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Federal Register

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

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

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 10, 12 and 171

Proceedings Before the Commodity Futures Trading Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is amending its Rules of Practice, Rules Relating to Reparation Proceedings, and its Rules Relating to Review of National Futures Association (''NFA'') Decisions in Disciplinary, Membership Denial, Registration and Membership Responsibility Actions, to simplify and clarify service, filing and formatting requirements, particularly those requirements applicable to electronic service and filing. The Commission is also amending its Rules Relating to Reparations Proceedings to clarify the authority of its Judgment Officers.

DATES: Effective February 26, 2013.

FOR FURTHER INFORMATION CONTACT: Jason Gizzarelli, Director, Office of Proceedings, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Telephone: (202) 418–5395.

SUPPLEMENTARY INFORMATION: In 2008, the Commission amended its rules to allow for service via electronic mail (''email'') for 17 CFR parts 10 and 12, and via facsimile (''fax'') for Part 12 (service by fax under Part 10 had been permitted by the Commission since 1998.) At that time, the Commission approved these additional means of service to take advantage of technological developments that would be faster and less costly than regular mail. Today, the Commission has amended 17 CFR Parts 10, 12 and 171 to simplify and refine the rules for service, filing and formatting. Additionally, the Commission has amended 17 CFR Parts 10 and 12 to clarify the role and authority of its Judgment Officers. The Commission believes these rule amendments will increase efficiencies and lower costs for parties and for the Commission in administrative enforcement proceedings, in reparations proceedings, and in the appellate review of NFA decisions. Also, the Commission has designed the amendments to the reparations rules to make the reparations forum less legalistic and more user-friendly for *pro se* parties.

Confirmation of Service

To ease the burden on parties in reparations cases, many of whom appear *pro se,* the amended rules drop the requirement of a formal affidavit of service and now require parties to submit a signed ''statement of service'' that: (1) Confirms that service has been made; (2) identifies each person served; (3) sets forth the date of service; and (4) recites the manner of service. The less formal and less burdensome statement of service effectively serves the same purpose as an affidavit of service: promoting and assuring the full exchange of information among the parties by requiring service of submissions on all of the parties in the proceeding. A corresponding change has been made to the 17 CFR Part 10 rules regarding confirmation of service.

Electronic Service

The amendments to the service rules in 17 CFR parts 10 and 12 reflect the Commission's experience with electronic filing since 2008, which generally has been positive. First, the amendments specifically provide that a party who consents to service by email must specify the email address to be used. Consent is required because it is not yet possible to assume universal access to electronic communication. Second, under these amendments, actual notice that an email or fax transmission was not received will defeat the presumption of receipt that service is complete on transmission and will compel the sender to take additional steps to affect service. Finally, consistent with 17 CFR 12.1(a), which provides that the reparations rules ''shall be construed liberally so as to secure the just, speedy and inexpensive determination of the issues,'' the Commission expects that as electronic technology continues to advance, its Proceedings Clerk and its presiding officials will provide guidance to parties on standards governing such technical specifications as data formatting, speed of transmission, means to transmit attachments, and security of communication.

Filing and Formatting

The amended rules simplify and harmonize the filing and formatting requirements contained in 17 CFR parts 10 and 12. First, the amended rules provide that parties filing by personal delivery, mail or commercial delivery service are no longer required to file any copies of an original. Second, the amended rules explicitly provide that parties filing electronically should not also send paper copies of the same documents to the Proceedings Clerk. Third, the amended rules reduce the maximum length of briefs in administrative proceedings from 60 to 50 pages and in reparations proceedings from 35 to 25 pages. Fourth, the amended rules simplify the formatting of filed documents, such as font size, spacing and related issues. Fifth, the amendments clarify that documents that are delivered in person, or delivered by first-class mail, by a more expeditious form of United States mail, or by overnight or similar commercial delivery service will be considered timely filed if they are delivered in person or mailed to the Proceedings Clerk within the time prescribed for filing. Finally, the Commission is also amending 17 CFR 171.8 to allow filing and service by fax and email.

Judgment Officer

On October 12, 2011, to promote the efficient use of the Commission's budget and personnel resources, the Commission amended 17 CFR part 12 to authorize its Judgment Officers to conduct formal decisional proceedings. The new 17 CFR part 12 amendments issued today conform the definition of ''Judgment Officer'' to the authority of Judgment Officers to conduct formal decisional proceedings. These new amendments also provide that Judgment Officers may conduct *sua sponte* discovery in voluntary decisional proceedings, as they can in summary and formal decisional proceedings. This

amendment will help ensure that the evidentiary record is adequately developed in voluntary decisional proceedings.

The amendment to 17 CFR 10.8, which authorizes the Commission to appoint a Presiding Officer other than an administrative law judge (''ALJ'') to conduct proceedings within the scope of 17 CFR part 10, unless some other provision of law requires the use of an ALJ in a particular category of proceeding,[1] clarifies that Presiding Officers who are not ALJs can carry out the same functions as ALJs in certain proceedings to deny, condition, suspend, revoke or place restrictions on registration. Registration-related proceedings are subject to procedural rules set forth in the Commission's rules at 17 CFR part 3, as well as the 17 CFR part 10 Rules of Practice.[2] This amendment will make clear the Commission's intent that references to ALJs in both 17 CFR part 10 and part 3 shall apply to non-ALJ Presiding Officers when the Commission appoints such Presiding Officers in registration-related proceedings.

Prior to this amendment, the second sentence of 17 CFR 10.8 stated:

> If the Commission determines that a proceeding within the scope of this subpart shall be conducted before a Presiding Officer who is not an Administrative Law Judge, all provisions of this part that refer to and grant authority to or impose obligations upon an Administrative Law Judge shall be read as referring to and granting authority to and imposing obligations upon the designated Presiding Officer.

This amendment adds the phrase ''or of Part 3 of this title'' following the words ''this part'' in this sentence.

[1] 17 CFR 10.2(n) defines a ''Presiding Officer'' as ''a member of the Commission, an Administrative Law Judge, or a hearing officer designated by the Commission to conduct a hearing on a specific matter, or the Commission itself * * *.'' In some types of proceedings, statutory provisions constrain the choice of Presiding Officer. For example, section 6(c)(4)(C)(iii) of the Commodity Exchange Act (''CEA''), 7 U.S.C. 9(4)(C)(iii), requires that proceedings pursuant to section 6(c)(4), 7 U.S.C. 9(4), must be heard by either the Commission or an ALJ. By contrast, other provisions of the CEA leave the choice of Presiding Officer to the discretion of the Commission. For example, CEA section 8a(2), 7 U.S.C. 12a(2), which applies in certain circumstances where a court or administrative agency has previously made a determination regarding a registrant's conduct, authorizes the Commission to revoke registration ''with such a hearing as may be appropriate'' and does not specify what type of official must preside.

[2] *See generally* 17 CFR 3.55 through 3.64 and 17 CFR 10.1(a).

Related Matters

A. No Notice Is Required Under 5 U.S.C. 553

The Commission has determined that these amendments are exempt from the provisions of the Administrative Procedure Act, 5 U.S.C. 553, which generally require notice of proposed rulemaking and provide other opportunities for public participation. According to the exemptive language of 5 U.S.C. 553, these amendments pertain to ''rules of agency organization, procedure, or practice,'' as to which there exists agency discretion not to provide notice. In addition, notice and public procedure are unnecessary in this case because the proposed amendments are self-explanatory. If made effective immediately, they will promote efficiency and facilitate the Commission's core mission without imposing a new burden. For the above reasons, the notice requirements under 5 U.S.C. 553 are inapplicable.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.,* requires agencies with rulemaking authority to consider the impact those rules will have on small businesses. With respect to persons seeking Commission review of final exchange and NFA decisions, and initial decisions in reparation and administrative enforcement matters, the amendments impose no additional burden and in fact ease existing burdens by providing more options, greater certainty and increased predictability concerning filing and service. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the amendments will not have a significant economic impact on a substantial number of small businesses.

C. Paperwork Reduction Act

The amendments to 17 CFR parts 10, 12 and 171 do not impose a burden within the meaning and intent of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*

D. Cost-Benefit Analysis

Section 15(a) of the CEA, 7 U.S.C. 19(a), requires the Commission to consider the costs and benefits of its action before issuing a new regulation. CEA section 15(a) further specifies that costs and benefits shall be evaluated in light of 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.

