed amendments to appendix D1 for standby mode and off mode that are based IEC Standard 62301 (Second Edition). The results, presented below in Table III.19, show that the measured average standby power is the same using both methods.

TABLE III.19—DOE TEST RESULTS TO EVALUATE EFFECTS OF PROPOSED CHANGES TO STANDBY AND OFF MODE TESTING PROCEDURES

Test unit	Average standby power (*W*)	
	Existing appendix D1	Proposed appendix D1
1*	0.97	0.97
3*	0.16	0.16
14*	0.38	0.38
16	0.70	0.70

* Minimally compliant test units.

Based on these test results, DOE believes that the proposed amendments to the clothes dryer test procedure for standby mode and off mode would not alter the measured CEF. DOE is, therefore, not considering amendments to the energy conservation standards at 10 CFR 430.32(h)(3) that must be met on January 1, 2015.

DOE's proposed amendments would continue to clarify that manufacturers would not be required to use the provisions relating to standby mode and off mode energy use to determine compliance with the energy conservation standard until the compliance date of the amended energy conservation standards for clothes dryers addressing standby mode and off mode energy use on January 1, 2015. As a result, the proposed test procedure amendments for standby mode and off mode would not affect a manufacturer's ability to demonstrate compliance with the current energy conservation standards.

G. Compliance With Other EPCA Requirements

1. Test Burden

EPCA requires that test procedures shall be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. Test procedures must also not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

DOE notes that the proposed amendments for automatic cycle termination, discussed in section III.B.5, would change the test cycle for automatic cycle termination dryers to require that a programmed automatic termination cycle be used for the test instead of using the maximum timed dry setting. The proposed provision to include the cool down period and allowing the clothes dryer to run until the completion of the programmed dry cycle would likely be less burdensome than the existing test procedure in which the tester is required to monitor or make estimates about the RMC of the test load and potentially run multiple test cycles to determine when to stop the test to achieve the desired final RMC. For timer dryers, the proposed amendments would use the same basic test method that is currently specified in the DOE test procedure in 10 CFR part 430, subpart B, appendix D1, except that the test cycle would be stopped when the final RMC is between 1.0 percent and 2.5 percent instead of between 2.5 percent and 5.0 percent. DOE notes that this would result in a slightly longer cycle time, but the additional time would be minimal compared to the overall time to set up and conduct the test. For these reasons, DOE believes that the amendments to more accurately account for automatic cycle termination proposed in today's NOPR would not be unduly burdensome to conduct. DOE also notes that the revised test cycle for automatic cycle termination dryers would produce a measured energy use that is more representative of consumer use because it directly measures the energy consumption of the programmed automatic termination cycle.

With regards to the amendments for standby and off mode power consumption, DOE concluded in the January 2011 TP Final Rule that the amended test procedure would produce test results that measure the standby mode and off mode power consumption of covered products during a representative average use cycle as well as annual energy consumption, and that the test procedure would not be unduly burdensome to conduct. 76 FR 972. 1020 (Jan. 6, 2011). Today's proposed amendments to the DOE clothes dryer test procedure for standby mode and off mode are based on an updated version of IEC Standard 62301, IEC Standard 62301 (Second Edition), which has been the subject of significant review and input from interested parties and, thus, continues to be an internationally accepted test standard for measuring standby mode and off mode power consumption. As discussed in section III.0 of this notice, DOE believes that the provisions of IEC Standard 62301 (Second Edition) that it proposes to incorporate by reference through today's NOPR provide a means to measure power consumption with greater accuracy and repeatability than the provisions from IEC Standard 62301 (First Edition) that were adopted in the January 2011 TP Final Rule. DOE tentatively concludes that today's proposed amendments would also provide measurements representative of average consumer use of the product under test. DOE also notes that interested parties have commented that the testing methods in IEC Standard 62301 (Second Edition) would not be unduly burdensome to conduct. 77 FR 28805, 28812 (May 16, 2012); 76 FR 58346, 58350 (Sept. 20, 2011); 77 FR 13888, 13893 (March 7, 2012). The potential for increased test burden for certain power consumption measurements is also offset by more reasonable requirements for testing equipment, while maintaining measurement accuracy deemed acceptable and practical by voting members for IEC Standard 62301 (Second Edition). For these reasons, DOE tentatively concludes that the amended test procedures proposed in today's NOPR would produce test results that measure the standby mode and off mode power consumption during representative use, and that the test procedures would not be unduly burdensome to conduct.

2. Certification Requirements

42 U.S.C. 6299 *et seq.* authorizes DOE to enforce compliance with the energy and water conservation standards established for certain consumer products. On March 7, 2011, the Department revised, consolidated, and streamlined its existing certification, compliance, and enforcement regulations for certain consumer products and commercial and industrial equipment covered under EPCA, including clothes dryers. 76 FR 12422. These regulations are codified in 10 CFR 429.21 (residential clothes dryers).

The certification requirements for residential clothes dryers consist of a sampling plan for selection of units for testing and requirements for certification reports. Because DOE introduced a new metric (CEF) in the January 2011 TP Final Rule, DOE proposes to amend the provisions in 10 CFR 429.21(a)(2) to include CEF, along with the existing measure of EF, in the list of metrics for which consumers would favor higher values. DOE is proposing to amend the reporting requirements in 10 CFR 429.21(b)(2) to require manufacturers, when using either appendix D or D1, to provide an indication if the clothes dryer has automatic termination controls and also to report the hourly Btu rating of the burner for gas clothes dryers. DOE is also proposing to amend 10 CFR 429.21(b)(2) to require manufacturers, when using appendix D1, to include the CEF and to list the cycle setting selections for the energy test cycle as recorded in the proposed section 3.4.7 of appendix D1 for each basic model.

3. Compliance Date of Any Final Amended Test Procedures

As stated in section I, DOE test procedures for clothes dryers are set forth in appendices D and D1 in 10 CFR part 430 subpart B. This proposal describes amendments to both appendices. Pursuant to 42 U.S.C. 6293(c)(2), effective 180 days after DOE prescribes or establishes a new or amended test procedure, manufacturers must make representations of energy efficiency using that new or amended test procedure. Therefore, effective 180

days after the promulgation of any final amendments to the test procedure based on this proposal, manufacturers must make representations of energy efficiency, including certifications of compliance, using either appendix D or appendix D1. Manufacturers must use a single appendix for all representations, including certifications of compliance, and may not use appendix D for certain representations and appendix D1 for other representations. See DOE's existing guidance on this topic for additional information, available at: *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/tp_faq_2012-06-29.pdf*. Compliance with DOE's amended standards for clothes dryers, and corresponding use of the test procedures at Appendix D1 for all representations, including certifications of compliance, is required as of January 1, 2015. (76 FR 52852 (Aug. 24, 2011), 76 FR 52854 (Aug. 24, 2011))

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a regulatory flexibility analysis (RFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE's procedures and policies may be viewed on the Office of the General Counsel's Web site (*http://energy.gov/gc/office-general-counsel*). DOE reviewed today's NOPR under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

In conducting this review, DOE first determined the potential number of affected small entities. The Small Business Administration (SBA) considers an entity to be a small business if, together with its affiliates, it employs fewer than the threshold number of workers specified in 13 CFR part 121 according to the North American Industry Classification System (NAICS) codes. The SBA's Table of Size Standards is available at: *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf*. The threshold number for NAICS classification 335224, *Household Laundry Equipment Manufacturing,* which includes clothes dryer manufacturers, is 1,000 employees.

As discussed in the January 2011 TP Final Rule, DOE noted that most of the manufacturers supplying clothes dryers are large multinational corporations. As part of the most recent energy conservation standards rulemaking for residential clothes dryers, DOE requested comment on whether there are any manufacturer subgroups, including potential small businesses, that it should consider for its analyses. DOE did not receive any comments regarding whether there are any residential clothes dryer manufacturers that would be considered small businesses. DOE then conducted a more focused inquiry of the companies that could be small business manufacturers of products covered by this rulemaking. During its market survey, DOE used all available public information to identify potential small manufacturers. DOE's research included the AHAM membership directory, product databases (the AHRI, AHAM, CEC, and ENERGY STAR databases), individual company Web sites, and the SBA dynamic small business search [11] to find potential small business manufacturers. DOE also asked interested parties and industry representatives if they were aware of any other small business manufacturers during manufacturer interviews conducted and at DOE public meetings for the energy conservation standards rulemakings. DOE also contacted various companies, as necessary, to determine whether they met the SBA's definition of a small business manufacturer of covered residential clothes dryers. DOE screened out companies that did not offer products covered by this rulemaking, did not meet the definition of a ''small business,'' or are foreign owned and operated.

DOE initially identified at least 14 manufacturers of residential clothes dryers that sold products in the United States. DOE determined that 13 of these companies exceeded the SBA's maximum number of employees or were foreign-owned and operated. Thus, DOE identified only one potential small business manufacturer of residential clothes dryers. DOE could not locate this manufacturer on the dynamic small business search on the SBA Web site, but DOE nonetheless considered the economic impacts of the proposed test procedure amendments on this potential small business manufacturer.

As discussed in section III.G.0, DOE does not believe the proposed active mode test procedure amendments in today's NOPR to more accurately measure the effects of automatic cycle termination would result in any added test burden on manufacturers as compared to the current DOE clothes dryer test procedure in 10 CFR part 430, subpart B, appendix D1. DOE is not proposing to require any additional test instruments or significantly different active mode testing methods and conditions that would require additional time for testing. For standby mode and off mode, DOE believes that the proposed test procedure amendments presented in section 0 would not represent a significant economic impact. DOE notes that industry-standard instruments, such as the Yokogawa WT210/WT230 digital power meter, that meet the standby mode and off mode requirements of the current DOE clothes dryer test procedure in 10 CFR part 430, subpart B, appendix D1, also meet the requirements of the proposed amendments for standby mode and off mode in today's NOPR. DOE also notes that the duration of a standby mode or off mode test period using the current test procedure in appendix D1 is 40 to 50 minutes. As discussed in section 0, DOE recognizes that the test duration using the proposed standby and off mode test procedure may range from 15 minutes to 3 hours depending on the stability of the measured power consumption. However, based on DOE's testing of four clothes dryers from different manufacturers, DOE expects the test duration using the proposed standby and off mode test procedure to be approximately 30 to 45 minutes for most clothes dryers. In addition, DOE notes that most third party testing laboratories already use these or similar industry-standard power meters for clothes dryer testing. As a result, if the

[11] A searchable database of certified small businesses is available online at: *http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm*.

small manufacturer decides to use a third party testing laboratory, DOE believes there would be a minimal, if any, increase in cost for standby mode and off mode testing.

For these reasons, DOE certifies that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE seeks comment on the certification set forth above, and will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of clothes dryers must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for clothes dryers, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including clothes dryers. (76 FR 12422 (March 7, 2011). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE is adopting test procedure amendments that it expects will be used to develop and implement future energy conservation standards for clothes dryers. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would amend the existing test procedures without affecting the amount, quality or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735.DOE has examined this proposed rule and has determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

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

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause 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 (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under

UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-counsel*. DOE examined today's proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

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

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

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

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

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

Today's action to amend the test procedure for measuring the energy efficiency of clothes dryers is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the DOE Organization Act (Pub. L. 95–91), DOE must comply with section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (FEAA; Pub. L. 95–70) (15 U.S.C. 788). Section 32 essentially provides that, where a rule authorizes or requires use of commercial standards, the rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The proposed rule incorporates testing methods contained in the commercial standard, IEC Standard 62301, ''Household electrical appliances—Measurement of standby power,'' Edition 2.0, 2011–01. DOE has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA, *i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review. DOE will consult with the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in this standard and will address any concerns when it publishes a response to the public comments on this NOPR.

V. Public Participation

A. Attendance at Public Meeting

The time, date and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov.* Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Edwards to initiate the necessary procedures. Please also note that those wishing to bring laptops into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes. Persons can attend the public meeting via webinar.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site *https://www1.gotomeeting.com/register/903943753*. Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a

judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via regulations.gov. The regulations.gov web page will require you to provide your name and contact information. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment.

Do not submit to regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through regulations.gov cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties on the following issues:

1. Test Load

DOE seeks comment on the proposal to continue using the DOE test load to maintain repeatability and reproducibility. DOE welcomes additional data on the test-to-test repeatability and lab-to-lab reproducibility of both the DOE and IEC/AHAM test load. (*See* section III.B.5)

2. Automatic Cycle Termination Test Cycle

DOE seeks comment on the proposed amendments to more accurately measure the effects of automatic cycle termination. DOE specifically requests comment on the proposed maximum allowable final RMC of 2 percent using the DOE test load. DOE further seeks comment on the proposed test cycle program settings, temperature settings, and dryness level settings. DOE also requests comment and additional test data on the proposed field use factor of 0.80 for automatic cycle termination clothes dryers. (*See* section III.B.5)

3. Timed Dry Test Cycle

DOE seeks comment on the proposed test method for timer dryers. In particular, DOE welcomes comment on the proposed final RMC range of 1.0 percent to 2.5 percent with the normalization of the per-cycle energy consumption to represent the energy consumption required to dry the test load to 4-percent RMC changed to represent the new target RMC of 2 percent. DOE also seeks comment on the continued use of the 1.18 field use factor in the per-cycle energy consumption calculation for timer dryers. DOE welcomes comment on the determination to not measure the cool-down period for the timed dry test cycle due to the associated test burden and difficulties with determining the appropriated timed dry cycle time. DOE also welcomes comment on the proposed amendment to clarify that the clothes dryer should not be stopped intermittently in the middle of the timed dry test cycle for any reason. (*See* section III.B.5)

4. Characteristics of Water for Wetting Test Load

DOE welcomes comment on the determination to not propose amendments to include requirements for the characteristics of the water supply used for wetting the test load prior to the test cycle. DOE welcomes additional data evaluating the repeatability and reproducibility of test results using both appendix D1 water and water modified according to the requirements in IEC Standard 61121. (*See* section III.B.4)

5. Incorporation by Reference of IEC Standard 62301 (Second Edition)

DOE invites comment on the adequacy of IEC Standard 62301 (Second Edition) to measure standby mode and off mode power consumption for clothes dryers, and the suitability of incorporating into DOE regulations the following specific provisions from IEC Standard 62301 (Second Edition): section 4 (''General conditions for measurements''), paragraph 4.2, ''Test room,'' paragraph 4.3.2, ''Supply voltage waveform,'' and paragraph 4.4, ''Power measuring instruments,'' and section 5 (''Measurements''), paragraph 5.1, ''General,'' paragraph 5.2 ''Preparation of product'', and paragraph 5.3.2, ''Sampling method.'' DOE also invites comment on the acceptability of measuring the total harmonic content, crest factor, and maximum current ratio before and after the actual test measurement if the power measuring instrument is unable to perform these measurements during the actual test measurement. (*See* section 0)

6. Technical Correction to the Calculation of the Per-cycle Combined Total Energy Consumption

DOE seeks comment on the proposed amendments to correct the section number reference for the per-cycle standby mode and off mode energy consumption contained in the calculation of the per-cycle combined total energy consumption contains in 10 CFR part 430, subpart B, appendix D1, section 4.6. (*See* section III.D)

7. Clarifications to Test Conditions

DOE seeks comment on the proposed amendments to clarify the cycle settings used for the test cycle. DOE also seeks comment on the proposed amendments to clarify for gas clothes dryer the requirements for the hourly British thermal unit (Btu) rating of the burner and the regulator outlet pressure for clothes dryers equipped with a gas appliance pressure regulator. (*See* section III.E)

8. Effects of Proposed Amendments for Automatic Cycle Termination on Energy Conservation Standards

DOE welcomes comments and additional data on the effects of the proposed test procedure amendments on the current energy conservation standards in both 10 CFR 430.32(h)(2) and (3). In particular, DOE seeks comment on the proposed determination to not amend the energy conservation standards based on the proposed test procedure amendments for automatic cycle termination due to the anti-backsliding provisions in 42 U.S.C. 6295(o)(1). DOE also welcomes comment on the determination and testing results showing that the proposed standby mode and off mode test procedure amendments would not measurably affect the measured efficiency as compared to the existing DOE test procedure in 10 CFR 430, subpart B, appendix D1. (*See* section III.F)

9. Test Burden

DOE seeks comment on any added test burden associated with the proposed amendments. When providing comments regarding testing burden, DOE request that commenters provide specific details and quantify any burdens. (*See* section III.G.0)

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects

10 CFR Part 429

Energy conservation, Household appliances, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

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

Kathleen B. Hogan,

Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 430 of title 10 of the Code of Federal Regulations, as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 429.21 is amended by:

■ a. Revising paragraph (a)(2)(ii) introductory text; and

■ b. Revising paragraph (b)(2).

The revision and addition read as follows:

§ 429.21 Residential clothes dryers.

* * * * *

(a) * * *

(2) * * *

(ii) Any represented value of the energy factor, combined energy factor, or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

* * * * *

(b) * * *

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: When using appendix D, the energy factor in pounds per kilowatt hours (lb/kWh), the capacity in cubic feet (cu ft), the voltage in volts (V) (for electric dryers only), an indication if the dryer has automatic termination controls, and the hourly British thermal unit (Btu) rating of the burner (for gas dryers only); when using appendix D1, the combined energy factor in pounds per kilowatt hours (lb/kWh), the capacity in cubic feet (cu ft), the voltage in volts (V) (for electric dryers only), an indication if the dryer has automatic termination controls, the hourly Btu rating of the burner (for gas dryers only), and a list of the cycle setting selections for the energy test cycle as recorded in section 3.4.7 of appendix D1 for each basic model.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 3. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

§ 430.3 [Amended].

■ 4. Section 430.3 is amended by:

■ a. Removing ''appendix D1,'' from paragraph (m)(1); and

■ b. Adding ''appendix D1,'' after ''appendix C1,'' in (m)(2).

■ 5. Appendix D to Subpart B of Part 430 is amended:

■ a. Revise the introductory text;

■ b. In section 2. *Test Conditions,* by revising sections 2.3.2.1 and 2.3.2.2; and

■ c. In section 3. *Test Methods and Measurements,* by revising section 3.3.

The revisions read as follows:

Appendix D to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Clothes Dryers

Note: Effective 180 days after the promulgation of any final amendments to the test procedure, manufacturers must make representations of energy efficiency, including certifications of compliance, using either appendix D or appendix D1. Manufacturers must use a single appendix for all representations, including certifications of compliance, and may not use appendix D for certain representations and appendix D1 for other representations. Compliance with DOE's amended standards for clothes dryers, and corresponding use of the test procedures at Appendix D1 for all representations, including certifications of compliance, is required as of January 1, 2015.

* * * * *

2. *Testing Conditions*

* * * * *

2.3.2 *Gas supply.*

2.3.2.1 *Natural gas.* Maintain the gas supply to the clothes dryer at a normal inlet test pressure immediately ahead of all controls at 7 to 10 inches of water column. If the clothes dryer is equipped with a gas appliance pressure regulator, the regulator outlet pressure at the normal test pressure shall be within ±10 percent of the value specified by the manufacturer. The hourly Btu rating of the burner shall be maintained within ±5 percent of the rating specified by the manufacturer. If the requirement to maintain the hourly Btu rating of the burner within ±5 percent of the rating specified by the manufacturer cannot be achieved under the allowable range in gas inlet test pressure, the orifice of the gas burner should be modified as necessary to achieve the required Btu rating. The natural gas supplied should have a heating value of approximately 1,025 Btus per standard cubic foot. The actual heating value, H_n2, in Btus per standard cubic foot, for the natural gas to be used in the test shall be obtained either from measurements made by the manufacturer conducting the test using a standard continuous flow calorimeter as described in section 2.4.6 or by the purchase of bottled natural gas whose Btu rating is certified to be at least as accurate a rating as could be obtained from measurements with a standard continuous flow calorimeter as described in section 2.4.6.

2.3.2.2 *Propane gas.* Maintain the gas supply to the clothes dryer at a normal inlet test pressure immediately ahead of all controls at 11 to 13 inches of water column. If the clothes dryer is equipped with a gas appliance pressure regulator, the regulator outlet pressure at the normal test pressure shall be within ±10 percent of the value specified by the manufacturer. The hourly Btu rating of the burner shall be maintained within ±5 percent of the rating specified by the manufacturer. If the requirement to maintain the hourly Btu rating of the burner within ±5 percent of the rating specified by the manufacturer cannot be achieved under the allowable range in gas inlet test pressure, the orifice of the gas burner should be modified as necessary to achieve the required Btu rating. The propane gas supplied should have a heating value of approximately 2,500 Btus per standard cubic foot. The actual heating value, H_p, in Btus per standard cubic foot, for the propane gas to be used in the test shall be obtained either from measurements made by the manufacturer conducting the test using a standard continuous flow calorimeter as described in section 2.4.6 or by the purchase of bottled gas whose Btu rating is certified to be at least as accurate a rating as could be obtained from measurement with a standard continuous calorimeter as described in section 2.4.6.

* * * * *

3. *Test Procedures and Measurements*

* * * * *

3.3 *Test cycle.* Operate the clothes dryer at the maximum temperature setting and, if equipped with a timer, at the maximum time setting. Any other optional cycle settings that do not affect the temperature and time settings shall be tested in the as-shipped position. If the clothes dryer does not have a separate temperature setting selection on the control panel, the maximum time setting should be used for the drying test cycle. Dry the test load until the moisture content of the test load is between 2.5 percent and 5.0 percent of the bone-dry weight of the test load, but do not permit the dryer to advance into cool down. If required, reset the timer or automatic dry control.

* * * * *

■ 6. Appendix D1 to Subpart B of Part 430 is amended:

■ a. By revising the introductory text;

■ b. In section 1. *Definitions,* by:

■ 1. Redesignating sections 1.5 through 1.18 and 1.19 as sections 1.6 through 1.19 and 1.21, respectively;

■ 2. Revising newly designated section 1.12;

■ 3. Adding sections 1.5 and 1.20;

c. In section 2. *Test Conditions,* by:

1. Revising sections 2.1, 2.3.1.1, 2.3.2.1, 2.3.2.2, 2.4.7, 2.6.3, 2.7.1, and 2.7.2; 2. Adding sections 2.1.1 through 2.1.3;

d. In section 3. *Test Methods and Measurements,* by:

1. Revising sections 3.3, 3.6, 3.6.1, and 3.6.2;

2. Adding sections 3.3.1, 3.3.2, and 3.4.7; and

e. In section 4. *Calculation of Derived Results From Test Measurements,* by revising sections 4.1, 4.2, 4.3, and 4.6.

The additions and revisions read as follows:

Appendix D1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Clothes Dryers

Note: Effective 180 days after the promulgation of any final amendments to the test procedure, manufacturers must make representations of energy efficiency, including certifications of compliance, using either appendix D or appendix D1. Manufacturers must use a single appendix for

all representations, including certifications of compliance, and may not use appendix D for certain representations and appendix D1 for other representations. Compliance with DOE's amended standards for clothes dryers, and corresponding use of the test procedures at Appendix D1 for all representations, including certifications of compliance, is required as of January 1, 2015.

1. Definitions

* * * * *

1.5 ''Automatic termination control dryer'' means a clothes dryer which can be preset to carry out at least one sequence of operations to be terminated by means of a system assessing, directly or indirectly, the moisture content of the load. An automatic termination control dryer with supplementary timer or that may also be manually controlled shall be tested as an automatic termination control dryer.

* * * * *

1.12 ''IEC 62301'' means the test standard published by the International Electrotechnical Commission (''IEC'') titled ''Household electrical appliances—Measurement of standby power,'' Publication 62301 (Edition 2.0 2011–01) (incorporated by reference; see § 430.3).

* * * * *

1.20 ''Timer dryer'' means a clothes dryer that can be preset to carry out at least one operation to be terminated by a timer, but may also be manually controlled, and does not include any automatic termination function.

* * * * *

2. Testing Conditions

2.1 *Installation.*

2.1.1 *All clothes dryers.* For both conventional clothes dryers and ventless clothes dryers, as defined in sections 1.8 and 1.21 of this appendix, install the clothes dryer in accordance with manufacturer's instructions. If the manufacturer's instructions do not specify the installation requirements for a certain component, it shall be tested in the as-shipped condition. Where the manufacturer gives the option to use the dryer both with and without a duct, the dryer shall be tested without the exhaust simulator described in section 3.3.5.1 of AHAM HLD–1 (incorporated by reference; see § 430.3). All external joints should be taped to avoid air leakage. For drying testing, disconnect all console lights or other lighting systems on the clothes dryer which do not consume more than 10 watts during the clothes dryer test cycle. For standby and off mode testing, the clothes dryer shall also be installed in accordance with section 5, paragraph 5.2 of IEC 62301 (incorporated by reference; see § 430.3), disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes. For standby and off mode testing, do not disconnect console lights or other lighting systems.

2.1.2 *Conventional clothes dryers.* For conventional clothes dryers, as defined in section 1.8 of this appendix, the dryer exhaust shall be restricted by adding the AHAM exhaust simulator described in section 3.3.5.1 of AHAM HLD–1 (incorporated by reference; see § 430.3).

2.1.3 *Ventless clothes dryers.* For ventless clothes dryers, as defined in section 1.21, the dryer shall be tested without the AHAM exhaust simulator. If the manufacturer gives the option to use a ventless clothes dryer, with or without a condensation box, the dryer shall be tested with the condensation box installed. For ventless clothes dryers, the condenser unit of the dryer must remain in place and not be taken out of the dryer for any reason between tests.

* * * * *

2.3.1.1 *Supply voltage waveform.* For the clothes dryer standby mode and off mode testing, maintain the electrical supply voltage waveform indicated in section 4, paragraph 4.3.2 of IEC 62301 (incorporated by reference; see § 430.3). If the power measuring instrument used for testing is unable to measure and record the total harmonic content during the test measurement period, it is acceptable to measure and record the total harmonic content immediately before and after the test measurement period.

2.3.2 *Gas supply.*

2.3.2.1 *Natural gas.* Maintain the gas supply to the clothes dryer immediately ahead of all controls at a pressure of 7 to 10 inches of water column. If the clothes dryer is equipped with a gas appliance pressure regulator for which the manufacturer specifies an outlet pressure, the regulator outlet pressure shall be within ±10 percent of the value specified by the manufacturer. The hourly Btu rating of the burner shall be maintained within ±5 percent of the rating specified by the manufacturer. If the requirement to maintain the hourly Btu rating of the burner within ±5 percent of the rating specified by the manufacturer cannot be achieved under the allowable range in gas inlet test pressure, the orifice of the gas burner should be modified as necessary to achieve the required Btu rating. The natural gas supplied should have a heating value of approximately 1,025 Btus per standard cubic foot. The actual heating value, H_n2, in Btus per standard cubic foot, for the natural gas to be used in the test shall be obtained either from measurements made by the manufacturer conducting the test using a standard continuous flow calorimeter as described in section 2.4.6 or by the purchase of bottled natural gas whose Btu rating is certified to be at least as accurate a rating as could be obtained from measurements with a standard continuous flow calorimeter as described in section 2.4.6.

2.3.2.2 *Propane gas.* Maintain the gas supply to the clothes dryer immediately ahead of all controls at a pressure of 11 to 13 inches of water column. If the clothes dryer is equipped with a gas appliance pressure regulator for which the manufacturer specifies an outlet pressure, the regulator outlet pressure shall be within ±10 percent of the value specified by the manufacturer. The hourly Btu rating of the burner shall be maintained within ±5 percent of the rating specified by the manufacturer. If the requirement to maintain the hourly Btu rating of the burner within ±5 percent of the rating specified by the manufacturer cannot be achieved under the allowable range in gas inlet test pressure, the orifice of the gas burner should be modified as necessary to achieve the required Btu rating. The propane gas supplied should have a heating value of approximately 2,500 Btus per standard cubic foot. The actual heating value, H_p, in Btus per standard cubic foot, for the propane gas to be used in the test shall be obtained either from measurements made by the manufacturer conducting the test using a standard continuous flow calorimeter as described in section 2.4.6 or by the purchase of bottled gas whose Btu rating is certified to be at least as accurate a rating as could be obtained from measurement with a standard continuous calorimeter as described in section 2.4.6.

* * * * *

2.4.7 *Standby mode and off mode watt meter.* The watt meter used to measure standby mode and off mode power consumption shall meet the requirements specified in section 4, paragraph 4.4 of IEC 62301(incorporated by reference; see § 430.3). If the power measuring instrument used for testing is unable to measure and record the crest factor, power factor, or maximum current ratio during the test measurement period, it is acceptable to measure the crest factor, power factor, and maximum current ratio immediately before and after the test measurement period.

* * * * *

2.6.3 *Test Cloth Preconditioning.*

A new test cloth load and energy stuffer cloths shall be treated as follows:

(1) Bone dry the load to a weight change of ±1 percent, or less, as prescribed in section 1.6 of this appendix.

(2) Place the test cloth load in a standard clothes washer set at the maximum water fill level. Wash the load for 10 minutes in soft water (17 parts per million hardness or less), using 60.8 grams of AHAM standard test detergent Formula 3.Wash water temperature should be maintained at 140° ± 5 °F (60° ± 2.7 °C). Rinse water temperature is to be controlled at 100° ± 5 °F (37.7 ± 2.7 °C).

(3) Rinse the load again at the same water temperature.

(4) Bone dry the load as prescribed in section 1.6 of this appendix and weigh the load.

(5) This procedure is repeated until there is a weight change of 1 percent or less.

(6) A final cycle is to be a hot water wash with no detergent, followed by two warm water rinses.

* * * * *

2.7.1 *Compact size dryer load.* Prepare a bone-dry test load of energy cloths that weighs 3.00 pounds ± .03 pounds. The test load can be adjusted to achieve proper weight by adding energy stuffer cloths, but no more than five stuffer cloths may be added per load. Dampen the load by agitating it in water whose temperature is 60 °F ± 5 °F and consists of 0 to 17 parts per million hardness for approximately 2 minutes to saturate the fabric. Then, extract water from the wet test load by spinning the load until the moisture content of the load is between 52.5 and 57.5 percent of the bone-dry weight of the test load. Make a final mass adjustment, such that the moisture content is 57.5 percent ± 0.33 percent by adding water uniformly to the load in a very fine spray.

2.7.2 *Standard size dryer load.* Prepare a bone-dry test load of energy cloths that

weighs 8.45 pounds ± .085 pounds. The test load can be adjusted to achieve proper weight by adding stuffer cloths, but no more than five stuffer cloths may be added per load. Dampen the load by agitating it in water whose temperature is 60 °F ± 5°F and consists of 0 to 17 parts per million hardness for approximately 2 minutes to saturate the fabric. Then, extract water from the wet test load by spinning the load until the moisture content of the load is between 52.5 and 57.5 percent of the bone-dry weight of the test load. Make a final mass adjustment, such that the moisture content is 57.5 percent ± 0.33 percent by adding water uniformly to the load in a very fine spray.

* * * * *

3. Test Procedures and Measurements

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3.3 *Test cycle.*

3.3.1 *Timer dryers.* For timer dryers, as defined in section 1.20 of this appendix, operate the clothes dryer at the maximum temperature setting and, if equipped with a timer, at the maximum time setting. Any other optional cycle settings that do not affect the temperature and time settings shall be tested in the as-shipped position. If the clothes dryer does not have a separate temperature setting selection on the control panel, the maximum time setting should be used for the drying test cycle. Dry the load until the moisture content of the test load is between 1 and 2.5 percent of the bone-dry weight of the test load, at which point the test cycle is stopped, but do not permit the dryer to advance into cool down. If required, reset the timer to increase the length of the drying cycle. After stopping the test cycle, remove and weigh the test load. The clothes dryer shall not be stopped intermittently in the middle of the test cycle for any reason. Record the data specified by section 3.4 of this appendix. If the dryer automatically stops during a cycle because the condensation box is full of water, the test is stopped, and the test run is invalid, in which case the condensation box shall be emptied and the test re-run from the beginning. For ventless dryers, as defined in section 1.21 of this appendix, during the time between two cycles, the door of the dryer shall be closed except for loading (and unloading).

3.3.2 *Automatic termination control dryers.* For automatic termination control dryers, as defined in section 1.5 of this appendix, a ''normal'' program shall be selected for the test cycle. For dryers that do not have a ''normal'' program, the cycle recommended by the manufacturer for drying cotton or linen clothes shall be selected. Where the drying temperature setting can be chosen independently of the program, it shall be set to the maximum. Where the dryness level setting can be chosen independently of the program, it shall be set to the ''normal'' or ''medium'' dryness level setting. If such designation is not provided, then the dryness level shall be set at the mid-point between the minimum and maximum settings. Any other optional cycle settings that do not affect the program, temperature and dryness settings shall be tested in the as-shipped position. Operate the clothes dryer until the completion of the programmed cycle, including the cool down period. After the completion of the test cycle, remove and weigh the test load. Record the data specified in section 3.4 of this appendix. If the final moisture content is greater than 2 percent, the test shall be invalid and a new run shall be conducted using the highest dryness level setting. If the dryer automatically stops during a cycle because the condensation box is full of water, the test is stopped, and the test run is invalid, in which case the condensation box shall be emptied and the test re-run from the beginning. For ventless dryers, during the time between two cycles, the door of the dryer shall be closed except for loading (and unloading).

* * * * *

3.4.7 The cycle settings selected, in accordance with section 3.3.2 of this appendix, for the automatic termination control dryer test.

* * * * *

3.6 *Standby mode and off mode power.* Establish the testing conditions set forth in Section 2 ''Testing Conditions'' of this appendix. For clothes dryers that take some time to enter a stable state from a higher power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301 (incorporated by reference; see § 430.3), allow sufficient time for the clothes dryer to reach the lower power state before proceeding with the test measurement. Follow the test procedure specified in section 5, paragraph 5.3.2 of IEC 62301 for testing in each possible mode as described in sections 3.6.1 and 3.6.2 of this appendix.

3.6.1 If a clothes dryer has an inactive mode, as defined in section 1.13 of this appendix, measure and record the average inactive mode power of the clothes dryer, P_{IA}, in watts.

3.6.2 If a clothes dryer has an off mode, as defined in section 1.16 of this appendix, measure and record the average off mode power of the clothes dryer, P_{OFF}, in watts.

4. Calculation of Derived Results From Test Measurements

4.1 *Total per-cycle electric dryer energy consumption.* Calculate the total electric dryer energy consumption per cycle, E_{ce}, expressed in kilowatt-hours per cycle and defined as:

$E_{ce} = E_t \times$ field use,

For automatic termination control dryers, and,

$E_{ce} = [55.5/(W_w - W_d)] \times E_t \times$ field use,

For timer dryers

Where

55.5 = an experimentally established value for the percent reduction in the moisture content of the test load during a laboratory test cycle expressed as a percent.

E_t = the energy recorded in section 3.4.5 of this appendix.

field use = field use factor

= 1.18, the field use factor for clothes dryers with time termination control systems only without any automatic termination control functions.

= 0.80, the field use factor for clothes dryers with automatic control systems that meet the requirements of the definition for automatic control systems in sections 1.5, 1.15 and 1.19 of this appendix, including those that also have a supplementary timer control, or that may also be manually controlled.

W_w = the moisture content of the wet test load as recorded in section 3.4.2 of this appendix.

W_d = the moisture content of the dry test load as recorded in section 3.4.3 of this appendix.

4.2 *Per-cycle gas dryer electrical energy consumption.* Calculate the gas dryer electrical energy consumption per cycle, E_{ge}, expressed in kilowatt-hours per cycle and defined as:

$E_{ge} = E_{te} \times$ field use,

For automatic termination control dryers, and,

$E_{ge} = [55.5/(W_w - W_d)] \times E_{te} \times$ field use,

for timer dryers

Where

E_{te} = the energy recorded in section 3.4.6.1 of this appendix.

field use, 55.5, W_w, W_d as defined in section 4.1 of this appendix

4.3 *Per-cycle gas dryer gas energy consumption.* Calculate the gas dryer gas energy consumption per cycle, E_{ge}. expressed in Btus per cycle and defined as:

$E_{gg} = E_{tg} \times$ field use $\times$ GEF

for automatic termination control dryers, and,

$E_{gg}=[55.5/(W_w - W_d)] \times E_{tg} \times$ field use $\times$ GEF

for time dryers

Where

E_{tg} = the energy recorded in section 3.4.6.2 of this appendix.

GEF = corrected gas heat value (Btu per cubic feet) as defined in section 3.4.6.3 of this appendix,

field use, 55.5, W_w, W_d as defined in section 4.1 of this appendix.

* * * * *

4.6 *Per-cycle combined total energy consumption expressed in kilowatt-hours.* Calculate the per-cycle combined total energy consumption, $E_{CC,}$ expressed in kilowatt-hours per cycle and defined for an electric clothes dryer as:

$E_{CC} = E_{ce} + E_{TSO}$

Where:

E_{ce} = the energy recorded in section 4.1 of this appendix, and

E_{TSO} = the energy recorded in section 4.5 of this appendix,

and defined for a gas clothes dryer as:

$E_{CC} = E_{cg} + E_{TSO}$

Where:

E_{cg} = the energy recorded in section 4.4 of this appendix, and

E_{TSO} = the energy recorded in section 4.5 of this appendix.

* * * * *

[FR Doc. 2012–30677 Filed 12–31–12; 8:45 am]

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Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1222

Paper and Paper-Based Packaging Promotion, Research and Information Order; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1222

[Document Number AMS–FV–11–0069 PR–A1]

RIN 0581–AD21

Paper and Paper-Based Packaging Promotion, Research and Information Order

AGENCY: Agricultural Marketing Service, Department of Agriculture.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a proposed Paper and Paper-Based Packaging Promotion, Research and Information Order (Order). The purpose of the program would be to maintain and expand markets for paper and paper-based packaging. A referendum would be held among eligible manufacturers and importers to determine whether they favor implementation of the program prior to it going into effect. The program would be financed by an assessment on paper and paper-based packaging manufacturers (domestic producers) and importers and would be administered by a board of industry members appointed by the Secretary of Agriculture (Secretary). The assessment rate would initially be $0.35 per short ton. This proposed rule also announces the Agricultural Marketing Service's (AMS) intent to request approval by the Office of Management and Budget (OMB) of new information collection requirements to implement the program.

DATES: Comments must be received by March 4, 2013. Pursuant to the Paperwork Reduction Act (PRA), comments on the information collection burden that would result from this proposal must be received by March 4, 2013.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments may be submitted on the Internet at: *http://www.regulations.gov* or to the Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Room 1406–S, Stop 0244, Washington, DC 20250–0244; facsimile: (202) 205–2800. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection, including name and address, if provided, in the above office during regular business hours or it can be viewed at *http://www.regulations.gov*.

Pursuant to the PRA, comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, should be sent to the above address. In addition, comments concerning the information collection should also be sent to the Desk Office for Agriculture, Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street NW., Room 725, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, P.O. Box 831, Beavercreek, Oregon 97004; telephone: (503) 632–8848; facsimile (503) 632–8852; or electronic mail: *Maureen.Pello@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This proposed rule is issued pursuant to the Commodity Promotion, Research and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

Background

This proposed rule invites comments on a proposed industry-funded research, promotion and information program for paper and paper-based packaging. The program would cover four types of paper and paper-based packaging—printing, writing and related paper (used to make products for printing, writing and other communication purposes), kraft packaging paper (used for products like grocery bags and sacks), containerboard (used to make corrugated boxes, shipping containers and related products), and paperboard (used for food and beverage packaging, tubes and other miscellaneous products). The program would be financed by an assessment on U.S. manufacturers and importers of paper and paper-based packaging and would be administered by a board of industry members appointed by the Secretary. The assessment rate would initially be $0.35 per short ton. (One short ton equals 2,000 pounds.) Entities that manufacture or import less than 100,000 short tons per marketing year would be exempt from the payment of assessments. The purpose of the program would be to maintain and expand markets for paper and paper-based packaging.

A referendum would be held among eligible U.S. manufacturers and importers to determine whether they favor implementation of the program prior to it going into effect. The proposal was submitted to USDA by the Paper and Paper-Based Packaging Panel (Panel). The Panel is a group of 14 industry members that was formed in May 2010 to oversee development of the program. The American Forest & Paper Association (AF&PA), a national trade association, provided technical assistance to the Panel. This rule also announces AMS's intent to request approval by the OMB of new information collection requirements to implement the program.

Authority in 1996 Act

The proposed Order is authorized under the 1996 Act which authorizes USDA to establish agricultural commodity research and promotion orders which may include a combination of promotion, research, industry information and consumer information activities funded by mandatory assessments. Commodity promotion programs provide a unique opportunity for an industry to inform consumers about their particular commodity and have the ability to provide significant conservation benefits to producers and the public. These programs are designed to strengthen the position of agricultural commodity industries in the marketplace, maintain and expand markets and uses for agricultural commodities, develop new uses for agricultural commodities and assist producers in meeting their conservation objectives. As defined under section 513(1)(D) of the 1996 Act, agricultural commodities include the products of forestry, which includes paper and paper-based packaging.

The 1996 Act provides for a number of optional provisions that allow the tailoring of orders for different commodities. Section 516 of the 1996 Act provides permissive terms for orders, and other sections provide for alternatives. For example, section 514 of the 1996 Act provides for orders applicable to (1) Producers, (2) first handlers and others in the marketing chain as appropriate, and (3) importers (if imports are subject to assessments). Section 516 states that an order may include an exemption of de minimis quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic

and branded activities; and assessment of imports.

In addition, section 518 of the 1996 Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under the order. An order also may provide for its approval in a referendum based upon different voting patterns. Section 515 provides for establishment of a board or council from among producers, first handlers and others in the marketing chain as appropriate, and importers, if imports are subject to assessment.

Industry Background

Paper and paper-based packaging is produced from pulp. Pulp is made by chemically or mechanically separating fibers from wood or by recycling recovered paper and paper-based packaging products. The separated, moist fibers are then pressed together and dried into flexible sheets.

U.S. Pulpwood Production [1]

Wood used to make pulp is known as pulpwood. Total pulpwood production includes roundwood chipped at mills and other primary industry mill residues. Roundwood includes both softwood and hardwood. Roundwood pulpwood continues to be the primary fiber source used in pulp manufacturing in the United States. Wood residues consist primarily of mill residue chips, a byproduct of sawmilling and veneer mill operations.

According to U.S. Forest Service statistics, in 2008, U.S. pulpwood production totaled 89.2 million cords. Of that total, softwood roundwood and residues accounted for 69 percent (61.4 million cords). Hardwood roundwood and residues accounted for 31 percent (27.7 million cords). By region, the South accounted for 76.4 percent of total U.S. pulpwood production (68.1 million cords). The West accounted for 9.9 percent (8.8 million cords), the Midwest accounted for 7.1 percent (6.3 million cords), and the Northeast accounted for 6.6 percent (5.9 million cords) of total U.S. pulpwood production.

Manufacturers and Converting Operations

The U.S. paper industry encompasses two broad segments—primary producers/manufacturers (mills) and converters. Primary manufacturers make rolls of paper and paper-based packaging (commonly referred to as roll stock) from pulp produced in the same mill or pulp supplied by another mill. Primary manufacturers would be covered under the program.

Converters turn roll stock into final products such as boxes, corrugated boxes, shipping containers, envelopes, magazines, catalogs, copy paper and bags/sacks. Converting operations can take place in a primary producer mill or off-site. When converting is done in a primary producer mill, the roll produced before it is converted into a final product or sold to an off-site converter would be covered under the program. Converting operations (and thus converted products) would not be covered under the program. An exception is the case of cut-size printing and writing papers (including folio sheets) made by primary producers that are cut prior to leaving the mill.[2] These are classified as primary products (not converted products) under the Harmonized Tariff Schedule of the United States (HTSUS) and would, therefore, be assessed under the program.