The amendments to 17 CFR parts 10, 12 and 171 will not create any significant change in the Commission's adjudicatory process. In fact, the amendments will enhance the protection of market participants and the public by making filing and service more certain, faster and cheaper. The amendments do not bear directly upon the risk-benefit factors, but reduce costs and increase the efficiency of litigation that arises pursuant to the operation of futures markets.

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17 CFR Part 10

Administrative practice and procedure, Authority delegations (Government agencies), Commodity futures.

17 CFR Part 12

Administrative practice and procedure, Commodity futures, Consumer protection.

17 CFR Part 171

Administrative practice and procedure, Commodity futures.

For the reasons discussed in the preamble, the Commodity Futures Trading Commission amends 17 CFR parts 10, 12 and 171 as follows:

PART 10—RULES OF PRACTICE

■ 1. The authority citation for part 10 continues to read as follows:

Authority: Pub. L. 93–463, sec. 101(a)(11), 88 Stat. 1391; 7 U.S.C. 2(a)(12).

Section 10.102 also issued under 7 U.S.C. 4a, 12a; 5 U.S.C. 10.

■ 2. Revise § 10.4 to read as follows:

§ 10.4 Business address; hours.

The Office of Proceedings is located at Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Faxes must be sent to (202) 418–5532, and emails must be sent to *PROC_filings@cftc.gov*. The office is open from 8:15 a.m. to 4:45 p.m., Eastern Time, Monday through Friday, except on federal holidays.

■ 3. Amend § 10.8 by revising the introductory text to read as follows:

§ 10.8 Presiding officers.

Unless otherwise determined by the Commission, all proceedings within the scope of this Part shall be assigned to an Administrative Law Judge for hearing. If the Commission determines that a proceeding within the scope of this Part shall be conducted before a Presiding Officer who is not an Administrative Law Judge, all provisions of this part or

of part 3 of this chapter that refer to and grant authority to or impose obligations upon an Administrative Law Judge shall be read as referring to and granting authority to and imposing obligations upon the designated Presiding Officer.

* * * * *

■ 4. Amend § 10.12 by:

■ a. Revising paragraphs (a)(1), (a)(2)(ii) through (iv), and (a)(3);

■ b. Adding paragraphs (a)(4) through (6);

■ c. Revising paragraphs (b) through (f); and

■ d. Removing paragraph (g).

The revisions and additions read as follows:

§ 10.12 Service and filing of documents; form and execution.

(a) *Service by a party or other participant in a proceeding.* (1) When one party serves another with documents under these rules, a copy must be served on all other parties as well as filed with the Proceedings Clerk. Similarly, when a person files a document with the Office of Proceedings, the person must serve a copy of the document on all other parties.

(2) * * *

(ii) First-class or a more expeditious form of United States mail or an overnight or similar commercial delivery service;

(iii) Facsimile (''fax''); or

(iv) Electronic mail (''email'').

(3) Service by email or fax shall be permitted at the discretion of the Presiding Officer, with the parties' consent. The consent of a party must specify the email address or fax number to be used. Signed documents that are served by email must be in PDF or other non-alterable form.

(4) Service will be complete at the time of personal service; upon deposit in the mail or with an overnight or similar commercial delivery service of a properly addressed document for which all postage or delivery service fees have been paid; or upon transmission by fax or email. Service by email or by fax will not be effective if the party making service learns that the attempted service did not reach the person to be served.

(5) Where service is effected by mail or a commercial delivery service (but not by fax or email), the time within which the person being served may respond shall be extended by five (5) days.

(6) *Statement of service.* A statement of service shall be made by filing with the Proceedings Clerk, simultaneously with the filing of the document, a statement signed by the party making service or by his attorney or representative that:

(i) Confirms that service has been made,

(ii) Identifies each person served,

(iii) Sets forth the date of service, and

(iv) Recites the manner of service.

(b) *Service of decisions and orders.* A copy of all rulings, opinions and orders shall be served by the Proceedings Clerk on each of the parties.

(c) *Designation of person to receive service.* The first page of the first document filed in a proceeding by a party or participant must include the name and contact information of a person authorized to receive service on the party or participant's behalf. Contact information must include a post office address and daytime telephone number, and should also include the person's fax or email. Thereafter service of documents shall be made upon the person authorized unless service on the party himself is ordered by the Administrative Law Judge or the Commission, or unless no person authorized to receive service can be found, or unless the person authorized to receive service is changed by the party upon due notice to all other parties.

(d) *Filing of documents with the Proceedings Clerk.* (1) All documents which are required to be served upon a party shall be filed concurrently with the Proceedings Clerk. A document shall be filed by delivering it in person or by first-class mail or a more expeditious form of United States mail or by overnight or similar commercial delivery service to Proceedings Clerk, Office of Proceedings, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; or faxing the document to (202) 418–5532; or emailing it to *PROC_Filings@cftc.gov* in accordance with the conditions set forth in paragraph (a)(2) of this section.

(2) To be timely filed under this part, a document must be delivered in person; mailed by first-class or a more expeditious form of United States mail or by an overnight or similar commercial delivery service; or faxed or emailed to the Proceedings Clerk within the time prescribed for filing.

(e) *Formalities of filing.* (1) An original of all documents shall be filed with the Proceedings Clerk. If a party files a document with the Proceedings Clerk by fax or email, they should not also send paper copies.

(2) *First page.* The first page of all documents filed with the Proceedings Clerk must include the Commission's name, the docket number, the title of proceeding, the subject of the document, and the name of the person on whose behalf the document is being filed. In subsequent filings, the case title may be abbreviated by listing the name of the first respondent, followed by ''et al.'' In the complaint, the title of the action shall include the names of all the respondents, but in documents subsequently filed it is sufficient to state the name of the first respondent named in the complaint with an appropriate indication of other parties.

(3) *Format.* Documents must be legible and printed on normal white paper of eight and one half by eleven inches. The typeface, margins, and spacing of all documents presented for filing must meet the following requirements: all text must be 12-point type or larger, except for text in footnotes which may be 10-point type; all documents must have at least one-inch margins on all sides; all text must be double-spaced, except for headings, text in footnotes, or block quotations, which may be single-spaced. Emailed documents must be in PDF or other non-alterable form.

(4) *Signatures.* (i) The original of all documents must be signed by the person filing the same or by his duly authorized agent or attorney.

(ii) *Effect.* The signature on any document of any person acting either for himself or as attorney or agent for another constitutes certification by him that:

(A) He has read the document and knows the contents thereof;

(B) If executed in any representative capacity, it was done with full power and authority to do so;

(C) To the best of his knowledge, information, and belief, every statement contained in the document is true and not misleading; and

(D) The document is not being interposed for delay.

(5) *Length and form of briefs.* All briefs of more than fifteen pages shall include an index and a table of cases and other authorities cited. No brief shall exceed 50 pages in length without prior permission of the Presiding Officer or the Commission.

(f) *Official docket.* The Proceedings Clerk will maintain the official docket for each proceeding. The official docket is available for public inspection in the Commission's Office of Proceedings.

■ 5. Amend § 10.102 by revising paragraph (c) to read as follows:

§ 10.102 Review of initial decisions.

* * * * *

(c) *Briefs.* An original of all briefs submitted under this section shall be filed with the Proceedings Clerk.

* * * * *

PART 12—RULES RELATING TO REPARATIONS

■ 6. The authority citation for Part 12 continues to read as follows:

Authority: 7 U.S.C. 2(a)(12), 12a(5), and 18.

■ 7. Amend § 12.2 by revising the definition of ''Judgment Officer'' to read as follows:

§ 12.2 Definitions.

* * * * *

Judgment Officer means an employee of the Commission who is authorized to conduct all reparations proceedings. In appropriate circumstances, the functions of a Judgment Officer may be performed by an Administrative Law Judge;

* * * * *

■ 8. Revise § 12.3 to read as follows:

§ 12.3 Business address; hours.

The Office of Proceedings is located at Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Faxes must be sent to (202) 418–5532, and emails must be sent to *PROC_filings@cftc.gov*. The office is open from 8:15 a.m. to 4:45 p.m., Eastern Time, Monday through Friday except on federal holidays.

■ 9. Revise § 12.10 to read as follows:

§ 12.10 Service.

(a) *General requirements.* (1) *When service is required; number of copies.* When one party serves another with documents under these rules, a copy must be served on all other parties as well as filed with the Proceedings Clerk. Similarly, when a person files a document with the Office of Proceedings, the person must serve a copy of the document on all other parties. This rule does not apply to a complaint filed pursuant to § 12.13 of these rules, which shall only be filed with the Commission.