Types of Paper and Paper-Based Packaging

There are six major types of paper and paper-based packaging produced by manufacturers: (1) Printing, writing and related paper; (2) kraft packaging paper; (3) containerboard; 4) paperboard; (5) tissue paper; and (6) newsprint. The proposed Order would cover the first four of the six types mentioned above.

Printing, writing and related paper is coated or uncoated paper, including thermal but excluding carbonless paper, which is subsequently converted into products used for printing, writing and other communication purposes, such as file folders, envelopes, catalogues, magazines and brochures. Demand for carbonless paper has declined significantly due to other technologies. Thus, the Panel concluded that the carbonless segment of the industry would not be able to absorb the cost of a promotion program at this time.

Kraft packaging paper is coarse, unbleached, semi-bleached or fully bleached grades of paper that are subsequently converted into products such as grocery bags, multiwall sacks, waxed paper and other products. ''Kraft'' refers to a process for transforming wood into a high quality, strong pulp for making paper and paper-based packaging. Bleaching is the chemical processing of pulp to remove the natural brown color and thus make the pulp and pulp products whiter.

Containerboard includes all forms of linerboard, which is used as the facing material in the production of corrugated or solid fiber shipping boxes, and medium, which is used as the inner fluting material in the manufacture of such boxes. Containerboard is used to manufacture corrugated boxes, shipping containers, point-of-sale displays, pallets and other products.

Paperboard is solid bleached kraft board, recycled board and unbleached kraft board, which is converted into products such as folding boxes, tubes, cans and drums. Paperboard is also used to package food, beverages and other nondurable consumer products such as pharmaceuticals, clothing, footwear and cosmetics. Nondurable goods are used immediately or have a lifespan of 3 years or less.

The two types of paper and paper-based packaging that would not be covered under the program are tissue paper and newsprint. With the exception of restroom hand-dryers versus paper towels, tissue paper products are not facing competition from alternative products. The opposite is true for newsprint. Demand for newsprint has drastically declined due to the shift toward digital communications. However, the Panel concluded that the newsprint segment of the industry would not be able to incur the cost of a promotion program at this time.

U.S. Manufacturing by Region [3]

In 2011, about 68.5 million short tons of U.S. paper and paper-based packaging to be covered under the program were produced. Of the 68.5 million short tons, 63.2 percent was manufactured in the South, 17.1 percent was manufactured in the Midwest, 10.5 percent was manufactured in the Northeast, and 9.2 percent was manufactured in the West. In terms of type, 50.1 percent was containerboard, 29.1 percent was printing, writing and related paper, 18.3 percent was paperboard, and 2.5 percent was kraft packaging paper.

Export Markets

According to U.S. Census data, in 2011, exports of the four types of paper and paper-based packaging to be covered under the proposed Order

[1] Johnson, Tony G., Ronald J., Walters, Brian F., Sorenson, Colin, Woodall, Christopher W., Morgan, Todd A., National Pulpwood Production, 2008, USDA, p. 15 (*www.treesearch.fs.fed.us/pubs/37960*).

[2] Cut-size office papers are used in office machines and are sold in sheet form typically 8.5″ x 11,″ 8.5″ x 14″ or 11″ x 11.″ Folio sheets are cut-size papers sold in sheet form in sizes of 17″ x 22″ or larger. These would be included in the printing, writing and related paper category.

[3] Manufacturing data was compiled by the AF&PA from its 51st Annual Survey of Paper, Paperboard and Pulp, 2011.

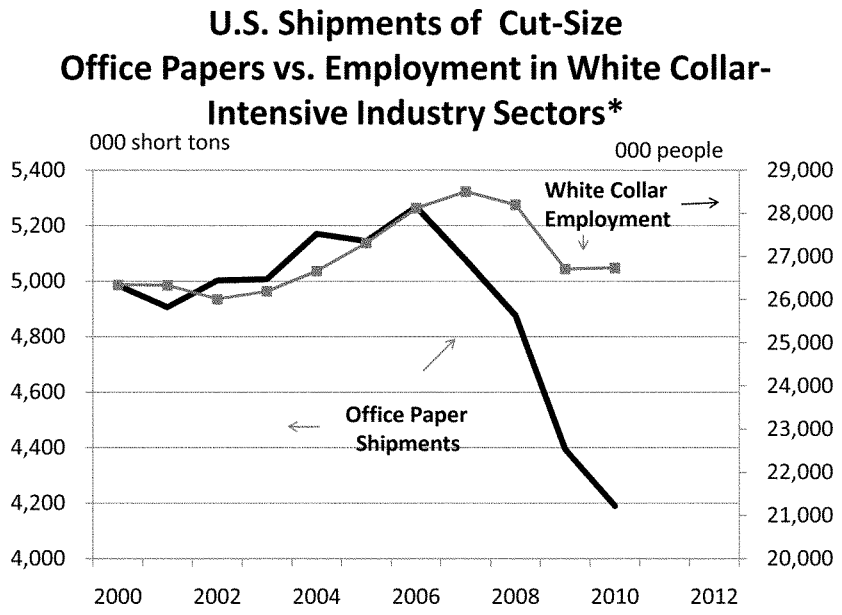
totaled about 11.5 million short tons, or 17 percent of domestic production. In terms of major export markets in 2011, 18.0 percent went to Western Europe, 16.0 percent each went to Canada and Mexico, 11.0 percent went to the Far East and Oceania, 9.0 percent went to South America and 8.0 percent went to China. Of the 11.5 million short tons, 46.0 percent was containerboard, 26.0 percent was paperboard, 22.0 percent was printing, writing and related paper, and 6.0 percent was kraft packaging paper.

Imports

According to U.S. Customs and Border Protection (Customs) data, in 2011, imports to be covered under the program totaled 7.5 million short tons. Of that total, about 58.6 percent was from Canada, 22.2 percent from Western Europe, 9.8 percent was from China, Japan and the Far East, 2.7 percent was from South America and the remainder was from other countries. In terms of type, 72.0 percent of the imports were printing, writing and related paper, 13.1 percent was paperboard, 10.1 percent was containerboard and 4.8 percent was kraft packaging paper.

Need for a Program

According to AF&PA data, markets for paper and paper-based packaging that would be covered under the program declined by 15 percent between 2000 and 2010. U.S. shipments of cut-size office papers (one sector of the printing and writing category) grew with employment in white collar-intensive industries between 2000 and 2006. However, between 2006 and 2010, shipments fell 20 percent[4] while employment in white collar-intensive industries declined by 5 percent. Moreover, in 2010, while employment in white collar-intensive industries stabilized,[5] office paper shipments declined another 5 percent.[6] This is illustrated in the following chart.



Markets for other printing and writing papers (exclusive of cut-size office papers) declined 27 percent between 2006 and 2010.[7] Digital forms of communication such as Internet advertising and the widespread availability of news, books and other digital information have contributed to this displacement. This is illustrated in the following chart.[8]

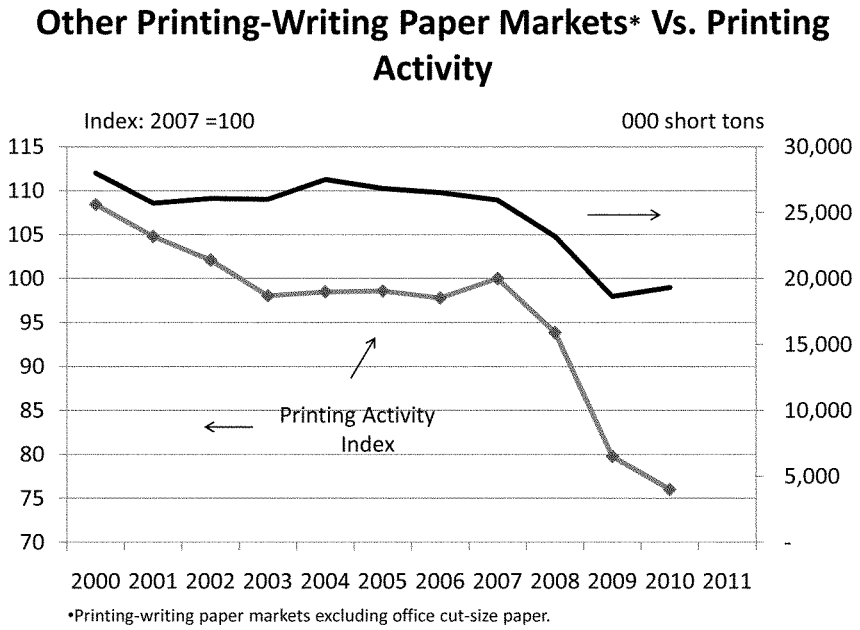
[4] AF&PA's Statistics of Pulp, Paper and Paperboard, p. 7.

[5] Employment data was compiled by the AF&PA from the U.S. Bureau of Labor Statistics, *http://www.bls.gov/data.*

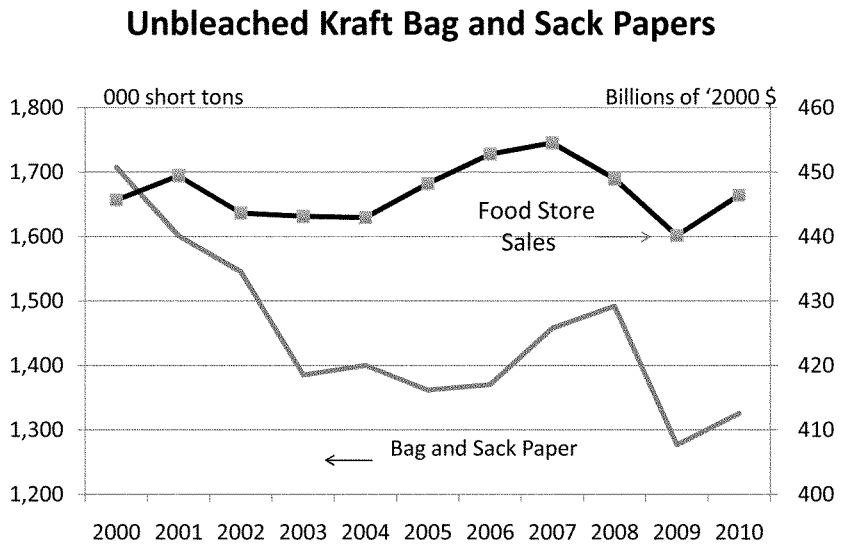
[6] AF&PA's Statistics, p. 7.

[7] AF&PA's Statistics, p. 7 and 12.

[8] Printing activity index is from *http://www.federalreserve.gov/releases/g17/ipdisk/ip_nsa.txt.* The Federal Reserve Board reports production of nondurable goods, as well as other items, as indexes rather than in terms of tons, pounds or units. The base year is 2007, which means that if the index reaches 105 in 2008, production has increased 5 percent relative to the 2007 level. If the index falls to 95, it means that production has declined 5 percent relative to the 2007 level.



According to AF&PA data, kraft paper markets declined 23 percent between 2000 and 2010,[9] even as food store sales rose by 1 percent.[10]



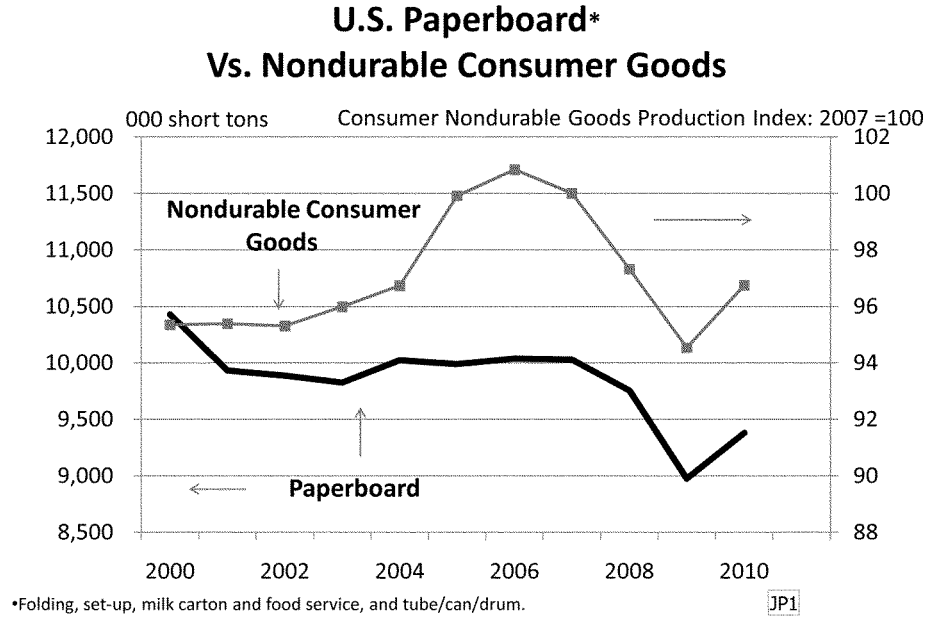
Paperboard markets also have declined over the past decade.[11] Paperboard is mainly facing competition from plastics, but also from foils and, to a lesser extent, glass. Between 2000 and 2010, U.S. paperboard markets contracted 10 percent as compared with a fairly stable demand (*i.e.,* a 1 percent increase) for nondurable consumer goods. Additionally, paperboard markets stagnated when nondurable consumer goods demand grew in the mid-2000s.[12] This is illustrated below.

[9] AF&PA monthly Kraft Paper Statistical Reports.

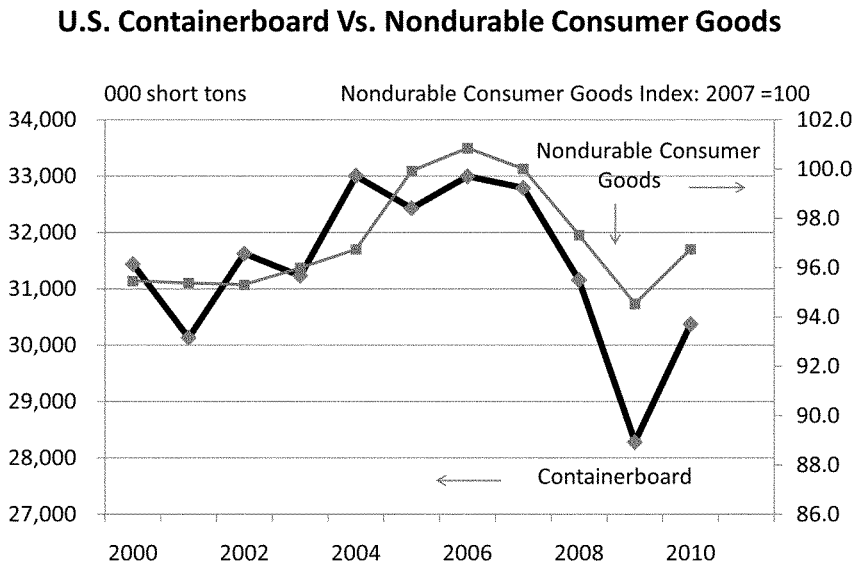
[10] Retail food and beverage store sales data is from the U.S. Census Bureau (*http://www.census.gov/retail*) and was adjusted for inflation by the AF&PA using U.S. Bureau of Labor Statistics' consumer price index for food and beverages (*http://www.bls.gov/data/#prices*).

[11] AF&PA's Statistics, p. 9.

[12] *http://www.federalreserve.gov/releases/g17/ipdisk/ip_nsa.txt.*



AF&PA data show that containerboard markets have remained fairly steady as compared to the other four types of paper and paper-based packaging to be covered under the program. U.S. containerboard markets declined 2 percent between 2000 and 2010,[13] while demand for nondurable consumer goods, which accounts for most of the demand for corrugated boxes, rose 1 percent. As shown below, from 2000 through 2007, containerboard markets largely kept pace with nondurable consumer goods, with containerboard demand growing 4 percent and nondurable goods up 5 percent.[14] This is illustrated in the following chart.



In light of these market conditions, the Panel was formed in May 2010 to assess the merits of a national promotion program. While there have been a number of ongoing campaigns designed to promote specific sectors of the paper industry, the impact of these programs has been limited due to funding. Additionally, while the programs have been useful, their messages have been tailored to specific segments of the industry. Ultimately, the Panel concluded that a national program that would generate about $25 million annually with a unified message that crosses all segments would benefit the entire industry.

Provisions of Proposed Program

Definitions

Pursuant to section 513 of the 1996 Act, sections 1222.1 through 1222.29 of the proposed Order would define certain terms that would be used throughout the Order. Several of the terms are common to all research and promotion programs authorized under

[13] AF&PA's Statistics, p. 9 and 20.

[14] *http://www.federalreserve.gov/releases/g17/ipdisk/ip_nsa.txt.*

the 1996 Act while other terms are specific to the proposed paper and paper-based packaging Order.

Section 1222.1 would define the term ''Act'' to mean the Commodity Promotion, Research and Information Act of 1996 (7 U.S.C. 7411–7425), and any amendments thereto.

Section 1222.2 would define the term ''Board'' to mean the Paper and Paper-Based Packaging Board established pursuant to section 1222.40, or such other name as recommended by the Board and approved by the Department.

Section 1222.4 would define the term ''converted products'' to mean products made from paper and paper-based packaging.

Section 1222.5 would define the term ''Customs'' or ''CBP'' to mean the U.S. Customs and Border Protection, an agency of the U.S. Department of Homeland Security.

Section 1222.7 would define the term ''fiscal period'' and ''marketing year'' to mean the 12-month period ending on December 31 or such other period as recommended by the Board and approved by the Secretary.

Section 1222.9 would define the term ''information'' to mean information and programs for consumers, customers and industry, including educational activities, information and programs designed to enhance and broaden the understanding of the use and attributes of paper and paper-based packaging, increase efficiency in manufacturing paper and paper-based packaging, maintain and expand existing markets, and develop new markets and marketing strategies. These include:

(a) Consumer education and information, which means any action taken to provide information to, and broaden the understanding of, the general public regarding paper and paper-based packaging; and

(b) Industry information, which means information and programs that would enhance the image of the paper and paper-based packaging industry.

Section 1222.12 would define the term ''manufacture'' or ''produce'' to mean the process of transforming pulp into paper and paper-based packaging.

Section 1222.13 would define the term ''manufacturer or producer'' to mean any person who manufactures paper and paper-based packaging in the United States.

Section 1222.16 would define the term ''Panel'' to mean the Paper and Paper-Based Packaging Panel formed to oversee development of a paper and paper-based packaging promotion, research and information program. As specified in section 1222.41, the Panel would conduct the initial nominations for the Board and submit them to the Secretary. This would be the only role of the Panel under the program.

Section 1222.17 would define the term ''paper and paper-based packaging'' to mean:

(1) Printing, writing and related paper, which is coated or uncoated paper, including thermal but excluding carbonless paper, that is subsequently converted into products used for printing, writing and other communication purposes, such as file folders, envelopes, catalogues, magazines and brochures;

(2) Kraft packaging paper, which is coarse unbleached, semi-bleached or fully bleached grades of paper that is subsequently converted into products such as grocery bags, multiwall sacks, waxed paper and other products;

(3) Containerboard, which is all forms of linerboard and medium, that is used to manufacture corrugated boxes, shipping containers and related products; and

(4) Paperboard, which is solid bleached kraft board, recycled board and unbleached kraft board that is subsequently converted into a wide variety of end uses, including folding boxes, food and beverage packaging, tubes, cans, and drums, and other miscellaneous products. Paperboard does not include construction-related products such as gypsum wallboard facings and panel board.

As previously mentioned, the Order would cover only the four types of paper and paper-based packaging as defined above, not tissue, newsprint or converted products.

Sections 1222.10, 1222.11, 1222.14 and 1222.22 would define the terms ''kraft process,'' ''linerboard,'' ''medium,'' and ''pulp,'' respectively. These terms are used in the definition of paper and paper-based packaging specified in section 1222.17.

Section 1222.20 would define the term ''programs, plans and projects'' to mean those research, promotion and information programs, plans or projects established pursuant to the Order.

Section 1222.21 would define the term ''promotion'' to mean any action, including paid advertising and the dissemination of information, utilizing public relations or other means, to enhance and broaden the understanding of the use and attributes of paper and paper-based packaging for the purpose of maintaining and expanding markets for paper and paper-based packaging.

Section 1222.23 would define the term ''research'' to mean any type of test, study, or analysis designed to enhance the image, desirability, use, marketability, manufacturing, recyclability, reusability or quality of paper and paper-based packaging, including research directed to product characteristics and product development, including new uses of existing products, new products or improved technology in the manufacturing of paper and paper-based packaging.

Section 1222.25 would define the term ''short ton'' or ''ton'' to mean a measure of weight equal to 2,000 pounds.

Sections 1222.3, 1222.6, 1222.8, 1222.15, 1222.19, 1222.24, 1222.26, 1222.27, 1222.28 and 1222.29 would define the terms ''conflict of interest,'' ''Department or UDSA,'' ''importer,'' ''Order,'' ''person,'' ''Secretary,'' ''State,'' ''suspend,'' ''terminate,'' and ''United States,'' respectively. The definitions are the same as those specified in section 513 of the Act.

Establishment of the Board

Pursuant to section 515 of the 1996 Act, sections 1222.40 through 1222.47 of the proposed Order would detail the establishment and membership of the proposed Paper and Paper-Based Packaging Board, nominations and appointments, the term of office, removal and vacancies, procedure, reimbursement and attendance, powers and duties, and prohibited activities.

Section 1222.40 would specify the Board establishment and membership. The Board would be composed of domestic manufacturers and importers who manufacture or import to the United States 100,000 short tons or more of paper and paper-based packaging during a fiscal period. Seats on the Board would be apportioned based on the geographic distribution of the quantity of paper and paper-based packaging manufactured in the United States and the quantity of paper and paper-based packaging imported to the United States.

The Board would be composed of 12 members. Eleven members would be manufacturers and 1 member would be an importer. Of the 11 domestic manufacturers, 10 would be allocated to four regions within the United States based on the quantity of paper and paper-based packaging manufactured within the respective region. Of the 10 members, 6 would be from the South, two would be from the Midwest, and one each would be from the Northeast and the West. Specific areas within each domestic region would be specified in section 1222.40(b)(1). One manufacturer representative may be from any region (''at large'') and must produce at least 100,000 short tons but no more than 250,000 short tons of paper and paper-

based packaging annually. This is to help ensure that the views of smaller entities that are subject to assessments are represented on the Board. If there are no eligible nominees, this seat would be allocated to the largest producing region.

The Panel also opted to have no alternate Board members. It wants to ensure that industry members who seek representation and serve on the Board are committed to their service and participate in all Board meetings.

Every 5 years, but no more often than once every 3 years, the Board must review the geographical distribution of the quantity of paper and paper-based packaging manufactured within the United States and the quantity of paper and paper-based packaging imported to the United States. If warranted, the Board would recommend to the Secretary that the Board membership be reapportioned appropriately to reflect such changes, which could include an increase in the number of importer seats. The distribution of quantities between domestic regions would also be considered as well as changes in the size of the Board. Any changes in Board composition would be implemented by the Secretary through rulemaking.

Section 1222.41 of the proposed Order would specify Board nominations and appointments. The initial nominations would be submitted to the Secretary by the Panel. The Panel would publicize the nomination process, using trade press or other means it deems appropriate, and outreach to all known manufacturers and importers who manufacture or import 100,000 short tons or more of paper and paper-based packaging in a marketing year. The Panel would use regional caucuses, mail or other methods to solicit potential nominees and would work with USDA to help ensure that all interested persons are apprised of the nomination process. The Panel would submit the nominations to the Secretary and recommend two nominees for each Board position. The Secretary would select the members of the Board from the nominations submitted by the Panel.

Regarding subsequent nominations, the Board would solicit nominations as described in the preceding paragraph. Eligible persons may nominate themselves or other eligible candidates. Nominees would have the opportunity to provide the Board a short background statement outlining their qualifications to serve on the Board. Nominees must domestically produce or import 100,000 short tons or more of paper and paper-based packaging annually. Entities that are both a domestic manufacturer and an importer could seek nomination to the Board as either a domestic manufacturer or an importer, but not both.

For the domestic seats allocated by region, manufacturers must produce paper and paper-based packaging in the region for which they seek nomination. Domestic manufacturers who manufacture paper and paper-based packaging in more than one region could seek nomination in only one region of their choice. The names of domestic manufacturer nominees would be placed on a ballot by region. The ballots along with the background statements would be mailed to manufacturers who produce 100,000 short tons or more annually for a vote. Manufacturers may vote in each region in which they manufacture paper and paper-based packaging. The votes would be tabulated for each region with the nominee receiving the highest number of votes at the top of the list in descending order by vote. The top two candidates for each position would be submitted to the Secretary.

The names of nominees for the ''at large'' domestic manufacturer seat would also be placed on a ballot. The ballots along with the background statements would be mailed to all manufacturers who manufacture 100,000 short tons or more of paper and paper-based packaging annually. The votes would be tabulated and the nominees receiving the highest number of votes would be placed at the top of the list in descending order by vote. The top two candidates would be submitted to the Secretary.

The names of importer nominees would also be placed on a ballot. The ballots along with the background statements would be mailed to importers who import 100,000 short tons or more annually for a vote. The votes would be tabulated with the nominee receiving the highest number of votes at the top of the list in descending order by vote. The top two candidates for each position would then be submitted to the Secretary.

The Board would submit nominations to the Secretary at least 6 months before the new Board term begins. The Secretary would select the members of the Board from the nominations submitted by the Board.

The Panel also recommended that no two Board members be employed by a single corporation, company, partnership or any other legal entity. This is to help ensure that representation on the Board is balanced.

In order to provide the Board flexibility, the Board could recommend to the Secretary modifications to its nomination procedures. Any such modifications would be implemented through rulemaking by the Secretary.

Section 1222.42 of the proposed Order would specify the term of office. With the exception of the initial Board, each Board member would serve a three-year term or until the Secretary appointed his or her successor. Each term of office would begin on January 1 and end on December 31. No member could serve more than two consecutive terms, excluding any term of office less than three years. For the initial board, the terms of Board members would be staggered for two, three and four years and would be recommended to the Secretary by the Panel.

Section 1222.43 of the proposed Order would specify criteria for the removal of members and for filling vacancies. If a Board member ceased to work for or be affiliated with a domestic manufacturer or importer or ceased to do business in the region he or she represented, such position would become vacant. Additionally, the Board could recommend to the Secretary that a member be removed from office if the member consistently refused to perform his or her duties or engaged in dishonest acts or willful misconduct. The Secretary could remove the member if he or she finds that the Board's recommendation shows adequate cause. The Secretary could also remove a member due to adequate cause absent a Board recommendation. If a position became vacant, nominations to fill the vacancy would be conducted using the nominations process as proposed in section 1222.41 of the Order. A vacancy would not be required to be filled if the unexpired term is less than six months.

Section 1222.44 of the proposed Order would specify procedures of the Board. A majority of the Board members would constitute a quorum. Thus, for the 12-member Board, 7 members would constitute a quorum. If the Board had two vacancies and consisted of only 10 members, 6 members would constitute a quorum. A motion would carry if supported by a majority of Board members, except for recommendations to change the assessment rate or to adopt a budget, both of which would require affirmation by at least two-thirds of the Board members. Thus, for a 12-member Board, 8 members would have to vote in favor of a budget for it to pass. For a 10-member Board (two vacancies), 7 members would have to vote in favor of a budget for it to pass. Proxy voting would not be permitted.

The proposed Order would also provide for the Board to take action by mail, telephone, electronic mail, facsimile, or any other electronic means when the chairperson believes it is

necessary. Actions taken under these procedures would be valid only if all members and the Secretary were notified of the meeting and all members were provided the opportunity to vote and at least a majority of Board members voted in favor of the action (unless two-thirds vote were required under the Order). Additionally, all votes would have to be confirmed in writing and recorded in Board minutes.

The proposed Order would specify that Board members would serve without compensation. However, Board members would be reimbursed for reasonable travel expenses, as approved by the Board, incurred when performing Board business. Similarly, persons who serve on subcommittees or other committees who may not be Board members would also be reimbursed for reasonable travel expenses, as approved by the Board, incurred when performing Board business.

Section 1222.46 of the proposed Order would specify powers and duties of the Board. These are similar in promotion programs authorized under the 1996 Act. They include, among other things, to administer the Order and collect assessments; to develop bylaws and recommend regulations necessary to administer the Order; to select a chairperson and other Board officers; to form committees and subcommittees as necessary; to hire staff or contractors; to provide appropriate notice of meetings to the industry and USDA and keep minutes of such meetings; to develop programs and enter into contracts to implement programs; to submit fiscal year budgets to USDA in accordance with section 1222.50; to borrow funds necessary to cover startup costs of the Order; to invest Board funds appropriately; to recommend changes in the assessment rate as appropriate and within the limits of the Order; to have its books audited by an outside certified public accountant at the end of each fiscal period and at other times as requested by the Secretary; to report and make public reports of its program activities; to make public an accounting of funds received and expended at least once each fiscal year; to receive, investigate and report to the Secretary complaints of violations of the Order; to recommend amendments to the Order as appropriate; and to work to achieve an effective, continuous and coordinated program of promotion, research and information and to carry out programs, plans and projects designed to provide maximum benefits to the paper and paper-based packaging industry.

Section 1222.47 of the proposed Order would specify prohibited activities that are common to all promotion programs authorized under the 1996 Act. In summary, neither the Board nor its employees and agents could engage in actions that would be a conflict of interest; use Board funds to lobby (influencing legislation or governmental action or policy, by local, state, national, and foreign governments or subdivision thereof, other than recommending to the Secretary amendments to the Order); and engage in any advertising or activities that may be false, misleading or disparaging to another agricultural commodity. Additionally, paper and paper-based packaging from all origins would be treated equally.

Expenses and Assessments

Pursuant to sections 516 and 517 of the 1996 Act, sections 1222.50 through 1222.53 of the proposed Order detail requirements regarding the Board's budget and expenses, financial statements, assessments, and exemption from assessments. At least 60 calendar days before the start of the fiscal period, and as necessary during the year, the Board would submit a budget to USDA covering its projected expenses. The budget must include a summary of anticipated revenue and expenses for each program along with a breakdown of staff and administrative expenses. Except for the initial budget, the Board's budgets should include comparative data for at least one preceding fiscal period.

Each budget must provide for adequate funds to cover the Board's anticipated expenses. Any amendment or addition to an approved budget must be approved by USDA, including shifting of funds from one program, plan or project to another. Shifts of funds that do not result in an increase in the Board's approved budget would not have to have prior approval from USDA. For example, if the Board's approved budget provided for $1 million in consumer advertising and $500,000 in research projects, a shift of $50,000 from consumer advertising to research would require USDA approval. However, a shift within the $1 million consumer advertising line item would not require prior USDA approval.

The Board would be authorized to incur reasonable expenses for its maintenance and functioning. During its first year of operation, the Board could borrow funds for startup costs and capital outlay. Any borrowed funds would be subject to the same fiscal, budget and audit controls as other funds of the Board.

The Board could also accept voluntary contributions. Any contributions received by the Board would be free from encumbrances by the donor and the Board would retain control over use of the funds. The Board would also be required to reimburse USDA for costs incurred by USDA in overseeing the Order's operations, including all costs associated with referenda.

The Board would be limited to spending no more than 15 percent of its available funds for administration, maintenance, and the functioning of the Board. This limitation would begin three fiscal years after the Board's first meeting. As an example, if the Board received $20 million in assessments during fiscal year 5, and had available $1 million in reserve funds, the Board's available funds would be $21 million. In this scenario, the Board would be limited to spending no more than $3.2 million (.15 × $21 million) on administrative costs. Reimbursements to USDA would not be considered administrative costs.

The Board could also maintain a monetary reserve and carry over excess funds from one fiscal period to the next. However, such reserve funds could not exceed one fiscal year's budgeted expenses. For example, if the Board's budgeted expenses for a fiscal year were $20 million, it could carry over no more than $20 million in reserve. With approval of the Secretary, reserve funds could be used to pay expenses.

The Board could invest its revenue collected under the Order in the following: (1) Obligations of the United States or any agency of the United States; (2) General obligations of any State or any political subdivision of a State; (3) Interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve; and (4) Obligations fully guaranteed as to principal interest by the United States.

The Board would be required to submit to USDA financial statements on a quarterly basis, or at any other time as requested by the Secretary. Financial statements should include, at a minimum, a balance sheet, an income statement and an expense budget.

Assessments

The Board's programs and expenses would be funded through assessments on U.S. manufacturers and importers, other income, and other funds available to the Board. The Order would provide for an initial assessment rate of $0.35 per short ton of paper and paper-based packaging domestically manufactured or imported. Domestic manufacturers would pay assessments based on the quantity of paper and paper-based packaging manufactured or produced;

the assessment would be on the rollstock. An exception previously mentioned is the case of cut-size printing and writing papers (including folio sheets) in which case the assessment would be on the cut-size paper. Importers would pay assessments based on the quantity of paper and paper-based packaging imported to the United States.

Two years after the Order becomes effective and periodically thereafter, the Board would review the assessment rate and, if appropriate, recommend a change in the rate. At least two-thirds of the Board members would have to favor a change in the assessment rate. Any change in the assessment rate would be subject to rulemaking by the Secretary. Anticipated income generated at the $0.35 per short ton assessment rate is addressed in the section titled ''Initial Regulatory Flexibility Act Analysis.''

Domestic manufacturers would be required to pay their assessments owed to the Board by the 30th calendar day of the month following the end of the quarter in which the paper and paper-based packaging was manufactured. Thus, the January to December fiscal year would have four quarters ending the last day of March, June, September, and December, respectively. Assessments would be due April 30th, July 30th, October 30th and January 30th. As an example, assessments for paper and paper-based packaging produced in January, February or March would be due to the Board by April 30th.

Importer assessments would be collected through Customs. If Customs did not collect the assessment from an importer, then the importer would be responsible for paying the assessment directly to the Board within 30 calendar days after the end of the quarter in which the paper and paper-based packaging was imported. Imported paper and paper-based packaging identified by the numbers of the HTSUS listed in sections 1222.52(e) would be covered under the Order. The majority of the paper and paper-based packaging imports are in kilograms. One kilogram is equal to 2.20462262 pounds and one short ton is equal to 2,000 pounds. Thus, the $0.35 per short ton assessment rate is equal to a rate of $.000386 per kilogram ($0.35/2,000 pounds times 2.20462262 pounds/kilogram).

The Order would provide authority for the Board to impose a late payment charge and interest for assessments overdue to the Board by 60 calendar days. The late payment charge and rate of interest would be prescribed in the Order's regulations issued by the Secretary.

Exemptions

The Order would provide for two exemptions. First, U.S. manufacturers and importers who domestically produce or import less than 100,000 short tons during a marketing year would be exempt from paying assessments. If an entity is a U.S. manufacturer and an importer, such entity's combined quantity of paper and paper-based packaging manufactured and imported annually would count towards the 100,000 short ton exemption. Manufacturers and importers would apply to the Board for an exemption prior to the start of the fiscal year. This would be an annual exemption; entities would have to reapply each year. They would have to certify that they expect to domestically manufacture or import less than 100,000 short tons for the applicable fiscal year. The Board could request past production or import data to support the exemption request. The Board would then issue, if deemed appropriate, a certificate of exemption to the eligible manufacturer or importer.

Once approved, domestic manufacturers would not have to pay assessments to the Board for the applicable fiscal year. Approved importers would have their assessments as collected by Customs refunded by the Board within 60 calendar days after receipt of such assessments by the Board. No interest would be paid on the assessments collected by Customs.

Manufacturers and importers who did not apply to the Board for an exemption and domestically manufactured or imported less than 100,000 short tons during the fiscal year would receive a refund from the Board for the applicable assessments within 30 calendar days after the end of the fiscal year. The Board would determine the assessments paid and refund the manufacturer or importer accordingly. On the other hand, manufacturers and importers who receive an exemption certificate but domestically manufacture or import 100,000 short tons or more of paper and paper-based packaging during the fiscal year would have to pay the Board the applicable assessments owed within 30 calendar days after the end of the fiscal year and submit any necessary reports to the Board.

The Board could recommend additional procedures to administer the exemption as appropriate. Any procedures would be implemented through rulemaking by the Secretary.

The second exemption under the proposed Order would be for organic paper and paper-based packaging. A domestic manufacturer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan, only manufactures paper and paper-based packaging that is eligible to be labeled as 100 percent organic under the NOP and is not a split operation would be exempt from the payment of assessments. Likewise, an importer who imports only paper and paper-based packaging that is eligible to be labeled as 100 percent organic under the NOP, is not a split operation and who does not import any nonorganic paper and paper-based packaging would be exempt from the payment of assessments.

Promotion, Research and Information

Pursuant to section 516 of the 1996 Act, sections 1222.60 through 1222.62 of the proposed Order would detail requirements regarding promotion, research and information programs, plans and projects authorized under the Order. The Board would develop and submit to the Secretary for approval programs, plans and projects regarding promotion, research, education and other activities, including consumer and industry information and advertising. The Board would be required to evaluate each plan and program to ensure that it contributes to an effective promotion program. The Order would also require that, at least once every five years, the Board fund an independent evaluation of the effectiveness of the Order and programs conducted by the Board.

Finally, the Order would specify that any patents, copyrights, trademarks, inventions, product formulations and publications developed through the use of funds received by the Board would be the property of the U.S. Government, as represented by the Board. These along with any rents, royalties and the like from their use would be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board, and could be licensed with approval of the Secretary.

Reports, Books, and Records

Pursuant to section 515 of the 1996 Act, sections 1222.70 through 1222.72 would specify the reporting and recordkeeping requirements under the proposed Order as well as requirements regarding confidentiality of information.

Manufacturers and importers would be required to submit periodically to the Board certain information as the Board may request. Specifically, domestic manufacturers would submit a report to the Board that would include, but not be limited to, the manufacturer's name, address, and telephone number; and the quantity of paper and paper-based packaging manufactured by type.

Manufacturers would submit this report by the 30th calendar day of the month following the end of the quarter in which the paper and paper-based packaging was manufactured. The report would accompany the payment of assessments as specified in section 1222.52. Manufacturers who received a certificate of exemption from the Board would not have to submit such a report to the Board. However, exempt manufacturers who produced 100,000 short tons or more during the fiscal year would have to submit such reports to the Board as specified in section 1222.53(a)(6).

Likewise, importers who pay their assessments directly to the Board would be required to submit a report to the Board that would include, but not be limited to, the importer's name, address, and telephone number; the quantity of paper and paper-based packaging imported to the United States by type; and country of export for such paper and paper-based packaging. Importers would submit this report at the same time they remit their assessments to the Board. Importers who paid their assessments through Customs would not have to submit such reports to the Board because Customs would collect this information upon entry.

Additionally, manufacturers and importers, including those who were exempt, would be required to maintain books and records needed to verify any required reports. Such books and records must be made available during normal business hours for inspection by the Board's or USDA's employees or agents. Manufacturers and importers would be required to maintain such books and records for two years beyond the applicable fiscal period.

The Order would also require that all information obtained from persons subject to the Order as a result of proposed recordkeeping and reporting requirements would be kept confidential by all officers, employees, and agents of the Board and USDA. Such information could only be disclosed if the Secretary considered it relevant, and the information were revealed in a judicial proceeding or administrative hearing brought at the direction or at the request of the Secretary or to which the Secretary or any officer of USDA were a party. Other exceptions for disclosure of confidential information would include the issuance of general statements based on reports or on information relating to a number of persons subject to the Order, if the statements did not identify the information furnished by any person, or the publication, by direction of the Secretary, of the name of any person violating the Order and a statement of the particular provisions of the Order violated.

Miscellaneous Provisions

Referenda

Pursuant to section 518 of the 1996 Act, section 1222.81(a) of the proposed Order specifies that the program would not go into effect unless it is approved by a majority of U.S. manufacturers and importers voting in a referendum who also represent a majority of the volume of paper and paper-based packaging represented in the referendum who, during a representative period determined by the Secretary, were engaged in the manufacturing or importation of paper and paper-based packaging into the United States. For example, if 50 U.S. manufacturers and importers representing 50 million short tons of paper and paper-based packaging voted in a referendum, 26 manufacturers and importers representing over 26 million short tons would have to vote in favor of the Order for it to pass in the referendum.

Section 1222.81(b) of the proposed Order specifies criteria for subsequent referenda. Under the Order, a referendum would be held to ascertain whether the program should continue, be amended, or be terminated. This section specifies that a referendum would be held 7 years after the Order becomes effective, and every 7 years thereafter, to determine whether manufacturers and importers favor continuation of the Order. The Order would continue if favored by a majority of manufacturers and importers voting in the referendum that also represented a majority of the volume of paper and paper-based packaging represented in the referendum.

Additionally, a referendum could be conducted at the request of the Board. A referendum could also be conducted at the request of 10 percent or more of the number of persons eligible to vote in a referendum under the Order. Finally, a referendum could be conducted at any time as determined by the Secretary.

Other Miscellaneous Provisions

Sections 1222.80 and sections 1222.82 through 1222.88 describe the rights of the Secretary; authorize the Secretary to suspend or terminate the Order when deemed appropriate; prescribe proceedings after termination; address personal liability, separability, and amendments; and provide OMB control numbers. These provisions are common to all research and promotion program authorized under the 1996 Act.

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be minimal. The program is intended to include broad, fact-based messages highlighting the renewability, recyclability and reusability of paper and paper-based packaging. Paper produced in the United States relies on fiber from sustainably managed forests and fiber recovered for recycling as its raw material. Broad messages about the recyclability of paper should enhance recovery efforts. Increasing paper recovering for recycling would increase the amount of paper diverted from landfills. Messaging to encourage the use of renewable and recyclable paper and paper-based packaging could help increase the use of bio-based products; paper and paper-based packaging are considered bio-based products because they are composed of wood fiber.

The industry could also educate the public about the sustainability of paper and paper-based packaging. In the United States, more trees are grown than harvested. Between 1953 and 2006, the standing inventory of trees (*i.e.,* the volume of growing trees) in U.S. forests increased by 49 percent and has increased by more than 20 percent since 1970.[15]

Additionally, many paper products are manufactured using renewable energy. In 2008, an estimated 65 percent of the energy needed to operate U.S. pulp and paper mills was generated from renewable fuels derived largely from biomass.[16] Broad campaigns to educate consumers about these factors

[15] National Report of Sustainable Forests (2010), Page II–112, U.S. Forest Service *(www.fs.fed.us/research/sustain/)*.

[16] This is based on a 2008 survey of AF&PA member companies that produced pulp, paper and paperboard.

should help all segments of the industry.

The program would also help the forest products industry maintain 870,000 jobs across the nation and begin to create new jobs.[17] In addition to these jobs, numerous other jobs in related sectors are dependent upon the economic health of this industry.

The proposed program would be funded by industry through an assessment. The program would collect approximately $25 million in assessments from the top producing U.S. manufacturers and importers to conduct marketing and educate consumers about a variety of paper products, thus, benefiting all paper manufacturers and importers, including many small operations that would be exempt from the assessment. While the benefits of the program are difficult to quantify, they are expected to outweigh program costs. If the new program preserves just 0.24 percent of the paper and allied products industry sales by slowing demand declines for some grades and/or increasing demand growth for other grades, the economy could experience 3,360 additional jobs.[18] For example, the Cotton Board has seen a Benefit-Cost Ratio for producers and the government of $8.80 return for each dollar invested; and since 1990, the Benefit-Cost Ratio for importers is a $14.80 return for each dollar invested. Other research and promotion programs have seen similar benefits.

The assessments collected from U.S. manufacturers and importers are expected to be relatively small compared to U.S. manufacturer revenue and the value of paper and paper-based packaging imports. Many businesses make the decision to not pass these costs to consumers and instead keep it as a cost to do business because the costs are so small compared to the total revenue. To calculate the percentage of revenue represented by the assessment rate, the $0.35 per short ton assessment rate is divided by the average price, and that number is multiplied by 100. For domestic manufacturers, using a 2011 average price of $760 per short ton,[19] the percentage of revenue represented by the assessment rate would be .046 percent. For importers, using an average price of $824 per short ton ($6.2 billion in 2011 imports divided by 7.5 million short tons of imports × 100),[20] the percentage revenue represented by the assessment rate would be .042 percent. Thus, for both domestic manufacturers and importers covered under the proposed program, the percentage revenue represented by the assessment rate would be well under 1 percent (just under 5/100ths of a percent) of the average value per ton produced or imported.

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of the proposed rule on small entities. Accordingly, AMS has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (manufacturers and importers) as those having annual receipts of no more than $7.0 million.

According to the AF&PA, in 2011, there were 84 manufacturers in the United States that produced one or more of the four types of paper and paper-based packaging to be covered under the proposed Order. Using an average price of $760 per short ton, a manufacturer who produced less than 9,210 short tons of paper and paper-based packaging per year would be considered a small entity. It is estimated that no more than four manufacturers produced less than 9,210 short tons in 2011. Thus, the majority of manufacturers would not be considered small businesses.

According to Customs data, it is estimated that, in 2011, there were about 2,612 importers of paper and paper-based packaging. Eighty-five importers, or about 3.2 percent, imported more than $7.0 million worth of paper and paper-based packaging. Thus, the majority of importers would be considered small entities. However, no importer who imported 100,000 short tons or more (the Order's proposed exemption threshold) imported less than $7.0 million worth of paper and paper-based packaging (19 importers). Therefore, none of the 19 importers to be covered under the proposed Order would be considered small businesses.

Regarding value of the commodity, with domestic production at about 68.5 million short tons in 2011, and using an average price of $760 per short ton, the value of domestic paper and paper-based packaging in 2011 was about $52 billion. According to Customs data, the value of imported paper and paper-based packaging imports for 2011 was about $6.2 billion.

This rule invites comments on a proposed industry-funded research, promotion, and information program for paper and paper-based packaging. The program would be financed by an assessment on domestic manufacturers and importers and would be administered by a board of industry members appointed by the Secretary. The initial assessment rate would be $0.35 per short ton. Entities that domestically manufacture or import less than 100,000 short tons per marketing year would be exempt from the payment of assessments. The purpose of the program would be to maintain and expand markets for paper and paper-based packaging. A referendum would be held among eligible manufacturers and importers to determine whether they favor implementation of the program prior to it going into effect. A majority of entities by both number and volume would have to support the program for it to be implemented. The program is authorized under the 1996 Act.

The Order would provide for an exemption for domestic manufacturers and importers who manufacture or import less than 100,000 short tons annually. Of the 84 domestic manufacturers in 2011, it is estimated that about 33, or 39 percent, produced less than 100,000 short tons per year and would thus be exempt from paying

[17] Forest products industry employment was calculated by summing March 2012 Bureau of Labor Statistics employment data for the following categories: Paper and paper products, logging, wood products, wood kitchen cabinets and countertops.

[18] This is an AF&PA estimate and was computed as follows. The paper and paper products industry currently employs 395,000 people, according to the Bureau of Labor Statistics. The grades of paper and paper-based packaging to be covered by the proposed program accounted for about 83.3 percent of total paper and paper-based packaging in 2011. Hence, an estimated 329,000 direct jobs (83.3 percent of 395,000) are associated with grades that would be covered by the program. Multipliers compiled by the Economic Policy Institute indicate that 100 jobs in the paper industry support an additional 325 jobs outside the industry (supplier industries, government entities and schools, and local communities where paper industry employees spend their wages). Thus, 329,000 paper industry jobs support 1.4 million jobs throughout the economy ((329,000 jobs) + (329,000 jobs × 3.25)). If the proposed program preserves just 0.24 percent of the paper and allied products industry sales by slowing demand declines for some grades and/or increasing demand growth for other grades, the economy will have 3,360 additional jobs (0.24 percent × 1.4 million).

[19] Industry sources do not publish information on average price for paper and paper-based packaging. A reasonable estimate for average price of paper and paper-based packaging is the value per ton of paper and paper-based packaging exports. According to U.S. Census data, the average value of paper and paper-based packaging exports in 2011 was approximately $760 per short ton.

[20] U.S. Customs and Border Protection data.

assessments under the proposed Order. Of the 2,612 importers in 2011, it is estimated that about 2,593, or 99 percent, imported less than 100,000 short tons per year and would also be exempt from paying assessments. Thus, about 51 domestic manufacturers and 19 importers would pay assessments under the Order. Using 2011 data and deducting exempt tonnage, it is estimated that if 72.5 million short tons of paper and paper-based packaging (67.2 million short tons domestic and 5.3 million short tons imported) were assessed at a rate of $0.35 per short ton, about $25.4 million would be collected in assessments. Of that $25.4 million, 92.5 percent ($23.5 million) would be paid by domestic manufacturers and 7.5 percent ($1.9 million) would be paid by importers.

Regarding alternatives, the Panel considered various options to the program's coverage, the proposed assessment rate and exemption threshold. The Panel considered the merits of assessing all U.S. production of the four types of paper and paper-based packaging to be covered under the program, whether imports should be included, and different assessment rates to generate a range in income from $10 million to $30 million. The Panel also considered the merits of a 25,000 short ton versus a 100,000 short ton exemption. The table below details various rates of assessment and approximate income generated using 2011 data and the 100,000 short ton-exemption threshold.

APPROXIMATE ASSESSMENT INCOME AT VARIOUS ASSESSMENT RATES

Approximate assessment income	U.S. production and imports with a 100,000 short ton-exemption (72.5 million short tons)
$10.0 million	$0.138
$20.0 million	$0.276
$25.4 million	$0.350
$30.0 million	$0.413

After much consideration, the Panel concluded that an exemption threshold of 100,000 short tons would be appropriate with imports covered under the program as well. The Panel concluded that this exemption level would help reduce the financial and reporting burden on smaller entities but provide the Board sufficient income to administer the program and conduct research and promotion activities.

This action would impose additional reporting and recordkeeping burdens on manufacturers and importers of paper and paper-based packaging. Manufacturers and importers interested in serving on the Board would be asked to submit a nomination form to the Board indicating their desire to serve or nominating another industry member to serve on the Board. Interested persons could also submit a background statement outlining their qualifications to serve on the Board. Except for the initial Board nominations, manufacturers and importers would have the opportunity to cast a ballot and vote for candidates to serve on the Board. Manufacturer and importer nominees to the Board would have to submit a background form to the Secretary to ensure they are qualified to serve on the Board.

Additionally, manufacturers and importers who manufacture or import less than 100,000 short tons annually could submit a request to the Board for an exemption from paying assessments on this volume. Manufacturers and importers would also be asked to submit a report to the Board regarding their production/imports. Manufacturers and importers who would qualify as 100 percent organic under the NOP could submit a request to the Board for an exemption from assessments. Importers could also request a refund of any assessments paid to Customs.

Finally, manufacturers and importer who wanted to participate in a referendum to vote on whether the Order should become effective would have to complete a ballot for submission to the Secretary. These forms are being submitted to the OMB for approval under OMB Control No. 0581–NEW. Specific burdens for the forms are detailed later in this document in the section titled ''Paperwork Reduction Act''. As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Regarding outreach efforts, the Panel represents a broad cross-section of manufacturers and importers that would be covered under the program. Of the 14 Panel members, 11 are AF&PA members and 3 are non-AF&PA members. According to the Panel, Panel and AF&PA members represent about 81 percent of the domestic industry that would be covered by the program. Panel members representing 69 percent of the domestic production have signed forms indicating their support for the program. Over the past year, the Panel, and AF&PA staff and industry company employees, on behalf of the Panel, have made presentations on the proposed Order to all three major associations representing paper-based packaging and many of the associations representing the printing and writing paper segment of the industry. In September 2011, the Panel mailed information regarding the program to all Panel-known companies that would pay assessments under the program. This included manufacturers and importers and both AF&PA members and non-members. The Panel also mailed a letter to other parties in the supply chain to continue to educate them about the program. The AF&PA continues to communicate to its members and non-members about the program. Finally, Panel members plan to continue outreach to the CEOs of their industry peers to explain the program and help garner support.

While USDA has performed this initial RFA analysis regarding the impact of the proposed rule on small entities, in order to have as much data as possible for a more comprehensive analysis, we invite comments concerning potential effects. USDA is also requesting comments regarding the number and size of entities covered under the proposed Order.

Civil Rights Impact Analysis

Consideration has been given to the potential civil rights implications of this proposed rule on affected parties to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status or protected genetic information. Although detailed information is not available on the domestic manufacturers and importers who would be subject to the program or the users of paper and paper-based packaging, broad consideration was given to the employees of such entities and those individuals who wish to use information collected under this mandatory program. This proposed rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Moreover, the program would not exclude from participation any persons or groups, deny any persons or groups the benefits of the program, or

subject any persons or groups to discrimination.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act, a person subject to an order may file a written petition with the U.S. Department of Agriculture (USDA) stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS announces its intention to request an approval of a new information collection and recordkeeping requirements for the proposed paper and paper-based packaging program.

Title: Advisory Committee or Research and Promotion Background Information.

OMB Number for background form AD–755: (Approved under OMB No. 0505–0001).

Expiration Date of Approval: May 31, 2015.

Title: Paper and Paper-Based Packaging Promotion, Research and Information Order.

OMB Number: 0581–NEW.

Expiration Date of Approval: 3 years from approval date.

Type of Request: New information collection for research and promotion programs.

Abstract: The information collection requirements in the request are essential to carry out the intent of the 1996 Act. The information collection concerns a proposal received by USDA for a national research and promotion program for the paper and paper-based packaging industry. The program would be financed by an assessment on domestic manufacturers and importers and would be administered by a board of industry members appointed by the Secretary. The program would provide for an exemption for manufacturers and importers who manufacture or import less than 100,000 short tons of paper and paper-based packaging during the year. A referendum would be held among eligible manufacturers and importers to determine whether they favor implementation of the program prior to it going into effect. The purpose of the program would be to maintain and expand markets for paper and paper-based packaging.

In summary, the information collection requirements under the program concern Board nominations, the collection of assessments, and referenda. For Board nominations, manufacturers and importers interested in serving on the Board would be asked to submit a ''Nomination Form'' to the Board indicating their desire to serve or to nominate another industry member to serve on the Board. Interested persons could also submit a background statement outlining qualifications to serve on the Board. Except for the initial Board nominations, manufacturers and importers would have the opportunity to submit a ''Nomination Ballot'' to the Board where they would vote for candidates to serve on the Board. Nominees would also have to submit a background information form, ''AD–755,'' to the Secretary to ensure they are qualified to serve on the Board.

Regarding assessments, manufacturers and importers who manufacture or import less than 100,000 short tons annually could submit a request, ''Application for Exemption from Assessments,'' to the Board for an exemption from paying assessments. Manufacturers and importers would be asked to submit a ''Production/Import Report'' that would be submitted to the Board on a quarterly basis that would specify the quantity of paper and paper-based packaging manufactured or imported during the applicable period and the country of export (for imports). Manufacturers who manufacture less than 100,000 short tons annually would be exempt from paying assessments and would not be required to submit this report. Additionally, only importers who pay their assessments directly to the Board would be required to submit this report. If the importer assessments are collected by Customs, Customs would remit the funds to the Board and the other information would be available from Customs (*i.e.,* country of export, quantity imported). Finally, domestic manufacturers and importers who would qualify as 100 percent organic under the NOP could submit an ''Organic Exemption Form'' to the Board and request an exemption from assessments.

There would also be an additional burden on manufacturers and importers voting in referenda. The referendum ballot, which represents the information collection requirement relating to referenda, is addressed in a proposed rule on referendum procedures which is published separately in this issue of the **Federal Register**.

Information collection requirements that are included in this proposal include:

(1) Nomination Form

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.25 hour per application.

Respondents: Manufacturers and importers.

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 5 hours.

(2) Background Statement

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.25 hour per application.

Respondents: Manufacturers and importers.

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 5 hours.

(3) Nomination Ballot

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.25 hour per application.

Respondents: Domestic manufacturers and importers.

Estimated Number of Respondents: 75 (56 manufacturers and 19 importers who manufacture/import 100,000 short tons or more annually).

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 18.75 hours.

(4) Background Information Form AD–755 (OMB Form No. 0505–0001)

Estimate of Burden: Public reporting for this collection of information is estimated to average 0.5 hour per response for each Board nominee.

Respondents: Manufacturers and importers.

Estimated Number of Respondents: 12 (24 for initial nominations to the Board, 0 for the second year, and up to 8 annually thereafter).

Estimated Number of Responses per Respondent: 1 every 3 years. (0.3)

Estimated Total Annual Burden on Respondents: 12 hours for the initial nominations to the Board, 0 hours for the second year of operation, and up to 4 hours annually thereafter.

(5) Application for Exemption From Assessments

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hour per manufacturer or importer reporting on paper and paper-based packaging manufactured or imported. Upon approval of an application, manufacturers and importers would receive exemption certification.

Respondents: Domestic manufacturers (33) and importers (2,593) who manufacture or import less than 100,000 short tons of paper and paper-based packaging annually.

Estimated number of Respondents: 2,626.

Estimated number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 656.50 hours.

(6) Production/Import Report

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hour per manufacturer or importer.

Respondents: Manufacturers who manufacture 100,000 short tons or more annually (51) and importers who remit their assessments directly to the Board (computation is based on the scenario where all 19 importers pay their assessments to the Board).

Estimated number of Respondents: 70.

Estimated number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 140 hours.

(7) Refund Of Assessments

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hour.

Respondents: Manufacturers and importers.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2.5 hours.

(8) Organic Exemption Form

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.5 hours per exemption form.

Respondents: Organic manufacturers and importers.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 0.5 hour.

(9) A Requirement To Maintain Records Sufficient To Verify Reports Submitted Under the Order

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per recordkeeper maintaining such records.

Recordkeepers: Manufacturers (84) and importers (2,612).

Estimated number of recordkeepers: 2,696.

Estimated total recordkeeping hours: 1,348 hours.

As noted above, under the proposed program, manufacturers and importers would be required to pay assessments and file reports with and submit assessments to the Board (importers through Customs). While the proposed Order would impose certain recordkeeping requirements on manufacturers and importers, information required under the proposed Order could be compiled from records currently maintained. Such records shall be retained for at least two years beyond the fiscal year of their applicability.

An estimated 2,696 respondents would provide information to the Board (84 domestic manufacturers and 2,612 importers). The estimated cost of providing the information to the Board by respondents would be $72,204. This total has been estimated by multiplying 2,188 total hours required for reporting and recordkeeping by $33, the average mean hourly earnings of various occupations involved in keeping this information. Data for computation of this hourly rate was obtained from the U.S. Department of Labor, Bureau of Labor Statistics.

The proposed Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other programs administered by USDA and other state programs.

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the 1996 Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information quarterly would coincide with normal industry business practices. The timing and frequency of collecting information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. The requirement to keep records for two years is consistent with normal industry practices. In addition, the information to be included on these forms is not available from other sources because such information relates specifically to individual manufacturers and importers who are subject to the provisions of the 1996 Act. Therefore, there is no practical method for collecting the required information without the use of these forms.

Request for Public Comment Under the Paperwork Reduction Act

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the proposed Order and USDA's oversight of the proposed Order, including whether the information would have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) the accuracy of USDA's estimate of the principal manufacturing areas in the United States for paper and paper-based packaging; (d) the accuracy of USDA's estimate of the number of manufacturers and importers of paper and paper-based packaging that would be covered under the program; (e) ways to enhance the quality, utility, and clarity of the information to be collected; and (f) 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.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581–NEW. In addition, the docket number, date, and page number of this issue of the **Federal Register** also should be referenced. Comments should be sent to the same addresses referenced in the **ADDRESSES** section of this rule.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

USDA made modifications to the proponent's proposal to conform with other similar national research and promotion programs implemented under the 1996 Act.

While the proposal set forth below has not received the approval of USDA, it is determined that this proposed Order is consistent with and would effectuate the purposes of the 1996 Act.

As previously mentioned, for the proposed Order to become effective, it must be approved by a majority of manufacturers and importers voting for approval in a referendum who also represent a majority of the volume of paper and paper-based packaging represented in the referendum. Referendum procedures will be published separately in this issue of the **Federal Register**.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this rule by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1222

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Paper and Paper-Based-Packaging promotion, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations, be amended by adding Part 1222 to read as follows:

PART 1222—PAPER AND PAPER-BASED PACKAGING PROMOTION, RESEARCH AND INFORMATION ORDER

Subpart A—Paper and Paper-Based Packaging Promotion, Research and Information Order

Definitions

Sec.
1222.1 Act.
1222.2 Board.
1222.3 Conflict of interest.
1222.4 Converted products.
1222.5 Customs or CBP.
1222.6 Department or USDA.
1222.7 Fiscal period and marketing year.
1222.8 Importer.
1222.9 Information.
1222.10 Kraft process.
1222.11 Linerboard.
1222.12 Manufacture or produce.
1222.13 Manufacturer or producer.
1222.14 Medium.
1222.15 Order.
1222.16 Panel.
1222.17 Paper and paper-based packaging.
1222.18 Part and subpart.
1222.19 Person.
1222.20 Program, plans and projects.
1222.21 Promotion.
1222.22 Pulp.
1222.23 Research.
1222.24 Secretary.
1222.25 Short ton or ton.
1222.26 State.
1222.27 Suspend.
1222.28 Terminate.
1222.29 United States.

Paper and Paper-Based Packaging Board

1222.40 Establishment and membership.
1222.41 Nominations and appointments.
1222.42 Term of office.
1222.43 Removal and vacancies.
1222.44 Procedure.
1222.45 Reimbursement and attendance.
1222.46 Powers and duties.
1222.47 Prohibited activities.

Expenses and Assessments

1222.50 Budget and expenses.
1222.51 Financial statements.
1222.52 Assessments.
1222.53 Exemption from assessment.

Promotion, Research and Information

1222.60 Programs, plans and projects.
1222.61 Independent evaluation.
1222.62 Patents, copyrights, trademarks, inventions, product formulations, and publications.

Reports, Books, and Records

1222.70 Reports.
1222.71 Books and records.
1222.72 Confidential treatment.

Miscellaneous

1222.80 Right of the Secretary.
1222.81 Referenda.
1222.82 Suspension or termination.
1222.83 Proceedings after termination.
1222.84 Effect of termination or amendment.
1222.85 Personal liability.
1222.86 Separability.
1222.87 Amendments.
1222.88 OMB control numbers.

Subpart B—[Reserved]

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

Subpart A—Paper and Paper-Based Packaging Promotion, Research and Information Order

Definitions

§ 1222.1 Act.

Act means the Commodity Promotion, Research and Information Act of 1996 (7 U.S.C. 7411–7425), and any amendments thereto.

§ 1222.2 Board.

Board means the Paper and Paper-Based Packaging Board established pursuant to § 1222.40, or such other name as recommended by the Board and approved by the Department.

§ 1222.3 Conflict of interest.

Conflict of interest means a situation in which a member or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

§ 1222.4 Converted products.

Converted products means products made from paper and paper-based packaging.

§ 1222.5 Customs or CBP.

Customs or CBP means the U.S. Customs and Border Protection, an agency of the U.S. Department of Homeland Security.

§ 1222.6 Department or USDA.

Department or USDA means the U.S. Department of Agriculture, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1222.7 Fiscal period and marketing year.

Fiscal and marketing year means the 12-month period ending on December 31 or such other period as recommended by the Board and approved by the Secretary.

§ 1222.8 Importer.

Importer means any person who imports paper and paper-based packaging from outside the United States for sale in the United States as a principal or as an agent, broker, or consignee of any person who

manufactures paper and paper-based packaging outside the United States for sale in the United States, and who is listed in the import records as the importer of record for such paper and paper-based packaging.

§ 1222.9 Information.

Information means information and programs for consumers, customers and industry, including educational activities, information and programs designed to enhance and broaden the understanding of the use and attributes of paper and paper-based packaging, increase efficiency in manufacturing paper and paper-based packaging, maintain and expand existing markets, and develop new markets and marketing strategies. These include:

(a) Consumer education and information, which means any action taken to provide information to, and broaden the understanding of, the general public regarding paper and paper-based packaging; and

(b) Industry information, which means information and programs that would enhance the image of the paper and paper-based packaging industry.

§ 1222.10 Kraft process.

Kraft process means a process that transforms wood into a high quality strong pulp for making paper and paper-based packaging.

§ 1222.11 Linerboard.

Linerboard means a grade of containerboard that is used as facing material in the manufacture of corrugated or solid fiber shipping boxes.

§ 1222.12 Manufacture or produce.

Manufacture or produce means the process of transforming pulp into paper and paper-based packaging.

§ 1222.13 Manufacturer or producer.

Manufacturer or producer means any person who manufactures paper and paper-based packaging in the United States.

§ 1222.14 Medium.

Medium means a grade of containerboard used as the inner fluting material in the manufacture of corrugated or solid fiber shipping boxes.

§ 1222.15 Order.

Order means an order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1222.16 Panel.

Panel means the Paper and Paper-Based Packaging Panel formed to pursue development of a paper and paper-based packaging promotion, research and information program.

§ 1222.17 Paper and paper-based packaging.

(a) *Paper and paper-based packaging* means:

(1) Printing, writing and related paper, which is coated or uncoated paper that is subsequently converted into products used for printing, writing and other communication purposes, such as file folders, envelopes, catalogues, magazines and brochures. For purposes of this Order, printing, writing and related paper includes thermal paper but does not include carbonless paper;

(2) Kraft packaging paper, which is coarse unbleached, semi-bleached or fully bleached grades of paper that are subsequently converted into products such as grocery bags, multiwall sacks, waxed paper and other products;

(3) Containerboard, which is all forms of linerboard and medium that is used to manufacture corrugated boxes, shipping containers and related products; and

(4) Paperboard, which is solid bleached kraft board, recycled board and unbleached kraft board that is subsequently converted into a wide variety of end uses, including folding boxes, food and beverage packaging, tubes, cans, and drums, and other miscellaneous products. Paperboard does not include construction-related products such as gypsum wallboard facings and panel board.

(b) For purposes of this Order, paper and paper-based packaging does not include tissue paper, newsprint or converted products.

§ 1222.18 Part and subpart.

Part means the Paper and Paper-Based Packaging Promotion, Research and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a *subpart* of such part.

§ 1222.19 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1222.20 Programs, plans and projects.

Programs, plans and projects means those research, promotion and information programs, plans or projects established pursuant to the Order.

§ 1222.21 Promotion.

Promotion means any action, including paid advertising and the dissemination of information, utilizing public relations or other means, to enhance and broaden the understanding of the use and attributes of paper and paper-based packaging for the purpose of maintaining and expanding markets for paper and paper-based packaging.

§ 1222.22 Pulp.

Pulp means the material that is produced by chemically or mechanically separating cellulose fibers from wood or recycling recovered fiber.

§ 1222.23 Research.

Research means any type of test, study, or analysis designed to enhance the image, desirability, use, marketability, manufacturing, recyclability, reusability or quality of paper and paper-based packaging, including research directed to product characteristics and product development, including new uses of existing products, new products or improved technology in the manufacturing of paper and paper-based packaging.

§ 1222.24 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any other officer or employee of the Department to whom authority has been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1222.25 Short ton or ton.

Short ton or ton means a measure of weight equal to 2,000 pounds.

§ 1222.26 State.

State means any of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 1222.27 Suspend.

Suspend means to issue a rule under section 553 of title 5 U.S.C. to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

§ 1222.28 Terminate.

Terminate means to issue a rule under section 553 of title 5 U.S.C. to cancel permanently the operation of an order or part thereof beginning on a date certain specified in the rule.

§ 1222.29 United States.

United States means collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States.

Paper and Paper-Based Packaging Board

§ 1222.40 Establishment and membership.

(a) *Establishment of the Board.* There is hereby established a Paper and Paper-Based Packaging Board to administer the terms and provisions of this Order. The Board shall be composed of manufacturers and importers of paper and paper-based packaging that manufacture or import 100,000 short tons or more of paper and paper-based packaging during a marketing year. Seats on the Board shall be apportioned as set forth in paragraph (b) of this section based on the geographical distribution of the quantity of paper and paper-based packaging manufactured in the United States and the quantity of paper and paper-based packaging imported to the United States.

(b) The Board shall be composed of 12 members and shall be established as follows:

(1) *Manufacturers.* Eleven members shall be manufacturers. Of the 11 manufacturers, 10 shall be from the following four regions:

(i) Six members shall be from the South, which consists of the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia, and all other parts of the United States not listed in paragraphs (b)(1)(ii), (b)(1)(iii), and (b)(1)(iv) of this section;

(ii) One member shall be from the Northeast, which consists of the states of Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont;

(iii) Two members shall be from the Midwest, which consists of the states of Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, North Dakota, Ohio, South Dakota, Wisconsin and Wyoming; and

(iv) One member shall be from the West, which consists of the states of Alaska, Arizona, California, Hawaii, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, and Washington.

(v) One manufacturer member at large may be from any region and shall manufacture at least 100,000 short tons but no more than 250,000 short tons of paper and paper-based packaging annually. If there are no eligible nominees, this seat shall be allocated to the largest producing region specified in paragraphs (b)(1)(i) through (b)(1)(iv).

(2) *Importers.* One member shall be an importer.

(c) At least once in every five-year period, but not more frequently than once in every three-year period, the Board will review the geographical distribution of the quantity of paper and paper-based packaging manufactured within the United States and the quantity of paper and paper-based packaging imported to the United States. The review will be conducted using the Board's annual assessment receipts and, if available, other reliable reports from the industry. If warranted, the Board will recommend to the Secretary that the membership or size of the Board be adjusted to reflect changes in geographical distribution of the quantity of paper and paper-based packaging manufactured in the United States and the quantity of paper and paper-based packaging imported to the United States. Any changes in Board composition shall be implemented by the Secretary through rulemaking.

§ 1222.41 Nominations and appointments.

(a) Nominees must manufacture or import 100,000 short tons or more of paper and paper-based packaging in a marketing year.

(b) Initial nominations shall be submitted to the Secretary by the Panel. Before considering any nominations, the Panel shall publicize the nomination process, using trade press or other means it deems appropriate, and shall conduct outreach to all known manufacturers and importers manufacturing or importing 100,000 short tons or more of paper and paper-based packaging in a marketing year to generate nominees that reflect the range of operations within the paper and paper-based packaging industry. The Panel may use regional caucuses, mail or other methods to elicit potential nominees. The Panel shall work with USDA to ensure that all eligible candidates are aware of the opportunity to serve on the Board. The Panel shall submit the nominations to the Secretary and recommend two nominees for each Board position specified in § 1222.40(b). The Secretary shall select the initial members of the Board from the nominations submitted by the Panel.

(c) Subsequent nominations shall be conducted as follows:

(1) The Board shall conduct outreach to all known manufacturers and importers manufacturing or importing 100,000 short tons or more of paper and paper-based packaging in a marketing year. Manufacturers and importers may submit nominations to the Board;

(2) Manufacturer and importer nominees may provide the Board a short background statement outlining their qualifications to serve on the Board;

(3) Nominees that are both a manufacturer and an importer may seek nomination to the Board as either a manufacturer or an importer, but not both;

(4) For the domestic seats allocated by region, domestic manufacturers must manufacture paper and paper-based packaging in the region for which they seek nomination. Nominees that manufacture in more than one region may seek nomination in one region of their choice. Nominees must specify for which region they are seeking nomination. The names of manufacturer nominees shall be placed on a ballot by region. The ballots along with the background statements shall be mailed to all manufacturers who manufacture 100,000 short tons or more of paper and paper-based packaging per marketing year. Manufacturers may vote in each region in which they manufacture paper and paper-based packaging. The votes shall be tabulated for each region and the nominees receiving the highest number of votes shall be placed at the top of the list in descending order by vote. The top two candidates for each position shall be submitted to the Secretary;

(5) The names of nominees for at large domestic manufacturers shall be placed on a ballot. The ballots along with the background statements shall be mailed to all manufacturers who manufacture 100,000 short tons or more of paper and paper-based packaging per marketing year. The votes shall be tabulated and the nominees receiving the highest number of votes shall be placed at the top of the list in descending order by vote. The top two candidates shall be submitted to the Secretary;

(6) The names of importer nominees shall be placed on a ballot. The ballots along with background statements shall be mailed to importers who import 100,000 short tons or more of paper and paper-based packaging per marketing year. The votes shall be tabulated and the nominees receiving the highest number of votes shall be placed at the top of the list in descending order by vote. The top two candidates for each position shall be submitted to the Secretary;

(7) The Board must submit nominations to the Secretary at least six months before the new Board term begins;

(8) Any manufacturer or importer nominated to serve on the Board shall file with the Secretary at the time of the nomination a background questionnaire;

(9) From the nominations made pursuant to this section, the Secretary shall appoint the members of the Board on the basis of representation provided in § 1222.40(b);

(10) No two members shall be employed by a single corporation, company, partnership or any other legal entity; and

(11) The Board may recommend to the Secretary modifications to its nomination procedures as it deems appropriate. Any such modifications shall be implemented through rulemaking by the Secretary.

§ 1222.42 Term of office.

(a) With the exception of the initial Board, each Board member shall serve for a term of three years or until the Secretary selects his or her successor. Each term of office shall begin on January 1 and end on December 31. No member may serve more than two full consecutive three-year terms, except as provided in paragraph (b) of this section.

(b) For the initial Board, the terms of the Board members shall be staggered for two, three and four years. Determination of which of the initial members shall serve a term of two, three or four years shall be recommended to the Secretary by the Panel.

§ 1222.43 Removal and vacancies.

(a) The Board may recommend to the Secretary that a member be removed from office if the member consistently fails or refuses to perform his or her duties properly or engages in dishonest acts or willful misconduct. If the Secretary determines that any person appointed under this subpart consistently fails or refuses to perform his or her duties properly or engages in acts of dishonesty or willful misconduct, the Secretary shall remove the person from office. A person appointed under this subpart or any employee of the Board may be removed by the Secretary if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

(b) If a member resigns, is removed from office, or in the event of death of any member or if any member of the Board ceases to work for or be affiliated with a manufacturer or importer, or if a manufacturer ceases to do business in the region he or she represents, such position shall become vacant.

(c) If a position becomes vacant nominations to fill the vacancy will be conducted using the nominations process set forth in this Order or the Board may recommend to the Secretary that he or she appoint a successor from the most recent list of nominations for the position.

(d) A vacancy will not be required to be filled if the unexpired term is less than six months.

§ 1222.44 Procedure.

(a) A majority of the Board members shall constitute a quorum.

(b) Each member of the Board shall be entitled to one vote on any matter put to the Board and the motion will carry if supported by a majority of Board members, except for recommendations to change the assessment rate or to adopt a budget, both of which require affirmation by two-thirds of the total number of Board members.

(c) At an assembled meeting, all votes shall be cast in person.

(d) In lieu of voting at an assembled meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action if supported by a majority of members (unless two-thirds is required under the Order) by mail, telephone, electronic mail, facsimile, or any other means of communication. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at an assembled meeting. All votes shall be recorded in Board minutes.

(e) There shall be no proxy voting.

§ 1222.45 Reimbursement and attendance.

Board members shall serve without compensation, but shall be reimbursed for reasonable travel expenses, as approved by the Board, which they incur when performing Board business.

§ 1222.46 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer this subpart in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board, and such rules and regulations as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet not less than annually, organize, and select from among the members of the Board a chairperson, vice chairperson, secretary/treasurer, other officers, and committees and subcommittees, as the Board determines to be appropriate. The committee and subcommittees may include persons other than Board members, including representatives of Board members, as the Board deems necessary and appropriate, provided Board members or their representative constitute a majority of all committees and subcommittees;

(d) To employ or contract with persons, other than the Board members, as the Board considers necessary to assist the Board in carrying out its duties, and to determine the compensation and specify the duties of the persons;

(e) To notify manufacturers and importers of all Board meetings through a press release or other means and to give the Secretary the same notice of meetings of the Board (including committee, subcommittee, and the like) as is given to members so that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Board to the Secretary;

(f) To develop and submit programs, plans and projects to the Secretary for the Secretary's approval, and enter into contracts or agreements related to such programs, plans and projects, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs, plans or projects of promotion, research and information. The payment of costs for such activities shall be from funds collected pursuant to this Order. Each contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

(g) To prepare and submit for the approval of the Secretary fiscal year budgets in accordance with § 1222.50;

(h) To borrow funds necessary for startup expenses of the Order during the first year of operation by the Board;

(i) To invest assessments collected and other funds received pursuant to the Order and use earnings from invested assessments to pay for activities carried out pursuant to the Order;

(j) To recommend changes to the assessment rates as provided in this part;

(k) To cause its books to be audited by an independent auditor at the end of each fiscal year and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(l) To periodically prepare and make public reports of program activities and, at least once each fiscal year, to make public an accounting of funds received and expended;

(m) To maintain such minutes, books and records and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(n) To act as an intermediary between the Secretary and any manufacturer or importer;

(o) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(p) To recommend to the Secretary such amendments to the Order as the Board considers appropriate; and

(q) To work to achieve an effective, continuous, and coordinated program of promotion, research, and information and to carry out programs, plans, and projects designed to provide maximum benefits to the paper and paper-based packaging industry.

§ 1222.47 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that would be a conflict of interest;

(b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments or subdivision thereof, other than recommending to the Secretary amendments to the Order; and

(c) No program, plan or project including advertising shall be false, misleading or disparaging to another agricultural commodity. Paper and paper-based packaging of all geographic origins shall be treated equally.

Expenses and Assessments

§ 1222.50 Budget and expenses.

(a) At least 60 calendar days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Board shall prepare and submit to the Department a budget for the fiscal year covering its anticipated expenses and disbursements in administering this part. The budget for research, promotion or information may not be implemented prior to approval by the Secretary. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan or project;

(2) A summary of anticipated revenue, with comparative data for at least one preceding fiscal year, except for the initial budget;

(3) A summary of proposed expenditures for each program, plan or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding fiscal year, except for the initial budget.

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this Order.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Department, including shifting funds from one program, plan or project to another. Shifts of funds that do not result in an increase in the Board's approved budget and are consistent with governing bylaws need not have prior approval by the Department.

(d) The Board is authorized to incur such expenses, including provision for a reserve, as the Secretary finds reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) With approval of the Department, the Board may borrow money for the payment of startup expenses subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed shall be expended only for startup costs and capital outlays and are limited to the first year of operation by the Board.

(f) The Board may accept voluntary contributions. Such contributions shall be free from any encumbrance by the donor and the Board shall retain complete control of their use. The Board may receive funds from outside sources with approval of the Secretary for specific authorized projects.

(g) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, enforcement and supervision of the Order, including all referendum costs in connection with the Order.

(h) For fiscal years beginning three years after the date the of the establishment of the Board, the Board may not expend for administration, maintenance, and the functioning of the Board an amount that is greater than 15 percent of the assessment and other income received by and available to the Board for the fiscal year. For purposes of this limitation, reimbursements to the Secretary shall not be considered administrative costs.

(i) The Board may establish an operating monetary reserve and may carry over to subsequent fiscal years excess funds in any reserve so established: *Provided,* That, the funds in the reserve do not exceed one fiscal year's budget of expenses. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this subpart.

(j) Pending disbursement of assessments and all other revenue under a budget approved by the Secretary, the Board may invest assessments and all other revenues collected under this part in:

(1) Obligations of the United States or any agency of the United States;

(2) General obligations of any State or any political subdivision of a State;

(3) Interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve System;

(4) Obligations fully guaranteed as to principal interest by the United States; or

(5) Other investments as authorized by the Secretary.

§ 1222.51 Financial statements.

(a) The Board shall prepare and submit financial statements to the Department on a quarterly basis, or at any other time as requested by the Secretary. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Department within 30 calendar days after the end of the time period to which it applies.

(c) The Board shall submit to the Department an annual financial statement within 90 calendar days after the end of the fiscal year to which it applies.

§ 1222.52 Assessments.

(a) The Board's programs and expenses shall be paid by assessments on manufacturers and importers, other income of the Board, and other funds available to the Board.

(b) Subject to the exemptions specified in § 1222.53, each

manufacturer and importer shall pay an assessment to the Board in the amount of 35 cents per short ton or its equivalent manufactured and imported. The assessment shall be on the roll of paper and paper-based packaging manufactured or imported, except that the assessment for cut-size printing and writing paper imported or made by domestic manufacturers prior to leaving the manufacturer's mill shall be on the cut-size paper.

(c) At least 24 months after the Order becomes effective and periodically thereafter, the Board shall review and may recommend to the Secretary, upon an affirmative vote of at least two-thirds of the Board, a change in the assessment rate. A change in the assessment rate is subject to rulemaking by the Secretary.

(d) Domestic manufacturers shall remit to the Board the amount due no later than the 30th calendar day of the month following the end of the quarter in which the paper and paper-based packaging was manufactured.

(e) Each importer of paper and paper-based packaging shall pay through Customs to the Board an assessment on the paper and paper-based packaging imported into the United States identified in the Harmonized Tariff Schedule of the United States (HTSUS) numbers listed in the table below.

Paper and paper-based packaging	Assessment $/kg
4802.54.1000	.000386
4802.54.3100	.000386
4802.54.5000	.000386
4802.54.6100	.000386
4802.55.1000	.000386
4802.55.2000	.000386
4802.55.4000	.000386
4802.55.6000	.000386
4802.55.7020	.000386
4802.55.7040	.000386
4802.56.1000	.000386
4802.56.2000	.000386
4802.56.4000	.000386
4802.56.6000	.000386
4802.56.70	.000386
4802.57.1000	.000386
4802.57.2000	.000386
4802.57.4000	.000386
4802.58.1000	.000386
4802.58.20	.000386
4802.58.5000	.000386
4802.58.60	.000386
4802.61.1000	.000386
4802.61.2000	.000386
4802.61.30	.000386
4802.61.5000	.000386
4802.61.60	.000386
4802.62.1000	.000386
4802.62.2000	.000386
4802.62.3000	.000386
4802.62.5000	.000386
4802.62.60	.000386
4802.69	.000386
4804.11.0000	.000386
4804.19.0000	.000386
4804.21.0000	.000386
4804.29.0000	.000386
4804.31.40	.000386
4804.31.6000	.000386
4804.39.4020	.000386
4804.39.4049	.000386
4804.39.60	.000386
4804.41.2000	.000386
4804.41.4000	.000386
4804.42.00	.000386
4804.49.0000	.000386
4804.51.0000	.000386
4804.52.00	.000386
4804.59.0000	.000386
4805.11.0000	.000386
4805.12	.000386
4805.19	.000386
4805.24	.000386
4805.25.0000	.000386
4805.91.1010	.000386
4805.91.9000	.000386
4805.92.4010	.000386
4805.92.4030	.000386
4805.93.4010	.000386
4805.93.4030	.000386
4805.93.4050	.000386
4805.93.4060	.000386
4807.00.9100	.000386
4807.00.9400	.000386
4810.13.11	.000386
4810.13.1900	.000386
4810.13.20	.000386
4810.13.5000	.000386
4810.13.6000	.000386
4810.13.70	.000386
4810.14.11	.000386
4810.14.1900	.000386
4810.14.20	.000386
4810.14.5000	.000386
4810.14.6000	.000386
4810.14.70	.000386
4810.19.1100	.000386
4810.19.1900	.000386
4810.19.20	.000386
4810.22.1000	.000386
4810.22.50	.000386
4810.22.6000	.000386
4810.22.70	.000386
4810.29.10	.000386
4810.29.5000	.000386
4810.29.6000	.000386
4810.29.70	.000386
4810.31.1020	.000386
4810.31.1040	.000386
4810.31.3000	.000386
4810.31.6500	.000386
4810.32.10	.000386
4810.32.3000	.000386
4810.32.6500	.000386
4810.39.1200	.000386
4810.39.1400	.000386
4810.39.3000	.000386
4810.39.6500	.000386
4810.92.12	.000386
4810.92.65	.000386
4810.99.1050	.000386
4810.99.6500	.000386
4811.51.2010	.000386
4811.51.2020	.000386
4811.51.2030	.000386
4811.59.4020	.000386
4811.90.8030	.000386

(f) If Customs does not collect an assessment from an importer, the importer is responsible for paying the assessment directly to the Board within 30 calendar days after the end of the quarter in which the paper and paper-based packaging was imported.

(g) When a manufacturer or importer fails to pay the assessment within 60 calendar days of the date it is due, the Board may impose a late payment charge and interest. The late payment charge and rate of interest shall be prescribed in regulations issued by the Secretary. All late assessments shall be subject to the specified late payment charge and interest. Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(h) The Board may accept advance payment of assessments from any manufacturer or importer that will be credited toward any amount for which that person may become liable. The Board may not pay interest on any advance payment.

(i) If the Board is not in place by the date the first assessments are to be collected, the Secretary shall receive assessments and shall pay such assessments and any interest earned to the Board when it is formed.

§ 1222.53 Exemption from assessment.

(a) *Minimum quantity exemption.*

(1) Manufacturers that manufacture less than 100,000 short tons of paper and paper-based packaging in a marketing year are exempt from paying assessments. Such manufacturers must apply to the Board, on a form provided by the Board, for a certificate of exemption prior to the start of the marketing year. This is an annual exemption and manufacturers must reapply each year. Such manufacturers shall certify that they will manufacture less than 100,000 short tons of paper and paper-based packaging during the marketing year for which the exemption is claimed. Upon receipt of an application for exemption, the Board shall determine whether an exemption may be granted. The Board may request past manufacturing data to support the exemption request. The Board will issue, if deemed appropriate, a certificate of exemption to the eligible manufacturer. It is the responsibility of the manufacturer to retain a copy of the certificate of exemption.

(2) Importers that import into the United States less than 100,000 short tons of paper and paper-based packaging in a marketing year are exempt from paying assessments. Such importers must apply to the Board, on

a form provided by the Board, for a certificate of exemption prior to the start of the fiscal year. This is an annual exemption and importers must reapply each year. Such imports shall certify that they will import less than 100,000 short tons of paper and paper-based packaging during the marketing year for which the exemption is claimed. Upon receipt of an application for exemption, the Board shall determine whether an exemption may be granted. The Board may request past import data to support the exemption request. The Board will issue, if deemed appropriate, a certificate of exemption to the eligible importer. It is the responsibility of the importer to retain a copy of the certificate of exemption. The Board shall refund such importers their assessments as collected by Customs no later than 60 calendar days after receipt of such assessments by the Board. No interest shall be paid on the assessments collected by Customs.

(3) Manufacturers that did not apply to the Board for an exemption and that manufactured less than 100,000 short tons of paper and paper-based packaging during the marketing year shall automatically receive a refund from the Board for the applicable assessments within 30 calendar days after the end of the marketing year. Board staff shall determine the assessments paid and refund the amount due to the manufacturer accordingly.