(2) *How service is made.* Service shall be made by:

(i) Personal service;

(ii) First-class or a more expeditious form of United States mail or an overnight or similar commercial delivery service;

(iii) Facsimile (''fax''); or

(iv) Electronic mail (''email'').

(3) Service by fax or email shall be permitted at the discretion of the Presiding Officer, with the parties' consent. The consent of a party must specify the email address or fax number to be used. Signed documents that are served by email attachment must be in PDF or other non-alterable form.

(4) Service will be complete at the time of personal service; upon deposit in the mail or with an overnight or similar commercial delivery service of a properly addressed document for which all postage or delivery service fees have been paid; or upon transmission by fax or email. Service by email or by fax will not be effective if the party making service learns that the attempted service did not reach the person to be served.

(5) Where service is effected by mail or commercial delivery service (but not by fax or email), the time within which the person served may respond thereto shall be extended by five (5) days.

(6) *Statement of Service.* A statement of service shall be made by filing with the Proceedings Clerk, simultaneously with the filing of the document, a statement signed by the party making service or by his attorney or representative that:

(i) Confirms that service has been made;

(ii) Identifies each person served;

(iii) Sets forth the date of service; and

(iv) Recites the manner of service.

(b) *Service of orders and decisions.* A copy of all notices, rulings, opinions, and orders of the Proceedings Clerk, the Director of the Office of Proceedings, a Judgment Officer, an Administrative Law Judge, the General Counsel or any employee under the General Counsel's supervision as the General Counsel may designate, or the Commission shall be served by the Proceedings Clerk on each of the parties. The Commission, in its discretion and with due consideration for the convenience of the parties, may serve the aforementioned documents to the parties by electronic means.

(c) *Designation of person to receive service.* The first page of the first document filed in a proceeding by a party or participant shall include the contact information of a person authorized to receive service on their behalf. Thereafter, service of documents shall be made upon the person authorized unless service on the party himself is ordered by a Judgment Officer, an Administrative Law Judge or the Commission, or unless no person authorized to receive service can be found, or unless the person authorized to receive service is changed by the party upon due notice to all other parties.

■ 10. Revise § 12.11 to read as follows:

§ 12.11 Formalities of filing of documents with the Proceedings Clerk.

(a) If a party files by personal delivery or mail, an original of all documents shall be filed with the Proceedings Clerk. If a party files a document by fax or email in accordance with § 12.10(a)(2), they should not also send paper copies.

(b) *First page.* The first page of all documents filed with the Proceedings Clerk must include the Commission's name, the docket number, the title of the proceeding, the subject of the document and the name of the person on whose behalf the document is being filed. In the complaint, the title of the proceeding shall include the names of all the complainants and respondents, but in documents subsequently filed it is sufficient to state the name of the first complainant and first respondent named in the complaint.

(c) *Format.* Documents must be legible and printed on normal white paper of eight and one half by eleven inches. Documents emailed in accordance with the requirements of § 12.10(a)(2) must be in PDF or other non-alterable form. The typeface, margins, and spacing of all typed documents presented for filing should meet the following requirements: all text should be 12-point type or larger, except for text in footnotes which may be 10-point type; all documents should have at least one-inch margins on all sides; all text must be double-spaced, except for headings, text in footnotes, or block quotations, which may be single-spaced.

(d) *Signature.* (1) The original of all papers must be signed by the person filing the same or by his duly authorized agent or attorney.

(2) *Effect.* The signature on any document of any person acting either for himself or as attorney or agent for another constitutes certification by him that:

(i) He has read the document and knows the contents thereof;

(ii) If executed in any representative capacity, it was done with full power and authority to do so;

(iii) To the best of his knowledge, information, and belief, every statement contained in the document is true and not misleading; and

(iv) The document has been filed in good faith and has not been filed to cause delay.

(e) *Length and form of briefs.* All briefs filed containing more than 15 pages shall include an index and a table of cases and other authorities cited. No brief shall exceed 25 pages in length without prior permission of the Presiding Officer.

(f) All documents which are required to be served upon a party shall be filed concurrently with the Proceedings Clerk. A document shall be filed by delivering it in person or by first-class mail or a more expeditious form of United States mail or by overnight or similar commercial delivery service to Proceedings Clerk, Office of Proceedings, Three Lafayette Centre,

1155 21st Street NW., Washington, DC 20581; or faxing the document to (202) 418–5532; or emailing it to *PROC_Filings@cftc.gov* in accordance with the conditions set forth in paragraph (a)(2) of this section.

(g) To be timely filed under this part, a document must be delivered in person; mailed by first-class or a more expeditious form of United States mail or by an overnight or similar commercial delivery service; or faxed or emailed to the Proceedings Clerk within the time prescribed for filing.

■ 11. Amend § 12.34 by revising paragraph (a) to read as follows:

§ 12.34 Discovery by a decisionmaking official.

(a) *Applicability.* The provisions of this rule shall apply to all decisional proceedings commenced pursuant to § 12.26. For the purposes of this rule, the term ''decisionmaking official'' shall mean a Judgment Officer or Administrative Law Judge assigned to render a decision in the proceeding.

* * * * *

■ 12. Amend § 12.101 by revising paragraphs (a) through (c) to read as follows:

§ 12.101 Functions and responsibilities of the Judgment Officer.

* * * * *

(a) To rule upon discovery-related motions, and to take such action pursuant to § 12.35 as is appropriate if a party fails to comply with a discovery order;

(b) To issue orders for the production of documents and tangible things and orders for written testimony, as provided in § 12.34;

(c) To issue subpoenas pursuant to § 12.34 and § 12.36;

* * * * *

PART 171—RULES RELATING TO REVIEW OF NATIONAL FUTURES ASSOCIATION DECISIONS IN DISCIPLINARY, MEMBERSHIP DENIAL, REGISTRATION AND MEMBER RESPONSIBILITY ACTIONS

■ 13. The authority citation for Part 171 continues to read as follows:

Authority: 7 U.S.C. 4a, 12a, and 21, unless otherwise noted.

■ 14. Amend § 171.8 by revising paragraph (a) to read as follows:

§ 171.8 Filing with the Proceedings Clerk.

(a) *How to file.* Any document that is required by this part to be filed with the Proceedings Clerk shall be filed by delivering it in person or by first-class mail or a more expeditious form of United States mail, or by overnight or similar commercial delivery service to: Proceedings Clerk, Office of Proceedings, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; or faxing the document to (202) 418–5532 or emailing it to *PROC_Filings@cftc.gov.* To be timely filed under this part, a document must be delivered or mailed to the Proceedings Clerk within the time prescribed for filing.

* * * * *

Issued in Washington, DC, on February 20, 2013, by the Commission.

Melissa D. Jurgens,

Secretary of the Commission.

[FR Doc. 2013–04252 Filed 2–25–13; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 50 and 56

[Docket No. FDA–2000–N–0009] (formerly 2000N–0074)

RIN 0910–AG71

Additional Safeguards for Children in Clinical Investigations of Food and Drug Administration-Regulated Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to provide additional safeguards for children enrolled in clinical investigations of FDA-regulated products. This rule finalizes the interim rule published in 2001 to bring FDA regulations into compliance with provisions of the Children's Health Act of 2000 (the Children's Health Act). The Children's Health Act requires that all research involving children that is conducted, supported, or regulated by the Department of Health and Human Services (HHS) be in compliance with HHS regulations providing additional protections for children involved as subjects in research. FDA is taking this action both to comply with the congressional mandate and because of increases in the enrollment of children in clinical investigations as a result of ongoing pediatric initiatives.

DATES: This rule is effective March 28, 2013.

FOR FURTHER INFORMATION CONTACT: Robert M. Nelson, Office of Pediatric Therapeutics, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 32, rm. 5126, Silver Spring, MD 20993–0002, 301–796–8659.

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I. Background

In the **Federal Register** of April 24, 2001 (66 FR 20589), FDA published an interim rule amending its regulations to provide additional safeguards for children enrolled in clinical investigations of FDA-regulated products (part 50 (21 CFR part 50, subpart D (FDA subpart D))). The interim rule brought FDA regulations into compliance with provisions of the Children's Health Act (Pub. L. 106–310). Title XXVII, section 2701 of the Children's Health Act required that within 6 months of its enactment all research involving children conducted, supported, or regulated by HHS be in compliance with HHS regulations providing additional protections for children involved as subjects in research (45 CFR part 46, subpart D (HHS subpart D)). The interim rule was effective on April 30, 2001. Interested parties were given until July 23, 2001, to comment on the interim rule.