(4) Importers that did not apply to the Board for an exemption and that imported less than 100,000 short tons of paper and paper-based packaging during the marketing year shall automatically receive a refund from the Board for the applicable assessments within 30 calendar days after the end of the marketing year.

(5) If an entity is a manufacturer and an importer, such entity's combined quantity of paper and paper-based packaging manufactured and imported during a marketing year shall count towards the 100,000 short ton-exemption.

(6) Manufacturers and importers that received an exemption certificate from the Board but manufactured or imported 100,000 short tons or more of paper and paper-based packaging during the marketing year shall pay the Board the applicable assessments owed on the quantity manufactured or imported within 30 calendar days after the end of the marketing year and submit any necessary reports to the Board pursuant to § 1222.70.

(7) The Board may develop additional procedures to administer this exemption as appropriate. Such procedures shall be implemented through rulemaking by the Secretary.

(b) *Organic.*

(1) Organic Act means section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522).

(2) A manufacturer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan, only manufactures paper and paper-based packaging that is eligible to be labeled as 100 percent organic under the NOP and is not a split operation shall be exempt from payment of assessments. To obtain an organic exemption, an eligible manufacturer shall submit a request for exemption to the Board, on a form provided by the Board, at any time initially and annually thereafter on or before the start of the fiscal year as long as such manufacturer continues to be eligible for the exemption. The request shall include the following: The manufacturer's name and address; a copy of the organic operation certificate provided by a USDA-accredited certifying agent as defined in the Organic Act, a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary. The Board shall have 30 calendar days to approve the exemption request. If the exemption is not granted, the Board will notify the applicant and provide reasons for the denial within the same time frame.

(3) An importer who imports only paper and paper-based packaging that is eligible to be labeled as 100 percent organic under the NOP and is not a split operation shall be exempt from the payment of assessments. To obtain an organic exemption, an eligible importer must submit documentation to the Board and request an exemption from assessment on 100 percent of organic paper and paper-based packaging, on a form provided by the Board, at any time initially and annually thereafter on or before the beginning of the fiscal year as long as the importer continues to be eligible for the exemption. This documentation shall include the same information as required by manufacturers in paragraph (b)(2) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer a 9-digit alphanumeric number valid for 1 year from the date of issue. This alphanumeric number should be entered by the importer to Customs at entry summary. Any line item entry of 100 percent organic paper and paper-based packaging bearing this alphanumeric number assigned by the Board will not be subject to assessments.

(4) Importers who are exempt from assessment in paragraph (d)(3) of this section shall also be eligible for reimbursement of assessments collected by Customs and may apply to the Board for a reimbursement. The importer would be required to submit satisfactory proof to the Board that the importer paid the assessment on exempt organic products.

(5) The exemption will apply immediately following the issuance of the exemption certificate.

Promotion, Research and Information

§ 1222.60 Programs, plans and projects.

(a) The Board shall develop and submit to the Secretary for approval programs, plans and projects authorized by this subpart. Such programs, plans and projects shall provide for promotion, research, information and other activities including consumer and industry information and advertising.

(b) No program, plan or project shall be implemented prior to its approval by the Secretary. Once a program, plan or project is so approved, the Board shall take appropriate steps to implement it.

(c) The Board must evaluate each program, plan and project authorized under this subpart to ensure that it contributes to an effective and coordinated program of research, promotion and information. The Board must submit the evaluations to the Secretary. If the Board finds that a program, plan or project does not contribute to an effective program of promotion, research, or information, then the Board shall terminate such program, plan or project.

§ 1222.61 Independent evaluation.

At least once every five years, the Board shall authorize and fund from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and the programs conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

§ 1222.62 Patents, copyrights, trademarks, inventions, product formulations, and publications.

Any patents, copyrights, trademarks, inventions, product formulations, and publications developed through the use of funds received by the Board under this subpart shall be the property of the U.S. Government, as represented by the

Board, and shall along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, inventions, product formulations, or publications, inure to the benefit of the Board, shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board, and may be licensed subject to approval by the Secretary. Upon termination of this subpart, § 1222.83 shall apply to determine disposition of all such property.

Reports, Books, and Records

§ 1222.70 Reports.

(a) Manufacturers and importers will be required to provide periodically to the Board such information as the Board, with the approval of the Secretary, may require. Such information may include, but not be limited to:

(1) For manufacturers:

(i) The name, address and telephone number of the manufacturer; and

(ii) The quantity of paper and paper-based packaging manufactured by type.

(2) For importers:

(i) The name, address and telephone number of the importer;

(ii) The quantity of paper and paper-based packaging imported by type; and

(iii) The country of export.

(b) For manufacturers, such information shall be reported to the Board no later than the 30th calendar day of the month following the end of the quarter in which the paper and paper-based packaging was manufactured and shall accompany the collected payment of assessments as specified in § 1222.52. First quarter data (January–March) shall be reported to the Board no later than the 30th calendar day of April; second quarter data (April–June) shall be reported no later than the 30th calendar day of July; third quarter data (July–September) shall be reported no later than the 30th calendar day of October; and fourth quarter data (October–December) shall be reported no later than the 30th calendar day of January of the following marketing year.

(c) For importers who pay their assessments directly to the Board, such information shall accompany the payment of collected assessments within 30 calendar days after the end of the quarter in which the paper and paper-based packaging was imported specified in § 1222.52.

§ 1222.71 Books and records.

Each manufacturer and importer shall maintain any books and records necessary to carry out the provisions of this subpart and regulations issued thereunder, including such records as are necessary to verify any required reports. Such books and records must be made available during normal business hours for inspection by the Board's or Secretary's employees or agents. Manufacturers and importers must maintain the books and records for two years beyond the fiscal year to which they apply.

§ 1222.72 Confidential treatment.

All information obtained from books, records, or reports under the Act, this subpart and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members or manufacturers and importers. Only those persons having a specific need for such information solely to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or at the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this part, together with a statement of the particular provisions of this part violated by such person.

Miscellaneous

§ 1222.80 Right of the Secretary.

All fiscal matters, programs, plans or projects, contracts, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1222.81 Referenda.

(a) *Initial referendum.* The Order shall not become effective unless the Order is approved by a majority of manufacturers and importers voting in the referendum who also represent a majority of the volume of paper and paper-based packaging represented in the referendum and who, during a representative period determined by the Secretary, have been engaged in the manufacturing or importation of paper and paper-based packaging. A single entity who domestically manufactures and imports paper and paper-based packaging may cast one vote in the referendum.

(b) *Subsequent referenda.* The Secretary shall conduct subsequent referenda:

(1) For the purpose of ascertaining whether manufacturers and importers favor the amendment, continuation, suspension, or termination of the Order;

(2) Not later than seven years after this Order becomes effective and every seven years thereafter, to determine whether manufacturers and importers favor the continuation of the Order. The Order shall continue if it is favored by a majority of manufacturers and importers voting in the referendum who also represent a majority of the volume of paper and paper-based packaging represented in the referendum and who, during a representative period determined by the Secretary, have been engaged in the manufacturing or importation of paper and paper-based packaging;

(3) At the request of the Board established in this Order;

(4) At the request of 10 percent or more of the number of persons eligible to vote in a referendum as set forth under the Order; or

(5) At any time as determined by the Secretary.

§ 1217.82 Suspension or termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof, if the Secretary finds that this part or subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) The Secretary shall suspend or terminate this subpart at the end of the fiscal year whenever the Secretary determines that its suspension or termination is favored by a majority of manufacturers and importers voting in the referendum who also represent a majority of the volume represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the manufacturing or importation of paper and paper-based packaging.

(c) If, as a result of a referendum the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than one hundred and eighty (180) calendar days after making the determination, suspend or terminate, as the case may be, the collection of assessments under this subpart.

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1222.83 Proceedings after termination.

(a) Upon termination of this subpart, the Board shall recommend to the Secretary up to five of its members to serve as trustees for the purpose of liquidating the Board's affairs. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered, or any other existing claim at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to the Order;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and trustees, to such person or person as the Secretary directs; and

(4) Upon request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such persons title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to the Order.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, to one or more paper and paper-based packaging organizations in the United States whose mission is generic promotion, research, and information programs.

§ 1222.84 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any other persons, with respect to any such violation.

§ 1222.85 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1222.86 Separability.

If any provision of this subpart is declared invalid or the applicability of it to any person or circumstances is held invalid, the validity of the remainder of this subpart, or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1222.87 Amendments.

Amendments to this subpart may be proposed from time to time by the Board or any interested person affected by the provisions of the Act, including the Secretary.

§ 1222.88 OMB control numbers.

The control numbers assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, are OMB control number 0505–0001 (Board nominee background statement) and OMB control number 0581–NEW.

Subpart B—[Reserved]

Dated: December 18, 2012.

David R. Shipman,

Administrator.

[FR Doc. 2012–30923 Filed 12–31–12; 8:45 am]

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Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1222

Paper and Paper-Based Packaging Promotion, Research and Information Order; Referendum Procedures; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1222

[Document Number AMS–FV–11–0069 PR–B]

RIN 0581–AD21

Paper and Paper-Based Packaging Promotion, Research and Information Order; Referendum Procedures

AGENCY: Agricultural Marketing Service, Department of Agriculture.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on procedures for conducting a referendum to determine whether issuance of a proposed Paper and Paper-Based Packaging Promotion, Research and Information Order (Order) is favored by manufacturers (domestic producers) and importers of paper and paper-based packaging. The procedures would also be used for any subsequent referendum under the Order. The proposed Order is being published separately in this issue of the **Federal Register**. This proposed rule also announces the Agricultural Marketing Service's (AMS) intent to request approval by the Office of Management and Budget (OMB) of new information collection requirements to implement the program.

DATES: Comments must be received by March 4, 2013. Pursuant to the Paperwork Reduction Act (PRA), comments on the information collection burden that would result from this proposal must be received by March 4, 2013.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments may be submitted on the Internet at: *http://www.regulations.gov* or to the Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Room 1406–S, Stop 0244, Washington, DC 20250–0244; facsimile: (202) 205–2800. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection, including name and address, if provided, in the above office during regular business hours or it can be viewed at *http://www.regulations.gov*.

Pursuant to the PRA, comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, should be sent to the above address. In addition, comments concerning the information collection should also be sent to the Desk Office for Agriculture, Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street NW., Room 725, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, P.O. Box 831, Beavercreek, Oregon 97004; telephone: (503) 632–8848; facsimile (503) 632–8852; or electronic mail: *Maureen.Pello@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued pursuant to the Commodity Promotion, Research and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

Executive Order 12866

This rule regarding proposed referendum procedures has been determined to be non-significant for purposes of Executive Order 12866 and therefore has not been reviewed by the OMB.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act provides that it shall not affect or preempt any other Federal or state law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act, a person subject to an order may file a written petition with the U.S. Department of Agriculture (USDA) stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

This rule invites comments on procedures for conducting a referendum to determine whether manufacturers and importers of paper and paper-based packaging favor issuance of a proposed paper and paper-based packaging Order. The program would cover four types of paper and paper-based packaging—printing, writing and related paper, kraft packaging paper (used for products like grocery bags and sacks), containerboard (used to make shipping containers and related products), and paperboard (used for food and beverage packaging, tubes, and other miscellaneous products).

USDA would conduct the referendum. The program would be implemented if it is favored by a majority of manufacturers and importers of paper and paper-based packaging voting in the referendum who also represent a majority of the volume of paper and paper-based packaging represented in the referendum. The procedures would also be used for any subsequent referendum under the Order. The proposed Order is being published separately in this issue of the **Federal Register**. This rule also announces AMS's intent to request approval by the OMB of new information collection requirements to implement the program.

The 1996 Act authorizes USDA to establish agricultural commodity research and promotion orders which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs are designed to maintain and expand markets and uses for agricultural commodities. As defined under section 513(1)(D) of the 1996 Act, agricultural commodities include the products of forestry, which includes paper and paper-based packaging.

The 1996 Act provides for alternatives within the terms of a variety of provisions. Paragraph (e) of section 518 of the 1996 Act provides three options for determining industry approval of a new research and promotion program: (1) By a majority of those persons voting; (2) by persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. In addition, section 518 of the 1996 Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years

after assessments first begin under an order.

USDA received a proposal for a national research and promotion program for paper and paper-based packaging from the Paper and Paper-Based Packaging Panel (Panel). The Panel is a group of 14 industry members that was formed in May 2010 to oversee development of the program. The American Forest & Paper Association (AF&PA), a national trade association, provided technical assistance to the Panel. The program would be financed by an assessment on paper and paper-based packaging manufacturers and importers and would be administered by a board of industry members selected by the Secretary of Agriculture (Secretary). The assessment rate would initially be $0.35 per short ton. (One short ton equals 2,000 pounds.) Entities that manufacture or import less than 100,000 short tons annually would be exempt. The purpose of the program would be to maintain and expand markets for paper and paper-based packaging.

The Panel proposed that a referendum be held among eligible manufacturers and importers of paper and paper-based packaging to determine whether they favor implementation of the program prior to it going into effect. The Panel recommended that the program be implemented if it is favored by a majority of the manufacturers and importers voting in the referendum who also represent a majority of the volume of paper and paper-based packaging represented in the referendum. Manufacturers and importers who produce or import 100,000 short tons or more of paper and paper-based packaging annually would be eligible to vote in the referendum.

Accordingly, this rule would add subpart B to part 1222 that would establish procedures for conducting the referendum. The procedures would cover definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information. The procedures would be applicable for the initial referendum and future referenda.

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of the proposed rule on small entities. Accordingly, AMS has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (manufacturers and importers) as those having annual receipts of no more than $7.0 million.

According to the AF&PA, in 2011, there were 84 manufacturers in the United States that produced one or more of the four types of paper and paper-based packaging to be covered under the proposed Order. Using an average price of $760 per short ton,[1] a manufacturer who produced less than 9,210 short tons of paper and paper-based packaging per year would be considered a small entity. It is estimated that no more than four manufacturers produced less than 9,210 short tons in 2011. Thus, the majority of manufacturers would not be considered small businesses.

According to Customs data, it is estimated that, in 2011, there were about 2,612 importers of paper and paper-based packaging. Eighty-five importers, or about 3.2 percent, imported more than $7.0 million worth of paper and paper-based packaging. Thus, the majority of importers would be considered small entities. However, no importer who imported 100,000 short tons or more (the Order's proposed exemption threshold) imported less than $7.0 million worth of paper and paper-based packaging (19 importers). Therefore, none of the 19 importers to be covered under the proposed Order would be considered small businesses.

It is estimated that, in 2011, about 68.5 million short tons of paper and paper-based packaging were produced. Of the 68.5 million short tons, about 63.2 percent was manufactured in the South, 17.1 percent was manufactured in the Midwest, 10.5 percent was manufactured in the Northeast, and 9.2 percent was manufactured in the West.[2]

According to Customs data, in 2011, imports of paper and paper-based packaging to be covered under the program totaled 7.5 million short tons. Of that total, about 58.6 percent was from Canada, 22.2 percent from Western Europe, 9.8 percent was from China, Japan and the Far East, 2.7 percent was from South America and the remainder was from other countries.

This proposed rule invites comments on procedures for conducting a referendum to determine whether manufacturers and importers of paper and paper-based packaging favor issuance of a proposed Order. USDA would conduct the referendum. The program would be implemented if it is favored by a majority of manufacturers and importers voting in a referendum who also represent a majority of paper and paper-based packaging represented in the referendum. The procedures would also be used for any subsequent referendum under the Order. The procedures are authorized under paragraph (e) of section 518 the 1996 Act.

Regarding the economic impact of this rule on affected entities, eligible manufacturers and importers would have the opportunity to participate in the referendum. The Order would exempt manufacturers and importers who produce or import less than 100,000 short tons annually from the payment of assessments. Exempt manufacturers and importers would not be eligible to participate in the referendum. Of the 84 manufacturers and 2,612 importers, it is estimated that about 51 manufacturers and 19 importers would pay assessments under the Order and thus be eligible to vote in the referendum. Using 2011 data and deducting exempt tonnage, it is estimated that if 72.5 million short tons of paper and paper-based packaging (67.2 million short tons domestic and 5.3 million short tons imported) were assessed at a rate of $0.35 per short ton, about $25.4 million would be collected in assessments. Of that $25.4 million, about 92.5 percent ($23.5 million) would be paid by domestic manufacturers and 7.5 percent ($1.9 million) would be paid by importers.

Voting in the referendum is optional. If manufacturers and importers chose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the program.

Regarding alternatives, USDA considered requiring eligible voters to vote in person at various USDA offices across the country. USDA also considered electronic voting, but the use of computers is not universal. Conducting the referendum from one central location by mail ballot would be more cost effective and reliable. USDA would provide easy access to information for potential voters through a toll free telephone line.

[1] AF&PA does not collect price information and other industry sources do not publish information on average price for paper and paper-based packaging. A reasonable estimate for average price of paper and paper-based packaging is the value per ton of paper and paper-based packaging exports. According to U.S. Census data, the average value of paper and paper-based packaging exports in 2011 was approximately $760 per short ton.

[2] Data was compiled by the AF&PA from the American Forest & Paper Association's 51st Annual Survey of Paper, Paperboard and Pulp, 2011.

This action would impose an additional reporting burden on eligible manufacturers and importers of paper and paper-based packaging. Eligible manufacturers and importers would have the opportunity to complete and submit a ballot to USDA indicating whether or not they favor implementation of the proposed Order. The specific burden for the ballot is detailed later in this document in the section titled Paperwork Reduction Act. As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Regarding outreach efforts, USDA would keep these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA would also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

USDA has performed this initial RFA analysis regarding the impact of this proposed rule on small businesses.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, has been submitted to OMB for approval.

Title: Paper and Paper-Based Packaging Promotion, Research and Information (Referendum Procedures).

OMB Number: 0581–NEW.

Expiration Date of Approval: 3 years from OMB date of approval.

Type of Request: New information collection for research and promotion programs.

Abstract: The information collection requirements in the request are essential to carry out the intent of the 1996 Act. The information collection concerns a proposal received by USDA for a national research and promotion program for paper and paper-based packaging. The program would be financed by an assessment on manufacturers and importers and would be administered by a board of industry members selected by the Secretary. The program would exempt manufacturers and importers who produce or import less than 100,000 short tons of paper and paper-based packaging annually. A referendum would be held among eligible manufacturers and importers to determine whether they favor implementation of the program prior to it going into effect. The purpose of the program would be to maintain and expand markets for paper and paper-based packaging.

The information collection requirements in this rule concern the referendum that would be held to determine whether the program is favored by the industry. Current manufacturers or importers that manufactured or imported 100,000 short tons or more of paper and paper-based packaging during the representative period would be eligible to vote in the referendum. The ballot would be completed by eligible manufacturers and importers who want to indicate whether or not they support implementation of the program.

Referendum Ballot

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.25 hour per application.

Respondents: Manufacturers and importers.

Estimated Number of Respondents: 70 (51 manufacturers and 19 importers).

Estimated Number of Responses per Respondent: 1 every 7 years (0.14).

Estimated Total Annual Burden on Respondents: 2.45 hours.

The ballot would be added to the other information collections approved under OMB No. 0581–NEW.

An estimated 70 respondents would provide information to the Board (51 manufacturers and 19 importers). The estimated cost of providing the information to the Board by respondents would be $80.85. This total has been estimated by multiplying 2.45 total hours required for reporting and recordkeeping by $33, the average mean hourly earnings of various occupations involved in keeping this information. Data for computation of this hourly rate was obtained from the U.S. Department of Labor statistics.

The proposed Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other programs administered by USDA and other state programs.

Request for Public Comment Under the Paperwork Reduction Act

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the proposed Order and USDA's oversight of the proposed Order, including whether the information would have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) the accuracy of USDA's estimate of the principal manufacturing areas in the United States for paper and paper-based packaging; (d) the accuracy of USDA's estimate of the number of manufacturers and importers that would be covered under the program; (e) ways to enhance the quality, utility, and clarity of the information to be collected; and (f) 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.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581–NEW. In addition, the docket number, date, and page number of this issue of the **Federal Register** also should be referenced. Comments should be sent to the same addresses referenced in the **ADDRESSES** section of this rule.

A 60-day comment period is provided to allow interested persons to comment on this proposed information collection. All written comments received will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

List of Subjects in 7 CFR Part 1222

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Paper and Paper-Based Packaging, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations, as proposed to be amended elsewhere in this issue of the **Federal Register**, be further amended as follows:

PART 1222—PAPER AND PAPER–BASED PACKAGING PROMOTION, RESEARCH AND INFORMATION ORDER

■ 1. The authority citation for part 1222 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 2. Subpart B of 7 CFR part 1222 is added to read as follows:

Subpart B—Referendum Procedures

Sec.
1222.100 General.
1222.101 Definitions.
1222.102 Voting.
1222.103 Instructions.
1222.104 Subagents.
1222.105 Ballots.
1222.106 Referendum report.
1222.107 Confidential information.
1222.108 OMB Control number.

Subpart B—Referendum Procedures

§ 1222.100 General.

Referenda to determine whether eligible manufacturers and importers favor the issuance, continuance, amendment, suspension, or termination of the Paper and Paper-Based Packaging Promotion, Research and Information Order shall be conducted in accordance with this subpart.

§ 1222.101 Definitions.

For the purposes of this subpart:

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to delegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Converted products* means products made from paper and paper-based packaging.

(c) *Customs or CBP* means the U.S. Customs and Border Protection, an agency of the U.S. Department of Homeland Security.

(d) *Department* or *USDA* means the U.S. Department of Agriculture or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(e) *Eligible manufacturer or producer* means any person who is currently a manufacturer or producer and who manufactured 100,000 short tons or more of paper and paper-based packaging during the representative period.

(f) *Eligible importer* means any person who is currently an importer and who imported 100,000 short tons or more of paper and paper-based packaging into the United States during the representative period as a principal or as an agent, broker, or consignee of any person who manufactured paper and paper-based packaging outside of the United States for sale in the United States, and who is listed as the importer of record for such paper and paper-based packaging. Importation occurs when paper and paper-based packaging manufactured outside of the United States is released from custody by Customs and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign-manufactured paper and paper-based packaging immediately upon release by Customs, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of paper and paper-based packaging from Customs when such paper and paper-based packaging is entered or withdrawn for use in the United States.

(g) *Kraft process* means a process that transforms wood into a high quality strong pulp for making paper and paper-based packaging.

(h) *Linerboard* means a grade of containerboard that is used as facing material in the manufacture of corrugated or solid fiber shipping boxes.

(i) *Manufacture or produce* means the process of transforming pulp into paper and paper-based packaging.

(j) *Order* means the Paper and Paper-Based Packaging Promotion, Research and Information Order.

(k) *Paper and paper-based packaging* means:

(1) Printing, writing and related paper, which is coated or uncoated paper that is subsequently converted into products used for printing, writing and other communication purposes, such as file folders, envelopes, catalogues, magazines and brochures. For purposes of this Order, printing, writing and related paper includes thermal paper but does not include carbonless paper;

(2) Kraft packaging paper, which is coarse unbleached, semi-bleached or fully bleached grades of paper that are subsequently converted into products such as grocery bags, multiwall sacks, waxed paper and other products;

(3) Containerboard, which is all forms of linerboard and medium that is used to manufacture corrugated boxes, shipping containers and related products; and

(4) Paperboard, which is solid bleached kraft board, recycled board and unbleached kraft board that is subsequently converted into a wide variety of end uses, including folding boxes, food and beverage packaging, tubes, cans, and drums, and other miscellaneous products. Paperboard does not include construction-related products such as gypsum wallboard facings and panel board.

(5) For purposes of this Order, paper and paper-based packaging does not include tissue paper, newsprint or converted products.

(l) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term ''partnership'' includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a paper and paper-based packaging manufacturing entity as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So called ''joint ventures'' wherein one or more parties to an agreement, informal or otherwise, contributed land, facilities, capital, labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the manufacturing or importation of paper and paper-based packaging and the authority to transfer title to the paper and paper-based packaging so manufactured or imported.

(m) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(n) *Representative period* means the period designated by the Department.

(o) *Short ton or ton* means a measure of weight equal to 2,000 pounds.

(p) *United States* means collectively the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1222.102 Voting.

(a) Each eligible manufacturer and importer of paper and paper-based packaging shall be entitled to cast only one ballot in the referendum. However, each manufacturer in a landlord/tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to manufacture paper and paper-based manufacturing, in which more than one of the parties is a manufacturer or importer, shall be entitled to cast one ballot in the referendum covering only such manufacturer or importer's share of ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate manufacturer or importer, or

an administrator, executor, or trustee of an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) A single entity who manufactures and imports paper and paper-based manufacturing may cast one vote in the referendum.

(d) All ballots are to be cast by mail or other means, as instructed by the Department.

§ 1222.103 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, consistent with the provisions of this subpart, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast;

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter;

(c) Give reasonable public notice of the referendum:

(1) By using available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible manufacturers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot;

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process;

(f) Prepare a report on the referendum; and

(g) Announce the results to the public.

§ 1222.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1222.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1222.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1222.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

§ 1222.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. is OMB control number 0581–NEW.

Dated: December 18, 2012.

David R. Shipman,

Administrator.

[FR Doc. 2012–30915 Filed 12–31–12; 8:45 am]

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Part V

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1, 54 and 301

Shared Responsibility for Employers Regarding Health Coverage; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 54 and 301

[REG–138006–12]

RIN 1545–BL33

Shared Responsibility for Employers Regarding Health Coverage

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations providing guidance under section 4980H of the Internal Revenue Code (Code) with respect to the shared responsibility for employers regarding employee health coverage. These proposed regulations would affect only employers that meet the definition of ''applicable large employer'' as described in these proposed regulations. As discussed in section X of this preamble, employers may rely on these proposed regulations for guidance pending the issuance of final regulations or other applicable guidance. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by March 18, 2013. Outlines of topics to be discussed at the public hearing scheduled for April 23, 2013, at 10:00 a.m., must be received by April 3, 2013.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–138006–12), Internal Revenue Service, room 5203, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–138006–12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–138006–12). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, call Kathryn Bjornstad at (202) 927–9639; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, call Oluwafunmilayo Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed Pension Excise Tax Regulations (26 CFR part 54) under section 4980H of the Code. Section 4980H was added to the Code by section 1513 of the Patient Protection and Affordable Care Act, enacted March 23, 2010, Public Law 111–148, and amended by section 1003 of the Health Care and Education Reconciliation Act of 2010, enacted March 30, 2010, Public Law 111–152, and further amended by the Department of Defense and Full-Year Continuing Appropriations Act, 2011, Public Law 112–10 (125 Stat. 38, (2011)), (collectively, the Affordable Care Act). Section 4980H is effective for months beginning after December 31, 2013.

I. Section 4980H

In General

Section 4980H generally provides that an applicable large employer is subject to an assessable payment if either (1) the employer fails to offer to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage [1] (MEC) under an eligible employer-sponsored plan and any full-time employee is certified to the employer as having received an applicable premium tax credit or cost-sharing reduction (section 4980H(a) liability), or (2) the employer offers its full-time employees (and their dependents) the opportunity to enroll in MEC under an eligible employer-sponsored plan and one or more full-time employees is certified to the employer as having received an applicable premium tax credit or cost-sharing reduction (section 4980H(b) liability). Generally, section 4980H(b) liability may arise because, with respect to a full-time employee who has been certified to the employer as having received an applicable premium tax credit or cost-sharing reduction, the employer's coverage is unaffordable within the meaning of section 36B(c)(2)(C)(i) or does not provide minimum value within the meaning of section 36B(c)(2)(C)(ii).[1] As noted, an employer may be liable for an assessable payment under section 4980H(a) or (b) only if one or more full-time employees are certified to the employer as having received an applicable premium tax credit or cost-sharing reduction.

The assessable payment under section 4980H(a) is based on all (excluding the first 30) full-time employees, while the assessable payment under section 4980H(b) is based on the number of full-time employees who are certified to the employer as having received an applicable premium tax credit or cost-sharing reduction with respect to that employee's purchase of health insurance for himself or herself on an Exchange. In contrast, an employee's receipt of a premium tax credit or cost sharing reduction with respect to coverage for a dependent will not result in liability for the employer under section 4980H. Under section 4980H(b), liability is contingent on whether the employer offers minimum essential coverage under an eligible employer-sponsored plan, and whether that coverage is affordable and provides minimum value, as determined by reference to the cost and characteristics of employee-only coverage offered to the employee. Section 4980H(c)(4) provides that a full-time employee with respect to any month is an employee who is employed on average at least 30 hours of service per week. An applicable large employer with respect to a calendar year is defined in section 4980H(c)(2) as an employer that employed an average of at least 50 full-time employees on business days during the preceding calendar year. For purposes of determining whether an employer is an applicable large employer, full-time equivalent employees (FTEs), which are statutorily determined based on the hours of service of employees who are not full-time employees, are taken into account.

II. Previous Guidance

The Treasury Department and the IRS have published four notices addressing issues under section 4980H. Each notice, briefly summarized in this section of the preamble, outlined potential approaches to future guidance, and each requested public comments. See Notice 2011–36 (2011–21 IRB 792), Notice 2011–73 (2011–40 IRB 474), Notice 2012–17 (2012–9 IRB 430), and Notice 2012–58 (2012–41 IRB 436). Notice 2012–58 also provided guidance that taxpayers may rely upon for periods specified in the notice. Extensive public comments were submitted in response to each of the four notices. See § 601.601(d)(2).

A. Notice 2011–36

Notice 2011–36 addressed the definitions of employer, employee, and hours of service. The notice also specifically described and requested comments on a possible approach that would permit employers to use an optional ''look-back/stability period safe harbor'' to determine whether ongoing employees (that is, employees other

[1] See section III of the Background section of the preamble for a discussion of MEC, minimum value and affordability.

than new employees) are full-time employees for purposes of determining and calculating assessable payments under section 4980H. (In the proposed regulations and the remainder of this preamble, this optional safe harbor method generally is referred to, for convenience, as the ''look-back measurement method.'') This method may not be used for purposes of determining status as an applicable large employer, which is prescribed by the statute.

Under this method, an employer would determine each ongoing employee's status as a full-time employee by looking back at a defined period of not less than three but not more than 12 consecutive calendar months, as chosen by the employer (the measurement period), to determine whether during that measurement period the employee was employed on average at least 30 hours of service per week. If the employee were determined to be employed on average at least 30 hours of service per week during the measurement period, then the employee would be treated as a full-time employee during a subsequent period (the stability period), regardless of the employee's hours of service during the stability period, so long as he or she remained an employee. For an employee who has been determined to be employed on average at least 30 hours of service per week during the measurement period, the stability period would be a period that followed the measurement period, and the duration of which was at least the greater of six consecutive calendar months or the length of the measurement period. If the employee were employed on average less than 30 hours per week during the measurement period, the employer would be permitted to treat the employee as not a full-time employee during a stability period that followed the measurement period, but the length of the stability period could not exceed the length of the measurement period.

Notice 2011–36 also outlined potential approaches under section 4980H for determining whether an employer is an applicable large employer, including calculating the number of the employer's full-time employees and full-time equivalents, defining employer and employee, and calculating the number of hours of service completed by an employee.

B. Notice 2011–73

Notice 2011–73 addressed the requirement that, in order to avoid a potential assessable payment under section 4980H(b), the coverage offered be affordable, generally meaning that the employee portion of the self-only premium for the employer's lowest cost coverage that provides minimum value not exceed 9.5 percent of the employee's household income. Recognizing the inability of employers to ascertain their employees' total household incomes, Notice 2011–73 described a potential safe harbor under which coverage offered by an employer to an employee would be treated as affordable for section 4980H liability purposes if the employee's required contribution for that coverage was no more than 9.5 percent of the employee's wages from the employer reported in Box 1 of the Form W–2 (Form W–2 wages) instead of household income. This potential affordability safe harbor would apply in determining whether an employer is subject to the assessable payment under section 4980H(b), but would not affect an employee's eligibility for a premium tax credit under section 36B.

C. Notice 2012–17

Notice 2012–17 stated that the Treasury Department and the IRS intended to incorporate the look-back measurement method described in Notice 2011–36 and the affordability safe harbor described in Notice 2011–73 into upcoming proposed regulations or other guidance.

Notice 2012–17 also described and requested comments on a potential approach for determining the full-time status of a new employee. Under that approach, if, based on the facts and circumstances at the date the employee began providing services to the employer (the start date), a new employee was reasonably expected to be employed an average of 30 hours of service per week on an annual basis and was employed full-time during the first three months of employment, the employer's group health plan would be required to offer the employee coverage as of the end of that period in order to avoid a potential section 4980H assessable payment for periods after the end of that three-month period. In contrast, if, based on the facts and circumstances at the start date, it could not reasonably be determined whether the new employee was expected to be employed on average at least 30 hours of service per week because the employee's hours were variable or otherwise uncertain, employers would be given three months or, in certain cases, six months, without incurring an assessable payment under section 4980H, to determine whether the employee was a full-time employee.

In response to Notice 2012–17, many commenters requested that employers be allowed to use a measurement period of up to 12 months to determine the status of new employees, similar to the potential approach outlined in Notice 2011–36 to determine the status of ongoing employees (although some commenters were not in favor of allowing a measurement period of up to 12 months for new employees).

D. Notice 2012–58

Notice 2012–58 provided employers reliance, through at least the end of 2014, on the guidance contained in that notice and on the following approaches described in the prior notices discussed in this section of the preamble: (1) For ongoing employees, an employer will be permitted to use measurement and stability periods of up to 12 months; (2) for new employees who are reasonably expected to be full-time employees, an employer that maintains a group health plan that meets certain requirements will not be subject to an assessable payment under section 4980H for failing to offer coverage to the employee for the initial three months of employment; and (3) for all employees, an employer will not be subject to an assessable payment under section 4980H(b) for failure to offer affordable coverage to an employee if the coverage offered to that employee was affordable based on the employee's Form W–2 wages and otherwise provided minimum value.

Notice 2012–58 also announced and provided similar reliance on a revised optional look-back measurement method for new employees with variable hours and new seasonal employees that more closely resembled the optional method for ongoing employees described in Notice 2011–36. The expanded method provides employers the option to use a measurement period of up to 12 months to determine whether new variable-hour employees or seasonal employees are full-time employees, without being subject to an assessable payment under section 4980H for this period with respect to those employees. Under this approach, a new employee is a variable hour employee if, based on the facts and circumstances at the employee's start date, it cannot be determined that the employee is reasonably expected to be employed on average at least 30 hours of service per week.

In addition, Notice 2012–58 proposed and provided similar reliance on an option for employers to use specified administrative periods (in conjunction with specified measurement periods) for ongoing employees and certain new employees, and facilitated a transition for new employees from the determination method the employer

chose to use for new employees to the determination method the employer chose to use for ongoing employees. Notice 2012–58 provided employers reliance for these options, through at least the end of 2014.

III. Minimum Essential Coverage, Minimum Value and Affordability

Under section 4980H, an applicable large employer member [2] may be subject to an assessable payment under section 4980H(a) if the employer fails to offer its full-time employees (and their dependents) the opportunity to enroll in MEC under an eligible employer-sponsored plan. Also, under section 4980H(b), an applicable large employer member may be subject to an assessable payment if its offer of MEC under an eligible employer-sponsored plan is unaffordable (within the meaning of section 36B(c)(2)(C)(i)) or does not provide minimum value (within the meaning of section 36B(c)(2)(C)(ii)). The determinations of MEC, minimum value and affordability are all determined by reference to other statutory provisions, but also all relate to the determination of liability under section 4980H, as described in this section of the preamble.

A. Minimum Essential Coverage—In General

MEC is defined in section 5000A(f). Section 5000A(f)(1)(B) provides that MEC includes coverage under an eligible employer-sponsored plan. Under section 5000A(f)(2), an eligible employer-sponsored plan is a group health plan or group health insurance coverage offered by an employer to an employee that is a governmental plan (within the meaning of section 2791(d)(8) of the Public Health Service Act (42 U.S.C. 300gg–91(d)(8))), any other plan or coverage offered in the small or large group market, or a grandfathered plan offered in the group market. Section 5000A(f)(3) provides that MEC does not include health insurance coverage which consists of coverage of excepted benefits described in section 2791(c)(1) of the Public Health Service Act, or sections 2971(c)(2), (3) or (4) of the Public Health Service Act if the benefits are provided under a separate policy, certificate, or contract of insurance. Future regulations under section 5000A are expected to provide further guidance on the definition of MEC and eligible employer-sponsored plans. These regulations under section 5000A are expected to provide that an employer-sponsored plan will not fail to be MEC solely because it is a plan to reimburse employees for medical care for which reimbursement is not provided under a policy of accident and health insurance (a self-insured plan).

B. Minimum Value—In General

If the coverage offered by an applicable large employer fails to provide minimum value, an employee may be eligible to receive a premium tax credit. Under section 36B(c)(2)(C)(ii), a plan fails to provide minimum value if the plan's share of the total allowed costs of benefits provided under the plan is less than 60 percent of those costs. Section 1302(d)(2)(C) of the Affordable Care Act sets forth the rules for calculating the percentage of total allowed costs of benefits provided under a group health plan or health insurance plan. Notice 2012–31 (2012–20 IRB 906) requested comments on potential approaches for determining minimum value.

On November 26, 2012, the Department of Health and Human Services (HHS) issued proposed regulations providing guidance on methodologies for determining minimum value (77 FR 70644). Those HHS proposed regulations provide that the percentage of the total allowed cost of benefits will be determined using one of the main methodologies described in those proposed regulations and Notice 2012–31. These methodologies include a minimum value calculator which will be made available by HHS and the IRS. The proposed regulations also provide that minimum value for employer-sponsored self-insured group health plans and insured large group health plans will be determined using a standard population that is based upon large self-insured group health plans. Also, as there is no requirement that employer-sponsored self-insured and insured large group health plans offer all categories of essential health benefits or conform to any of the essential health benefit benchmarks, the proposed regulations describe how to take account of a benefit that an employer offers that is outside the parameters of the minimum value calculator. The Treasury Department and the IRS intend to propose additional guidance under section 36B with respect to minimum value. All comments received in response to Notice 2012–31 are being considered in connection with the development of that guidance.

C. Affordability—In General

For purposes of eligibility for the premium tax credit, coverage for an employee under an employer-sponsored plan is affordable if the employee's required contribution (within the meaning of section 5000A(e)(1)(B)) for self-only coverage [3] does not exceed 9.5 percent of the employee's household income for the taxable year. See section 36B(c)(2)(C)(i) and § 1.36B–1(e). Household income for purposes of section 36B is defined as the modified adjusted gross income of the employee and any members of the employee's family (including a spouse and dependents) who are required to file an income tax return. Section 36B(d)(2)(A). Modified adjusted gross income means adjusted gross income (within the meaning of section 62) increased by (1) amounts excluded from gross income under section 911, (2) the amount of any tax-exempt interest a taxpayer receives or accrues during the taxable year, and (3) an amount equal to the portion of the taxpayer's social security benefits (as defined in section 86(d)) which is not included in gross income under section 86 for the taxable year. See section 36B(d)(2)(B) and § 1.36B–1(e)(2).

Explanation of Provisions

The proposed regulations generally incorporate the provisions of Notice 2012–58, as well as many of the provisions of Notices 2011–36, 2011–73, and 2012–17, with some modifications in response to comments. The regulations also propose guidance on additional issues. Employers will be permitted to rely on these proposed regulations to the extent described in the section X of this preamble.

The proposed regulations are organized as follows: definitions (proposed § 54.4980H–1), rules for determining status as an applicable large employer and applicable large employer member (proposed § 54.4980H–2), rules for determining full-time employees (proposed § 54.4980H–3), rules for determining assessable payments under section 4980H(a) (proposed § 54.4980H–4), rules for determining whether an employer is subject to assessable payments under section 4980H(b) (proposed § 54.4980H–5), and rules relating to the administration and assessment of assessable payments under section 4980H (proposed § 54.4980H–6).

[2] For explanation of applicable large employer and applicable large employer member, see section I.A.2. and section III.A. of the preamble. If the applicable large employer consists of only one entity, rather than a controlled group of entities, then the applicable large employer member is the applicable large employer.

[3] TD 9590 (77 FR 30377) reserved the rules under section 36B on determining affordability of coverage under an eligible employer-sponsored plan for individuals eligible for coverage because of a relationship to an employee.

I. Determination of Applicable Large Employer Status

A. Identification of Employer and Employees

1. In General

Only applicable large employers may be liable for an assessable payment under section 4980H. Section 4980H(c)(2) defines an applicable large employer with respect to a calendar year as an employer that employed an average of at least 50 full-time employees (taking into account FTEs) on business days during the preceding calendar year. The proposed regulations adopt the position outlined in Notice 2011–36 under which an employee is an individual who is an employee under the common law standard, and an employer is the person that is the employer of an employee under the common law standard. Under the common law standard, an employment relationship exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. Under the common law standard, an employment relationship exists if an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so. See §§ 31.3121(d)–1(c), 31.3231(b)–1(a)(2), 31.3306(i)–1(b), and 31.3401(c)–1(b).

Several commenters responding to Notice 2011–36 asked that the definition of employer in the Fair Labor Standards Act be used instead of the common law employer. However, the term employer, as generally used in the Code, refers to the common law employer. Further, use of the common law standard is consistent with the definition of employer generally applied in Title I of the Affordable Care Act (which includes section 4980H). Specifically, section 1551 of the Affordable Care Act provides that ''unless specifically provided otherwise, the definitions contained in section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91) shall apply with respect to this title.'' Section 2791 of the Public Health Service Act provides that the term employer has the meaning given that term in section 3(5) of the Employee Retirement Income Security Act (ERISA) (29 U.S.C. 1002(5)), that is, the common law employer. For these reasons, the proposed regulations do not adopt this comment and instead use the common law standard for determining an employee's employer.

As noted in Notice 2011–36, section 414(n), which treats leased employees (as defined in section 414(n)(2)) as employees of the service recipient for various purposes, does not cross-reference section 4980H (and is not cross-referenced by section 4980H) and accordingly does not apply for section 4980H purposes. In addition, for purposes of section 4980H, a sole proprietor, a partner in a partnership, or a 2-percent S corporation shareholder is not an employee; but an individual who provides services as both an employee and a non-employee (such as an individual serving as both an employee and a director) is an employee with respect to his or her hours of service as an employee.

The identification of full-time employees for purposes of determining status as an applicable large employer under section 4980H is, by statute, performed on a look-back basis using data from the prior year, taking into account the hours of service of all employees employed in the prior year (full-time employees and non-full-time employees). Therefore, the look-back measurement method that may be used to identify full-time employees for purposes of determining potential section 4980H(a) or (b) liability does not apply for purposes of determining status as an applicable large employer. Instead, the determination of whether an employer is an applicable large employer for a year is based upon the actual hours of service of employees in the prior year. But see section IX.E. of this preamble for transition relief allowing use of a shorter look-back period in 2013 for purposes of determining applicable large employer status for 2014.

2. Application of Aggregation Rules

For purposes of counting the number of full-time and full-time equivalent employees for determining whether an employer is an applicable large employer, section 4980H(c)(2)(C)(i) provides that all entities treated as a single employer under section 414(b), (c), (m), or (o) are treated as a single employer for purposes of section 4980H. Thus, all employees of a controlled group under section 414(b) or (c), or an affiliated service group under section 414(m), are taken into account in determining whether the members of the controlled group or affiliated service group together constitute an applicable large employer.

Section 4980H applies to all common law employers, including an employer that is a government entity (such as Federal, State, local or Indian tribal government entities) and an employer that is an organization described in section 501(c) that is exempt from Federal income tax under section 501(a). The proposed regulations reserve on the application of the section 414(b), (c), (m), and (o) aggregation rules in section 4980H(c)(2)(C)(i) to government entities and churches, or a convention or association of churches (as defined in § 1.170A–9(b)). Until further guidance is issued, government entities, churches, and a convention or association of churches may rely on a reasonable, good faith interpretation of section 414(b), (c), (m), and (o) in determining whether a person or group of persons is an applicable large employer.

Several commenters asked for clarification of whether the aggregation rules used in determining applicable large employer status also applied for purposes of determining liability for, and the amount of, an assessable payment. The proposed regulations clarify that for a calendar year during which an employer is an applicable large employer, the section 4980H standards generally are applied separately to each person that is a member of the controlled group comprising the employer (with each such person referred to as an applicable large employer member) in determining liability for, and the amount of, any assessable payment. For example, if an applicable large employer is comprised of a parent corporation and 10 wholly owned subsidiary corporations, each of the 11 corporations, regardless of the number of employees, is an applicable large employer member. For a discussion of the related information reporting requirements for applicable large employer members under section 6056, see section VII of this preamble.

3. Foreign Employers and Foreign Employees

Some commenters on Notice 2011–36 requested guidance on whether foreign employees working for foreign entities are excluded in determining status as an applicable large employer, and in determining any potential liability under section 4980H. For example, commenters asked whether a large foreign corporation with a small U.S. presence (under 50 employees) would be subject to section 4980H. These proposed regulations generally address these issues through the definition of hours of service, discussed in section II.B.2. of this preamble.

4. Successor Employers

Section 4980H(c)(2)(C)(iii) provides that, for purposes of determining applicable large employer status, an employer includes a predecessor employer. The regulations reserve, and therefore do not address, the specific rules for identifying a predecessor employer (or the corresponding successor employer). Rules for identifying successor employers have been developed in the employment tax context for determining when wages paid by a predecessor may be attributed to a successor employer (see § 31.3121(a)(1)–1(b)). The Treasury Department and the IRS anticipate that rules similar to this provision may form the basis for the rule on identifying a predecessor or successor employer for purposes of the section 4980H applicable large employer determination, and invite comments on whether these employment tax rules are appropriate and whether any modifications of the rules may be necessary. Until further guidance is issued, taxpayers may rely upon a reasonable, good faith interpretation of the statutory provision on predecessor (and successor) employers for purposes of the applicable large employer determination.

For purposes of assessment and collection, and not for purposes of the applicable large employer determination, State law may provide for liability of a successor employer for a section 4980H assessable payment which has been, or could have been, imposed on a predecessor employer. In that case, the liability could be assessed, paid, and collected from the successor employer in accordance with section 6901.

5. New Employers

Section 4980H(c)(2)(C)(ii) and these proposed regulations provide that an employer not in existence during an entire preceding calendar year is an applicable large employer for the current calendar year if it is reasonably expected to employ an average of at least 50 full-time employees (taking into account FTEs) on business days during the current calendar year. One commenter suggested that a new employer be exempted from any potential assessable payment under section 4980H, or alternatively, that the standard should be a minimum period of operations in the preceding calendar year. The proposed regulations do not adopt this suggestion because it is inconsistent with the statutory provision addressing new employers in section 4980H(c)(2)(C)(ii). However, comments are requested on whether the final regulations should adopt any safe harbors or presumptions to assist a new employer in determining whether it is an applicable large employer.

6. Seasonal Workers

Section 4980H(c)(2)(B)(ii) provides that if an employer's workforce exceeds 50 full-time employees for 120 days or fewer during a calendar year, and the employees in excess of 50 who were employed during that period of no more than 120 days were seasonal workers, the employer is not an applicable large employer. Notice 2011–36 provided that, for this purpose only, four calendar months would be treated as the equivalent of 120 days. In response to comments, and consistent with Notice 2011–36, these proposed regulations provide that, solely for purposes of the seasonal worker exception in determining whether an employer is an applicable large employer, an employer may apply either a period of four calendar months (whether or not consecutive) or a period of 120 days (whether or not consecutive). Because the 120-day period referred to in section 4980H(c)(2)(B)(ii) is not part of the definition of the term seasonal worker, an employee would not necessarily be precluded from being treated as a seasonal worker merely because the employee works, for example, on a seasonal basis for five consecutive months. In addition, the 120-day period referred to in section 4980H(c)(2)(B)(ii) is relevant only for applying the seasonal worker exception for determining status as an applicable large employer, and is not relevant for determining whether an employee is a seasonal employee for purposes of the look-back measurement method (meaning that an employee who provides services for more than 120 days per year may nonetheless qualify as a seasonal employee). See section II.C.2. of this preamble for a discussion of the application of the look-back measurement method to seasonal employees.

For purposes of the definition of an applicable large employer, section 4980H(c)(2)(B)(ii) defines a seasonal worker as a worker who performs labor or services on a seasonal basis, as defined by the Secretary of Labor, including (but not limited to) workers covered by 29 CFR 500.20(s)(1) and retail workers employed exclusively during holiday seasons. This definition of seasonal worker is incorporated in these proposed regulations. The Department of Labor (DOL) regulations at 29 CFR 500.20(s)(1) to which section 4980H(c)(2)(B)(ii) refers, and that interpret the Migrant and Seasonal Agricultural Workers Protection Act, provide that ''[l]abor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. A worker who moves from one seasonal activity to another, while employed in agriculture or performing agricultural labor, is employed on a seasonal basis even though he may continue to be employed during a major portion of the year.''

After consultation with the DOL, the Treasury Department and the IRS have determined that the term seasonal worker, as incorporated in section 4980H, is not limited to agricultural or retail workers. Until further guidance is issued, employers may apply a reasonable, good faith interpretation of the statutory definition of seasonal worker, including a reasonable good faith interpretation of the standard set forth under the DOL regulations at 29 CFR 500.20(s)(1) and quoted in this paragraph, applied by analogy to workers and employment positions not otherwise covered under those DOL regulations.

Several commenters suggested that seasonal workers not be counted in determining whether an employer is an applicable large employer. However, because section 4980H(c)(2) requires the inclusion of seasonal workers in the applicable large employer determination (and then excludes them only if certain conditions are satisfied), this suggestion is not adopted.

7. Full-Time Equivalent Employees

Solely for purposes of determining whether an employer is an applicable large employer for the current calendar year, section 4980H(c)(2)(E) provides that the employer must calculate the number of full-time equivalent employees (FTEs) it employed during the preceding calendar year and count each FTE as one full-time employee for that year. The proposed regulations apply this provision using the calculation method for FTEs that was included in Notice 2011–36. Under that method, all employees (including seasonal workers) who were not full-time employees for any month in the preceding calendar year are included in calculating the employer's FTEs for that month by (1) calculating the aggregate number of hours of service (but not more than 120 hours of service for any employee) for all employees who were not employed on average at least 30 hours of service per week for that

month, and (2) dividing the total hours of service in step (1) by 120. This is the number of FTEs for the calendar month.

In determining the number of FTEs for each calendar month, fractions are taken into account. For example, if for a calendar month employees who were not employed on average at least 30 hours of service per week have 1,260 hours of service in the aggregate, there would be 10.5 FTEs for that month. However, after adding the 12 monthly full-time employee and FTE totals, and dividing by 12, all fractions would be disregarded. For example, 49.9 full-time employees (including FTEs) for the preceding calendar year would be rounded down to 49 full-time employees (and thus the employer would not be an applicable large employer in the current calendar year).

Some commenters suggested that the definition of FTE in section 45R be used, that equivalencies be used, or that employees not averaging at least 30 hours of service per week be counted at fractions of their hours of service. Because section 4980H(c)(2)(E) prescribes specific definitions and steps in computing FTEs, these suggestions have not been adopted.

II. Identifying Full-Time Employees for Section 4980H Purposes

A. General Rule

Section 4980H(c)(4) provides that, for purposes of section 4980H, a full-time employee is an employee who was employed on average at least 30 hours of service per week. One commenter suggested that the proposed regulations use the term ''hours of service'' instead of, for example, ''hours worked'' (a term sometimes used in Notice 2012–58), noting that ''hours of service'' is the statutory term and includes not only hours when work is performed but also hours for which an employee is paid or entitled to payment even when no work is performed. This suggestion has been adopted. In addition, various commenters responding to Notice 2011–36 suggested that, for purposes of section 4980H, the term ''full-time employee'' should be defined by reference to a higher threshold, for example 32, 35, or 40 hours of service per week. Because section 4980H(c)(4)(A) defines a full-time employee as an employee employed on average at least 30 hours of service per week, these suggestions have not been adopted.

Pursuant to the approach initially described in Notice 2011–36, these proposed regulations would treat 130 hours of service in a calendar month as the monthly equivalent of 30 hours of service per week ($(52 \times 30) \div 12 = 130$). This monthly standard takes into account that the average month consists of more than four weeks. Some commenters argued that the 130 hour monthly standard is not an appropriate proxy for 30 hours per week during certain shorter calendar months. However, the 130 hour monthly standard may also be lower than an average of 30 hours per week during other longer months of the calendar year (for example, the seven calendar months that consist of 31 days) and, therefore, any effect of this approximation will balance out over the calendar year (for example, over a 12-month measurement period, over two successive six-month measurement periods, or over four successive three-month measurement periods). Accordingly, in the interest of administrative simplicity, the proposed regulations retain the 130-hour standard as a monthly equivalent of 30 hours per week.

Several commenters suggested that rather than calculating hours of service on a monthly basis, employers be permitted to determine hours of service on a payroll period basis using successive payroll periods as approximations of calendar months. This approach would be problematic, however, because payroll periods generally are not evenly divisible by the twelve calendar months. For example, treating two successive standard two-week payroll periods as equivalent to a calendar month generally would leave two payroll periods per year unassigned, requiring the arbitrary assignment of those two extra payroll periods to two calendar months.

The Treasury Department and the IRS anticipate that a significant majority of employers will use some form of the optional look-back measurement method described in these proposed regulations to identify full-time employees. Because the measurement periods must extend for at least three months, and may extend for as many as twelve months, the use of payroll periods to approximate months generally will not be necessary. However, for those using payroll periods, an adjustment may be needed at the beginning and end of the measurement period. The proposed regulations address this by permitting adjustments for cases in which the measurement period begins or ends in the middle of a payroll period. See section II.C.1. of this preamble.

B. Hours of Service Rules

1. In General

Hours of service are used in determining whether an employee is a full-time employee for purposes of section 4980H, and in calculating an employer's FTEs. Section 4980H(c)(4)(B) provides that the ''Secretary, in consultation with the Secretary of Labor, shall prescribe regulations, rules, and guidance as may be necessary to determine the hours of service of an employee'', including for employees who are not compensated on an hourly basis. Notice 2011–36 suggested rules for determining hours of service for purposes of section 4980H. As required by section 4980H(c)(4)(B), the Treasury Department and the IRS consulted with the DOL about the definition of hours of service in developing the rules described in Notice 2011–36 and these proposed regulations. Consistent with existing DOL regulations and other guidance under the Affordable Care Act (for example, Notice 2010–44 (2010–22 IRB 717)), and with Notice 2011–36, the proposed regulations provide that an employee's hours of service include the following: (1) Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer; and (2) each hour for which an employee is paid, or entitled to payment by the employer on account of a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence (29 CFR 2530.200b–2(a)).

Several comments requested that the definition of hours of service exclude all hours of service for paid leave. The proposed regulations do not adopt these suggestions because they are not consistent with the DOL regulations or the general concept of when employees are credited with hours of service. Notice 2011–36 described a potential rule providing that, for any single continuous period during which the employee was paid or entitled to payment but performed no duties, no more than 160 hours of service would be counted as hours of service. A number of commenters on Notice 2011–36 requested that the 160-hour limit be removed because they viewed it as restrictive, and expressed concern about the potential negative impact on employees who are on longer paid leaves, such as maternity or paternity leave. In response, these proposed regulations remove the 160-hour limit on paid leave, so that all periods of paid leave must be taken into account.

For purposes of calculating an employee's average hours of service under the look-back measurement method, the proposed regulations would limit the number of hours that an employer that is an educational organization is required to take into account in a calendar year with respect to most periods of absence with zero hours of service (as described in section II.C.4 of this preamble). The limit is 501 hours based on a longstanding 501-hour limit that applies in a different but related context under the service crediting rules applicable to retirement plans which are familiar to and administered by many employers.

For purposes of calculating an employee's hours of service, the proposed regulations provide rules for hourly employees and non-hourly employees, generally consistent with the approach outlined in Notice 2011–36. For employees paid on an hourly basis, employers must calculate actual hours of service from records of hours worked and hours for which payment is made or due for vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. For employees not paid on an hourly basis, employers are permitted to calculate the number of hours of service under any of the following three methods: (1) Counting actual hours of service (as in the case of employees paid on an hourly basis) from records of hours worked and hours for which payment is made or due for vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence; (2) using a days-worked equivalency method whereby the employee is credited with eight hours of service for each day for which the employee would be required to be credited with at least one hour of service under these service crediting rules; or (3) using a weeks-worked equivalency of 40 hours of service per week for each week for which the employee would be required to be credited with at least one hour of service under these service crediting rules. These equivalents are based on DOL regulations (29 CFR 2530.200b–2(a)), modified as described in this preamble and in the proposed regulations.

Although an employer must use one of these three methods for counting hours of service for all non-hourly employees, under these proposed regulations, an employer need not use the same method for all non-hourly employees. Rather, an employer may apply different methods for different classifications of non-hourly employees, so long as the classifications are reasonable and consistently applied. In addition, an employer may change the method of calculating non-hourly employees' hours of service for each calendar year. For example, for all non-hourly employees, an employer may use the actual hours worked method for the calendar year 2014, but may use the days-worked equivalency method for counting hours of service for the calendar year 2015.

However, consistent with Notice 2011–36, these proposed regulations prohibit use of the days-worked or weeks-worked equivalency method if the result would be to substantially understate an employee's hours of service in a manner that would cause that employee not to be treated as a full-time employee. For example, an employer may not use a days-worked equivalency in the case of an employee who generally works three 10-hour days per week, because the equivalency would substantially understate the employee's hours of service as 24 hours of service per week, which would result in the employee being treated as not a full-time employee. Rather, the number of hours of service calculated using the days-worked or weeks-worked equivalency method must reflect generally the hours actually worked and the hours for which payment is made or due.

For purposes of identifying the employee as a full-time employee, all hours of service performed for all entities treated as a single employer under section 414(b), (c), (m), or (o) must be taken into account.

2. Services Performed Outside of the United States

The proposed regulations provide that hours of service do not include hours of service to the extent the compensation for those hours of service constitutes foreign source income, consistent with the rules of Federal taxation for determining whether compensation for services is attributable to services performed within or outside the United States. Thus, hours of service generally do not include hours of service worked outside the United States. This rule applies without regard to the residency or citizenship status of the individual. Therefore, employees working overseas generally will not have hours of service, and will not qualify as full-time employees either for purposes of determining an employer's status as an applicable large employer or for purposes of determining and calculating any potential liability under section 4980H. However, all hours of service for which an individual receives U.S. source income are hours of service for purposes of section 4980H.

3. Teachers and Other Employees of Educational Organizations

Several comments were submitted on behalf of teachers and other employees of schools, colleges, universities, and other educational organizations in response to the look-back measurement method. The comments noted that educational organizations present a special situation compared to other workplaces because they typically function on the basis of an academic year, which involves various extended periods in which the organization is not in session or is engaged in only limited classroom activities. Because the services of many of the employees of these educational organizations follow the academic year, many of the employees, while typically employed for at least 30 hours of service per week during the active portions of the academic year, are precluded from working (or from working normal hours) during periods when the organization is entirely or largely closed. The commenters were concerned that use of a 12-month measurement period for employees who provide services only during the active portions of the academic year could inappropriately result in these employees not being treated as full-time employees. The concern is that employees' average hours of service for the 12-month measurement period would be distorted (and employees therefore would be inappropriately treated as not full-time employees) by averaging in the periods during or outside of the academic year (such as, typically, the summer months) during which teachers and other similarly situated employees of educational organizations may have no hours or only a few hours of required workplace attendance, because the institution is not in session or is engaged in only limited classroom activities. Traditional breaks in the academic or school year such as winter or spring breaks will often be periods of paid leave; in those cases employees will be required to be credited with hours of service under the general hours of service rules under the look-back measurement method. See section II.B.1 of this preamble.

These proposed regulations address these special issues presented by educational institutions by providing an averaging method for employment break periods that generally would result in an employee who works full-time during the active portions of the academic year being treated as a full-time employee for section 4980H. See

section II.C.4. of the preamble. Comments are invited on any remaining issues relating to teachers, other educational organization employees, or industries with comparable circumstances.

4. Employees Compensated on a Commission Basis, Adjunct Faculty, Transportation Employees and Analogous Employment Positions

One commenter expressed concern the hours of service framework underlying the measurement and stability periods did not reflect the wide variety of workplaces, schedules, and specific work patterns in different industries and sectors of the economy, and that, consequently, the look-back method could be misused to treat employees long considered full-time employees as not full-time employees. A number of commenters requested special rules for employees whose compensation is not based primarily on hours and employees whose active work hours may be subject to safety-related regulatory limits (for example, salespeople compensated on a commission basis or airline pilots whose flying hours are subject to limits). Generally, the commenters suggest determining whether such employees are full-time employees for purposes of section 4980H by using hourly standards that, for the relevant industries or occupations, would be equivalent to the 30-hour and 130-hour standards applicable to other employees. Thus, for example, some commenters noted that educational organizations generally do not track the full hours of service of adjunct faculty, but instead compensate adjunct faculty on the basis of credit hours taught. Some comments suggested that hours of service for adjunct faculty should be determined by crediting three hours of service per week for each course credit taught. Others explained that some educational organizations determine whether an adjunct faculty member will be treated as a full-time employee by comparing the number of course credit hours taught by the adjunct faculty member to the number of credit hours taught by typical non-adjunct faculty members working in the same or a similar discipline who are considered full-time employees. Commenters on behalf of airline pilots noted that the number of hours of service that a pilot is permitted to operate an aircraft is limited under Federal law. The commenters requested that the guidance provide lower hourly standards for pilots that would be treated as equivalent to the 30-hour per week or 130-hour per month standard, or alternatively establish a special rule treating pilots as full-time employees regardless of their hours of service.

The rules for counting hours of service and applying equivalents contained in the proposed regulations should assist in addressing some of the concerns raised in the comments. The Treasury Department and the IRS are continuing to consider, and invite further comment on, how best to determine the full-time status of employees in the circumstances described in the preceding paragraph and in other circumstances that may present similar difficulties in determining hours of service. Further guidance to address potentially common challenges arising in determining hours of service for certain categories of employees may be provided in the final regulations, or through Revenue Procedures, or other forms of subregulatory guidance.

Until further guidance is issued, employers of employees in positions described in the first paragraph of this section II.B.4. of this preamble (and in other positions that raise similar issues with respect to the crediting of hours of service) must use a reasonable method for crediting hours of service that is consistent with the purposes of section 4980H. A method of crediting hours would not be reasonable if it took into account only some of an employee's hours of service with the effect of recharacterizing, as non-fulltime, an employee in a position that traditionally involves more than 30 hours of service per week. For example, it would not be a reasonable method of crediting hours to fail to take into account travel time for a travelling salesperson compensated on a commission basis, or in the case of an instructor, such as an adjunct faculty member, to take into account only classroom or other instruction time and not other hours that are necessary to perform the employee's duties, such as class preparation time.

C. Look-Back Measurement Method for Determination of Full-Time Employees

As described in section III.A. of this preamble, the assessable payment under section 4980H(a) and section 4980H(b) is computed for each applicable large employer member. The potential section 4980H(a) liability of an applicable large employer member is determined by reference to the number of full-time employees employed by that member for a given calendar month, and its potential section 4980H(b) liability is determined by reference to the number of full-time employees of that member with respect to whom an applicable premium tax credit or cost-sharing reduction is allowed or paid for a given calendar month. Section 4980H(c)(4)(A) provides that ''[t]he term ''full-time employee'' means, with respect to any month, an employee who is employed on average at least 30 hours of service per week.'' As explained in Notice 2011–36 and subsequent notices, determining full-time employee status on a monthly basis may cause practical difficulties for employers, employees, and Affordable Insurance Exchanges (Exchanges). For employers, these difficulties include uncertainty and inability to predictably identify which employees are full-time employees to whom coverage must be provided to avoid a potential section 4980H liability. This problem is particularly acute if employees have varying hours or employment schedules (for example, employees whose hours vary from month to month). A month-by-month determination may also result in employees moving in and out of employer coverage (and potentially Exchange coverage) as frequently as monthly. This result would be undesirable from both the employee's and the employer's perspective, and would also create administrative challenges for the Exchanges.

To address these concerns, and to give employers flexible and workable options and greater predictability, Notice 2011–36, Notice 2012–17, and Notice 2012–58 outlined a potential optional look-back measurement method as an alternative to a month-by-month method of determining full-time employee status. See the discussion in the Background section of this preamble. The response to this look-back measurement method generally was favorable. Most commenters supported the general structure of the method, although, some expressed concern that the potential difficulties in identifying full-time employees were overstated, that the look-back measurement method might be manipulated by employers, and that there was a need to prescribe rules that would address special workplace situations to ensure that certain classes of employees would be treated as full-time employees even though their hours might not result in full-time employee treatment under the look-back measurement method described in Notice 2012–58. After considering all of the comments on the notices, the Treasury Department and the IRS have incorporated in the proposed regulations the optional look-back measurement method described and cross-referenced in Notice 2012–58,

with modifications as described in this preamble. See § 601.601(d)(2).

While the look-back measurement method prescribes minimum standards to facilitate the identification of full-time employees, employers always can treat more employees as eligible for coverage, or otherwise offer coverage more widely, than would be required to avoid an assessable payment under section 4980H, assuming they do so consistent with any other applicable law.

1. Look-Back Measurement Method for Ongoing Employees

The proposed regulations define an ongoing employee as, generally, an employee who has been employed by an employer for at least one standard measurement period. For ongoing employees, the proposed regulations, consistent with Notice 2012–58, provide that an applicable large employer member has the option to determine each ongoing employee's full-time status by looking back at a measurement period (a defined time period of not less than three but not more than 12 consecutive months, as chosen by the employer). The measurement period that the employer chooses to apply to ongoing employees is referred to as the standard measurement period. If the employer determines that an employee was employed on average at least 30 hours of service per week during the standard measurement period, then the employer treats the employee as a full-time employee during a subsequent stability period, regardless of the employee's number of hours of service during the stability period, so long as he or she remains an employee. The applicable large employer member, at its option, may also elect to add an administrative period between the measurement period and the stability period as part of this method.

For an employee whom the employer determines to be a full-time employee during the standard measurement period, the stability period would be a period that immediately followed the standard measurement period (and any applicable administrative period), the duration of which would be at least the greater of six consecutive calendar months or the length of the standard measurement period. If the employer determines that the employee did not work full-time during the standard measurement period, the employer would be permitted to treat the employee as not a full-time employee during the immediately following stability period (which may be no longer than the associated standard measurement period).

Generally, the standard measurement period and stability period selected by the applicable large employer member must be uniform for all employees; however, the applicable large employer member may apply different measurement periods, stability periods, and administrative periods for the following categories of employees: (1) Each group of collectively bargained employees covered by a separate collective bargaining agreement, (2) collectively bargained and non-collectively bargained employees, (3) salaried employees and hourly employees, and (4) employees whose primary places of employment are in different states. Notice 2012–58 had also included ''employees of different entities'' as a separate category of employees. However, because section 4980H generally is applied on an applicable large employer member-by-member basis, including the method of identifying full-time employees, there is no need for a distinct category for employees of different entities, as each such member is a separate entity. The applicable large employer member may change its standard measurement period and stability period for subsequent years, but generally may not change the standard measurement period or stability period once the standard measurement period has begun.

Comments have included requests that, in the interest of administrative convenience, the regulations permit employers to adjust the starting and ending dates of their three-to-twelve-month measurement periods in order to avoid splitting employees' regular payroll periods. The proposed regulations accommodate these requests to begin and end measurement periods with the beginning and ending of regular payroll periods if each of the payroll periods is one week, two weeks, or semi-monthly in duration. Pursuant to this accommodation, employers may make certain adjustments at the beginning and end of the measurement period. For example, an employer using the calendar year as a measurement period could exclude the entire payroll period that included January 1 (the beginning of the year) if it included the entire payroll period that included December 31 (the end of that same calendar year), or, alternatively, could exclude the entire payroll period that included December 31 if it included the entire payroll period that included January 1.

Because employers may need time between the end of the standard measurement period and the beginning of the associated stability period to determine which ongoing employees are eligible for coverage, and to notify and enroll employees, the proposed regulations, consistent with Notice 2012–58, allow an applicable large employer member the option of having an administrative period between the end of a measurement period and the start of a stability period. The administrative period may last up to 90 days. However, any administrative period between the standard measurement period and the stability period may neither reduce nor lengthen the measurement period or the stability period. Also, to prevent this administrative period from creating any potential gaps in coverage, it must overlap with the prior stability period, so that, for ongoing employees, during any such administrative period applicable following a standard measurement period, those employees who are enrolled in coverage because of their status as full-time employees based on a prior measurement period will continue to be covered.

2. New Employees

These proposed regulations also provide rules for determining the full-time employee status of new employees, including an optional look-back measurement method for certain new employees generally based upon the approach outlined in Notice 2012–58. The methods for new employees vary depending upon whether the new employees are reasonably expected to work full-time (and are not seasonal) or are variable hour employees or seasonal employees.

a. New Full-Time Employees

The proposed regulations provide that, for an employee who is reasonably expected at his or her start date to be employed on average 30 hours of service per week (and who is not a seasonal employee), an employer that sponsors a group health plan that offers coverage to the employee at or before the conclusion of the employee's initial three calendar months of employment will not be subject to an assessable payment under section 4980H by reason of its failure to offer coverage to the employee for up to the initial three calendar months of employment. This rule continues the approach outlined in Notice 2012–17 and Notice 2012–58.

Notice 2012–58 requested comments on whether the Treasury Department and the IRS should develop additional guidance for determining whether an employee is reasonably expected, as of the employee's start date, to be employed on average at least 30 hours of service per week or whether the employee is a variable hour employee.

The commenters suggested that the following factors could be used to determine whether an employee is reasonably expected to be employed on average at least 30 hours of service per week: (1) Whether the employee is replacing an employee who is a full-time employee; and (2) whether the hours of service of ongoing employees in the same or comparable positions actually vary. The Treasury Department and the IRS are continuing to consider whether such factors are appropriate or useful and welcome any additional comments on this issue.

b. Look-Back Measurement Method for New Variable Hour and Seasonal Employees

If an applicable large employer member uses the look-back measurement method for its ongoing employees, the employer may also use the optional method for new variable hour employees and for seasonal employees. The proposed regulations, consistent with Notice 2012–58, provide that a new employee is a variable hour employee if, based on the facts and circumstances at the start date, it cannot be determined that the employee is reasonably expected to be employed on average at least 30 hours per week. A new employee who is expected to be employed initially at least 30 hours per week may be a variable hour employee if, based on the facts and circumstances at the start date, the period of employment at more than 30 hours per week is reasonably expected to be of limited duration and it cannot be determined that the employee is reasonably expected to be employed on average at least 30 hours per week over the initial measurement period. Effective as of January 1, 2015, and except in the case of seasonal employees, the employer will be required to assume for this purpose that although the employee's hours of service might be expected to vary, the employee will continue to be employed by the employer for the entire initial measurement period; accordingly, the employer will not be permitted to take into account the likelihood that the employee's employment will terminate before the end of the initial measurement period. See section IX.G. of the preamble for transition relief for the effective date of the rule described in the immediately preceding sentence.

Notice 2012–58 provides that, through at least 2014, employers are permitted to use a reasonable, good faith interpretation of the term ''seasonal employee'' for purposes of this notice. Notice 2012–58 also requested comments on the definition of ''seasonal worker'' as set forth in section 4980H(c)(2)(B)(ii) for purposes of determining status as an applicable large employer. Specifically, the request for comments asked about the practicability of using different definitions for different purposes (such as for determining status as an applicable large employer versus determining the full-time employee status of a new employee); and whether other, existing legal definitions should be considered in defining a seasonal worker under section 4980H (such as the safe harbor for seasonal employees in the final sentence of § 1.105–11(c)(2)(iii)(C)).

The proposed regulations reserve the definition of seasonal employee, and provide that, as set forth in Notice 2012–58, employers are permitted, through 2014, to use a reasonable, good faith interpretation of the term seasonal employee for purposes of section 4980H. It is not a reasonable good faith interpretation of the term seasonal employee to treat an employee of an educational organization, who works during the active portions of the academic year, as a seasonal employee. The Treasury Department and the IRS contemplate that the final regulations may add to the definition of seasonal employee a specific time limit in the form of a defined period. For example, the limit specified in the current safe harbor for treatment as a seasonal employee under regulations for self-insured medical reimbursement plans (see final sentence of § 1.105–11(c)(2)(iii)(C)) could be adapted to the definition of seasonal employee in the final regulations by prescribing, in the interest of simplicity and clarity, a specific time limit of not more than six months. Comments are requested on this approach, including any necessary modifications for purposes of section 4980H and any alternative approaches that should be considered.

As provided in Notice 2012–58, in general, an employer may use both an initial measurement period of between three and 12 months (the same as allowed for ongoing employees) and an administrative period of up to 90 days for variable hour and seasonal employees. However, the initial measurement period and the administrative period combined may not extend beyond the last day of the first calendar month beginning on or after the one-year anniversary of the employee's start date (totaling, at most, 13 months and a fraction of a month).

If the employer complies with these requirements, no assessable payment under section 4980H will be due with respect to the variable hour or seasonal employee during the initial measurement period or the administrative period. Note that an employee or related individual is not considered eligible for minimum essential coverage under the employer's plan (and therefore may be eligible for a premium tax credit or cost-sharing reduction through an Exchange) during any period when coverage is not offered, including any measurement period or administrative period prior to when coverage takes effect, even if the employer is not subject to an assessable payment for this period.

During the initial measurement period, the employer measures the hours of service for the new employee or seasonal employee and determines whether the employee was employed an average of 30 hours of service per week or more during this period. The stability period for that employee must be the same length as the stability period for ongoing employees. As in the case of a standard measurement period, if an employee is determined to be a full-time employee during the initial measurement period, the stability period must be a period of at least six consecutive calendar months that is no shorter in duration than the initial measurement period and that begins immediately after the initial measurement period (and any associated administrative period).

If a new variable hour or seasonal employee is determined not to be a full-time employee during the initial measurement period, the employer is permitted to treat the employee as not a full-time employee during the stability period that follows the initial measurement period. This stability period must not be more than one month longer than the initial measurement period and, as explained herein, must not exceed the remainder of the standard measurement period (plus any associated administrative period) in which the initial measurement period ends. In these circumstances, allowing a stability period to exceed the initial measurement period by one month is intended to give additional flexibility to employers that wish to use a 12-month stability period for new variable hour and seasonal employees and an administrative period that exceeds one month. To that end, such an employer could use an 11-month initial measurement period (in lieu of the 12-month initial measurement period that would otherwise be required) and still comply with the general rule that the initial measurement period and administrative period combined may not extend beyond the last day of the

first calendar month beginning on or after the one-year anniversary of the employee's start date.

For purposes of applying the look-back measurement method, the proposed regulations provide that an employee's start date is the first date for which the employee would be required to be credited with at least one hour of service under the hours of service rules. See section II.B.1. of this preamble for a discussion of those rules. See also section II.C.4. of this preamble for a description of the proposed rules on when an employee who has experienced a period with no hours of service is treated as a newly rehired employee rather than as a continuing employee. As indicated, this rule applies solely for purposes of determining the employee's start date for determining hours of service under section 4980H, and not for determining the beginning of an employment relationship for any other purpose under the Code or other applicable law.

3. Change in Employment Status

The proposed regulations address the treatment of new variable or seasonal employees who have a change in employment status during the initial measurement period (for example, in the case of a new variable hour employee who is promoted during the initial measurement period to a position in which employees are reasonably expected to be employed on average 30 hours of service per week). The proposed regulations define a change in employment status as a material change in the position of employment or other employment status that, had the employee begun employment in the new position or status, would have resulted in the employee being reasonably expected to be employed on average at least 30 hours of service per week. The proposed regulations provide that a new variable hour or seasonal employee who has a change in employment status during an initial measurement period is treated as a full-time employee under section 4980H as of the first day of the fourth month following the change in employment status or, if earlier and the employee averages more than 30 hours of service per week during the initial measurement period, the first day of the first month following the end of the initial measurement period (including any optional administrative period applicable to the initial measurement period). The change in employment status rule only applies to new variable hour and seasonal employees. A change in employment status for an ongoing employee does not change the employee's status as a full-time employee or non full-time employee during the stability period.

4. Employees Rehired After Termination of Employment or Resuming Service After Other Absence

An employee might work for the same applicable large employer on and off during different periods. For example, an employee's employment could terminate but the employee could later be rehired by the same employer. Alternatively, even without a termination of employment, there might be a continuous period during which an employee is not credited with any hours of service under the hours of service rules described in these proposed regulations (for example, in the case of a period of unpaid leave of absence). When such an employee is rehired or returns from unpaid leave, this raises the issue of whether the employee may be treated as a new employee. A number of commenters requested clarification regarding how to treat rehired employees, in particular whether employees who are rehired during a measurement period are treated as new hires or whether their prior service must be taken into account in determining their status. In addition, several commenters expressed concern that employers might terminate an employee with an intent to later rehire that employee in order to delay offering health coverage to employees working full-time.

The proposed regulations include rules designed to prevent this type of period without credited hours of service from inappropriately restarting an employee's initial measurement period, or causing the employee to be subject to a new 90-day waiting period for new full-time employees. For example, a variable hour employee terminated near the end of his or her initial measurement period and then rehired shortly thereafter, if treated again as a new variable hour employee, could be left out of coverage for an entire new initial measurement period without resulting in 4980H liability.

Under the proposed regulations, if the period for which no hours of service is credited is at least 26 consecutive weeks, an employer may treat an employee who has an hour of service after that period, for purposes of determining the employee's status as a full-time employee, as having terminated employment and having been rehired as a new employee of the employer. The employer may also choose to apply a rule of parity for periods of less than 26 weeks. Under the rule of parity, an employee may be treated as having terminated employment and having been rehired as a new employee if the period with no credited hours of service (of less than 26 weeks) is at least four weeks long and is longer than the employee's period of employment immediately preceding that period with no credited hours of service (with the length of that previous period determined with application to that period of these rules governing employee rehires or other resumptions of service). For example, under the optional rule of parity if an employee works three weeks for an applicable large employer, terminates employment, and is rehired by that employer ten weeks after terminating employment, that rehired employee is treated as a new employee because the ten-week period with no credited hours of service is longer than the immediately preceding three-week period of employment.

Note that this rule applies solely for purposes of determining the full-time employee status for employers using the look-back measurement method and not for any other purpose under the Code or other applicable law (including for determining status as an applicable large employer and for applying the 90-day waiting period limitation under section 2708 of the Affordable Care Act).

For an employee who is treated as a continuing employee (as opposed to an employee who is treated as terminated and rehired), the measurement and stability period that would have applied to the employee had the employee not experienced the period of no credited hours of service would continue to apply upon the employee's resumption of service. For example, if the continuing employee returns during a stability period in which the employee is treated as a full-time employee, the employee is treated as a full-time employee upon return and through the end of that stability period. For this purpose, the proposed regulations provide that a continuing employee treated as a full-time employee will be treated as offered coverage upon resumption of services if the employee is offered coverage as of the first day that employee is credited with an hour of service, or, if later, as soon as administratively practicable.

The proposed regulations propose a method for averaging hours when applying the look-back measurement method to measurement periods that include special unpaid leave. This method applies only to an employee treated as a continuing employee upon the resumption of services, and not to an employee treated as terminated and rehired. For this purpose, special

unpaid leave refers to a period of unpaid leave subject to the Family and Medical Leave Act of 1993 (FMLA), Public Law 103–3, 20 U.S.C. 2601 *et seq.,* unpaid leave subject to the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Public Law 103–353, 38 U.S.C. 4301 *et seq.,* and unpaid leave on account of jury duty.

Under this proposed averaging method, the employer determines the average hours of service per week for the employee during the measurement period excluding special unpaid leave period and uses that average as the average for the entire measurement period. Alternatively, the employer may choose to treat employees as credited with hours of service for special unpaid leave at a rate equal to the average weekly rate at which the employee was credited with hours of service during the weeks in the measurement period that are not special unpaid leave.

Additional requirements apply to employment break periods for employees of an educational organization (meaning an organization described in § 1.170A–9(c)(1), whether or not described in section 501(c)(3) and exempt under section 501(a), and an educational organization owned, controlled, or operated by a government entity (as defined in § 54.4980H–1(a)(20)). For this purpose, an employment break period is a period of at least four consecutive weeks (disregarding special unpaid leave) during which an employee is not credited with an hour of service. As noted above, educational organizations are different than other workplaces because they typically function on the basis of an academic year, which involves various extended periods in which the organization is not in session or is engaged in only limited classroom activities. The proposed regulations provide that the educational organization must apply one of the methods in the preceding paragraph to employment break periods related to or arising out of non-working weeks or months under the academic calendar. Accordingly, the educational organization must either determine the average hours of service per week for the employee during the measurement period excluding the employment break period and use that average as the average for the entire measurement period, or treat employees as credited with hours of service for the employment break period at a rate equal to the average weekly rate at which the employee was credited with hours of service during the weeks in the measurement period that are not part of an employment break period. However, the educational organization is not required to credit an employee in any calendar year with more than 501 hours of service for any employment break period (although this 501-hour limit does not apply to, or take into account, hours of service required to be credited for special unpaid leave). The rules governing employment break period for educational organizations apply only to an employee treated as a continuing employee upon the resumption of services, and not to an employee treated as terminated and rehired.

The Treasury Department and the IRS are considering whether final regulations should extend the employment break period rules described in the preceding paragraph to all employers (not only educational organizations) and request comments. Any such extension of the rule would not take effect prior to 2015. Comments are invited in particular on how the proposed averaging methods should apply to employment break periods or other periods of absence, how the proposed approach would affect employees and employers, and whether the proposed treatment of employment break periods would be appropriate.

The proposed regulations also contain an anti-abuse rule to address practices that have the effect of circumventing or manipulating the application of the employee rehire rules.

5. New Short-Term Employees

Notice 2012–58 requested comments on the application of section 4980H to employees hired for short-term periods but expected to be employed on average 30 hours of service per week or more for the duration of the short-term employment. Section 4980H would not apply to full-time employees employed for three months or less because, if the applicable large employer member were otherwise offering coverage, the section 4980H assessable payment would not apply to a failure to offer coverage during that period. However, section 4980H issues may arise for short-term employment exceeding three months.

Some comments were received requesting special rules for determining the full-time employee status of short-term employees. The Treasury Department and the IRS have been concerned that the potential for abuse and manipulation of any special rules addressing short-term employees might outweigh the considerations of avoiding churning and inefficiency associated with offering coverage to employees whose employment is anticipated to last, for example, no more than four or five months. Commenters that wish to submit additional comments on whether any special rules would be appropriate with respect to short-term employees, and if so, whether there are any methods that could be used to determine the full-time status of these employees that are consistent with the provisions of section 4980H, are requested to take these concerns into account.

6. New Employees Hired Into High-Turnover Positions

Notice 2012–58 also requested comments on the application of section 4980H to new hires of full-time employees in high-turnover positions. An employer that otherwise offers coverage is not subject to a section 4980H assessable payment with respect to an employee whose employment terminates within three months of the employee's start date. However, some commenters raised concerns that employers with employees working full-time in typically high-turnover positions who, because of the high turnover, have a high probability of not being employed for the entire measurement period (for example, employees, a significant portion of whom are expected to remain employed for more than three months, but not more than six months) will be required to offer coverage for only a relatively brief period of time for a significant portion of the high-turnover employees.

The proposed regulations do not contain special rules for high-turnover positions for several reasons. As noted by comments in response to Notice 2012–58, ''high-turnover'' is a category that would require a complex definition (for example, how to define classes of employees and how much turnover of employment would be required over what period) and that could be subject to manipulation. In addition, any special treatment that is provided for employees hired into a high-turnover position could provide an incentive for employers to terminate employees to ensure that the position remains a high-turnover position under whatever standard was used to make that determination. Commenters who wish to provide additional comments on this issue are requested to address the concerns identified in this paragraph.

D. Temporary Staffing Agencies

1. Application of Rules to Temporary Staffing Agencies

The Treasury Department and the IRS recognize that the application of section 4980H may be particularly challenging for temporary staffing agencies because of the distinctive nature of their

employees' work schedules. In particular, several commenters discussed the challenges involved in applying the look-back measurement method to employees of temporary staffing agencies. It is anticipated that many new employees of temporary staffing agencies will be variable hour employees under the rules in these proposed regulations because, based on the facts and circumstances, their periods of employment at 30 or more hours per week are reasonably expected to be of limited duration with the potential for significant gaps between assignments, and there is often considerable uncertainty as to the likelihood and duration of assignments and as to whether an individual will accept any given assignment and will continue in it. For instance, as illustrated in Example 12 in § 54.4980H–3(c)(5) of the proposed regulations, if an individual hired by a temporary staffing agency as its common law employee can be expected to be offered one or more assignments with different clients each generally lasting no more than two or three months, and if the agency can expect the clients to have different requests with respect to hours of service (some above and some below 30 hours of service per week) and for there to be gaps of time between assignments during which the employee is not requested to provide services, then the employee generally would be a variable hour employee. For these and other reasons, it often cannot be determined that the employees are reasonably expected to be employed on average at least 30 hours per week over the initial measurement period.

Some commenters have suggested that, in view of the structure of the employment relationship, employees of temporary staffing agencies should be deemed to be variable hour employees, or at least that a presumption of status as a variable hour employee be established in the regulations. While, as noted, the Treasury Department and the IRS agree that many employees of temporary staffing agencies will likely be variable hour employees, we do not anticipate that all employees of a temporary staffing agency are inherently variable hour employees (especially employees on longer-term assignments with predictable requests for hours of service, as may be the case, for example, with particularly high-skilled technical or professional workers). In addition, the Treasury Department and the IRS are concerned that such a conclusion or presumption could lead employers to purport to use temporary staffing agencies (or other staffing agencies that may attempt to fit within such a presumption) in situations in which the employer ''client'' is the individual's common law employer and the staffing agency is inserted solely in an attempt to avoid application of section 4980H.

For these reasons, comments are invited on whether and, if so, how a special safe harbor or presumption should or could be developed with respect to the variable hour employee classification of the common law employees of temporary staffing agencies that would contain restrictions or safeguards intended to address these concerns while still providing useful guidance for employers and employees in this industry. More generally, further comments are invited on whether special rules for identifying full-time employees or any other issues relating to section 4980H may be necessary in the case of temporary staffing agencies, especially in light of the employment break period rules proposed in these regulations.