FDA is finalizing its interim final rule both to comply with the congressional mandate in the Children's Health Act and because of increases in the enrollment of children in clinical investigations, in part as a result of ongoing pediatric initiatives. Some of these pediatric initiatives were described in detail in the interim rule (66 FR 20589), including the Food and Drug Administration Modernization Act of 1997 (FDAMA) and FDA's 1998 pediatric rule (63 FR 66632, December 2, 1998).

FDAMA established economic incentives for manufacturers to conduct pediatric studies on drugs for which exclusivity or patent protection is

available under the Drug Price Competition and Patent Term Restoration Act (Pub. L. 98–417) or the Orphan Drug Act (Pub. L. 97–414). These provisions add 6 months of marketing exclusivity (known as pediatric exclusivity) to any existing exclusivity or patent protection on a drug moiety for which FDA has requested pediatric studies and the manufacturer has conducted such studies in accordance with the requirements of the statute. This exclusivity-based incentive was re-authorized under the Best Pharmaceuticals for Children Act (BPCA) of 2002 (Pub. L. 107–109) and 2007 (Title V of Pub. L. 110–85). The Patient Protection and Affordable Care Act of 2010 (section 7002(g)(1) of Pub. L. 111–148) extended pediatric exclusivity and applicable provisions of BPCA 2007 to biological products. Title V of the Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144) made permanent this exclusivity-based incentive for studies conducted in response to a written request from FDA.

Under FDA's 1998 pediatric rule, drug and biological product approvals issued, or applications submitted, on or after April 1, 1999, for a new active ingredient, new indication, new dosage form, new dosing regimen, or new route of administration, were required to include pediatric assessments for all indications for which applicants were receiving or seeking approval, unless the requirement was waived or deferred. Although the pediatric rule was suspended by court order on October 17, 2002, the Pediatric Research Equity Act (PREA) of 2003 (Pub. L. 108–155) codified many of its elements. The Pediatric Research Equity Act of 2007 (Title IV of Pub. L. 110–85) re-authorized and expanded PREA 2003, continuing these pediatric requirements. FDASIA also made permanent this requirement for pediatric assessments.

Additionally, as noted in the interim final rule, FDA initiated other actions to encourage the development of adequate pediatric use information for FDA-regulated products, for example, through issuance in 2000 of pediatric guidance titled ''E11 Clinical Investigation of Medicinal Products in the Pediatric Population'' (ICH E11) (December 2000) (Ref. 1). This guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) as part of the ICH effort to harmonize such requirements among the European Union, Japan, and the United States. ICH E11 addresses issues in pediatric drug development including ethical considerations in pediatric studies. It states that pediatric populations represent a vulnerable subgroup and special measures therefore are needed to protect the rights of pediatric study participants. Section 2.6 of ICH E11 addresses relevant issues including: the roles and responsibilities of institutional review boards (IRBs) and independent ethics committees (IECs), recruitment of study participants, consent and assent, and minimizing risk and distress in pediatric studies.

Additional examples of pediatric specific guidance include: (1) A final guidance entitled ''Acute Bacterial Otitis Media: Developing Drugs for Treatment'' (September 2012) (Ref. 2), which includes a section on the ethical considerations under part 50, subpart D in designing a clinical trial for acute bacterial otitis media; and (2) a final guidance entitled ''Orally Inhaled and Intranasal Corticosteroids: Evaluation of the Effects on Growth in Children'' (March 2007) (Ref. 3), which includes a section on the ethical concerns raised by the choice of a comparator or control group for allergic rhinitis and asthma studies.

These (and other) regulatory actions, combined with the statutory initiatives described previously, have resulted in increases in the enrollment of children in clinical investigations (see information provided at *http://www.fda.gov/pediatrics*).

II. Highlights of the Final Rule

This final rule adopts the safeguards described in HHS subpart D for children participating in clinical investigations regulated by FDA under sections 505(i) and 520(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C 355(i) and 360j(g)), as well as clinical investigations that support applications for research or marketing permits for products regulated by FDA, including human drug and biological products; medical devices for human use; foods, including dietary supplements, that bear a nutrient content claim or health claim; infant formula; food and color additives; and electronic products. (See § 50.1) These safeguards are intended to ensure that the rights and welfare of children who participate in clinical investigations are adequately protected. Nothing in these regulations is intended to preempt any applicable Federal, State, or local laws that require additional safeguards for children participating in clinical investigations.

The final rule brings FDA's regulations into compliance with HHS subpart D, as directed by Congress, with some changes reflecting differences between FDA's and HHS's regulatory authority and other changes made for clarification. In the preamble to the interim rule, we provided a detailed explanation of the provisions of the rule. In the final rule, we respond to comments received on the interim rule. Four substantive changes have been made to the codified section of the final rule: (1) The definition of guardian has been modified, (2) the definition of permission has been modified, (3) paragraph (a) has been added to § 50.51 to require, consistent with § 46.404 of HHS subpart D, that IRBs assess the level of risk to children in clinical investigations subject to § 50.51, and (4) a phrase has been added to § 50.55(e) to make it clear that the exception for emergency research described in § 50.24 applies to research in children. In addition, we have made changes on our own initiative for the purposes of clarity and consistency. In addition to modifying the definitions of guardian and permission, changes to the following sections were made in order to be more consistent with HHS 45 CFR part 46, subpart D: 1) Changing ''may'' to ''should'' in the definition of assent (§ 50.3(n)); (2) deleting ''and documents'' from §§ 50.51 to 50.54; and (3) deleting ''if consistent with State law'' from § 50.55(e)(1).

III. Comments and Agency Response

The Agency received a total of 18 comments on the April 24, 2001, interim rule. Five of those comments were from pharmaceutical companies, four were from health care professionals, four were from national membership organizations, three were from Federal Government agencies, one was from a State legislator, and one was from a private citizen. The majority of comments supported the rule. Most commenters provided comment on specific provisions, including the areas on which FDA solicited comment.

A. Definitions

(Comment 1) We received one comment stating that our modification of definitions creates several regulatory documents that are using slightly different terms and definitions. The comment stated that these differences would create challenges for sponsors as they try to meet the requirements under one document but, due to slightly modified terms and definitions, fail to meet requirements under another document.

As we stated in the preamble to the interim rule, we are aware that dissimilar or inconsistent Federal

requirements governing pediatric protections could be burdensome to institutions, IRBs, and the process of clinical investigation (66 FR 20589 at 20591). The majority of modifications in the interim rule to definitions from HHS subpart D were made only to the extent necessary to make it clear that the definitions apply to participation in clinical investigations regulated by FDA under sections 505(i) and 520(g) of the FD&C Act, as well as clinical investigations that support applications for research or marketing permits for products regulated by FDA. This final rule modifies some of the definitions in the interim rule, resulting in greater consistency between HHS and FDA definitions, as discussed further in this document.

1. Permission

(Comment 2) Two comments supported our definition of ''permission'' at § 50.3(r) and agreed that it was necessary to adopt this term. We agree with those comments. However, we have decided to simplify the definition by deleting the statement that permission must be obtained in compliance with part 50, subpart B and must include the elements of informed consent described in § 50.25. As required under § 50.55(f), permission by parents or guardians must be documented in accordance with, and to the extent required by, § 50.27, and thus must include the elements of informed consent required by § 50.25. The identified language is therefore unnecessary. As a result of this change, this definition and the definition of parental permission found in 45 CFR 46.402(c) are the same.

2. Guardian

We defined ''guardian'' at § 50.3(s). In the preamble to the interim rule, we explained that we were adopting the term because it is currently used in HHS subpart D and is familiar to IRBs. Our regulations at § 50.3(l) use the term ''legally authorized representative'' to describe an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure(s) involved in the research. Our definition of the term guardian was intended to make it clear that, for purposes of FDA subpart D, a guardian must be an individual who is legally authorized to consent to a child's participation in research. We invited comment on our definition and any implications under State or local law.

(Comment 3) We received five comments on our definition of guardian. All five comments raised concerns about our inclusion of language stating that a guardian is an individual who is authorized to consent on behalf of a child to participate in research.

Two comments recommended that the definition of guardian at § 50.3(s) should be the same as, or consistent with, the definition of guardian at 45 CFR 46.402(e) of HHS subpart D. One comment noted that under HHS subpart D, IRBs have been and continue to be responsible for ensuring that HHS-sponsored or HHS-conducted studies involving children comply with Federal, State, and local legal standards regarding permission. The comment stated that it was unclear why a revised definition was necessary in our regulation when no change is proposed for the existing definition in the HHS regulation. The comment stated that when HHS-sponsored research is also subject to FDA regulation, the conflicting definitions will lead to confusion. The second comment stated that our definition of guardian may result in unanticipated consequences, since many State laws do not specifically authorize legal guardians to provide consent to research. The comment stated that this requirement would unnecessarily prevent some children with guardians from participating in research from which they could benefit directly.

Another comment stated that the additional language we suggested represented a departure from the HHS definition and that it was unclear whether State laws specifically authorize guardians to consent to children's participation in clinical research. The comment stated that FDA's change may represent a serious, unintended obstacle to children's participation in research. The comment suggested defining a guardian as an individual who is authorized under applicable State or local law to consent on behalf of a child to general medical care and whose consenting on behalf of the child to research participation is consistent with applicable laws, if any.

Two comments stated that our definition leaves open the possibility that a guardian could be a person who is authorized to consent to a child's participation in research, but not authorized to consent to general medical care. These comments stated that this would be wholly undesirable for the child and that the language should be clarified to require that no one may consent to a child's participation in research who is not also authorized to consent to the child's general medical care. These comments also stated that it appears that many State laws do not specifically authorize a guardian to permit a child's involvement in research, so the definition may be very restrictive in practice. These comments concluded that adequate protection for children would result from the requirement that guardians should be authorized to consent to general medical care and that they should be in loco parentis, with a legally enforceable duty to care for the totality of the child's interests.

We appreciate the comments we received on State and local laws of guardianship and the likelihood that many of these laws do not specifically grant guardians the authority to consent to research. We did not intend to create an obstacle to children's participation in research or to prevent children under guardianship from participating in beneficial research when we included authorization to consent to research in the definition of guardian. We also did not intend to suggest that it would be appropriate to allow a person who is authorized to consent to research only, but not authorized to consent to general medical care, to grant permission for a child to participate in FDA-regulated research. We note, however, that we are not aware of any State or local laws which authorize a guardian to consent to research where the guardian does not have the authority to consent to general medical care as well.

After reviewing the comments submitted, we have decided to delete the phrase ''when general medical care includes participation in research,'' as State and local laws may be silent on whether general medical care includes research participation. We have also deleted the language stating that ''a guardian also means an individual who is authorized to consent on behalf of a child to participate in research.'' This revised definition makes it clear that under FDA regulations a legally authorized guardian for general medical care may consent on behalf of a child to participate in research in the absence of specific laws granting (or restricting) that authority. It remains the responsibility of an IRB to determine if there are any applicable State or local laws that either grant or restrict that authority. This revised definition of guardian is the same as the definition of guardian in HHS 45 CFR 46.402(e) of HHS subpart D.

B. IRB Membership and Continuing Education

(Comment 4) Two comments stated that IRB membership should include professionals and lay persons with demonstrated competence working with children, including pediatricians,

pediatric nurses, pediatric nutritionists, pediatric pharmacologists, pediatric psychologists, nonclinical experts in pediatric issues, and lay persons with a community sensitivity to the pediatric population (e.g., preschool teachers). One comment suggested that an advisory committee with specific expertise in pediatric areas of clinical research be established for IRBs. This comment also stated that processes need to be implemented to orient and educate IRB members on an ongoing basis, as well as standards and procedures for self-evaluation, including performance standards, self-assessment tools, certification, and the development of peer-based accreditation systems. One comment also suggested that all IRB members should complete a course, such as the one offered by the Office for Human Research Protections (OHRP), on IRB members' roles and responsibilities. This comment suggested that FDA develop a course on additional safeguards for children for those conducting research within the pediatric population and that an intraregulatory approach between HHS and FDA would provide consistency and uniformity in this educational process.

FDA supports the intent of these comments to ensure IRB members are adequately trained to make decisions on the unique aspects of conducting clinical trials in children. Part 56 (21 CFR part 56) of our regulations addresses IRBs generally. Section 56.107 requires IRBs to have members with varying backgrounds to promote complete and adequate review of research activities. This section requires the IRB to be sufficiently qualified through the experience and expertise of its members, the diversity of its members, and their sensitivity to issues such as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. Section 56.107(a) specifically states that if an IRB regularly reviews research that involves ''a vulnerable category of subjects, such as children * * *, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with those subjects.'' Section 56.107(b) states that no IRB may consist entirely of members of one profession. Section 56.107(c) requires that each IRB shall include at least one member whose primary concerns are in the scientific area and at least one member whose primary concerns are in nonscientific areas. FDA Guidance (ICH E11) on ''Clinical Investigation of Medicinal Products in the Pediatric Population'' advises that ''when protocols involving the pediatric population are reviewed, there should be IRB/IEC members or experts consulted by the IRB/IEC who are knowledgeable in pediatric ethical, clinical, and psychosocial issues'' (§ 2.6.1, Ref. 1). In our view, these provisions and guidance are adequate to ensure the appropriate composition of members on IRBs reviewing clinical trials in children.

We agree that it is important for members of an IRB reviewing such trials to be educated and trained in appropriate areas. Although these regulations do not require any specific training or continuing education for IRB members, we discuss the programming and educational needs for the IRB and investigator community with OHRP and others on an ongoing basis. As part of our efforts, we will consider the need to develop specific educational programs focusing on research involving children.

With regard to the comment requesting establishment of an advisory committee for IRBs, we note that § 56.107(f) provides that an IRB, at its discretion, may invite individuals with competence in special areas to assist in the review of complex issues that require expertise beyond or in addition to that available on the IRB. These individuals serve in an advisory capacity and do not vote with the IRB. We have published extensive guidance for IRBs and clinical investigators to use in conducting their reviews. This guidance is available on FDA's Web site at *http://www.fda.gov/ScienceResearch/SpecialTopics/RunningClinicalTrials/GuidancesInformationSheetsandNotices/default.htm.*

C. Risk Categories

As stated in the preamble to the interim rule, we adopted HHS subpart D, as directed by Congress, with those changes necessary because of differences between FDA's and HHS's regulatory authority. Sections § 50.51 through § 50.53 describe the criteria under which IRBs may approve clinical investigations of FDA-regulated products in children. Section 50.54 describes the criteria under which a clinical investigation that is otherwise not approvable by an IRB under sections § 50.51 through § 50.53 may be referred to FDA for review and consultation with a panel of experts.

1. Section 50.51—Clinical Investigations Not Involving Greater Than Minimal Risk

We received three comments on § 50.51.

(Comment 5) One comment requested a clearer definition of ''greater than minimal risk.'' Although it noted that FDA provided examples of types of procedures that fit the category of no more than minimal risk, the comment stated that the term is vague and the definition is open to interpretation.

Another comment stated that the language of this provision deviated in an important way from 45 CFR 46.404 of HHS subpart D, which places responsibility for determining the level of risk with the IRB. The comment stated that FDA only requires the IRB to find and document adequate provisions for soliciting assent and permission, which may create circumstances in which the investigator and the IRB disagree on the level of risk. The comment acknowledged that any disagreement will be resolved by the decision of the IRB, but the provision might cause unnecessary conflict and confusion. The comment also stated that this section appears internally inconsistent with §§ 50.52 and 50.53 in which the IRB assesses the nature and level of risk and suggested that the language of this provision should be consistent with 45 CFR 46.404 of HHS subpart D.

Another comment stated that the rule should include a well-defined scale system for risk assessment that would allow the IRB to classify procedures and help in identifying the degree of minimal risk. As an example, the comment stated that collecting a clean-catch urine sample via a catheter has a potential to cause tissue injury and/or infection and therefore has a higher degree of risk than testing devices involving temperature readings orally or in the ear. The comment stated that this type of scale would help IRBs in granting an approval for a procedure by providing a specific ''distinction'' of the potential risk.

As stated in the preamble to the interim rule (66 FR 20589 at 20593), we previously adopted HHS's definition of minimal risk without change in § 50.3(k). The definition of minimal risk states that ''minimal risk means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.'' As one comment noted, in the preamble to the interim rule we provided examples of procedures and clinical investigations that may present no greater than minimal risk to children.

While we acknowledge that there is no specific definition of ''greater than minimal risk'' in these regulations, IRBs

are familiar with this category of research and have been applying it for many years. Given this reality, we decline to add a definition of ''greater than minimal risk'' to our regulations at this time.