For purposes of this discussion, a temporary staffing agency refers only to an entity that is the common law employer of the individual that is providing services to a client of the temporary staffing agency. For an illustration of the facts and circumstances under which a temporary staffing agency (rather than its client) is the individual's common law employer, see Rev. Rul. 70–630 (1970–2 CB 229). In considering any requests for special consideration for temporary staffing agencies or other staffing agencies, the Treasury Department and the IRS will take into account the factual nature of the common law analysis in determining who is the common law employer of the workers providing the services and the potential implications for other Code sections, including employment tax liability provisions, for which the determination of common law employer status is necessary. See § 601.601(d)(2).

2. Separation From Service and Employment Break Period Rules

Commenters have also noted that, because of the intermittent nature of temporary staffing agency assignments, including employees' ability to accept or decline such assignments and the fact that some individuals are on multiple temporary staffing agencies' lists of potential workers, a temporary staffing agency may not be able in all cases to readily determine the date on which the individual separated from service as an employee of the agency. For instance, an individual may remain on an agency's list of potential workers even after the individual has decided (without necessarily informing the agency) not to take any further assignments from that agency. The Treasury Department and the IRS request comments on particular situations involving temporary staffing agencies that these proposed rules fail to address and on whether special consideration may be needed.

3. Anti-Abuse Rules

The Treasury Department and the IRS are aware of various structures being considered under which employers might use temporary staffing agencies (or other staffing agencies) purporting to be the common law employer to evade application of section 4980H. In one structure, the employer (referred to in this section as the ''client'') would purport to employ its employees for only part of a week, such as 20 hours, and then to hire those same individuals through a temporary staffing agency (or other staffing agency) for the remaining hours of the week, thereby resulting in neither the ''client'' employer nor the temporary staffing agency or other staffing agency appearing to employ the individual as a full-time employee. In another structure, one temporary staffing agency (or other staffing agency) would purport to employ an individual and supply the individual as a worker to a client for only part of a week, such as 20 hours, while a second temporary staffing agency or other staffing agency would purport to employ the same individual and supply that individual as a worker to the same client for the remainder of the week, thereby resulting in neither the temporary staffing agencies or the other staffing agencies, nor the client, appearing to employ the individual as a full-time employee. The Treasury Department and the IRS anticipate that only in rare circumstances, if ever, would the ''client'' under these fact patterns not employ the individual under the common law standard as a full-time employee. Rather, the Treasury Department and the IRS believe that the primary purpose of using such an arrangement would be to avoid the application of section 4980H.

It is anticipated that the final regulations will contain an anti-abuse rule to address the situations described in this section of the preamble. Under that anticipated rule, if an individual performs services as an employee of an employer, and also performs the same or similar services for that employer in the individual's purported employment at a temporary staffing agency or other staffing agency of which the employer is a client, then all the hours of service are attributed to the employer for purposes

of applying section 4980H. Similarly, to the extent an individual performs the same or similar services for the same client of two or more temporary staffing agencies or other staffing agencies, it is anticipated that all hours of service for that client are attributed to the client, if the client is the common law employer, or, if not, one of the temporary staffing agencies (or other staffing agencies) that purports to employ the individual with respect to services performed for that client.

III. Compliance With Section 4980H—In General

A. No Aggregation in Determining Liability of an Applicable Large Employer Member

The proposed regulations address the application of section 4980H to an applicable large employer member. As noted in section I.A.2. of this preamble, under section 4980H(c)(2), the determination of applicable large employer status is made on a controlled group basis applying the aggregation rules under section 414(b), (c), (m), and (o). Section 4980H(c)(2)(D) provides that, in calculating the liability under section 4980H(a), the applicable large employer, as determined applying these same aggregation rules, is permitted one reduction of 30 full-time employees, and that the reduction must be allocated ratably among the members of the applicable large employer based on each member's number of full-time employees.

The proposed regulations provide that, although applicable large employer status and the 30-employee reduction is determined on an aggregated basis, the determination of whether an employer is subject to an assessable payment and the amount of any such payment is determined on a member-by-member basis. Therefore, the liability for, and the amount of, any assessable payment under section 4980H is computed and assessed separately for each applicable large employer member, taking into account that member's offer of coverage (or lack thereof) and based on that member's number of full-time employees. For example, if a parent corporation owns 100 percent of all classes of stock of 20 subsidiary corporations, and the controlled group is an applicable large employer, each of the 21 members of this controlled group (the parent corporation plus 20 subsidiary corporations) is considered separately in computing and assessing a section 4980H payment. In addition, each of the 21 group members is liable only for its separate section 4980H assessable payment.

B. Certification of Payment of Subsidy

Under section 4980H, an applicable large employer member is subject to an assessable payment if at least one full-time employee of that member has been certified to the member under section 1411 of the Affordable Care Act as having enrolled in a qualified health plan with respect to which a premium tax credit is allowed or paid. Section 1411(a) of the Affordable Care Act gives the Secretary of Health and Human Services the authority to determine whether individuals are eligible to enroll in qualified health plans through the Exchange and whether they are eligible for a premium tax credit. It is anticipated that, in upcoming regulations to be proposed under section 1411(a) of the Affordable Care Act, the Department of Health and Human Services (HHS) will establish a process under which employees who have enrolled for a month in a qualified health plan with respect to which an applicable premium tax credit or cost-sharing reduction is allowed or paid with respect to the employee will be certified to the employer and that, pursuant to the proposed regulations, the certification to the employer will consist of methods adopted by the IRS to provide this information to an employer as part of its determination of liability under section 4980H. Existing HHS regulations also provide for a separate process for notification of employers.

IV. Compliance With Section 4980H(a)

A. In General

Section 4980H(a) provides that an applicable large employer is liable for an assessable payment under section 4980H(a) if, for any month, any full-time employee is certified to receive an applicable premium tax credit (section 4980H(c)(3)) or cost-sharing reduction and the applicable large employer fails to offer its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage (MEC) (as defined in section 5000A(f)) under an eligible employer-sponsored plan. If an employer offers MEC under an eligible employer-sponsored plan to its full-time employees (and their dependents), it will not be subject to the penalty under section 4980H(a), regardless of whether the coverage it offers is affordable to the employees or provides minimum value. For any calendar month, an applicable large employer member may be liable for an assessable payment under section 4980H(a) or under section 4980H(b), but cannot be liable under both section 4980H(a) and section 4980H(b) for the same calendar month.

B. Offer of Coverage to the Employee and the Employee's Dependents

Under section 4980H(a), an applicable large employer member is subject to an assessable payment if the member fails to offer its full-time employees (and their dependents) the opportunity to enroll in MEC under an eligible employer-sponsored plan and any full-time employee receives a premium tax credit or cost-sharing reduction. Commenters have asked whether coverage must be offered to the employee's dependents, and if so, to which individuals the term ''dependents'' refers. Some commenters argued that an offer of dependent coverage is not required under section 4980H because the statutory reference to dependents is in parentheses, and others noted that the liability under section 4980H is triggered only by a full-time employee receiving a premium tax credit (regardless of whether any dependents are eligible for, or receive, a premium tax credit).

The fundamental rules of statutory construction provide that effect must be given, to the extent possible, to every word, clause and sentence. *See* 2A Sutherland Statutory Construction 46:6 (7th ed. 2007). Applying these principles to the words ''employees (and their dependents),'' the language cannot be construed to mean only employees. To accept the commenters' argument that the statute requires an offer of coverage only to full-time employees would require ignoring the words ''and their dependents'' in their entirety. Accordingly, the proposed regulations provide that the words ''and their dependents'' in section 4980H refer to an offer of coverage to dependents.

Section 4980H does not contain a statutory definition of the term dependents for purposes of the references to dependents in section 4980H(a) and (b). The proposed regulations define an employee's *dependents* for purposes of section 4980H as an employee's child (as defined in section 152(f)(1)) who is under 26 years of age. A child attains age 26 on the 26th anniversary of the date the child was born. For example, a child born on April 10, 1986 attained age 26 on April 10, 2012. Employers may rely on employees' representations concerning the identity and ages of the employees' children. The term *dependents,* as defined in these proposed regulations for purposes of section 4980H, does not include any individual other than children as

described in this paragraph of the preamble, including an employee's spouse. Thus, an offer of coverage to an employee's spouse is not required for purposes of section 4980H because section 4980H refers only to dependents (and not spouses). This definition of dependents applies only for purposes of section 4980H and does not apply for purposes of any other section of the Code. But see section IX.F. of the preamble for transition relief with respect to the requirement to offer coverage to dependents.

C. Offer of Coverage

1. In General

For an employee to be treated as having been offered coverage for a month (or any day in that month), the coverage offered, if accepted, must be applicable for that month (or that day). These regulations clarify that if an applicable large employer member fails to offer coverage to a full-time employee for any day of a calendar month during which the employee was employed by the employer, the employee is treated as not being offered coverage during that entire month. However, in a calendar month when a full-time employee terminates employment, if the employee would have been offered coverage for the entire month if the employee had been employed for the entire month, the employee is treated as having been offered coverage during that month.

Several commenters requested clarification of what an employer would be required to provide to adequately demonstrate that it had offered coverage to an employee. These regulations do not propose any new specific rules for demonstrating that an offer of coverage was made. The otherwise generally applicable substantiation and recordkeeping requirements in section 6001 would apply, including Rev. Proc. 98–25 (1998–1 CB 689), (see § 601.601(d)(2)(ii)(*b*) of this chapter). In addition, the provision of the offer generally could be made electronically. Section 1.401(a)–21 provides a safe harbor method for use of electronic media. See also Notice 99–1 (1999–1 CB 269).

However, these regulations provide that if an employee has not been offered an effective opportunity to accept coverage, the employee will not be treated as having been offered the coverage for purposes of section 4980H. The employee must also have an effective opportunity to decline an offer of coverage that is not minimum value coverage or that is not affordable. Thus, an employer may not render an employee ineligible for a premium tax credit by providing an employee with mandatory coverage (that is, coverage which the employee is not offered an effective opportunity to decline) that does not meet minimum value. For an analogous provision relating to the effective opportunity to participate (or refuse participation) in an employee benefit arrangement, see § 1.401(k)–1(e)(2)(ii).

2. Offer of Coverage in the Case of Nonpayment or Late Payment of Premiums

Some commenters noted that in certain instances the employee share of the premium is not collected through withholding from the employee's salary but instead is billed to the employee. This may arise, for example, with respect to tipped employees, and may apply with respect to employees who were full-time employees during a measurement period but who work very few hours during the corresponding stability period. These commenters stated that in some instances employees do not pay their share of the premium on a timely basis and requested guidance on whether the employer would still be required to continue to provide coverage to those employees to avoid potential liability under section 4980H. The proposed regulations provide that, if an employee enrolls in coverage but fails to pay the employee's share of the premium on a timely basis, the employer is not required to provide coverage for the period for which the premium is not timely paid, and that employer is treated as having offered that employee coverage for the remainder of the coverage period (typically the remainder of the plan year) for purposes of section 4980H. The regulations generally adopt the provisions applicable for purposes of payment for COBRA continuation coverage under Q&A–5 of § 54.4980B–8, which generally provides a 30-day grace period for payment and also provides rules with respect to timely payments that are not significantly less than the amount required to be paid and for responding to requests by health care providers for confirmation of coverage during the grace period.

D. Section 4980H(a) Relief for Failure To Offer Coverage to a Limited Number of Full-time Employees

Section 4980H(a) liability is predicated on an applicable large employer member failing to offer its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an employer-sponsored plan. If section 4980H(a) liability is triggered, the amount of the assessable payment is determined by reference to a member's total number of full-time employees (including full-time employees offered employer-sponsored coverage). The Treasury Department and the IRS contemplate that the assessable payment should not apply in the case of a member that intends to offer coverage to all its full-time employees, but fails to offer coverage with respect to a few full-time employees. Notice 2011–36 initially addressed this issue by indicating that the Treasury Department and the IRS were contemplating providing in the proposed regulations that an employer offering coverage to all, or substantially all, of its full-time employees would not be subject to a section 4980H(a) assessable payment. Commenters generally welcomed the prospect of some flexibility or margin in lieu of an absolute standard that the employer offer coverage to all full-time employees (and their dependents). Many comments supported a ''substantially all'' standard, but many requested that the regulations prescribe a more definitive rule, specifying a particular percentage of full-time employees and their dependents (with comments suggesting various percentages) who need not be offered coverage for this purpose.

After further study and consideration of the comments, the Treasury Department and the IRS believe that they should exercise their administrative authority to allow recognition of a margin of error consistent with an intent to recognize the possibility of inadvertent errors together with the specificity and administrability of a specific percentage, and therefore have concluded that a clear and definitive 95 percent standard would be an administrable and appropriate interpretation of the statutory provision. Accordingly, the proposed regulations provide that an applicable large employer member will be treated as offering coverage to its full-time employees (and their dependents) for a calendar month if, for that month, it offers coverage to all but five percent or, if greater, five of its full-time employees (provided that an employee is treated as having been offered coverage only if the employer also offered coverage to that employee's dependents). The alternative margin of five full-time employees (and their dependents), if greater than five percent of full-time employees (and their dependents), is designed to accommodate relatively small applicable large employer members because a failure to offer coverage to a

handful of full-time employees (and their dependents) might exceed five percent of the applicable large employer member's full-time employees. This relief applies to a failure to offer coverage to the specified number or percentage of employees (and their dependents), regardless of whether the failure to offer was inadvertent.

E. Application of the Section 4980H(c)(2)(D) 30-Employee Reduction

Section 4980H(c)(2)(D)(i) provides that the number of individuals employed by an applicable large employer as full-time employees during any month shall be reduced by 30 solely for purposes of calculating the assessable payment under section 4980H(a) and the overall limit on the liability under section 4980H(b)(2) for any calendar month (which is equal to the product of the applicable payment amount described in section 4980H(c)(1) and the number of individuals employed by the employer as full-time employees during that calendar month). Section 4980H(c)(2)(D)(ii) further provides that in the case of persons treated as a single applicable large employer under the aggregation rules, only one 30-employee reduction is allowed with respect to those persons and the reduction is allocated among them ratably on the basis of the number of full-time employees employed by each. If an applicable large employer has more than 30 applicable large employer members, with some or all of the applicable large employer members receiving a ratable allocation of more than zero but less than one full-time employee, the proposed regulations provide that the applicable large employer member's share of the 30-employee reduction will be rounded up to one full-time employee (which may result in an overall reduction to all members of the applicable large employer of more than 30 employees).

F. Section 4980H(a) Assessable Payment Amount

The assessable payment amount under section 4980H(a) equals, with respect to any calendar month, the number of full-time employees of the applicable large employer member (reduced by the allocable share of the 30-employee reduction) multiplied by the section 4980H(a) applicable payment amount. The initial section 4980H(a) applicable payment amount for a calendar month equals 1/12th of $2,000. For subsequent years, that amount is adjusted for inflation pursuant to section 4980H(c)(5) based upon the premium adjustment percentage (as defined in section 1302(c)(4) of the Affordable Care Act) for the calendar year, rounded down to the next lowest multiple of $10.

V. Section 4980H(b) Liability

A. In General

If an applicable large employer member offers its full-time employees (and their dependents) the opportunity to enroll in MEC under an eligible employer-sponsored plan but nonetheless one or more full-time employees have been certified for the payment of an applicable premium tax credit or cost-sharing reduction, the employer generally is liable for a section 4980H(b) penalty based on the number of its full-time employees receiving an applicable premium tax credit or cost-sharing reduction. This may occur because (1) the coverage under the plan is unaffordable within the meaning of section 36(B)(c)(2)(C)(i) for the employee (and the employer does not meet the requirements of any of the affordability safe harbors described in section V.B.2. of this preamble), (2) the coverage under the plan does not provide minimum value within the meaning of section 36(B)(c)(2)(C)(ii), or (3) the employer offers coverage to at least 95 percent (or, if greater, five) but less than 100 percent of its full-time employees (and to those employees' dependents) and one or more of those employees who are not offered coverage receive a premium tax credit or cost-sharing reduction. See section IV of the preamble; see also section 36B(c)(2)(C) and § 1.36B–2(c)(3). Regulations under section 36B were published on May 23, 2012 (77 FR 30377), as corrected on July 13, 2012 (77 FR 41270).

B. Affordable Coverage

1. In General

Generally, section 4980H(b) liability may arise because, with respect to a full-time employee who has been certified to the employer as having received an applicable premium tax credit or cost-sharing reduction, the employer's coverage is unaffordable within the meaning of section 36B(c)(2)(C)(i) or does not provide minimum value within the meaning of section 36B(c)(2)(C)(ii). Therefore, section 4980H(b) effectively creates an affordability test based on section 36B affordability. For purposes of eligibility for the premium tax credit, coverage for an employee under an employer-sponsored plan is affordable if the employee's required contribution (within the meaning of section 5000A(e)(1)(B)) for self-only coverage does not exceed 9.5 percent of the employee's household income for the taxable year. See sections 36B(c)(2)(C)(i) and 36B(d)(2), and section III.C. of the preamble.

As noted in of the Background section of the preamble, Notice 2011–73 (2011–40 IRB 474) outlined a proposed affordability safe harbor (referred to as the Form W–2 safe harbor) in connection with the assessable payment under section 4980H(b) and requested comments on other potential safe harbors. The comments with respect to the proposed safe harbor generally were favorable and some commenters outlined other potential safe harbors they argued could assist employers in their efforts to determine affordability of coverage for purposes of section 4980H. See also Notice 2012–58 regarding reliance on the Form W–2 safe harbor for 2014. In response to the comments, the proposed regulations provide for the Form W–2 safe harbor and two additional safe harbors for determining affordability, as described in section V.B.2. of the preamble.

2. Affordability Safe Harbors

The three section 4980H(b) affordability safe harbors, as described in this preamble and incorporated into the proposed regulations, would apply only for purposes of determining whether an employer's coverage satisfies the 9.5 percent affordability test for purposes of the assessable payment under section 4980H(b). The section 4980H(b) safe harbors do not apply for purposes of determining the assessable payment under section 4980H(a). The safe harbors also would not affect an employee's eligibility for a premium tax credit under section 36B, which would continue to be based on the cost of employer-sponsored coverage relative to an employee's household income. Accordingly, in some instances, the effect of the safe harbor could be to treat an employer's offer of coverage to an employee as affordable (based on Form W–2 wages or one of the other affordability safe harbor standards) for purposes of determining whether the employer is subject to an assessable payment under section 4980H(b), while that same offer of coverage could be treated as unaffordable (based on household income) for purposes of determining whether the employee is eligible for a premium tax credit under section 36B.

These safe harbors are all optional. An employer may choose to use one or more of these safe harbors for all its employees or for any reasonable category of employees, provided it does so on a uniform and consistent basis for all employees in a category.

a. Form W–2 Safe Harbor

The proposed regulations provide a safe harbor under which an employer could determine affordability for purposes of section 4980H(b) liability by reference to an employee's wages from that employer. Under this proposed regulation, wages for this purpose would be the total amount of wages as defined in section 3401(a), which is the amount required to be reported in Box 1 of Form W–2, Wage and Tax Statement (referred to in this preamble as Form W–2 wages).

For the proposed Form W–2 wages safe harbor to apply, an employer must meet certain requirements, including: (1) That the employer offers its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan; and (2) that the required employee contribution toward the self-only premium for the employer's lowest cost coverage that provides minimum value (the employee contribution) not exceed 9.5 percent of the employee's Form W–2 wages for that calendar year. For this purpose, an employer may count wages paid to its employees by a third party that are reported on a Form W–2 that reflects the third party's EIN, for example because the Form W–2 was filed by an agent designated under section 3504 of the Code, or because the third party paying the wages was treated as the employer for employment tax purposes under section 3401(d)(1). If the employer satisfies both of these requirements for a particular employee (as well as any other conditions for the safe harbor), the employer will not be subject to an assessable payment under section 4980H(b) with respect to that particular employee, even if that employee receives a premium tax credit or cost sharing reduction because the employee's actual household income was less than the Form W–2 wages and, based on that household income, the coverage offered was not affordable.

Application of this safe harbor is determined after the end of the calendar year and on an employee-by-employee basis, taking into account the employee's Form W–2 wages from the employer and the employee contribution. So, for example, the employer determines whether it met the Form W–2 safe harbor for 2014 for an employee by looking at that employee's 2014 Form W–2 wages (meaning the wages reported on the 2014 Form W–2 that generally is furnished to the employee in January 2015) and comparing 9.5 percent of that amount to the employee's 2014 employee contribution. Although the determination of whether an employer actually satisfied the safe harbor is made after the end of the calendar year, an employer could also use the safe harbor prospectively, at the beginning of the year, to set the employee contribution at a level so that the employee contribution for each employee would not exceed 9.5 percent of that employee's Form W–2 wages for that year (for example, by automatically deducting 9.5 percent, or a lower percentage, from an employee's Form W–2 wages for each pay period). See also the rate of pay affordability safe harbor and the Federal poverty line safe harbor, discussed in section V.B.2. of this preamble.

In response to Notice 2011–73, several commenters noted that Box 1 of the Form W–2 excludes elective deferrals that an employee makes into a section 401(k) plan or section 403(b) plan, and excludes amounts that an employee elects to contribute to a section 125 cafeteria plan through salary reduction (for example, for health insurance premiums,[4] health flexible spending arrangements, dependent care assistance, or health savings accounts). The commenters contended that the measure of an employee's total compensation for purposes of the affordability safe harbor calculation should include the employee's elective deferrals to a retirement savings plan or cafeteria plan. The proposed regulations do not adopt this comment. The determination of whether employer-sponsored coverage is affordable for an employee under section 36B(c)(2)(C)(i) is based on modified adjusted income and does not take into account any elective deferrals to a section 401(k), section 403(b) or cafeteria plan. Given that these amounts are not taken into account in determining the affordability of coverage for purposes of an employee's eligibility for a section 36B credit, it would be inconsistent to allow employers to add back those amounts in determining their liability under section 4980H(b), which is linked to that employee's section 36B credit. However, see the rate of pay affordability safe harbor described in this section V.B.2. of the preamble, which could be used regardless of the amount of an employee's elective deferrals.

Notice 2011–73 also requested comments on how wages and employee contributions would need to be determined for employees employed for less than a full year by an employer (for example, a new employee hired during the calendar year or an employee who terminated employment during the calendar year) or an employee who was not offered coverage for the full year (for example, a new employee hired during the calendar year or an employee who switches positions of employment during the calendar year and so becomes eligible for coverage). Under section 36B, affordability for a part-year period is determined by comparing annual income to an annualized premium. See § 1.36B–2(c)(3)(v)(B). However, using this test to determine liability under section 4980H(b) could, in certain cases, result in penalizing employers that offer coverage that would be affordable based on the wages paid to, and premiums charged to, an employee for a given period. For example, if an employee was employed for six months of a calendar year by an employer, and offered coverage for those six months with an employee premium that did not exceed 9.5 percent of the employee's wages for those six months, and if the employee was not employed by the employer or any other employer for the other six months of the calendar year, the annualized premium may be higher than 9.5 percent of the employee's Form W–2 wages for the year. Commenters on Notice 2011–73 recommended several approaches, including prorating wages and premiums, using a reasonable estimate of Form W–2 wages for the year, and applying the safe harbor on a month-by-month basis.

The proposed regulations address this issue by providing that, for an employee who was not a full-time employee for the entire calendar year, the Form W–2 safe harbor is applied by adjusting the employee's Form W–2 wages to reflect the period when the employee was offered coverage, and then comparing those adjusted wages to the employee share of the premium during that period. Specifically, the amount of the employee's compensation for purposes of the safe harbor is determined by multiplying the wages for the calendar year by a fraction equal to the months for which coverage was offered to the employee over the months the employee was employed. That adjusted wage amount is then compared to the employee share of the premium for the months that coverage was offered to determine whether the Form W–2 safe harbor was satisfied for that employee. For example, if the employee worked eight months of a calendar year, during five months of which the employee was

[4] As a practical matter, if an employee makes a salary reduction to pay for employer-provided MEC and thus is actually receiving the employer-provided MEC, the employee will not be eligible to receive the section 36B credit for that period. See section 36B(c)(2)(C)((iii).

offered coverage, and received a Form W–2 reflecting Form W–2 wages of $24,000, the adjusted wages would be $24,000 multiplied by ⅝ or $15,000. That $15,000 is then treated as the adjusted Form W–2 wages for purposes of determining whether the employee share of the premium for each of the five months of coverage offered was affordable under the section 4980H safe harbor (meaning the employee would be treated for this purpose as earning $3,000 per month during that five-month period).

b. Rate of Pay Safe Harbor

Notice 2011–73 requested comments on other possible safe harbor methods for determining the affordability of employer-sponsored coverage for purposes of section 4980H(b). Several commenters suggested a safe harbor that is based on a rate of pay (either the employer's lowest rate of pay or each employee's individual rate of pay). In response to these comments, the proposed regulations provide a rate of pay safe harbor under which the employer would (1) take the hourly rate of pay for each hourly employee who is eligible to participate in the health plan as of the beginning of the plan year, (2) multiply that rate by 130 hours per month (the benchmark for full-time status for a month under section 4980H), and (3) determine affordability based on the resulting monthly wage amount. Specifically, the employee's monthly contribution amount (for the self-only premium of the employer's lowest cost coverage that provides minimum value) is affordable if it is equal to or lower than 9.5 percent of the computed monthly wages (that is, the employee's applicable hourly rate of pay × 130 hours). For salaried employees, monthly salary would be used instead of hourly salary multiplied by 130. An employer may use this safe harbor only if, with respect to the employees for whom the employer applies the safe harbor, the employer did not reduce the hourly wages of hourly employees or the monthly wages of salaried employees during the year. The rate of pay safe harbor is a design-based safe harbor that should be easy for employers to apply and allows them to prospectively satisfy affordability without the need to analyze every employee's wages and hours.

c. Federal Poverty Line Safe Harbor

Some commenters suggested that determinations of affordability should disregard employees whose income would qualify the employee for coverage under Medicaid (and, accordingly, would disqualify the employee from receiving the premium tax credit.) The suggestions reflect that employees who cannot receive a premium tax credit, which are not available by law to individuals with income below 100 percent of the Federal poverty line, cannot trigger 4980H(b) liability.

In response to these suggestions, the proposed regulations provide that an employer may also rely on a design-based safe harbor using the Federal poverty line (FPL) for a single individual. Specifically, for purposes of section 4980H, employer-provided coverage offered to an employee is affordable if the employee's cost for self-only coverage under the plan does not exceed 9.5 percent of the FPL for a single individual. For households with families, the amount that is considered to be below the poverty line is higher, so using the amount for a single individual ensures that the employee contribution for affordable coverage is minimized. In the interest of administrative convenience, employers are permitted to use the most recently published poverty guidelines as of the first day of the plan year of the applicable large employer member's health plan.

C. Section 4980H(b) Assessable Payment Amount

The assessable payment amount under section 4980H(b) equals, for any calendar month, the number of full-time employees of the applicable large employer member who receive an applicable premium tax credit or cost-sharing reduction multiplied by the section 4980H(b) applicable payment amount. The initial section 4980H(b) applicable payment amount for a calendar month equals 1/12th of $3,000. For subsequent years, that amount is adjusted for inflation pursuant to section 4980H(c)(5) based upon the premium adjustment percentage (as defined in section 1302(c)(4) of the Affordable Care Act) for the calendar year, rounded down to the next lowest multiple of $10. Notwithstanding the foregoing, the assessable payment under section 4980H(b) cannot exceed the amount of the assessable payment that would have been imposed under section 4980H(a) if the applicable large employer member had failed to offer coverage to its full-time employees (and their dependents). Also, for any employee for whom the employer satisfies at least one of the affordability safe harbors described in section V.B.2. of this preamble, the employer is not subject to an assessable payment under section 4980H(b) for that employee if the coverage offered to that employee otherwise satisfies minimum value.

VI. Assessment and Payment of Section 4980H Liability

Each applicable large employer member is liable for its section 4980H assessable payment, and is not liable for the section 4980H assessable payment of any other entity in the controlled group comprising the applicable large employer. With respect to a disregarded entity, as defined in § 301.7701–2, the proposed regulations regard the entity for purposes of an assessable payment under section 4980H and for purposes of reporting under section 6056. Therefore, the assessable payment and reporting requirements are imposed on the disregarded entity, and not on the owner of the disregarded entity. See proposed § 301.7701–2(c)(2)(v)(A)(*5*). These rules would also apply to a qualified subchapter S subsidiary. See proposed § 1.1361–4(a)(8)(i)(E).

Any assessable payment under section 4980H is payable upon notice and demand and is assessed and collected in the same manner as an assessable penalty under subchapter B of chapter 68 of the Code. Pursuant to regulations to be issued by HHS, the IRS will follow procedures that ensure employers receive certification that one or more employees have received premium tax credits or cost-sharing reductions and are provided an opportunity to respond before the issuance of any notice and demand for payment.

In complying with section 4980H, including relying on a look-back measurement method for determining full-time employees and non full-time employees and safe harbor methods for determining affordability for purposes of section 4980H(b) (as described in sections II and V.B.2. of this preamble), applicable large employer members are responsible for insuring that they comply with the recordkeeping requirements in section 6001, including Rev. Proc. 98–25 (1998–1 CB 689), (see § 601.601(d)(2)(ii)(*b*) of this chapter).

Pursuant to section 275(a)(6) regarding the nondeductibility of certain excise taxes, including those under chapter 43, an assessable payment imposed under section 4980H is not deductible.

VII. Information Reporting Under Section 6056

Applicable large employer members are required to report certain information on employer-provided health coverage under section 6056. Reporting will begin in 2015 for coverage provided on or after January 1,

2014. Notice 2012–33 (2012–20 IRB 912) requests comments on section 6056 information reporting. The Treasury Department and the IRS intend to publish separate proposed regulations implementing section 6056. For purposes of this reporting requirement, the proposed regulations are expected to apply to each applicable large employer member, as defined for purposes of section 4980H. The proposed regulations are also expected to align most definitions and rules so that, for example, if an employer is treated as offering coverage for a month for purposes of section 4980H, the employer would report the coverage was offered for that month.

VIII. Public Health Service Act Section 2708—The 90-Day Maximum Waiting Period

Public Health Service Act (PHS Act) section 2708 provides that, for plan years beginning on or after January 1, 2014, a group health plan or health insurance issuer offering group health insurance coverage shall not apply any waiting period that exceeds 90 days. PHS Act section 2704(b)(4), ERISA section 701(b)(4), and Code section 9801(b)(4) define a waiting period to be the period that must pass with respect to an individual before the individual is eligible to be covered for benefits under the terms of the plan. PHS Act section 2708 does not require the employer to offer coverage to any particular employee or class of employees, including part-time employees; but merely prevents an otherwise eligible employee (or dependent) from having to wait more than 90 days before coverage becomes effective.

Notice 2012–17 outlined various approaches under consideration with respect to both the 90-day waiting period limitation and the employer shared responsibility provisions under section 4980H,[5] and invited comments on the approaches contained in the notice, including a request for comments on how rules relating to the potential look-back measurement method for determining the full-time status of employees under Code section 4980H should be coordinated with the 90-day waiting period limitation of PHS Act section 2708. Subsequent guidance, under Notice 2012–59, provided temporary guidance on compliance with PHS Act section 2708, and provided that this temporary guidance would remain in effect at least through the end of 2014.[6]

IX. Transition Rules

A. Plans With Fiscal Year Plan Years

Commenters on behalf of employers sponsoring plans with plan years other than the calendar year (fiscal year plans) addressed two issues in particular. First, these commenters noted that because the terms and conditions of coverage are difficult to change in the middle of a plan year, application of section 4980H to fiscal year plans as of January 1, 2014 would, in many cases, require compliance with section 4980H for the entire fiscal year plan year beginning in 2013 (the 2013 plan year). In addition, these commenters observed that, in order to use the look-back measurement method to determine their employees' status as full-time employees for the 2013 plan year ending in 2014, employers with fiscal year plans would be required to determine the employees' hours of service for periods before the publication of these proposed regulations.

In response to these concerns, transition relief is being provided for members of applicable large employer members with fiscal year plans. If an applicable large employer member maintains a fiscal year plan as of December 27, 2012, the relief applies with respect to employees of the applicable large employer member (whenever hired) who would be eligible for coverage, as of the first day of the first fiscal year of that plan that begins in 2014 (the 2014 plan year) under the eligibility terms of the plan as in effect on December 27, 2012. If an employee described in the preceding sentence is offered affordable, minimum value coverage no later than the first day of the 2014 plan year, no section 4980H assessable payment will be due with respect to that employee for the period prior to the first day of the 2014 plan year.

While transition relief is provided with respect to all enrollees (and other eligible employees) in fiscal year plans, further relief is also provided for employers that have a significant percentage of their employees eligible for or covered under one or more fiscal year plans that have the same plan year as of December 27, 2012 and want to offer certain other employees coverage under these plans. Specifically, if an applicable large employer member has at least one-quarter of its employees covered under one or more fiscal year plans that have the same plan year as of December 27, 2012 or offered coverage under those plans to one-third or more of its employees during the most recent open enrollment period before December 27, 2012, no payment under section 4980H will be due for any month prior to the first day of the 2014 plan year of that fiscal year plan with respect to employees who (1) are offered affordable, minimum value coverage no later than the first day of the 2014 plan year of the fiscal year plan, and (2) would not have been eligible for coverage under any group health plan maintained by the applicable large employer member as of December 27, 2012 that has a calendar year plan year. For purposes of this transition relief, an applicable large employer member may determine the percentage of its employees covered under the fiscal year plan or plans as of the end of the most recent enrollment period or any date between October 31, 2012 and December 27, 2012.

Employers using this transition relief will still be subject to the reporting requirements under section 6056 for the entire 2014 calendar year. The concerns described in this section of the preamble with respect to the application of section 4980H do not apply with respect to reporting by a fiscal year plan under section 6056. Because no section 4980H liability will occur whether or not a full-time employee is offered coverage during the portion of the 2013 plan year falling in 2014, the applicable large employer may determine the full-time employees for that period for purposes of the section 6056 reporting requirements after the period has ended, using actual service data rather than the look-back measurement method, and use those determinations for the reporting required at the beginning of 2015 to cover the entire 2014 calendar year. In addition, the identification of whether the coverage offered provides minimum value and the employee portion of the applicable premium should be available to the employer in time to complete the required reporting. Therefore, because this reporting is essential to the administration of the premium tax credit under section 36B, applicable large employers will be required to report this information for the entire 2014 calendar year, even if during some calendar months in 2014 section 4980H liability will not apply due to application of the transition rules for fiscal year plan years.

The Treasury Department and the IRS are developing appropriate transition rules for employees of employers with fiscal year plans to account for the fact that premium tax credits will first

[5] Department of Labor Technical Release 2012–01, IRS Notice 2012–17, and HHS FAQs issued February 9, 2012.

[6] Department of Labor Technical Release 2012–02, IRS Notice 2012–59, and HHS FAQs issued August 31, 2012.

become available for the 2014 calendar year.

B. Salary Reduction Elections for Accident and Health Plans Provided Through Cafeteria Plans for Cafeteria Plan Years Beginning in 2013

Many employers offer health plans to employees through salary reduction under a section 125 cafeteria plan. Generally, cafeteria plan elections must be made before the start of the plan year, and are irrevocable during the plan year. See proposed § 1.125–2. However, the final regulations under § 1.125–4 permit a cafeteria plan to provide for changes in elections in certain circumstances, such as for change in status events. An employer that wishes to permit such changes in elections must incorporate the rules in § 1.125–4 in its written cafeteria plan.

In 2014, employees of an applicable large employer member covered under their employer's health plan through salary reduction under their employer's cafeteria plan may wish to enroll in coverage through an Exchange and discontinue their employer's coverage. However, the availability of health plan coverage through an Exchange beginning in 2014 does not constitute a change in status under § 1.125–4. As a result, employees would not be permitted to change their salary reduction elections for accident and health coverage during the plan year to cease salary reduction under the cafeteria plan and purchase coverage through an Exchange. Conversely, to avoid the individual responsibility payment under section 5000A, employees not covered under their employer's health plan may wish to enroll in the plan beginning after December 31, 2013.

The Treasury Department and the IRS have concluded that it is appropriate to provide transition relief from the election rules in proposed § 1.125–2 with respect to salary reduction elections under a cafeteria plan for an employer-provided accident and health plan with a fiscal year beginning in 2013. This transition relief applies only to the revocation, modification, or commencement of salary reductions for accident and health coverage offered through a cafeteria plan of an employer with a cafeteria fiscal year plan beginning in 2013 (and does not apply to any other qualified benefit offered through a cafeteria plan).

Thus, an applicable large employer member is permitted, at its election, to amend one or more of its written cafeteria plans to permit either or both of the following changes in salary reduction elections:

(1) An employee who elected to salary reduce through the cafeteria plan for accident and health plan coverage with a fiscal plan year beginning in 2013 is allowed to prospectively revoke or change his or her election with respect to the accident and health plan once, during that plan year, without regard to whether the employee experienced a change in status event described in § 1.125–4; and

(2) An employee who failed to make a salary reduction election through his or her employer's cafeteria plan for accident and health plan coverage with a fiscal plan year beginning in 2013 before the deadline in proposed § 1.125–2 for making elections for the cafeteria plan year beginning in 2013 is allowed to make a prospective salary reduction election for accident and health coverage on or after the first day of the 2013 plan year of the cafeteria plan, without regard to whether the employee experienced a change in status event described in § 1.125–4.

An applicable large employer member that wants to permit the change in election rules under this transition relief for fiscal plan years must incorporate these rules in its written cafeteria plan. Pursuant to proposed § 1.125–1(c), a plan may be amended at any time on a prospective basis. Notwithstanding the general rule that amendments to cafeteria plans may only be effective prospectively from the date of the plan amendment, a cafeteria plan may be amended retroactively to implement these transition rules. The retroactive amendment must be made by December 31, 2014, and be effective retroactively to the date of the first day of the 2013 plan year of the cafeteria plan.

C. Measurement Periods for Stability Periods Starting in 2014

Section 4980H is effective for months beginning after December 31, 2013. Employers that intend to utilize the look-back measurement method for determining full-time status for 2014 will need to begin their measurement periods in 2013 to have corresponding stability periods for 2014. The Treasury Department and the IRS recognize, however, that employers intending to adopt a 12-month measurement period, and in turn a 12-month stability period, will face time constraints in doing so. Consequently, solely for purposes of stability periods beginning in 2014, employers may adopt a transition measurement period that is shorter than 12 months but that is no less than 6 months long and that begins no later than July 1, 2013 and ends no earlier than 90 days before the first day of the plan year beginning on or after January 1, 2014 (90 days being the maximum permissible administrative period). For example, an employer with a calendar year plan could use a measurement period from April 15, 2013 through October 14, 2013 (six months), followed by an administrative period ending on December 31, 2013. An employer with a plan with a fiscal plan year beginning April 1 that also elected to implement a 90-day administrative period could use a measurement period from July 1, 2013 through December 31, 2013 (six months), followed by an administrative period ending on March 31, 2014. However, an employer with a fiscal plan year beginning on July 1, 2014 must use a measurement period that is longer than 6 months in order to comply with the requirement that the measurement period begin no later than July 1, 2013 and end no earlier than 90 days before the stability period. For example, the employer could have a 10-month measurement period from June 15, 2013 through April 14, 2014, followed by an administrative period from April 15, 2014 through June 30, 2014. This transition relief is solely for the application of a stability period beginning in 2014 through the end of that stability period (including any portion of the stability period falling in 2015).

Note that employers who use a full 12-month measurement period are not required to begin the measurement period by July 1, 2013. For example, an employer with a fiscal plan year beginning on November 1, 2014 could use a 12-month measurement period from September 1, 2013 through August 31, 2014, followed by an administrative period from September 1, 2014 through October 31, 2014.

See section II.C.1. of this preamble for rules on changing measurement periods from year to year.

D. Applicable Large Employer Members Participating in Multiemployer Plans

Several comments requested a special rule for employers participating in multiemployer plans in view of such plans' unique operating structures. Multiemployer plans are maintained pursuant to collective bargaining agreements, and have joint boards of trustees representing employees and employers. Each participating employer's relationship with the plan and the employee's participation in the plan differs from the typical single-employer-sponsored arrangement. For example, service at participating employers generally is aggregated to determine an employee's eligibility to participate in the multiemployer plan, even though the participating employers

generally are not related. Because many of the collective bargaining agreements governing multiemployer plans provide that contributions be made to the multiemployer fund based on requirements other than hours worked, such as on a days worked, projects completed, or percentage of earnings basis, contributing employers may not be in a position to know how many hours any individual employee worked. This problem is exacerbated by the fact that covered employees often work for multiple employers and it is thus impracticable for any one employer, or the fund, to determine how many hours any individual employee worked. For these reasons, further comments are requested on how section 4980H should apply to employers participating in multiemployer plans.

The transition rule described in this section X.D. applies through 2014 for contributions made by applicable large employers participating in a multiemployer plan. The rule is intended to provide an administratively feasible means for employers that contribute to multiemployer plans to comply with section 4980H. If any assessable payment were due under section 4980H, it would be payable by a participating applicable large employer member and that member would be responsible for identifying its full-time employees for this purpose (which would be based on hours of service for that employer). If the applicable large employer contributes to one or more multiemployer plans and also maintains a single employer plan, the rule applies to each multiemployer plan but not to the single employer plan.

Under this transition rule, an applicable large employer member will not be treated as failing to offer the opportunity to enroll in minimum essential coverage to a full-time employee (and the employee's dependents) for purposes of section 4980H(a), and will not be subject to a penalty under section 4980H(b) with respect to a full-time employee if (i) the employer is required to make a contribution to a multiemployer plan with respect to the full-time employee pursuant to a collective bargaining agreement or an appropriate related participation agreement, (ii) coverage under the multiemployer plan is offered to the full-time employee (and the employee's dependents), and (iii) the coverage offered to the full-time employee is affordable and provides minimum value. For purposes of the preceding sentence, whether the employee is a full-time employee is determined under section 4980H(c)(4), whether coverage is affordable is determined under section 36(c)(2)(C)(i), and whether coverage provides minimum value is determined under section 36B(c)(2)(C)(ii). Notwithstanding this transition relief, any waiting period for coverage under the plan must separately comply with 90-day limitation on waiting periods in section 2708 of the Public Health Service Act. Further guidance under section 2708 of the Public Health Service Act will address this limitation.

For purposes of determining whether coverage under the multiemployer plan is affordable, employers participating in the plan may use any of the affordability safe harbors set forth in the proposed regulations (and described in section V.B.2. of this preamble). Coverage under a multiemployer plan will also be considered affordable with respect to a full-time employee if the employee's required contribution, if any, toward self-only health coverage under the plan does not exceed 9.5 percent of the wages reported to the qualified multiemployer plan, which may be determined based on actual wages or an hourly wage rate under the applicable collective bargaining agreement.

E. Applicable Large Employer Determination for 2014

Section 4980H(c)(2) defines an applicable large employer with respect to a calendar year as an employer that employed an average of at least 50 full-time employees on business days during the preceding calendar year. For purposes of determining whether an employer is an applicable large employer, full-time equivalents (FTEs), which are determined based on the hours of service of employees who are not full-time employees, are taken into account. For most employers, their status as an applicable large employer will be evident without the need for an actual employee calculation (for example, employers with a number of employees that is well in excess of the 50-employee threshold). However, for some employers (those sufficiently close to the 50-employee threshold), a calculation will be required and will be performed for the first time. The Treasury Department and the IRS have concluded that transition relief is appropriate for those employers because they will be becoming familiar with the applicable large employer determination method and applying it for the first time in 2013. Specifically, transition relief is provided for purposes of the applicable large employer determination for the 2014 calendar year that allows an employer the option to determine its status as an applicable large employer by reference to a period of at least six consecutive calendar months, as chosen by the employer, in the 2013 calendar year (rather than the entire 2013 calendar year). Thus, an employer may determine whether it is an applicable large employer for 2014 by determining whether it employed an average of at least 50 full-time employees on business days during any consecutive six-month period in 2013.