The Children's Health Act also required a substantive review of HHS subpart D, and required the Secretary to consider any necessary modifications to ensure adequate and appropriate protection of children participating in research. This review was conducted by OHRP and a report was submitted to Congress in May 2001 entitled ''Protections for Children in Research: A Report to Congress in Accord with Section 1003 of Public Law 106–310, Children's Health Act of 2000'' (2001 OHRP report) (Ref. 4). While the 2001 OHRP report concluded that the current HHS regulations under subpart D are sound, effective, and well-crafted, the report identified terms and concepts for which further guidance is needed. Among the terms and concepts identified in this report as needing clarification are the terms ''minimal risk'' and ''minor increase over minimal risk.''

On January 4, 2002, the President signed BPCA 2002 into law. BPCA 2002 required HHS to contract with the Institute of Medicine (IOM) to conduct a review of Federal regulations relating to research involving children and report its findings to Congress. In the conduct of this review, the IOM was required to consider the definition of minimal risk with respect to children. The IOM published its report, ''Ethical Conduct of Clinical Research Involving Children'' in 2004 (2004 IOM report) (Ref. 5). The 2004 IOM report recommended that the Secretary's Advisory Committee on Human Research Protections continue the work of its predecessor committee (the National Human Research Protections Advisory Committee) by developing additional consensus descriptions of procedures or interventions that present minimal risk and no more than a minor increase over minimal risk. The 2004 IOM report also recommended that OHRP and FDA cooperate to develop and disseminate guidance and examples for investigators and IRBs to clarify definitions, including the definitions of minimal risk and minor increase over minimal risk (2004 IOM report, p. 136) (Ref. 5).

While both the 2001 OHRP report and the 2004 IOM report recommended that further guidance may be appropriate to clarify the meaning of minimal risk, neither report recommended changes to the current regulatory definition of minimal risk. Although we will not change FDA's definition of minimal risk at this time, we will consider developing guidance to assist in determining whether a research intervention poses minimal or more than minimal risk to children.

We agree with the comment regarding the fact that § 50.51 does not specifically require IRBs to assess the level of risk in order to approve a study under that provision. We have modified § 50.51 to make clear that it applies to clinical investigations involving children as subjects where the IRB finds that no greater than minimal risk to children is presented. This change is consistent with § 46.404 of HHS subpart D and §§ 50.52 and 50.53 of our regulations, and clarifies that the IRB is responsible for reviewing, assessing, and documenting the nature and level of risk in this category. Furthermore, because an IRB is required to document its findings under § 56.115(a)(2), we also have deleted the phrase ''and documents'' as unnecessary, and have made the same change to §§ 50.51 through 50.54.

While we appreciate the intent of the comment requesting a scale system for assessing risk, attempting to identify and classify every procedure that might be used in a clinical investigation as to its appropriate risk category would be a difficult, if not impossible, task. Rather, the broad categories laid out in the regulation will assist IRBs in assessing the risk level for any specific intervention and/or procedure in a clinical investigation on a case-by-case basis. IRBs have been using this system of classification for many years. However, if HHS proposes to change these risk categories, we will review and consider modifying the corresponding provisions of our regulations as appropriate.

2. Section 50.52—Clinical Investigations Involving Greater Than Minimal Risk, But Presenting the Prospect of Direct Benefit to Individual Subjects

In our discussion of § 50.52 in the preamble to the interim rule (66 FR 20589 at 20593), we recognized that the requirement for the prospect of direct benefit might create ambiguity as to whether placebo-controlled clinical investigations may be conducted in children under this section. We stated that placebo-controlled clinical investigations in children may be conducted in accord with § 50.52. FDA invited comment on the issue of conducting placebo-controlled investigations in children. We also noted that there is evidence of direct benefit to children from participating in placebo-controlled trials, including increased monitoring and care of subjects, even though a child may not actually receive the test product. This statement has been misinterpreted, and we provide clarification in the paragraphs that follow.

(Comment 6) Eight comments responded to FDA's request for comments on the issue of placebo-controlled clinical investigations in children. Five of the eight comments agreed with FDA that placebo-controlled trials in children may be appropriate in certain circumstances. Two comments opposed the conduct of placebo-controlled trials in healthy children, and one comment opposed the conduct of placebo-controlled trials in children with the active disease.

Of the five comments that supported the use of placebo-controlled clinical trials in children, four cited specific circumstances under which placebo-controlled trials would be appropriate in children. One comment stated that placebo-controlled trials should not be used in serious diseases where the absence of an ''active substance'' might put a child at undue risk. This comment stated that placebos should be used only in ''benign'' diseases such as the common cold or mild to moderate allergies because the absence of an active drug would not lead to a permanent handicap. The comment also stated a belief that in a controlled clinical trial, the active substance should be compared to the best standard therapy for the disease, so that children with a disease in a control group would be given the best standard therapy and not a placebo.

Another comment agreed with us that placebo-controlled trials may be conducted in accord with the terms of § 50.52. This comment stated that certain vaccines and a number of drug trials for certain non-life-threatening medical conditions may require use of placebo designs in which the placebo does not provide a medical benefit. This comment suggested that FDA evaluate specific circumstances on a study-by-study basis.

One comment noted that a prohibition or limitation on the use of placebo-controlled trials in children would not assist us in our goals of improving labeling and encouraging studies for children. This comment also suggested that IRBs should retain broad latitude in determining whether or not a particular placebo-controlled trial holds out the prospect of direct benefit to the proposed subjects. This comment cited guidelines established by the research community (ICH E 10 (Ref. 6); American Academy of Pediatrics (Ref. 7)) as support for its position.

One comment agreed with FDA that placebo-controlled trials in children may be conducted if they are in accord with § 50.51 or § 50.52; however, this comment suggested that an IRB's determination of a prospect of direct benefit should be based primarily on the potential benefit of the research intervention itself. The comment suggested that FDA and HHS should develop guidance on what benefits should be taken into account when determining whether a protocol offers the prospect of direct benefit.

Two comments expressed specific support for the view, which they ascribed to the American Academy of Pediatrics, that placebos may be used ethically in children only if their use does not place children at increased risk. According to the comments, such increased risk includes not only risk of mortality or increased or irreversible morbidity, but also physical pain or other distress, including fear and inconvenience. These comments suggested codifying these points in the rule.

One comment was concerned with language in the preamble to the interim rule stating that clinical investigations under § 50.52 ''*generally* are performed in children with the disease or condition for which the product is intended'' (66 FR 20589 at 20593) (emphasis added). This comment suggested that when a product presents more than minimal risk to children, it should never be tested in children who do not have the disease or condition for which the product is intended. The comment stated a concern that healthy children are being recruited to participate in clinical trials and should not be exposed to risk unless their health is at stake. The comment suggested that if children stand no chance of directly benefiting from the product being tested, their participation in such trials should be prohibited. Similarly, another comment stated that a healthy child should not be exposed to any degree of risk, even if the clinical investigation may benefit children with the disease.

One comment was opposed to the use of placebo-controlled trials in children. This comment stated that a child's development could be affected by the use of placebos in Phase 1 trials. The comment also stated that the use of placebos in Phase 2 trials could result in negative outcomes. This comment stated that the rule should clearly indicate that an investigational medicine would be compared against another ''active medicine'' in the same class.

We appreciate the numerous comments we received on this difficult area. Our position on the conduct of placebo-controlled trials in children takes into account the general guidance on the choice of control groups found in FDA's guidance entitled ''International Conference on Harmonisation E 10 Choice of Control Group and Related Issues in Clinical Trials'' (May 2001) (Ref. 6) and the advice of the Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee (Pediatric Subcommittee) and the Pediatric Ethics Subcommittee (PES) of FDA's Pediatric Advisory Committee (PAC). The PES and the PAC, and previously the Pediatric Subcommittee, are charged with providing advice and guidance on pediatric ethical issues.

In general, the Pediatric Subcommittee has agreed that placebo-controlled trials are acceptable in situations where there are no approved or adequately studied therapies for children with the condition under study. A Consensus Statement on the Pediatric Subcommittee's September 11, 2000, meeting is available on FDA's Web site at *http://www.fda.gov/Drugs/DevelopmentApprovalProcess/DevelopmentResources/ucm077894.htm* (Ref. 8).