This will allow these employers to choose to use either, or both, a period to prepare to count their employees and a period afterward to ascertain and implement the results of the determination. For example, an employer could use the period from January to February, 2013 to establish its counting method, the period from March through August, 2013 to determine its applicable large employer status and, if it is an applicable large employer, the period from September through December, 2013 to make any needed adjustments to its plan (or to establish a plan) in order to comply with section 4980H.

F. Coverage for Dependents

A number of employers currently offer coverage only to their employees, and not to dependents. For these employers, expanding their health plans to add dependent coverage will require substantial revisions to their plans and to their procedures for administration of the plans. To provide employers sufficient time to implement these changes, it is appropriate to provide transition relief with respect to dependent coverage for plan years that begin in 2014. Accordingly, any employer that takes steps during its plan year that begins in 2014 toward satisfying the section 4980H provisions relating to the offering of coverage to full-time employees' dependents will not be liable for any assessable payment under section 4980H solely on account of a failure to offer coverage to the dependents for that plan year.

G. Variable Hour Employee Definition

The proposed regulations, consistent with Notice 2012–58, provide that a new employee is a variable hour employee if, based on the facts and circumstances at the start date, it cannot be determined that the employee is reasonably expected to be employed on average at least 30 hours per week. A new employee who is expected to be employed initially at least 30 hours per week may be a variable hour employee if, based on the facts and circumstances at the start date, the period of employment at more than 30 hours per week is reasonably expected to be of

limited duration and it cannot be determined that the employee is reasonably expected to be employed on average at least 30 hours per week over the initial measurement period. Effective as of January 1, 2015, and except in the case of seasonal employees, the employer will be required to assume for this purpose that although the employee's hours of service might be expected to vary, the employee will continue to be employed by the employer for the entire initial measurement period; accordingly, the employer will not be permitted to take into account the likelihood that the employee's employment will terminate before the end of the initial measurement period. The effective date of the rule described in the immediately preceding sentence is delayed until 2015 to provide transition relief because some plan sponsors may have interpreted Notice 2012–58 (which gave reliance for 2014) more broadly. Even with respect to 2014, however, the status of any individual employee as a variable hour employee cannot be based on employer expectations regarding aggregate turnover. Rather there must be objective facts and circumstances specific to the newly hired employee at the start date demonstrating that the individual employee's employment is reasonably expected to be of limited duration within the initial measurement period.

X. Effective Dates and Reliance

Section 4980H is effective for months after December 31, 2013.

Employers may rely on these proposed regulations for guidance pending the issuance of final regulations or other guidance. Final regulations will be effective as of a date not earlier than the date the final regulations are published in the **Federal Register**. If and to the extent future guidance is more restrictive than the guidance in these proposed regulations, the future guidance will be applied without retroactive effect and employers will be provided with sufficient time to come into compliance with the final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 23, 2013, beginning at 10:00 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments by March 18, 2013, and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 3, 2013. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

These proposed regulations were drafted by the Office of Tax Exempt and Government Entities. Other personnel from the Treasury Department and the IRS participated in the development of the regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 54, and 301 are proposed to be 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 1.1361–4 is amended as follows:

■ 1. In paragraph (a)(8)(i)(C), the language ''and 4412; and'' is removed and ''and 4412;'' is added in its place.

■ 2. In paragraph (a)(8)(i)(D), the language ''or 6427.'' is removed and ''or 6427; and'' is added in its place.

■ 3. Paragraphs (a)(8)(i)(E) is added.

■ 4. In paragraph (a)(8)(ii), the language ''January 1, 2008.'' is removed and ''January 1, 2008, except that paragraph (a)(8)(i)(E) of this section applies for months after December 31, 2013.'' is added in its place.

The additions read as follows:

§ 1.1361–4 Effect of QSub election.

(a) * * *

(8) * * *

(i) * * *

(E) Assessment and collection of an assessable payment imposed by section 4980H and reporting required by section 6056.

* * * * *

PART 54—PENSION EXCISE TAXES

■ **Par. 3.** The authority citation for part 54 is amended by adding entries in numerical order to read as follows:

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

Section 54.4980H–3 is also issued under 26 U.S.C. 4980H(c)(4)(B).

■ **Par. 4.** Sections 54.4980H–0, 54.4980H–1, 54.4980H–2, 54.4980H–3, 54.4980H–4, 54.4980H–5, and 54.4980H–6 are added to read as follows:

§ 54.4980H–0 Table of contents.

This section lists the table of contents for §§ 54.4980H–1 through 54.4980H–6.

Section 54.4980H–1 Definitions.

(a) Definitions.

(1) Administrative period.
(2) Advance credit payment.
(3) Affordable Care Act.
(4) Applicable large employer.
(5) Applicable large employer member.
(6) Applicable premium tax credit.
(7) Calendar month.
(8) Church, or a convention or association of churches.
(9) Collective bargaining agreement.
(10) Cost sharing reduction.
(11) Dependent.
(12) Eligible employer-sponsored plan.
(13) Employee.
(14) Employer.
(15) Exchange.
(16) Federal poverty line.
(17) Form W–2 wages.
(18) Full-time employee.
(19) Full-time equivalent employee (FTE).
(20) Government entity.
(21) Hour of service.
(22) Initial measurement period.
(23) Minimum essential coverage.
(24) Minimum value.
(25) Month.
(26) New employee.
(27) Ongoing employee.
(28) Period of employment.
(29) Person.
(30) Plan year.
(31) Predecessor employer.
(32) Qualified health plan.
(33) Seasonal employee.
(34) Seasonal worker.
(35) Section 1411 certification.
(36) Section 4980H(a) applicable payment amount.
(37) Section 4980H(b) applicable payment amount.
(38) Self-only coverage.
(39) Stability period.
(40) Standard measurement period.
(41) Start date.
(42) United States.
(43) Variable hour employee.
(44) Week.
(b) Effective/applicability date.

Section 54.4980H–2 Applicable large employer and applicable large employer member.

(a) In general.
(b) Determining applicable large employer status.
(1) In general.
(2) Seasonal worker exception.
(3) Employers not in existence in preceding calendar year.
(4) Special rules for government entities, churches, and conventions and associations of churches.
(c) Full-time equivalent employees (FTEs).
(1) In general.
(2) Calculating the number of FTEs.
(d) Examples.
(e) Effective/applicability date.

Section 54.4980H–3 Determining full-time employees.

(a) In general.
(b) Hours of service.
(1) Hourly employee calculation.
(2) Non-hourly employee's calculation.
(c) Look-back measurement method.
(1) Ongoing employees.
(2) New non-variable hour and non-seasonal employees.
(3) New variable hour and new seasonal employees.
(4) Transition from new employee to ongoing employee.
(5) Examples.
(d) Change in employment status.
(1) In general.
(2) Examples.
(e) Employee rehires.
(1) Treatment as a new employee.
(2) Employment break period defined.
(3) Special unpaid leave defined.
(4) Averaging method for employment break periods and certain other unpaid leave.
(5) Anti-abuse rule.
(6) Examples.
(f) Nonpayment or late payment of premiums.
(g) Effective/applicability date.

Section 54.4980H–4 Assessable payments under section 4980H(a).

(a) In general.
(b) Offer of coverage.
(c) Partial calendar month.
(d) Allocated reduction of 30 full-time employees.
(e) Example.
(f) Effective/applicability date.

Section 54.4980H–5 Assessable payments under section 4980H(b).

(a) In general.
(b) Offer of coverage.
(c) Partial calendar month.
(d) Applicability to applicable large employer member.
(e) Affordability.
(1) In general.
(2) Affordability safe harbors for section 4980H(b) purposes.
(f) Effective/applicability date.

Section 54.4980H–6 Administration and procedure.

(a) Reserved.
(b) Effective/applicability date.

§ 54.4980H–1 Definitions.

(a) *Definitions.* The definitions in this section apply to this section and §§ 54.4980H–2 through 54.4980H–6.

(1) *Administrative period.* The term *administrative period* is an optional period, selected by an applicable large employer member, of no longer than 90 days beginning immediately following the end of a measurement period and ending immediately before the start of the associated stability period.

(2) *Advance credit payment.* The term *advance credit payment* means an advance payment of the premium tax credit as provided in Affordable Care Act section 1412 (42 U.S.C. 18082).

(3) *Affordable Care Act.* The term *Affordable Care Act* means the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)), and the Health Care and Education Reconciliation Act of 2010, Public Law 111–152, (124 Stat. 1029 (2010)), as amended by the Medicare and Medicaid Extenders Act of 2010 Public Law 111–309 (124 Stat. 3285 (2010)), the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011, Public Law 112–9 (125 Stat. 28, (2011)), the Department of Defense and Full-Year Continuing Appropriations Act, 2011, Public Law 112–10 (125 Stat. 38, (2011)), and the 3% Withholding Repeal and Job Creation Act, Public Law 112–56 (125 Stat. 711 (2011)).

(4) *Applicable large employer.* The term *applicable large employer* means, with respect to a calendar year, an employer that employed an average of at least 50 full-time employees (including full-time equivalent employees) on business days during the preceding calendar year. For rules relating to the determination of applicable large employer status, see § 54.5980H–2.

(5) *Applicable large employer member.* The term *applicable large employer member* means a person that, together with one or more other persons, is treated as a single employer that is an applicable large employer. For this purpose, if a person, together with one or more other persons, is treated as a single employer that is an applicable large employer on any day of a calendar month, that person is an applicable large employer member for that calendar month. If the applicable large employer comprises one person, that one person is the applicable large employer member. An applicable large employer member does not include a person that is not an employer or only an employer of employees with no hours of service for the calendar year. For rules for government entities, and churches, or conventions or associations of churches, see § 54.4980H–2(b)(4).

(6) *Applicable premium tax credit.* The term *applicable premium tax credit* means any premium tax credit that is allowed or paid under section 36B and any advance payment of such credit.

(7) *Calendar month.* The term *calendar month* means one of the 12 full months named in the calendar, such as January, February, or March.

(8) *Church, or a convention or association of churches.* The term *church, or a convention or association of churches* has the same meaning as provided in § 1.170A–9(b) of this chapter.

(9) *Collective bargaining agreement.* The term *collective bargaining agreement* means an agreement that the Secretary of Labor determines to be a collective bargaining agreement, provided that the health benefits provided under the collective bargaining agreement are the subject of good faith bargaining between employee representatives and one or more employers, and the agreement between

employee representatives and one or more employers satisfies section 7701(a)(46).

(10) *Cost-sharing reduction.* The term *cost-sharing reduction* means a cost-sharing reduction and any advance payment of the reduction as defined under section 1402 of the Affordable Care Act.

(11) *Dependent.* The term *dependent* means a child (as defined in section 152(f)(1)) of an employee who has not attained age 26. A child attains age 26 on the 26th anniversary of the date the child was born. Absent knowledge to the contrary, applicable large employer members may rely on an employee's' representation about that employee's children and the ages of those children. Dependent does not include the spouse of an employee.

(12) *Eligible employer-sponsored plan.* The term *eligible employer-sponsored plan* has the same meaning as provided under section 5000A(f)(2) and any applicable guidance thereunder.

(13) *Employee.* The term *employee* means an individual who is an employee under the common-law standard. See § 31.3401(c)–1(b) of this chapter. For purposes of this paragraph, a leased employee (as defined in section 414(n)(2)), a sole proprietor, a partner in a partnership, or a 2-percent S corporation shareholder is not an employee.

(14) *Employer.* The term *employer* means the person that is the employer of an employee under the common-law standard. See § 31.3121(d)–1(c) of this chapter. For purposes of determining whether an employer is an applicable large employer, all persons treated as a single employer under section 414(b), (c), (m), or (o) are treated as a single employer. Thus, all employees of a controlled group of entities under section 414(b) or (c), an affiliated service group under section 414(m), or under section 414(o) are taken into account in determining whether the members of the controlled group or affiliated service group together are an applicable large employer. For purposes of determining applicable large employer status, the term employer also includes a predecessor employer and a successor employer.

(15) *Exchange.* The term *Exchange* means an Exchange as defined in 45 CFR 155.20.

(16) *Federal Poverty Line.* The term *Federal poverty line* means the most recently published poverty guidelines (updated periodically in the **Federal Register** by the Secretary of Health and Human Services under the authority of 42 U.S.C. 9902(2)) as of the first day of the plan year of the applicable large employer member's health plan.

(17) *Form W–2 wages.* The term *Form W–2 wages* with respect to an employee refers to the amount of wages as defined under section 3401(a) for the applicable calendar year (required to be reported in Box 1 of the Form W–2) received from an applicable large employer.

(18) *Full-time employee.* The term *full-time employee* means, with respect to a calendar month, an employee who is employed an average of at least 30 hours of service per week with an employer. For this purpose, 130 hours of service in a calendar month is treated as the monthly equivalent of at least 30 hours of service per week, provided the employer applies this equivalency rule on a reasonable and consistent basis. For rules on the determination of whether an employee is a full-time employee, including the look-back measurement method for purposes of determining and computing liability under section 4980H (but not for the purpose of determining status as an applicable large employer), see § 54.4980H–3.

(19) *Full-time equivalent employee (FTE).* The term *full-time equivalent employee,* or *FTE,* means a combination of employees, each of whom individually is not treated as a full-time employee because he or she is not employed on average at least 30 hours of service per week with an employer, who, in combination, are counted as the equivalent of a full-time employee solely for purposes of determining whether the employer is an applicable large employer. For rules on the method for determining the number of an employer's full-time equivalent employees, or FTEs, see § 54.4980H–2(c).

(20) *Government entity.* The term *government entity* means the government of the United States, any State or political subdivision thereof, any Indian tribal government (as defined in section 7701(a)(40)) or subdivision of an Indian tribal government (determined in accordance with section 7871(d)), or any agency or instrumentality of any of the foregoing.

(21) *Hour of service*—(i) *In general.* The term *hour of service* means each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer; and each hour for which an employee is paid, or entitled to payment by the employer for a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence (as defined in 29 CFR 2530.200b–2(a)). For the rules for determining an employee's hour of service, see § 54.4980H–3.

(ii) *Service for other applicable large employer members.* In determining hours of service and status as a full-time employee for all purposes under section 4980H, an hour of service for one applicable large employer member is treated as an hour of service for all other applicable large employer members for all periods during which the applicable large employer members are part of the same group of employers forming an applicable large employer.

(iii) *Service of a nonresident alien individuals and service outside the United States.* Hours of service do not include hours of service to the extent the compensation for those hours of service constitutes income from sources without the United States (within the meaning of section 862(a)(3)).

(22) *Initial measurement period.* The term *initial measurement period* means a time period selected by an applicable large employer member of at least three consecutive calendar months but not more than 12 consecutive calendar months used by the applicable large employer as part of the process of determining whether certain new employees are full-time employees under the look-back measurement method in § 54.4980H–3(c). See § 54.4980H–3(c)(1)(ii) for rules on pay periods including the beginning and end dates of the measurement period.

(23) *Minimum essential coverage.* The term *minimum essential coverage* (or *MEC*) has the same meaning as provided in section 5000A(f) and any regulations or other administrative guidance thereunder.

(24) *Minimum value.* The term *minimum value* has the same meaning as provided in section 36B(c)(2)(C)(ii) and any regulations or other administrative guidance thereunder.

(25) *Month.* The term *month* refers to the period that begins on any date following the first day of a calendar month and that ends on the immediately preceding date in the immediately following calendar month (for example, from February 2 to March 1 or from December 15 to January 14) or that is a calendar month. See § 54.4980H–1(a)(7) for the definition of calendar month.

(26) *New employee.* The term *new employee* means an employee who has been employed by an applicable large employer for less than one complete standard measurement period. For treatment of the employee as a new employee or ongoing employee following a period for which no hours of service are earned, see the

employment break period rules at § 54.4980H–3(e).

(27) *Ongoing employee.* The term *ongoing employee* means an employee who has been employed by an applicable large employer member for at least one complete standard measurement period.

(28) *Period of employment.* The term *period of employment* means the period of time beginning on the first date for which an employee is credited with an hour of service for an applicable large employer (including any member of that applicable large employer) and ending on the last date on which the employee is credited with an hour of service for that applicable large employer, both dates inclusive. An employee may have one or more periods of employment with the same applicable large employer.

(29) *Person.* The term *person* has the same meaning as provided in section 7701(a)(1) and the regulations thereunder.

(30) *Plan year.* The plan year must be twelve consecutive months, unless a short plan year of less than twelve consecutive months is permitted for a valid business purpose. A plan year is permitted to begin on any day of a year and must end on the preceding day in the immediately following year (for example, a plan year that begins on October 15, 2014, must end on October 14, 2015). A calendar year plan year is a period of twelve consecutive months beginning on January 1 and ending on December 31 of the same calendar year. Once established, a plan year is effective for the first plan year and for all subsequent plan years, unless changed, provided that such change will only be recognized if made for a valid business purposes. A change in the plan year is not permitted if a principal purpose of the change in plan year is to circumvent the rules of section 4980H or these regulations.

(31) *Predecessor employer.* [Reserved]

(32) *Qualified health plan.* The term *qualified health plan* means a qualified health plan as defined in Affordable Care Act section 1301(a) (42 U.S.C. 18021(a)), but does not include a catastrophic plan described in Affordable Care Act section 1302(e) (42 U.S.C. 18022(e)).

(33) *Seasonal employee.* [Reserved]

(34) *Seasonal worker.* The term *seasonal worker* means a worker who performs labor or services on a seasonal basis as defined by the Secretary of Labor, including (but not limited to) workers covered by 29 CFR 500.20(s)(1), and retail workers employed exclusively during holiday seasons. Employers may apply a reasonable, good faith interpretation of the term ''seasonal worker'' and a reasonable good faith interpretation of 29 CFR 500.20(s)(1) (including as applied by analogy to workers and employment positions not otherwise covered under 29 CFR 500.20(s)(1)).

(35) *Section 1411 Certification.* The term *Section 1411 Certification* means the certification received as part of the process established by the Secretary of Health and Human Services under which an employee is certified to the employer under section 1411 of the Affordable Care Act as having enrolled for a calendar month in a qualified health plan with respect to which an applicable premium tax credit or cost-sharing reduction is allowed or paid with respect to the employee.

(36) *Section 4980H(a) applicable payment amount.* The term *section 4980H(a) applicable payment amount* means, with respect to any month, 1/12 of $2,000, adjusted for inflation in accordance with section 4980H(c)(5) and any applicable guidance thereunder.

(37) *Section 4980H(b) applicable payment amount.* The term *section 4980H(b) applicable payment amount* means, with respect to any month, 1/12 of $3,000, adjusted for inflation in accordance with section 4980H(c)(5) and any applicable guidance thereunder.

(38) *Self-only coverage.* The term *self-only coverage* means health insurance coverage provided to only one individual, generally the employee.

(39) *Stability period.* The term *stability period* means a time period selected by an applicable large employer member that follows, and is associated with, a standard measurement period or an initial measurement period, and is used by the applicable large employer member as part of the process of determining whether an employee is a full-time employee under the look-back measurement method in § 54.4980H–3(c).

(40) *Standard measurement period.* The term *standard measurement period* means a time period of at least three but not more than 12 consecutive months that an applicable large employer member selects and uses in determining whether an ongoing employee is a full-time employee under the look-back measurement method in § 54.4980H–3(c). See § 54.4980H–3(c)(1)(ii) for rules on payroll periods that include the beginning and end dates of the measurement period.

(41) *Start date.* The term *start date* means the first date on which an employee is required to be credited with an hour of service with an employer. For rules relating to when, following a period for which an employee does not earn an hour of service, that employee may be treated as a new employee with a new start date rather than a continuing employee, see the averaging method for employment break periods at § 54.4980H–3(e).

(42) *United States.* The term *United States* means United States as defined in section 7701(a)(9).

(43) *Variable hour employee.* The term *variable hour employee* means an employee if, based on the facts and circumstances at the employee's start date, the applicable large employer member cannot determine whether the employee is reasonably expected to be employed on average at least 30 hours of service per week during the initial measurement period because the employee's hours are variable or otherwise uncertain. For this purpose, the applicable large employer member may not take into account the likelihood that the employee may terminate employment with the applicable large employer (including any member of the applicable large employer) before the end of the initial measurement period.

(44) *Week.* The term *week* means any period of seven consecutive calendar days applied consistently by the applicable large employer member.

(b) *Effective/applicability date.* This section is applicable for periods after December 31, 2013.

§ 54.4980H–2 Applicable large employer and applicable large employer member.

(a) *In general.* Section 4980H applies to an applicable large employer and to all of the applicable large employer members that comprise that applicable large employer.

(b) *Determining applicable large employer status*—(1) *In general.* An employer's status as an applicable large employer for a calendar year is determined by taking the sum of the total number of full-time employees (including any seasonal workers) for each calendar month in the preceding calendar year and the total number of FTEs (including any seasonal workers) for each calendar month in the preceding calendar year, and dividing by 12. The result, if not a whole number, is then rounded to the next lowest whole number. If the result of this calculation is less than 50, the employer is not an applicable large employer for the current calendar year. If the result of this calculation is 50 or more, the employer is an applicable large employer for the current calendar year, unless the seasonal worker exception in paragraph (b)(2) of this section applies.

(2) *Seasonal worker exception.* If the sum of an employer's full-time employees and FTEs exceeds 50 for 120 days or less during the preceding calendar year, and the employees in excess of 50 who were employed during that period of no more than 120 days are seasonal workers, the employer is not considered to employ more than 50 full-time employees (including FTEs) and the employer is not an applicable large employer for the current calendar year. For purposes of this paragraph (b)(2) only, four calendar months may be treated as the equivalent of 120 days. The four calendar months and the 120 days are not required to be consecutive.

(3) *Employers not in existence in preceding calendar year.* An employer not in existence throughout the preceding calendar year is an applicable large employer for the current calendar year if it is reasonably expected to employ an average of at least 50 full-time employees (taking into account FTEs) on business days during the current calendar year and it actually employs an average of at least 50 full-time employees (taking into account FTEs) on business days during the calendar year.

(4) *Special rules for government entities, churches, and conventions and associations of churches.* [Reserved]

(c) *Full-time equivalent employees (FTEs)*—(1) *In general.* In determining whether an employer is an applicable large employer, the number of FTEs it employed during the preceding calendar year are taken into account. All employees (including seasonal workers) who were not employed on average at least 30 hours of service per week for a calendar month in the preceding calendar year are included in calculating the employer's FTEs for that calendar month.

(2) *Calculating the number of FTEs.* The number of FTEs for each calendar month in the preceding calendar year is determined by calculating the aggregate number of hours of service for that calendar month for employees who were not full-time employees (but not more than 120 hours of service for any employee) and dividing that number by 120. In determining the number of FTEs for each calendar month, fractions are taken into account.

(d) *Examples.* The following examples illustrate the rules of paragraphs (a) through (c) of this section. In these examples, hours of service are computed following the rules set forth in § 54.4980H–3, and references to years refer to calendar years unless otherwise specified. The Employers in *Examples 2* through *5* are each the sole applicable large employer member of the applicable large employer, as determined under section 414(b), (c), (m) and (o).

Example 1. Applicable large employer/controlled group. (i) *Facts.* For 2015 and 2016, corporation P owns 100 percent of all classes of stock of corporation S and corporation T. P has no employees at any time in 2015. For every calendar month in 2015, S has 40 full-time employees and T has 60 full-time employees. P, S, and T are a controlled group of corporations under section 414(b).

(ii) *Conclusion.* Because P, S and T have a combined total of 100 full-time employees during 2015, P, S, and T is an applicable large employer for 2016. Each of P, S and T is an applicable large employer member for 2016.

Example 2. Applicable large employer with FTEs. (i) *Facts.* During each calendar month of 2015, Employer L has 20 full-time employees each of whom averages 35 hours of service per week, 40 employees each of whom averages 90 hours of service per month, and no seasonal workers.

(ii) *Conclusion.* Each of the 20 employees who average 35 hours of service per week count as one full-time employee for each month. To determine the number of FTEs for each month, the total hours of service of the employees who are not full-time employees (but not more than 120 hours of service per employee) are aggregated and divided by 120. The result is that the employer has 30 FTEs for each month ($40 \times 90 = 3{,}600$, and $3{,}600 \div 120 = 30$). Because Employer L has 50 full-time employees (the sum of 20 full-time employees and 30 FTEs) during each month in 2015, and because the seasonal worker exception is not applicable, Employer L is an applicable large employer for 2016.

Example 3. Seasonal worker exception. (i) *Facts.* During 2015, Employer N has 40 full-time employees for the entire calendar year, none of whom are seasonal workers. In addition, Employer N also has 80 seasonal full-time workers who work for Employer N from September through December, 2015. Employer N has no FTEs during 2015.

(ii) *Conclusion.* Before applying the seasonal worker exception, Employer N has 40 full-time employees during each of eight calendar months of 2015, and 120 full-time employees during each of four calendar months of 2015, resulting in an average of 66.5 employees for the year (rounded down to 66 full-time employees). However, Employer N's workforce equaled or exceeded 50 full-time employees (counting seasonal workers) for no more than four calendar months (treated as the equivalent of 120 days) in calendar year 2015, and the number of full-time employees would be less than 50 during those months if seasonal workers were disregarded. Accordingly, because after application of the seasonal worker exception in paragraph (b)(2) of this section Employer N is not considered to employ more than 50 full-time employees, Employer N is not an applicable large employer for 2016.

Example 4. Seasonal workers and other FTEs. (i) *Facts.* Same facts as in *Example 3,* except that Employer N has 20 FTEs in August, some of whom are seasonal workers.

(ii) *Conclusion.* The seasonal worker exception in paragraph (b)(2) of this section does not apply if the number of an employer's full-time employees (including seasonal workers) and FTEs equals or exceeds 50 employees for more than 120 days during the calendar year. Because Employer N has at least 50 full-time employees for a period greater than four calendar months (treated as the equivalent of 120 days) during 2015, the exception in paragraph (b)(2) of this section does not apply. Employer N averaged 68 full-time employees in 2015: $[(40 \times 7) + (60 \times 1) + (120 \times 4)] \div 12 = 68.33$, rounded down to 68, and accordingly, Employer N is an applicable large employer for calendar year 2016.

Example 5. New employer. (i) *Facts.* Corporation A is incorporated on January 1, 2015. On January 1, 2015, Corporation A has three employees. However, prior to incorporation, Corporation A's owners purchased a factory intended to open within two months of incorporation and to employ approximately 100 employees. By March 15, 2015, Corporation A has more than 75 full-time employees.

(ii) *Conclusion.* Because Corporation A can reasonably be expected to employ on average at least 50 full-time employees on business days during 2015, and actually employs an average of at least 50 full-time employees on business days during 2015, Corporation A is an applicable large employer (and an applicable large employer member).

(e) *Effective/applicability date.* This section is applicable for periods after December 31, 2013.

§ 54.4980H–3 Determining full-time employees.

(a) *In general.* This section sets forth the rules for determining hours of service and status as a full-time employee for all purposes of section 4980H, provided that the look-back measurement methods for determining status as a full-time employee under paragraph (c) of this section apply solely for purposes of determining and calculating liability under section 4980H(a) and (b) (and not for purposes of determining status as an applicable large employer). See § 54.4980H–1(a)(18) for the definition of full-time employee.

(b) *Hours of service*—(1) *Hourly employees calculation.* For employees paid on an hourly basis, an employer must calculate actual hours of service from records of hours worked and hours for which payment is made or due.

(2) *Non-hourly employees calculation*—(i) *In general.* For employees paid on a non-hourly basis, an employer must calculate hours of service by using one of the following methods:

(A) Using actual hours of service from records of hours worked and hours for which payment is made or due.

(B) Using a days-worked equivalency whereby the employee is credited with eight hours of service for each day for

which the employee would be required to be credited with at least one hour of service in accordance with paragraph (b)(1) of this section.

(C) Using a weeks-worked equivalency whereby the employee is credited with 40 hours of service for each week for which the employee would be required to be credited with at least one hour of service in accordance with paragraph (b)(1) of this section.

(ii) *Change in method.* An employer must use one of the three methods in paragraph (b)(2) of this section for calculating the hours of service for non-hourly employees. An employer is not required to use the same method for all non-hourly employees, and may apply different methods for different classifications of non-hourly employees, provided the classifications are reasonable and consistently applied. Similarly, an applicable large employer member is not required to apply the same methods as other applicable large employer members of the same applicable large employer for the same or different classifications of non-hourly employees, provided that in each case the classifications are reasonable and consistently applied by the applicable large employer member.

(iii) *Prohibited use of equivalencies.* The number of hours of service calculated using the days-worked or weeks-worked equivalency must reflect generally the hours actually worked and the hours for which payment is made or due. An employer is not permitted to use the days-worked equivalency or the weeks-worked equivalency if the result is to substantially understate an employee's hours of service in a manner that would cause that employee not to be treated as full-time. For example, an employer may not use a days-worked equivalency in the case of an employee who generally works three 10-hour days per week, because the equivalency would substantially understate the employee's hours of service as 24 hours of service per week, which would result in the employee being treated as not a full-time employee. Rather, the number of hours of service calculated using the days-worked or weeks-worked equivalency method must reflect generally the hours actually worked and the hours for which payment is made or due.

(c) *Look-back measurement method*—(1) *Ongoing employees*—(i) *In general.* Under the look-back measurement method for ongoing employees, an applicable large employer determines each ongoing employee's full-time status by looking back at the standard measurement period. The applicable large employer member determines the months in which the standard measurement period starts and ends, provided that the determination must be made on a uniform and consistent basis for all employees in the same category (see paragraph (c)(1)(v) of this section for a list of permissible categories). For example, if an applicable large employer member chooses a standard measurement period of 12 months, the applicable large employer member could choose to make it the calendar year, a non-calendar plan year, or a different 12-month period, such as one that ends shortly before the start of the plan's annual open enrollment period. If the applicable large employer member determines that an employee was employed on average at least 30 hours per week during the standard measurement period, then the applicable large employer member treats the employee as a full-time employee during a subsequent stability period, regardless of the employee's number of hours of service during the stability period, so long as he or she remains an employee.

(ii) *Use of payroll periods.* For payroll periods that are one week, two weeks, or semi-monthly in duration, an employer is permitted to treat as a measurement period a period that ends on the last day of the payroll period preceding the payroll period that includes the date that would otherwise be the last day of the measurement period, provided that the measurement period begins on the first day of the payroll period that includes the date that would otherwise be the first day of the measurement period. An employer may also treat as a measurement period a period that begins on the first day of the payroll period that follows the payroll period that includes the date that would otherwise be the first day of the measurement period, provided that the measurement period ends on the last day of the payroll period that includes the date that would otherwise be the last day of the measurement period. For example, an employer using the calendar year as a measurement period could exclude the entire payroll period that included January 1 (the beginning of the year) if it included the entire payroll period that included December 31 (the end of that same year), or, alternatively, could exclude the entire payroll period that included December 31 of a calendar year if it included the entire payroll period that included January 1 of that calendar year.

(iii) *Employee determined to be employed an average of at least 30 hours of service per week.* An employee who was employed on average at least 30 hours of service per week during the standard measurement period must be treated as a full-time employee for a stability period that begins immediately after the standard measurement period and any applicable administrative period. The stability period must be at least six consecutive calendar months but no shorter in duration than the standard measurement period.

(iv) *Employee determined not to be employed on average at least 30 hours of service per week.* If an employee was not employed an average at least 30 hours of service per week during the standard measurement period, the applicable large employer member may treat the employee as not a full-time employee during the stability period that follows, but is not longer than, the standard measurement period. The stability period must begin immediately after the end of the measurement period and any applicable administrative period.

(v) *Permissible employee categories.* Subject to the rules governing the relationship between the length of the measurement period and the stability period, applicable large employer members may use measurement periods and stability periods that differ either in length or in their starting and ending dates for the following categories of employees:

(A) Collectively bargained employees and non-collectively bargained employees.

(B) Each group of collectively bargained employees covered by a separate collective bargaining agreement.

(C) Salaried employees and hourly employees.

(D) Employees whose primary places of employment are in different States.

(vi) *Optional administrative period.* An applicable large employer member may provide for an administrative period that begins immediately after the end of a standard measurement period and that ends immediately before the associated stability period; however, any administrative period between the standard measurement period and the stability period for ongoing employees may neither reduce nor lengthen the measurement period or the stability period. The administrative period following the standard measurement period may last up to 90 days. To prevent this administrative period from creating a gap in coverage, the administrative period must overlap with the prior stability period, so that, during any such administrative period applicable to ongoing employees following a standard measurement period, ongoing employees who are

enrolled in coverage because of their status as full-time employees based on a prior measurement period must continue to be covered through the administrative period. Applicable large employer members may use administrative periods that differ in length for the categories of employees identified in paragraph (c)(1)(v) of this section.

(vii) *Change in position of employment or other employment status.* If an ongoing employee's position of employment or other employment status changes before the end of a stability period, the change will not affect the application of the classification of the employee as a full-time employee (or not a full-time employee) for the remaining portion of the stability period. For example, if an ongoing employee in a certain position of employment is not treated as a full-time employee during a stability period because the employee's hours of service during the prior measurement period were insufficient for full-time-employee treatment, and the employee changes position of employment to a position that involves an increased level of hours of service, the treatment of the employee as a non-full time employee during the remainder of the stability period is unaffected. Similarly, if an ongoing employee in a certain position of employment is treated as a full-time employee during a stability period because the employee's hours of service during the prior measurement period were sufficient for full-time-employee treatment, and the employee changes position of employment to a position that involves a lower level of hours of service, the treatment of the employee as a full-time employee during the remainder of the stability period is unaffected.

(viii) *Example.* The following example illustrates the application of paragraph (c)(1) of this section:

(i) *Facts.* Employer W is an applicable large employer member and computes hours of service following the rules in this section. Employer W chooses to use a 12-month stability period that begins January 1 and a 12-month standard measurement period that begins October 15. Consistent with the terms of Employer W's group health plan, only employees classified as full-time employees using the look-back measurement method are eligible for coverage. Employer W chooses to use an administrative period between the end of the standard measurement period (October 14) and the beginning of the stability period (January 1) to determine which employees were employed on average 30 hours of service per week during the measurement period, notify them of their eligibility for the plan for the calendar year beginning on January 1 and of the coverage available under the plan, answer questions and collect materials from employees, and enroll those employees who elect coverage in the plan. Previously-determined full-time employees already enrolled in coverage continue to be offered coverage through the administrative period.

Employee A and Employee B have been employed by Employer W for several years, continuously from their start date. Employee A was employed on average 30 hours of service per week during the standard measurement period that begins October 15, 2015 and ends October 14, 2016 and for all prior standard measurement periods. Employee B also was employed on average 30 hours of service per week for all prior standard measurement periods, but is not a full-time employee during the standard measurement period that begins October 15, 2015 and ends October 14, 2016.

(ii) *Conclusions.* Because Employee A was employed for the entire standard measurement period that begins October 15, 2015 and ends October 14, 2016, Employee A is an ongoing employee with respect to the stability period running from January 1, 2017 through December 31, 2017. Because Employee A was employed on average 30 hours of service per week during that standard measurement period, Employee A is offered coverage for the entire 2017 stability period (including the administrative period from October 15, 2017 through December 31, 2017). Because Employee A was employed on average 30 hours of service per week during the prior standard measurement period, Employee A is offered coverage for the entire 2016 stability period and, if enrolled, would continue such coverage during the administrative period from October 15, 2016 through December 31, 2016.

Because Employee B was employed for the entire standard measurement period that begins October 15, 2015 and ends October 14, 2016, Employee B is also an ongoing employee with respect to the stability period in 2017. Because Employee B did not work full-time during this standard measurement period, Employee B is not required to be offered coverage for the stability period in 2017 (including the administrative period from October 15, 2017 through December 31, 2017). However, because Employee B was employed on average 30 hours of service per week during the prior standard measurement period, Employee B is offered coverage through the end of the 2016 stability period and, if enrolled, would continue such coverage during the administrative period from October 15, 2016 through December 31, 2016. Employer W complies with the standards of paragraph (c)(1) of this section because the measurement and stability periods are no longer than 12 months, the stability period for ongoing employees who work full-time during the standard measurement period is not shorter than the standard measurement period, the stability period for ongoing employees who do not work full-time during the standard measurement period is no longer than the standard measurement period, and the administrative period is no longer than 90 days.

(2) *New non-variable hour and non-seasonal employees.* If an employee is reasonably expected at his or her start date to be a full-time employee (and is not a seasonal employee), an employer that sponsors a group health plan that offers coverage to the employee at or before the conclusion of the employee's initial three full calendar months of employment will not be subject to an assessable payment under section 4980H by reason of its failure to offer coverage to the employee for up to the initial full three calendar months of employment; however, if the employer did not offer coverage to the employee by the end of the employee's initial three full calendar months of employment, the employer may be subject to a section 4980H assessable payment for those months as well as for any subsequent months for which coverage was not offered.

(3) *New variable hour and new seasonal employees*—(i) *In general.* For new variable hour employees and new seasonal employees, applicable large employer members are permitted to determine whether the new employee is a full-time employee using an initial measurement period of between three and 12 months (as selected by the applicable large employer member) that begins on any date between the employee's start date and the first day of the first calendar month following the employee's start date. The applicable large employer member measures the new employee's hours of service during the initial measurement period and determines whether the employee was employed on average at least 30 hours of service per week during this period. The stability period for such employees must be the same length as the stability period for ongoing employees.

(ii) *Employees determined to be employed on average at least 30 hours of service per week.* If a new variable hour employee or new seasonal employee has on average at least 30

hours of service per week during the initial measurement period, the applicable large employer member must treat the employee as a full-time employee during the stability period that begins after the initial measurement period (and any associated administrative period). The stability period must be a period of at least six consecutive calendar months that is no shorter in duration than the initial measurement period.

(iii) *Employees determined not to be employed on average at least 30 hours of service per week.* If a new variable hour employee or new seasonal employee does not have on average at least 30 hours of service per week during the initial measurement period, the applicable large employer member is permitted to treat the employee as not a full-time employee during the stability period that follows the initial measurement period. This stability period for such employees must not be more than one month longer than the initial measurement period and, in accordance with paragraph (c)(4) of this section, must not exceed the remainder of the standard measurement period (plus any associated administrative period) in which the initial measurement period ends.

(4) *Transition from new employee to ongoing employee*—(i) *In general.* Once a new variable hour employee or new seasonal employee has been employed for an entire standard measurement period, the applicable large employer must test the employee for full-time employee status, beginning with that standard measurement period, at the same time and under the same conditions as apply to other ongoing employees. Accordingly, for example, an applicable large employer member with a calendar year standard measurement period that also uses a one-year initial measurement period beginning on the employee's start date would test a new variable hour employee whose start date is February 12 for full-time status first based on the initial measurement period (February 12 through February 11 of the following year) and again based on the calendar year standard measurement period (if the employee continues in employment for that entire standard measurement period) beginning on January 1 of the year after the start date.

(ii) *Employee determined to be employed an average of at least 30 hours of service per week.* An employee who was employed an average of at least 30 hours of service per week during an initial measurement period or standard measurement period must be treated as a full-time employee for the entire associated stability period. This is the case even if the employee was employed an average of at least 30 hours of service per week during the initial measurement period but was not employed an average of at least 30 hours of service per week during the overlapping or immediately following standard measurement period. In that case, the applicable large employer member may treat the employee as not a full-time employee only after the end of the stability period associated with the initial measurement period. Thereafter, the applicable large employer member must determine the employee's status as a full-time employee in the same manner as it determines such status in the case of its other ongoing employees as described in paragraph (c)(1) of this section.

(iii) *Employee determined not to be employed an average of at least 30 hours of service per week.* If the employee was not employed an average of at least 30 hours of service per week during the initial measurement period, but was employed at least 30 hours of service per week during the overlapping or immediately following standard measurement period, the employee must be treated as a full-time employee for the entire stability period that corresponds to that standard measurement period (even if that stability period begins before the end of the stability period associated with the initial measurement period). Thereafter, the applicable large employer member must determine the employee's status as a full-time employee in the same manner as it determines such status in the case of its other ongoing employees as described in paragraph (c)(1) of this section.

(iv) *Permissible differences in measurement or stability periods for different categories of employees.* Subject to the rules governing the relationship between the length of the measurement period and the stability period, applicable large employer members may use measurement periods and stability periods that differ either in length or in their starting and ending dates for the categories of employees identified in paragraph (c)(1)(v) of this section).

(v) *Optional administrative period*—(A) *In general.* Subject to the limits in paragraph (c)(4)(v)(B) of this section, an applicable large employer member is permitted to apply an administrative period in connection with an initial measurement period and before the start of the stability period. This administrative period must not exceed 90 days in total. For this purpose, the administrative period includes all periods between the start date of a new variable hour employee or new seasonal employee and the date the employee is first offered coverage under the applicable large employer member's group health plan, other than the initial measurement period. Thus, for example, if the applicable large employer member begins the initial measurement period on the first day of the first month following a new variable hour or new seasonal employee's start date, the period between the employee's start date and the first day of the next month must be taken into account in applying the 90-day limit on the administrative period. Similarly, if there is a period between the end of the initial measurement period and the date the employee is first offered coverage under the plan, that period must be taken into account in applying the 90-day limit on the administrative period. Applicable large employer members may use administrative periods that differ in length for the categories of employees identified in paragraph (c)(1)(v) of this section.

(B) *Limit on combined length of initial measurement period and administrative period.* In addition to the specific limits on the initial measurement period (which must not exceed 12 months) and the administrative period (which must not exceed 90 days), there is a limit on the combined length of the initial measurement period and the administrative period applicable to a new variable hour employee or new seasonal employee. Specifically, the initial measurement period and administrative period together cannot extend beyond the last day of the first calendar month beginning on or after the first anniversary of the employee's start date. For example, if an applicable large employer member uses a 12-month initial measurement period for a new variable hour employee, and begins that initial measurement period on the first day of the first calendar month following the employee's start date, the period between the end of the initial measurement period and the offer of coverage to a new variable hour employee who works full time during the initial measurement period must not exceed one month.

(5) *Examples.* The following examples illustrate the look-back measurement methods described in paragraphs (c)(2) through (c)(4) of this section. In all of the following examples, the applicable large employer member offers all of its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan. The coverage is affordable within the

meaning of section 36B(c)(2)(C)(i) (or is treated as affordable coverage under one of the affordability safe harbors described in § 54.4980H–5) and provides minimum value within the meaning of section 36B(c)(2)(C)(ii). In *Example 1* through *Example 8,* the new employee is a new variable hour employee, and the employer has chosen to use a 12-month standard measurement period for ongoing employees starting October 15 and a 12-month stability period associated with that standard measurement period starting January 1. (Thus, during the administrative period from October 15 through December 31 of each calendar year, the employer continues to offer coverage to employees who qualified for coverage for that entire calendar year based upon working on average at least 30 hours per week during the prior standard measurement period.) Also, the employer offers health plan coverage only to full-time employees (and their dependents). In *Example 9* and *Example 10,* the new employee is a new variable hour employee, and the employer uses a six-month standard measurement period, starting each May 15 and November 15, with six-month stability periods associated with those standard measurement periods starting January 1 and July 1.