The PES met in June 2008 to address the interpretation of prospect of direct benefit as it relates to investigations conducted under the FDA subpart D regulations, including placebo-controlled trials (Ref. 9). The PES specifically addressed the question of what benefits may be considered ''direct'' under the FDA subpart D regulations, and whether the benefits need to accrue to children in both the control and treatment arms of a clinical trial. The general consensus of the PES was that the placebo arm of a trial cannot be considered to confer the prospect of direct benefit under § 50.52 of the FDA subpart D regulations. In general, the PES advised that the so-called ''inclusion'' benefit is not a ''direct'' benefit, and that children enrolled in the placebo arm of a trial should be exposed to no more than minimal risk or a minor increase over minimal risk (Ref. 9).

FDA agrees with this position. Because we do not consider the administration of a placebo to offer a prospect of direct benefit, part 50, subpart D, therefore requires that the placebo arm must present no more than minimal risk (§ 50.51) or a minor increase over minimal risk (§ 50.53), unless the clinical investigation is referred for review under § 50.54. As stated in ICH E10, in certain circumstances a placebo-controlled study of an investigational drug or biologic may involve the withholding of known effective treatment (section 2.1.3., Ref. 6). In such situations, however, the risks of such withholding of known effective treatment in the placebo control group should present no more than minimal risk or a minor increase over minimal risk, i.e. the placebo control arm of such a clinical trial must be approvable under either § 50.51 or § 50.53. The arm that receives the investigational product often would be approvable under § 50.52. With respect to the criteria that must be met for approval under§ 50.53, we note that the inclusion of children without the disorder or condition under study would not meet the requirement of § 50.53(c) that ''the intervention or procedure is likely to yield generalizable knowledge about the subjects' disorder or condition.''

With respect to the concern raised about physical pain or other distress, including fear and inconvenience, we recognize that children with a disorder or condition who are assigned to a placebo group might experience physical pain or discomfort (although no serious risk). It would usually be possible to design a trial to take this concern into account (for example by introducing ''escape'' or withdrawal provisions, such as defining an early escape as a treatment failure). Regardless of the trial design, however, for such a clinical trial to proceed, the risk of experiencing transient pain and/or discomfort would need to represent no more than a minor increase over minimal risk.

This approach to the analysis of placebo-controlled trials is consistent with the recommendation of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research (created under the 1974 National Research Act, Public Law 93–348) that the interventions that do and do not offer a prospect of direct benefit in any given protocol must be analyzed separately (often called a component analysis of risk) (43 FR 2084 at 2086 (January 13, 1978)). This approach is applied to, for example, antimicrobial studies for the treatment of acute bacterial otitis media in the FDA guidance entitled ''Acute Bacterial Otitis Media: Developing Drugs for Treatment'' (September 2012) (Ref. 2).

(Comment 7) In the preamble to the interim rule, FDA discussed strategies for mitigating risk in clinical investigations, including exit strategies in the case of adverse events or a lack of efficacy or establishing a data monitoring committee (DMC) to review ongoing data collection and recommend

study changes (66 FR 20589 at 20593). One comment suggested that while these strategies may be appropriate measures for an IRB when the clinical trial is conducted by the IRB's institution, they may not be appropriate actions for a local IRB involved in a sponsored global clinical trial in which a DMC is part of the protocol and amendments are generated by the responsible sponsor.

Since we published the interim rule, we have issued a final guidance for clinical trial sponsors on the establishment and operation of clinical trial DMCs entitled ''Guidance for Clinical Trial Sponsors: Establishment and Operation of Clinical Trial Data Monitoring Committees'' (March 2006) (Ref. 10). This document discusses the role of DMCs and other oversight groups, including IRBs, and the relationship between sponsors and DMCs. As part of its initial evaluation, an IRB may appropriately inquire as to whether a DMC has been established and, if so, seek information about its scope and composition. For ongoing trials, an IRB is responsible for considering information arising from the trial that may bear on the continued acceptability of the trial at the study site(s) it oversees. A DMC generally has access to much more data than the IRB during the trial, including interim efficacy and safety outcomes by treatment arm, and makes recommendations with regard to the entire trial. Given its obligation to minimize the risks to patients, an IRB may take action based on information from any appropriate source, including recommendations from a DMC to the sponsor. A trial may have multiple IRBs, each responsible for the patients at a single site, but only one DMC. Individual investigators (or the sponsor of investigational devices) are responsible for assuring that IRBs are made aware of significant new information that arises about a clinical trial. Such information may include DMC recommendations to the sponsor that are communicated to IRB(s), either directly or through individual investigators or sponsors. Additionally, it may be useful for sponsors to ensure that IRBs are informed when DMCs have met, even when no problems have been identified and the DMC has recommended continuation of the trial as designed.

3. Section 50.53—Clinical Investigations Involving Greater Than Minimal Risk and No Prospect of Direct Benefit to Individual Subjects, But Likely To Yield Generalizable Knowledge About the Subjects' Disorder or Condition

We solicited comments on § 50.53, particularly on whether further definitional criteria should be provided to aid IRBs in understanding certain concepts, including: (1) How to measure a minor increase in risk, (2) at what point a minimal risk develops into a major risk, and (3) whether IRBs have the expertise necessary to determine minor increases over minimal risk. We received four comments on this section.

(Comment 8) One comment expressed support for this provision, stating that the regulations provide adequate protections for children in research with more than minimal risk and provide IRBs with sufficient criteria for review. The comment stated that IRBs have been assessing ''increases over minimal risk and the balance between the prospects of benefit to the individual participant or generalizable knowledge and can continue to make these assessments on a case-by-case basis.'' Citing documents currently available to guide IRBs, the comment stated that there is no need for further definition or elaboration of criteria in the regulations. The comment concluded that additional criteria or definitions in the regulation would not provide greater protections for research participants.

In contrast, another comment expressed great concern regarding ''the power that has been bestowed upon IRBs.'' This comment stated that protection of pediatric populations requires a high degree of competency on the part of IRBs and pointed out that inappropriate practices have been detected in the past. The comment stated that only FDA should determine adequate guidelines for the procedures and that we should be the only authority that decides whether a clinical investigation in this category goes forward.

Two comments on this section responded to our solicitation of comments on appropriate criteria for an IRB to use in assessing more than minimal risk. Both comments listed the critical factors as: (1) Age and degree of physiological maturity of the child, (2) nature and natural history of the clinical condition to be treated, (3) presence of complicating clinical conditions, (4) efficacy and safety of the treatment that may have been demonstrated in older patients, or that is expected on the basis of other clinical or preclinical investigations, and (5) likely duration of treatment and its impact upon the growth and development of the child.

We do not agree that only FDA should determine whether research in this category proceeds. Further, IRBs are required to comply with all applicable federal requirements, including those set forth in subpart D, in their review of clinical investigations. To the extent concerns have arisen, or may arise, concerning their compliance with Federal requirements, both OHRP and FDA have taken regulatory action against non-compliant IRBs and/or institutions and have worked to help eliminate non-compliant procedures used by IRBs.

Although there are many documents to guide IRBs in their decisionmaking, we recognize that further elaboration of the criteria set out in these final regulations may prove helpful. This may involve a long-term process of coordination with other Agencies, including OHRP. We appreciate comments received on the appropriate criteria for an IRB to use in assessing more than minimal risk and, although we are not incorporating these suggestions into the regulations at this time, we will consider these suggestions in the future. As previously stated, OHRP identified in its 2001 report to Congress the need for guidance on terms and concepts in HHS subpart D, including the terms ''minimal risk,'' ''the prospect of direct benefit for the individual subject,'' ''condition,'' and ''disorder'' (Ref. 4) Should HHS propose changes to HHS subpart D, we will review and consider modifying the corresponding provisions of our regulations as appropriate.

4. Section 50.54—Clinical Investigations Not Otherwise Approvable That Present an Opportunity To Understand, Prevent, or Alleviate a Serious Problem Affecting the Health or Welfare of Children

(Comment 9) We received five comments on this provision. One comment stated that the requirement for public review and comment on study proposals from private industry under § 50.54 ''should be reconsidered in view of the commercial confidential nature of clinical drug development studies.'' This comment suggested that a closed advisory committee meeting in which the committee would be supplemented with invited guests should permit full consideration of the issues and would satisfy the requirement for public review and comment. Three comments supported the requirement for public review and comment, with two of these comments recommending that FDA ''suspend'' a clinical trial referred under § 50.54 absent a sponsor's willingness to

publicly disclose the necessary information. One comment suggested that ethical issues would stem from the unwillingness of a sponsor to disclose needed information to the public, and that the ''secrecy'' of the clinical investigation and its conduct would raise suspicion and make people uncomfortable. The comment stressed that the rule should emphasize our authority to ''suspend'' clinical investigations pending the sponsor's willingness to share information with the public after referral of the protocol for review under § 50.54.