Example 1 (12-Month Initial Measurement Period Followed by 1+ Partial Month Administrative Period). (i) *Facts.* For new variable hour employees, Employer B uses a 12-month initial measurement period that begins on the start date and applies an administrative period from the end of the initial measurement period through the end of the first calendar month beginning on or after the end of the initial measurement period. Employer B hires Employee Y on May 10, 2015. Employee Y's initial measurement period runs from May 10, 2015, through May 9, 2016. Employee Y has an average of 30 hours of service per week during this initial measurement period. Employer B offers coverage to Employee Y for a stability period that runs from July 1, 2016 through June 30, 2017.

(ii) *Conclusion.* Employee Y has an average of 30 hours of service per week during his initial measurement period and Employer B uses an initial measurement period that does not exceed 12 months; an administrative period totaling not more than 90 days; and a combined initial measurement period and administrative period that does not last beyond the final day of the first calendar month beginning on or after the one-year anniversary of Employee Y's start date. Accordingly, from Employee Y's start date through June 30, 2017, Employer B is not subject to any payment under section 4980H with respect to Employee Y, because Employer B complies with the standards for the initial measurement period and stability periods for a new variable hour employee. Employer B must test Employee Y again based on the period from October 15, 2015 through October 14, 2016 (Employer B's first standard measurement period that begins after Employee Y's start date).

Example 2 (11-Month Initial Measurement Period Followed by 2+ Partial Month Administrative Period). (i) *Facts.* Same as *Example 1,* except that Employer B uses an 11-month initial measurement period that begins on the start date and applies an administrative period from the end of the initial measurement period until the end of the second calendar month beginning after the end of the initial measurement period. Employer B hires Employee Y on May 10, 2015. Employee Y's initial measurement period runs from May 10, 2015, through April 9, 2016. Employee Y has an average of 30 hours of service per week during this initial measurement period. Employer B offers coverage to Employee Y for a stability period that runs from July 1, 2016 through June 30, 2017.

(ii) *Conclusion.* Same as *Example 1.*

Example 3 (11-Month Initial Measurement Period Preceded by Partial Month Administrative Period and Followed by 2-Month Administrative Period). (i) *Facts.* Same as *Example 1,* except that Employer B uses an 11-month initial measurement period that begins on the first day of the first calendar month beginning after the start date and applies an administrative period that runs from the end of the initial measurement period through the end of the second calendar month beginning on or after the end of the initial measurement period. Employer B hires Employee Y on May 10, 2015. Employee Y's initial measurement period runs from June 1, 2015, through April 30, 2016. Employee Y has an average of 30 hours of service per week during this initial measurement period. Employer B offers coverage to Employee Y for a stability period that runs from July 1, 2016 through June 30, 2017.

(ii) *Conclusion.* Same as *Example 1.*

Example 4 (12-Month Initial Measurement Period Preceded by Partial Month Administrative Period and Followed by 2-Month Administrative Period). (i) *Facts.* For new variable hour employees, Employer B uses a 12-month initial measurement period that begins on the first day of the first month following the start date and applies an administrative period that runs from the end of the initial measurement period through the end of the second calendar month beginning on or after the end of the initial measurement period. Employer B hires Employee Y on May 10, 2015. Employee Y's initial measurement period runs from June 1, 2015, through May 31, 2016. Employee Y has an average of 30 hours of service per week during this initial measurement period. Employer B offers coverage to Employee Y for a stability period that runs from August 1, 2016 through July 31, 2017.

(ii) *Conclusion.* Employer B does not satisfy the standards for the look-back measurement method in paragraph (c)(4)(v) of this section because the combination of the initial partial month delay, the 12-month initial measurement period, and the two month administrative period means that the coverage offered to Employee Y does not become effective until after the first day of the second calendar month following the first anniversary of Employee Y's start date. Accordingly, Employer B is potentially subject to a payment under section 4980H.

Example 5 (Continuous Full-Time Employee). (i) *Facts.* Same as *Example 1;* in addition, Employer B tests Employee Y again based on Employee Y's hours of service from October 15, 2015 through October 14, 2016 (Employer B's first standard measurement period that begins after Employee Y's start date), determines that Employee Y has an average of 30 hours of service a week during that period, and offers Employee Y coverage for July 1, 2017 through December 31, 2017. (Employee Y already has an offer of coverage for the period of January 1, 2017 through June 30, 2017 because that period is covered by the initial stability period following the initial measurement period, during which Employee Y was determined to be a full-time employee.)

(ii) *Conclusion.* Employer B is not subject to any payment under section 4980H for 2017 with respect to Employee Y.

Example 6 (Initially Full-Time Employee, Becomes Non-Full-Time Employee). (i) *Facts.* Same as *Example 1;* in addition, Employer B tests Employee Y again based on Employee Y's hours of service from October 15, 2015 through October 14, 2016 (Employer B's first standard measurement period that begins after Employee Y's start date), and determines that Employee Y has an average of 28 hours of service a week during that period. Employer B continues to offer coverage to Employee Y through June 30, 2017 (the end of the stability period based on the initial measurement period during which Employee Y was determined to be a full-time employee), but does not offer coverage to Employee Y for the period of July 1, 2017 through December 31, 2017.

(ii) *Conclusion.* Employer B is not subject to any payment under section 4980H for 2016 with respect to Employee Y, provided that it offers coverage to Employee Y from July 1, 2016 through June 30, 2017 (the entire stability period associated with the initial measurement period).

Example 7 (Initially Non-Full-Time Employee). (i) *Facts.* Same as *Example 1,* except that Employee Y has an average of 28 hours of service per week during the period from May 10, 2015 through May 9, 2016 and Employer B does not offer coverage to Employee Y in 2016.

(ii) *Conclusion.* From Employee Y's start date through the end of 2016, Employer B is not subject to any payment under section 4980H, because Employer B complies with the standards for the measurement and stability periods for a new variable hour employee with respect to Employee Y.

Example 8 (Initially Non-Full-Time Employee, Becomes Full-Time Employee). (i) *Facts.* Same as *Example 7;* in addition, Employer B tests Employee Y again based on Employee Y's hours of service from October 15, 2015 through October 14, 2016 (Employer B's first standard measurement period that begins after Employee Y's start date), determines that Employee Y has an average of 30 hours of service per week during this standard measurement period, and offers coverage to Employee Y for 2017.

(ii) *Conclusion.* Employer B is not subject to any payment under section 4980H for 2017 with respect to Employee Y.

Example 9 (Initially Full-Time Employee). (i) *Facts.* For new variable hour employees, Employer C uses a six-month initial measurement period that begins on the start date and applies an administrative period that runs from the end of the initial measurement period through the end of the first full calendar month beginning after the end of the initial measurement period. Employer C hires Employee Z on May 10, 2015. Employee Z's initial measurement period runs from May 10, 2015, through November 9, 2015, during which Employee Z has an average of 30 hours of service per week. Employer C offers coverage to Employee Z for a stability period that runs from January 1, 2016 through June 30, 2016.

(ii) *Conclusion.* Employer C uses an initial measurement period that does not exceed 12 months; an administrative period totaling not more than 90 days; and a combined initial measurement period and administrative period that does not last longer than the final day of the first calendar month beginning on or after the one-year anniversary of Employee Z's start date. From Employee Z's start date through June 30, 2016, Employer C is not subject to any payment under section 4980H, because Employer C complies with the standards for the measurement and stability periods for a new variable hour employee with respect to Employee Z. Employer C must test Employee Z again based on Employee Z's hours of service during the period from November 15, 2015 through May 14, 2016 (Employer C's first standard measurement period that begins after Employee Z's start date).

Example 10 (Initially Full-Time Employee, Becomes Non-Full-Time Employee). (i) *Facts.* Same as *Example 9;* in addition, Employer C tests Employee Z again based on Employee Z's hours of service during the period from November 15, 2015 through May 14, 2016 (Employer C's first standard measurement period that begins after Employee Z's start date), during which period Employee Z has an average of 28 hours of service per week. Employer C continues to offer coverage to Employee Z through June 30, 2016 (the end of the initial stability period based on the initial measurement period during which Employee Z has an average of 30 hours of service per week), but does not offer coverage to Employee Z from July 1, 2016 through December 31, 2016.

(ii) *Conclusion.* Employer C is not subject to any payment under section 4980H with respect to Employee Z for 2016.

Example 11 (Seasonal Employee, 12-Month Initial Measurement Period; 1+ Partial Month Administrative Period). (i) *Facts.* Employer D offers health plan coverage only to full-time employees (and their dependents). Employer D uses a 12-month initial measurement period for new variable hour employees and seasonal employees that begins on the start date and applies an administrative period from the end of the initial measurement period through the end of the first calendar month beginning after the end of the initial measurement period. Employer D hires Employee S, a ski instructor, on November 15, 2015 with an anticipated season during which Employee S will work running through March 15, 2016. Employer D determines that Employee S is a seasonal employee based upon a reasonable good faith interpretation of that term. Employee S's initial measurement period runs from November 15, 2015, through November 14, 2016. Employee S is expected to have 50 hours of service per week from November 15, 2015 through March 15, 2016, but is not reasonably expected to average 30 hours of service per week for the 12-month initial measurement period.

(ii) *Conclusion.* Employer D cannot determine whether Employee S is reasonably expected to average at least 30 hours of service per week for the 12-month initial measurement period. Accordingly, Employer D may treat Employee S as a variable hour employee during the initial measurement period.

Example 12 (Variable Hour Employee). (i) *Facts.* Employer E is in the trade or business of providing temporary workers to numerous clients that are unrelated to Employer E and to one another. Employer E is the common law employer of the temporary workers based on all of the facts and circumstances. Employer E offers health plan coverage only to full-time employees (including temporary workers who are full-time employees) and their dependents. Employer E uses a 12-month initial measurement period for new variable hour employees and new seasonal employees that begins on the start date and applies an administrative period from the end of the initial measurement period through the end of the first calendar month beginning after the end of the initial measurement period. Employer E hires Employee T on January 1, 2015 and anticipates that it will assign Employee T to provide services for various clients. As of the beginning of the initial measurement period, Employer E reasonably expects that, over the initial measurement period, Employee T is likely to be offered short-term assignments with several different clients, with significant gaps between the assignments and that the assignments will differ in the average hours of service per week (meaning averaging both above and below 30 hours of service per week), all depending on client needs and Employee T's availability. The number of actual assignments that Employee T will be offered, the number that Employee T will accept, the duration of assignments, the length of the gaps between assignments, and whether various assignments will result in Employee T being employed on average at least 30 hours of service per week during the assignment, are all uncertain.

(ii) *Conclusion.* Employer E cannot determine whether Employee T is reasonably expected to average at least 30 hours of service per week for the 12-month initial measurement period. Accordingly, Employer E may treat Employee T as a variable hour employee during the initial measurement period.

Example 13 (Variable Hour Employee). (i) *Facts.* Employee A is hired on an hourly basis by Employer Y to fill in for employees who are absent and to provide additional staffing at peak times. Employer Y expects that Employee A will average 30 hours of service per week or more for A's first few months of employment, while assigned to a specific project, but also reasonably expects that the assignments will be of unpredictable duration, that there will be gaps of unpredictable duration between assignments, that the hours per week required by subsequent assignments will vary, and that A will not necessarily be available for all assignments.

(ii) *Conclusion.* Employer Y cannot determine whether Employee A is reasonably expected to average at least 30 hours of service per week for the initial measurement period. Accordingly, Employer Y may treat Employee A as a variable hour employee.

(d) *Change in employment status*—(1) *In general.* If the position of employment or other employment status of a new variable hour employee or new seasonal employee materially changes before the end of the initial measurement period in such a way that, if the employee had begun employment in the new position or status, the employee would have reasonably been expected to be employed on average at least 30 hours of service per week, the employer is not required to treat the employee as a full-time employee for purposes of determining and calculating any liability under section 4980H until the first day of the fourth month following the change in employment status or, if earlier and the employee averages more than 30 hours of service per week during the initial measurement period, the first day of the first month following the end of the initial measurement period (including any optional administrative period associated with the initial measurement period).

(2) *Example.* The following example illustrates the provisions of paragraph (d)(1) of this section. In the following example, the applicable large employer member offers all of its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan. The coverage is affordable within the meaning of section 36B(c)(2)(C)(i) (or is treated as affordable coverage under one of the affordability safe harbors described in § 54.4980H–5) and provides minimum value within the meaning of section 36B(c)(2)(C)(ii).

Example (Change in employment from variable hour employee to non-variable hour employee). (i) *Facts.* For new variable hour employees, Employer A uses a 12-month initial measurement period that begins on the start date and applies an administrative period from the end of the initial measurement period through the end of the first calendar month beginning on or after the end of the initial measurement period. Employer A hires Employee Z on May 10,

2015. Employer A's initial measurement period runs from May 10, 2015, through May 9, 2016, with the optional administrative period ending June 30, 2016. At Employee Z's May 10, 2015 start date, Employee Z is a variable hour employee. On September 15, 2015, Employer A promotes Employee Z to a position that can reasonably be expected to average at least 30 hours of service per week.

(ii) *Conclusion.* For purposes of determining Employer A's potential liability under section 4980H, Employee Z must be treated as a full-time employee as of January 1, 2016, because that date is the earlier of the first day of the fourth calendar month following the change in position (January 1, 2016) or the first day of the calendar month after the end of the initial measurement period plus the optional administrative period (July 1, 2016).

(e) *Employees rehired after termination of employment or resuming service after other absence*—(1) *Treatment as a new employee after a period of absence.* Solely for purposes of section 4980H, an employee who resumes providing services to (or is otherwise credited with an hour of service for) an applicable large employer after a period during which the employee was not credited with any hours of service may be treated as having terminated employment and having been rehired, and therefore may be treated as a new employee upon the resumption of services only if the employee did not have an hour of service for the applicable large employer for a period of at least 26 consecutive weeks immediately preceding the resumption of services or, if chosen by the applicable large employer, for a shorter period (measured in weeks) of at least four consecutive weeks that exceeds the number of weeks of that employee's period of employment with the applicable large employer immediately preceding the period during which the employee was not credited with any hours of service. For purposes of the preceding sentence, the duration of the period of employment immediately preceding the period during which the employee was not credited with any hours of service is determined after application to that period of employment of the averaging methods described in paragraph (e)(4) of this section, if applicable. An employee treated as a continuing employee retains, upon resumption of services, the status that employee had with respect to the application of any stability period (for example, if the continuing employee returns during a stability period in which the employee is treated as a full-time employee, the employee is treated as a full-time employee upon return and through the end of that stability period). For purpose of the preceding sentence, a continuing employee treated as a full-time employee will be treated as offered coverage upon resumption of services if the employee is offered coverage as of the first day that employee is credited with an hour of service, or, if later, as soon as administratively practicable. This rule set forth in this paragraph (e)(1) applies solely for the purpose of determining whether the employee, upon the resumption of services, is treated as a new employee or as a continuing employee, and does not determine whether the employee is treated as a continuing full-time employee or a terminated employee during the period during which no hours of service are credited.

(2) *Employment break period defined.* An employment break period is a period of at least four consecutive weeks (disregarding special unpaid leave as defined in paragraph (e)(3) of this section) during which an employee of an educational organization is not credited with hours of service for an applicable large employer.

(3) *Definitions*—(i) *Special unpaid leave defined.* For purposes of this paragraph (e), special unpaid leave refers to—

(A) Unpaid leave that is subject to the Family and Medical Leave Act of 1993 (FMLA), Public Law 103–3, 20 U.S.C. 2601 et seq.,

(B) Unpaid leave that is subject to the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Public Law 103–353, 38 U.S.C. 4301 et seq., or

(C) Unpaid leave on account of jury duty.

(ii) *Educational organization.* For purposes of this paragraph (e), educational organization means an entity described in § 1.170A–9(c)(1) of this chapter, whether or not described in section 501(c)(3) and exempt under section 501(a). Thus, the term educational organization includes taxable entities, tax-exempt entities and government entities.

(4) *Averaging method for special unpaid leave and employment break periods.* For purposes of applying the look-back measurement method described in paragraph (c) of this section to an employee who is not treated as a new employee under paragraph (e)(1) of this section, the employer determines the employee's average hours of service for a measurement period by computing the average after excluding any special unpaid leave (and, in the case of an employer that is an educational organization, also excluding any employment break period) during that measurement period and by using that average as the average for the entire measurement period. Alternatively, for purposes of determining the employee's average hours of service for the measurement period, the employer may choose to treat the employee as credited with hours of service for any periods of special unpaid leave (and, in the case of an employer that is an educational organization, any employment break period) during that measurement period at a rate equal to the average weekly rate at which the employee was credited with hours of service during the weeks in the measurement period that are not part of a period of special unpaid leave (or, in the case of an employer that is an educational organization, an employment break period). Notwithstanding the preceding two sentences, no more than 501 hours of service during employment break periods in a calendar year are required to be excluded (under the first sentence) or credited (under the second sentence) by an educational organization, provided that this 501-hour limit does not apply to hours of service required to be excluded or credited (as the case may be) in respect of special unpaid leave. In applying the preceding sentence, an employer that uses the method described in the first sentence of this paragraph (e)(4) determines the number of hours excluded by multiplying the average weekly rate for the measurement period (determined as in the second sentence of this paragraph (e)(4)) by the number of weeks in the employment break period and periods of special unpaid leave. For purposes of this paragraph (e)(4), in computing the average weekly rate, employers are permitted to use any reasonable method if applied on a consistent basis. In addition, if an employee's average weekly rate under this paragraph (e)(4) is being computed for a measurement period and that measurement period is shorter than six months, the six-month period ending with the close of the measurement period is used to compute the average hours of service.

(5) *Averaging rules for employment break periods for employers other than educational organizations.* [RESERVED]

(6) *Anti-abuse rule.* For purposes of this paragraph (e), any hour of service will be disregarded if the hour of service is credited, or the services giving rise to the crediting of the hour of service are requested or required of the employee, for a purpose of avoiding or undermining the application of the employee rehire rules under paragraph (e)(1) of this section, or the application of the averaging method for employment break periods under paragraph (e)(4) of

this section. For example, if an employee of an educational organization would otherwise have a period with no hours of service to which the rules under paragraph (e)(4) of this section would apply, but for the employer's request or requirement that the employee perform one or more than one hour of service for a purpose of avoiding the application of those rules, any such hours of service for the week are disregarded, and the rules under paragraphs (e)(4) of this section will apply.

(7) *Examples.* The following examples illustrate the provisions of paragraph (e) of this section. All employers in these examples are applicable large employer members, each is in a different applicable large employer group, and each computes hours of service under the rules in paragraphs (a) through (e) of this section. None of the periods during which an employee is not credited with an hour of service for an employer involve special unpaid leave (as defined in paragraph (e)(3) of this section) or the employee being credited with hours of service for any applicable large employer member in the same applicable large employer as the employer.

Example 1. (i) *Facts.* As of April 1, 2015, Employee A has been an employee of Employer Z (which is not an educational organization as defined in paragraph (e)(3) of this section) for 10 years. On April 1, 2015, Employee A terminates employment and is not credited with an hour of service until September 1, 2015 when Employer Z rehires Employee A and Employee A continues as an employee through December 31, 2015, which is the close of the measurement period as applied by employer Z.

(ii) *Conclusion.* Because Employee A's period for which he is not credited with any hour of service is not longer than Employee A's prior period of employment and is less than 26 weeks, Employee A is not treated as having terminated employment and been rehired for purposes of determining whether Employee A is treated as a new employee upon resumption of services. Therefore, Employee A's hours of service prior to termination are required to be taken into account for purposes of the measurement period, and, Employee A's period with no hours of service is taken into account as a period of zero hours of service during the measurement period.

Example 2. (i) *Facts.* Same facts as *Example 1,* except that Employee A is rehired on December 1, 2015.

(ii) *Conclusion.* Because the period during which Employee A is not credited with an hour of service for Employer Z, exceeds 26 weeks, Employee A may be treated as having terminated employment on April 1, 2015 and having been rehired as a new employee on December 1, 2015, for purposes of determining Employee A's full-time employee status. Because Employee A is treated as a new employee, Employee A's hours of service prior to termination are not required to be taken into account for purposes of the measurement period, and the period between termination and rehire with no hours of service is not taken into account in the new measurement period that begins after the employee is rehired.

Example 3. (i) *Facts.* Employee B is employed by Employer X, an educational organization as defined in paragraph (e)(3) of this section. Employee B is employed for 38 hours of service per week on average from September 7, 2013 through May 22, 2014, and then does not provide services (and is not otherwise credited with an hour of service) during the summer break when the school is generally not in session except for limited summer classes and activities. Employee B resumes providing services for Employer X on September 5, 2014, when the new school year begins.

(ii) *Conclusion.* Because the period from May 23 through September 4, 2014 (a total of 15 weeks) during which Employee B is not credited with an hour of service does not exceed 26 weeks, and also does not exceed the number of weeks of Employee B's immediately preceding period of employment, Employee B is not treated as having terminated employment on May 23, 2014 and having been rehired on September 5, 2014. Also, for purposes of determining Employee B's average hours per week for the measurement period, Employee B is credited, under the averaging method for employment break periods applicable to educational organizations, as having an average of 38 hours per week for the 15 weeks between May 23 and September 4, 2014, during which Employee B otherwise was credited with no hours of service.

(f) *Nonpayment or late payment of premiums.* An applicable large employer member will not be treated as failing to offer to a full-time employee (and his or her dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan for an employee whose coverage under the plan is terminated during the coverage period solely due to the employee failing to make a timely payment of the employee portion of the premium. This treatment continues only through the end of the coverage period (typically the plan year). For this purpose, the rules in § 54.4980B–8, Q&A–5(a), (c), (d) and (e) apply under this section to the payment for coverage with respect to a full-time employee in the same manner that they apply to payment for COBRA continuation coverage under § 54.4980B–8.

(g) *Effective/applicability date.* This section is applicable for periods after December 31, 2013.

§ 54.4980H–4 Assessable payments under section 4980H(a).

(a) *In general.* If an applicable large employer member fails to offer to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan for any calendar month, and the applicable large employer member has received a Section 1411 Certification with respect to at least one full-time employee, an assessable payment is imposed. For the calendar month, the applicable large employer member will owe an assessable payment equal to the product of the section 4980H(a) applicable payment amount and the number of full-time employees of the applicable large employer member (adjusted in accordance with paragraph (d) of this section). For purposes of this paragraph (a), an applicable large employer member is treated as offering such coverage to its full-time employees (and their dependents) for a calendar month if, for that month, it offers such coverage to all but five percent (or, if greater, five) of its full-time employees (provided that an employee is treated as having been offered coverage only if the employer also offers coverage to that employee's dependents).

(b) *Offer of coverage.* An applicable large employer member will not be treated as having made an offer of coverage to a full-time employee for a plan year if the employee does not have an effective opportunity to elect to enroll (or decline to enroll) in the coverage no less than once during the plan year. Whether an employee has an effective opportunity is determined based on all the relevant facts and circumstances, including adequacy of notice of the availability of the offer of coverage, the period of time during which acceptance of the offer of coverage may be made, and any other conditions on the offer.

(c) *Partial calendar month.* If an applicable large employer member fails to offer coverage to a full-time employee for any day of a calendar month, that employee is treated as not offered coverage during that entire month. However, in a calendar month in which the employment of a full-time employee terminates, if the employee would have been offered coverage for the entire month had the employee been employed for the entire month, the employee is treated as having been offered coverage for that entire month.

(d) *Allocated reduction of 30 full-time employees.* For purposes of the liability calculation under paragraph (a) of this section, an applicable large employer member's number of full-time employees is reduced by that member's allocable share of 30. The applicable large employer member's allocation is equal to 30 allocated ratably among all

members of the applicable large employer on the basis of the number of full-time employees employed by each applicable large employer member during the calendar year. If an applicable large employer member's total allocation is a fractional number that is less than one, it will be rounded up to one. This rounding rule may result in the aggregate reduction for the entire group of applicable large employer members exceeding 30.

(e) *Example.* The following example illustrates the provisions of paragraphs (a) and (b) of this section.

Example. (i) *Facts.* Applicable large employer member A and applicable large employer member B are the two members of an applicable large employer. Applicable large employer member A employs 40 full-time employees in each calendar month of 2015. Applicable large employer member B employs 35 full-time employees in each calendar month of 2015. For 2015, the applicable payment amount for a calendar month is $2,000 divided by 12. Applicable large employer member A does not sponsor an eligible employer-sponsored plan for any calendar month of 2015, and receives a Section 1411 Certification for 2015 with respect to at least one of its full-time employees. Applicable large employer member B sponsors an eligible employer-sponsored plan under which all of its full-time employees are eligible for minimum essential coverage.

(ii) *Conclusion.* Pursuant to section 4980H(a) and this section, applicable large employer member A is subject to an assessable payment under section 4980H(a) for 2015 of $48,000, which is equal to 24 × $2,000 (40 full-time employees reduced by 16 (its allocable share of the 30-employee offset ((40/75) × 30 = 16)) and then multiplied by $2,000). Applicable large employer member B is not subject to an assessable payment under section 4980H(a) for 2015.

(f) *Effective/applicability date.* This section is applicable for periods after December 31, 2013.

§ 54.4980H–5 Assessable payments under section 4980H(b).

(a) *In general.* If an applicable large employer member offers to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan for any calendar month (including an offer of coverage to all but five percent or less (or, if greater, five or less) of its full-time employees (and their dependents)) and the applicable large employer member has received a Section 1411 Certification with respect to one or more full-time employees of the applicable large employer, then there is imposed on the applicable large employer member an assessable payment equal to the product of the number of full-time employees of the applicable large employer member for which it has received a Section 1411 Certification (minus the number of those employees who are new full-time employees during their first three months of employment, who are new variable hour or new seasonal employees during the months of that employee's initial measurement period (and associated administrative period) under § 54.4980H–3(c)(3), or who were offered the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan that satisfied minimum value and met one or more of the affordability safe harbors described in paragraph (e) of this section) and the section 4980H(b) applicable payment amount. Notwithstanding the foregoing, the aggregate amount of assessable payment determined under this paragraph (a) with respect to all employees of an applicable large employer for any calendar month may not exceed the product of the section 4980H(a) applicable payment amount and the number of full-time employees of the applicable large employer member during that calendar month (reduced by the applicable large employer member's ratable allocation of the 30 employee reduction under § 54.4980H–4(d).

(b) *Offer of coverage.* For purposes of this section, the same rules, with respect to an offer of coverage for purposes of section 4980H(a), apply. See § 54.4980H–4(b).

(c) *Partial calendar month.* If an applicable large employer member fails to offer coverage to a full-time employee for any day of a calendar month, that employee is treated as not offered coverage during that entire month. However, in a calendar month in which a full-time employee's employment terminates, if the employee would have been offered coverage if the employee had been employed for the entire month, the employee is treated as having been offered coverage during that month.

(d) *Applicability to applicable large employer member.* The liability for an assessable payment under section 4980H(b) for a calendar month with respect to a full-time employee applies solely to the applicable large employer member that was the employer of that employee for that calendar month, provided that, if the employee was an employee of more than one applicable large employer member during that calendar month, the liability for the assessable payment under section 4980H(b) is allocated among the different members in accordance with the number of hours of service the employee had from each such member for that calendar month. For a calendar month, an applicable large employer member may be liable for an assessable payment under section 4980H(a) or under section 4980H(b), but may not be liable for an assessable payment under both section 4980H(a) and section 4980H(b).

(e) *Affordability*—(1) *In general.* An employee who is offered coverage by an applicable large employer member may be eligible for a premium tax credit or cost reduction if that offer of coverage is not affordable within the meaning of section 36B(c)(2)(C)(i). Under section 36B(c)(2)(C)(i), coverage under an employer-sponsored plan is affordable to a particular employee if the employee's required contribution (within the meaning of section 5000A(e)(1)(B)(i)) to the plan does not exceed 9.5 percent of the employee's household income for the taxable year. For this purpose, section 36B(d)(2)(A) defines the term *household income* to mean the modified adjusted gross income of the employee and any members of the employee's family (which would include any spouse and dependents) who are required to file a federal income tax return. Section 36B(d)(2)(B) and § 1.36B–1(e)(2) of this chapter define the term *modified adjusted gross income* for this purpose as adjusted gross income (within the meaning of section 62) increased by—

(i) Amounts excluded from gross income under section 911,

(ii) The amount of any tax-exempt interest a taxpayer receives or accrues during the taxable year, and

(iii) An amount equal to the portion of the taxpayer's social security benefits (as defined in section 86(d)) which is not included in gross income under section 86 for the taxable year.

(2) *Affordability safe harbors for section 4980H(b) purposes.* The following affordability safe harbors apply solely for purposes of section 4980H(b), so that an applicable large employer member that offers minimum essential coverage providing minimum value will not be subject to an assessable payment under section 4980H(b) with respect to any employee receiving the premium tax credit or cost sharing reduction for a period for which the coverage is determined to be affordable under the requirements of an affordability safe harbor. This rule applies even if the applicable large employer member's offer of coverage that meets the requirements of an affordability safe harbor is not affordable for a particular employee under section 36B(c)(2)(C)(i) and a premium tax credit or cost-sharing is

allowed or paid with respect to that employee

(i) *Conditions of using an affordability safe harbor.* An applicable large employer member may use one or more of the affordability safe harbors described in paragraph (e)(2) of this section only if the employer offers its full-time employees and their dependents the opportunity to enroll in MEC under an eligible employer-sponsored plan that provides minimum value with respect to the self-only coverage offered to the employee. Use of any of the safe harbors is optional for an applicable large employer, and an applicable large employer member may choose to apply the safe harbors for any reasonable category of employees, provided it does so on a uniform and consistent basis for all employees in a category.

(ii) *Form W–2 safe harbor* –(A) *Full-year offer of coverage.* An employer will not be subject to an assessable payment under section 4980H(b) with respect to a full-time employee if that employee's required contribution for the calendar year for the employer's lowest cost self-only coverage that provides minimum value during the entire calendar year (excluding COBRA or other continuation coverage) does not exceed 9.5 percent of that employee's Form W–2 wages from the employer for the calendar year. Application of this safe harbor is determined after the end of the calendar year and on an employee-by-employee basis, taking into account the Form W–2 wages and the required employee contribution for that year. In addition, to qualify for this safe harbor, the employee's required contribution must remain a consistent amount or percentage of all Form W–2 wages during the calendar year (or for plans with fiscal year plan years, within the portion of each plan year during the calendar year) so that an applicable large employer member is not permitted to make discretionary adjustments to the required employee contribution for a pay period. A periodic contribution that is based on a consistent percentage of all Form W–2 wages may be subject to a dollar limit specified by the employer.

(B) *Adjustment for partial-year offer of coverage.* For an employee not offered coverage for an entire calendar year, the Form W–2 safe harbor is applied by adjusting the Form W–2 wages to reflect the period for which coverage was offered, then determining whether the employee's required contribution for the employer's lowest cost self-only coverage that provides minimum value, totaled for the periods during which coverage was offered, does not exceed 9.5 percent of the adjusted amount of Form W–2 wages. To adjust Form W–2 wages for this purpose, the Form W–2 wages are multiplied by a fraction equal to the number of calendar months for which coverage was offered over the number of calendar months in the employee's period of employment with the employer during the calendar year. For this purpose, if coverage is offered during at least one day during the calendar month, or the employee is employed for at least one day during the calendar month, the entire calendar month is counted in determining the applicable fraction.

(iii) *Rate of pay safe harbor.* An applicable large employer member satisfies the rate of pay safe harbor with respect to an employee for a calendar month if the employee's required contribution for the month for the applicable large employer member's lowest cost self-only coverage that provides minimum value does not exceed 9.5 percent of an amount equal to 130 hours multiplied by the employee's hourly rate of pay as of the first day of the coverage period (generally the first day of the plan year). For salaried employees, monthly salary is used instead of 130 multiplied by the hourly rate of pay, and, solely for purposes of this paragraph (e)(2)(iii), an applicable large employer member may use any reasonable method for converting payroll periods to monthly salary. An applicable large employer member may use this safe harbor only to the extent it does not reduce the hourly wage of hourly employees or the monthly wages of salaried employees during the calendar year (including through the transfer of employment to another applicable large employer member of the same applicable large employer). For this purpose, if coverage is offered during at least one day during the calendar month, the entire calendar month is counted both for purposes of determining the assumed income for the calendar month and for determining the employee's share of the premium for the calendar month.

(iv) *Federal poverty line safe harbor.* An applicable large employer member satisfies the Federal poverty line safe harbor with respect to an employee for a calendar month if the employee's required contribution for the calendar month for the applicable large employer member's lowest cost self-only coverage that provides minimum value does not exceed 9.5 percent of a monthly amount determined as the Federal poverty line for a single individual for the applicable calendar year, divided by 12. For this purpose, if coverage is offered during at least one day during the calendar month, the entire calendar month is counted both for purposes of determining the assumed income for the calendar month and for determining the employee's share of the premium for the calendar month. For this purpose, the applicable Federal poverty line is the Federal poverty line for the State in which the employee is employed.

(v) *Examples.* The following examples illustrate the application of the affordability safe harbors described in paragraph (e)(2) of this section:

Example 1. (Form W–2 wages safe harbor). (i) *Facts.* Employee A is employed by applicable large employer member Z consistently from January 1, 2015 through December 31, 2015. In addition, Z offers Employee A and his dependents minimum essential coverage during that period that meets the minimum value requirements. The employee contribution for self-only coverage is $100 per calendar month, or $1,200 for the calendar year. For 2015, Employee A's Form W–2 wages with respect to employment with Z are $24,000.

(ii) *Conclusion.* Because the employee contribution for 2015 is less than 9.5% of Employee A's Form W–2 wages for 2015, the coverage offered is treated as affordable with respect to Employee A for 2015 ($1,200 is 5% of $24,000).

Example 2. (Form W–2 wages safe harbor). (i) *Facts.* Employee B is employed by applicable large employer member Y from January 1, 2015 through September 30, 2015. In addition, Y offers Employee B and his dependents minimum essential coverage during that period that meets the minimum value requirements. The employee contribution for self-only coverage is $100 per calendar month, or $900 for Employee B's period of employment. For 2015, Employee B's Form W–2 wages with respect to employment with Y are $18,000. For purposes of applying the affordability safe harbor, the Form W–2 wages are multiplied by 9/9 (9 calendar months of coverage offered over 9 months of employment during the calendar year) or 1. Accordingly, affordability is determined by comparing the adjusted Form W–2 wages ($18,000) to the employee contribution for the period for which coverage was offered ($900).

(ii) *Conclusion.* Because the result is less than 9.5% of Employee B's Form W–2 wages for 2015, the coverage offered is treated as affordable with respect to Employee B for 2015 ($900 is 5% of $18,000).

Example 3. (Form W–2 wages safe harbor). (i) *Facts.* Employee C is employed by applicable large employer member X from May 15, 2015 through December 31, 2015. In addition, X offers Employee C and her dependents minimum essential coverage during the period from August 1, 2015 through December 31, 2015 that meets the minimum value requirements. The employee contribution for self-only coverage is $100 per calendar month, or $500 for Employee C's period of employment. For 2015, Employee C's Form W–2 wages with respect to employment with X are $15,000. For purposes of applying the affordability safe harbor, the Form W–2 wages are multiplied

by 5/8 (5 calendar months of coverage offered over 8 months of employment during the calendar year). Accordingly, affordability is determined by comparing the adjusted Form W–2 wages ($9,375 or $15,000 x 5/8) to the employer contribution for the period for which coverage was offered ($500).

(ii) *Conclusion.* Because $500 is less than 9.5% of $9,375 (Employee C's adjusted Form W–2 wages for 2015), the coverage offered is treated as affordable with respect to Employee C for 2015 ($500 is 5.33% of $9,375).

Example 4. (Rate of pay safe harbor). (i) *Facts.* Employee D is employed by applicable large employer member W from January 1, 2015 through December 31, 2015. In addition, W offers Employee D and his dependents minimum essential coverage during that period that meets the minimum value requirements. The employee contribution for self-only coverage is $85 per calendar month. Employee D is paid at a rate of $7.25 per hour (the minimum wage in Employer W's jurisdiction), for the entire year 2015. For purposes of applying the affordability safe harbor, W may assume that Employee D earned $942.50 per calendar month (130 hours of service multiplied by $7.25 per hour). Accordingly, affordability is determined by comparing the assumed income per month ($942.50) to the employee contribution per month ($85).

(ii) *Conclusion.* Because $85 is less than 9.5% of Employee D's assumed income, the coverage offered is treated as affordable with respect to Employee D for 2015 ($85 is 9.01% of $942.50).

Example 5. (Rate of pay safe harbor). (i) *Facts.* Employee E is employed by applicable large employer member V from May 15, 2015 through December 31, 2015. In addition, V offers Employee E and her dependents minimum essential coverage from August 1, 2015 through December 31, 2015 that meets the minimum value requirements. The employee contribution for self-only coverage is $100 per calendar month. From May 15, 2015 through October 31, 2015, Employee E is paid at a rate of $10 per hour. From November 1, 2015 through December 31, 2015, Employee E is paid at a rate of $12 per hour. For purposes of applying the affordability safe harbor V may assume that Employee E earned $1,300 per calendar month (130 hours of service multiplied by the lowest hourly rate of pay for the calendar year, or $10). Accordingly, affordability is determined by comparing the assumed income ($1,300 per month) to the employee contribution ($100 per month).

(ii) *Conclusion.* Because $100 is less than 9.5% of Employee E's assumed monthly income, the coverage offered is treated as affordable with respect to Employee E for 2015 ($100 is 7.69% of $1,300).

Example 6. (Federal poverty line safe harbor). (i) *Facts.* Employee F is employed by applicable large employer member W from January 1, 2015 through December 31, 2015. In addition, W offers Employee F and his dependents minimum essential coverage during that period that meets the minimum value requirements. W uses the look-back measurement method. Under that method as applied by W, Employee F is treated as a full-time employee for the entire calendar year 2015. Employee F is regularly credited with 35 hours of service per week but is credited with only 20 hours of service during the month of March, 2015 and only 15 hours of service during the month of August, 2015. Assume for this purpose that the Federal poverty line for 2015 for an individual is $11,170. With respect to Employee F, W determines the monthly employee contribution for employee single-only coverage for each calendar month of 2015 as an amount equal to 9.5% multiplied by $11,170, which is $1,061.15, and that amount is then divided by 12, and the result is $88.43.

(ii) *Conclusion.* Regardless of Employee F's actual wages for any calendar month, including the months of March, 2015 and August, 2015 when Employee F has lower wages because of significantly lower hours of service, the coverage under the plan is treated as affordable with respect to Employee F.

(f) *Effective/applicability date.* This section is applicable for periods after December 31, 2013.

§ 54.4980H–6 Administration and Procedure

(a) *In general.* [Reserved]

(b) *Effective/applicability date.* This section is applicable for periods after December 31, 2013.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 5.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 6.** Section 301.7701–2 is amended as follows:

■ 1. In paragraph (c)(2)(v)(A)(*3*), the language ''and 4412; and'' is removed and ''and 4412;'' is added in its place.

■ 2. In paragraph (c)(2)(v)(A)(*4*), the language ''or 6427.'' is removed and ''or 6427; and'' is added in its place.

■ 3. Paragraphs (c)(2)(v)(A)(*5*) and (e)(6)(iii) are added.

The additions read as follows:

§ 301.7701–2 Business entities; definitions.

* * * * *

(c) * * *

(2) * * *

(v) * * *

(A) * * *

(*5*) Assessment and collection of an assessable payment imposed by section 4980H and reporting required by section 6056.

* * * * *

(e) * * *

(6) * * *

(iii) Paragraph (c)(2)(v)(A)(*5*) of this section applies for periods after December 31, 2013.

* * * * *

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

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FEDERAL REGISTER PAGES AND DATE, JANUARY

1–254 2

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Bridgeport Indian Colony Land Trust, Health, and Economic Development Act of 2012 (Dec. 20, 2012; 126 Stat. 1538)

H.R. 2838/P.L. 112–213
Coast Guard and Maritime Transportation Act of 2012 (Dec. 20, 2012; 126 Stat. 1540)

H.R. 3319/P.L. 112–214
To allow the Pascua Yaqui Tribe to determine the requirements for membership in that tribe. (Dec. 20, 2012; 126 Stat. 1588)

H.R. 4014/P.L. 112–215
To amend the Federal Deposit Insurance Act with respect to information provided to the Bureau of Consumer Financial Protection. (Dec. 20, 2012; 126 Stat. 1589)

H.R. 4367/P.L. 112–216
To amend the Electronic Fund Transfer Act to limit the fee disclosure requirement for an automatic teller machine to the screen of that machine. (Dec. 20, 2012; 126 Stat. 1590)

S. 1998/P.L. 112–217
DHS Audit Requirement Target Act of 2012 (Dec. 20, 2012; 126 Stat. 1591)

S. 3542/P.L. 112–218
No-Hassle Flying Act of 2012 (Dec. 20, 2012; 126 Stat. 1593)

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Date of FR publication	15 days after publication	21 days after publication	30 days after publication	35 days after publication	45 days after publication	60 days after publication	90 days after publication
January 2	Jan 17	Jan 23	Feb 1	Feb 6	Feb 19	Mar 4	Apr 2
January 3	Jan 18	Jan 24	Feb 4	Feb 7	Feb 19	Mar 4	Apr 3
January 4	Jan 22	Jan 25	Feb 4	Feb 8	Feb 19	Mar 5	Apr 4
January 7	Jan 22	Jan 28	Feb 6	Feb 11	Feb 21	Mar 8	Apr 8
January 8	Jan 23	Jan 29	Feb 7	Feb 12	Feb 22	Mar 11	Apr 8
January 9	Jan 24	Jan 30	Feb 8	Feb 13	Feb 25	Mar 11	Apr 9
January 10	Jan 25	Jan 31	Feb 11	Feb 14	Feb 25	Mar 11	Apr 10
January 11	Jan 28	Feb 1	Feb 11	Feb 15	Feb 25	Mar 12	Apr 11
January 14	Jan 29	Feb 4	Feb 13	Feb 19	Feb 28	Mar 15	Apr 15
January 15	Jan 30	Feb 5	Feb 14	Feb 19	Mar 1	Mar 18	Apr 15
January 16	Jan 31	Feb 6	Feb 15	Feb 20	Mar 4	Mar 18	Apr 16
January 17	Feb 1	Feb 7	Feb 19	Feb 21	Mar 4	Mar 18	Apr 17
January 18	Feb 4	Feb 8	Feb 19	Feb 22	Mar 4	Mar 19	Apr 18
January 22	Feb 6	Feb 12	Feb 21	Feb 26	Mar 8	Mar 25	Apr 22
January 23	Feb 7	Feb 13	Feb 22	Feb 27	Mar 11	Mar 25	Apr 23
January 24	Feb 8	Feb 14	Feb 25	Feb 28	Mar 11	Mar 25	Apr 24
January 25	Feb 11	Feb 15	Feb 25	Mar 1	Mar 11	Mar 26	Apr 25
January 28	Feb 12	Feb 19	Feb 27	Mar 4	Mar 14	Mar 29	Apr 29
January 29	Feb 13	Feb 19	Feb 28	Mar 5	Mar 15	Apr 1	Apr 29
January 30	Feb 14	Feb 20	Mar 1	Mar 6	Mar 18	Apr 1	Apr 30
January 31	Feb 15	Feb 21	Mar 4	Mar 7	Mar 18	Apr 1	May 1