Another comment requested that we clarify the requirements for the review of research under § 50.54. This comment stated that in cases where a research study involving children is subject to both FDA and HHS regulations, it is unclear which entity will make the determination that the research can proceed, and that requiring a determination by both entities might be unnecessarily duplicative. The comment also noted that the preamble to the interim rule stated that FDA may not be able to provide public review and comment if the sponsor is unwilling to publicly disclose necessary information. The comment suggested that the text of the regulation state explicitly that public review and comment may not be possible in all cases given the FDA regulations relevant to sponsor confidentiality.

From the comments we received, it appears that confusion exists as to the intent of our statements in the preamble to the interim rule about the necessity of public review and comment. In the preamble we stated ''Because FDA believes full public review and comment is critical in determining whether a clinical investigation should proceed under these circumstances, if a sponsor is unwilling to waive this privilege, FDA may not be able to satisfy the public review and comment requirement and any such clinical investigation could not proceed'' (66 FR 20589 at 20594). The intent of this statement was to make it clear that if the public review and comment requirement could not be met because some or all of the information necessary for that public review and comment was trade secret and/or confidential commercial information, and therefore could not be discussed publicly unless the sponsor gave consent to have that information discussed publicly, the criteria under § 50.54 could not be met and thus the investigation could not go forward.

Because closed advisory committee meetings do not allow for public participation or review of issues under discussion, we do not agree that a closed advisory committee meeting satisfies the requirement for public review and comment. The Agency would be unable to proceed with a referral of a clinical investigation involving children under § 50.54 unless there is full opportunity for public review and comment as provided in this section.

In December 2006, FDA published a final guidance document entitled ''Guidance for Clinical Investigators, Institutional Review Boards and Sponsors; Process for Handling Referrals to FDA Under 21 CFR 50.54: Additional Safeguards for Children in Clinical Investigations'' (Ref. 11). This final guidance describes the procedures FDA generally will follow in handling clinical investigations referred for review under § 50.54 and in reaching final determinations under this regulation. The guidance is based in part on FDA's experience to date with such referrals. This guidance also addresses situations in which a clinical investigation being referred involves an FDA-regulated product and is conducted or supported by HHS, and therefore is subject to both FDA's regulations (§ 50.54) and HHS regulations (45 CFR 46.407). If there is a referral of a clinical investigation subject to both FDA and HHS regulations, FDA's PAC is chartered to advise both the Commissioner of FDA and the Secretary of HHS on referrals under § 50.54 of FDA subpart D and § 46.407 of HHS subpart D.

OHRP's guidance on the review process under 45 CFR 46.407, issued in May 2005, is available on OHRP's Web page at *http://www.hhs.gov/ohrp/policy/populations/guidance_407process.html (Ref. 12).*

D. Obtaining Assent From Children

We defined ''assent'' at § 50.3(n). In § 50.55 we listed our requirements for assent by children, and in the preamble to the interim rule we solicited comments on how to ensure that age-appropriate explanations are provided to children. We received three comments on soliciting and documenting assent and three comments on ensuring age-appropriate explanations.

(Comment 10) One comment suggested that the consent/assent of a child or family member should be witnessed by an independent person at the research facility and/or videotaped to ensure that proper and truthful information has been provided in an understandable fashion to children. A second comment requested that FDA define a minimum standard for documentation of assent similar to that of informed consent. The comment stated that a minimum standard would assist sponsors in monitoring and other quality assurance efforts and would facilitate increased consistency across clinical sites. The comment expressed concern that if an IRB determined that pediatric assent was warranted for a trial, but decided that documentation of the assent was unnecessary, both sponsors and FDA would be unable to determine that assent actually occurred. A third comment suggested that persons with demonstrated competence in dealing with children be added to the assent process to evaluate the cognitive levels of understanding for children in various age groups.

The requirements for assent listed at § 50.55 are the same as those in 45 CFR 46.408 of HHS subpart D. Because of the unique issues raised when soliciting assent from children, permission (i.e., consent) from one or both parents is required. This permission must be documented in accordance with and to the extent required by § 50.27. We do not agree that requiring an independent witness and/or videotape of the process of soliciting parental permission or child assent would, in every study, be necessary or would act as a safeguard. We conclude that the procedures in § 50.27 for documenting consent are sufficient for an adult providing parental or guardian permission. Additionally, in certain circumstances the use of videotape or the presence of an independent witness might intimidate a child being asked to provide assent. Under § 50.55(g), the IRB determines whether and how assent must be documented. If an IRB determines that videotaping the assent process is appropriate or that an independent witness is warranted, the IRB can require such procedures at its discretion as a condition of study approval. We do not agree that adding a formal evaluation of the cognitive levels of understanding for children in various age groups is routinely warranted.

FDA's guidance entitled ''E6 Good Clinical Practice: Consolidated Guidance'' (ICH E6) (Ref. 13) recommends that a child ''should be informed about the trial to the extent compatible with the [child]'s understanding and, if capable, the [child] should assent, sign and personally date the written informed consent'' (§ 4.8.12, ICH E6, Ref. 13). In addition, the ''language used in the oral and written information about the trial * * * should be understandable'' to the child or the child's parent or guardian (§ 4.8.6, ICH E6, Ref. 13). If a child is

deemed capable of assent, and the assent requirement is not waived under § 50.55(c) or (d), the language used should be understandable to the child in order for the child's assent to be meaningful (§ 2.6.3, ICH E 11, Ref. 1). We are aware that some IRBs do not use a separate child assent form, preferring an oral explanation along with some form of documentation of a child's assent. At this time, we do not plan to articulate a single standard similar to informed consent for obtaining or documenting assent. Although adults are presumed to have the level of competency necessary to grant informed consent, children's levels of competency differ on an individual basis, and therefore there is no one standard that would or could apply to all situations. In § 50.55, we have stated our requirements for the assent process and left IRBs discretion to determine whether children in a particular study are capable of providing assent. IRBs must determine for the clinical trial as a whole, or for each child or group of children within a trial, the appropriateness of obtaining assent, the ability of children to understand the subject of their assent, and the method of documentation appropriate to that understanding. Similarly, while we encourage IRBs to require documentation of assent when appropriate, as evidenced by § 50.55(g), we consider the issue of whether and how to document assent as appropriately left to the discretion of the IRB based on its own assessment. The requirement that in all cases parental or guardian permission must be granted and documented in accordance with and to the extent required by § 50.27 acts as a safeguard to the assent process.

(Comment 11) Three comments responded to our solicitation on ensuring age-appropriate explanations to children. The first comment stated that age-appropriate assent has long been a part of the HHS regulations and that current, available guidance is sufficient to assist IRBs in meeting their responsibilities. This comment stated that there is no need for further definition or elaboration of criteria to aid IRBs in ensuring age-appropriate explanations. A second comment stated that FDA should encourage the study and publication of techniques for securing the assent of pediatric patients. A third comment stated that ensuring that children are provided with age-appropriate explanations is both important and difficult. The comment supported the factors listed in the regulation and added the following factors: The environment in which the research will be conducted, the expertise of the researchers, and the risks and benefits of the specific protocol. The comment concluded that since these are matters of informed judgment, the assessment of the appropriateness of the explanation to children at a particular research site is best made by a duly constituted IRB that, as necessary, consults with individuals with expertise and experience in age-appropriate explanations.

We agree with the comment that ensuring that children are provided with age-appropriate explanations is important and difficult. We also agree that the assessment of appropriateness is best left to the IRB responsible for review of any specific protocol. However, if child assent is required, persons who are knowledgeable and skilled in dealing with children should be involved in the assent process to detect and/or minimize child distress (§ 2.6.3 and 2.6.5; ICH E 11, Ref. 1). While we acknowledge that age-appropriate assent has long been a part of HHS regulations, we support the continued study and publication of techniques for securing the assent of pediatric patients in the best ways possible.

E. Waiver of Permission

Consistent with the interim rule, we are not adopting the provisions of HHS subpart D at 45 CFR 46.408(c) that allow IRBs to waive the requirements for obtaining permission in certain circumstances. The policy decision not to adopt the waiver of parental or guardian permission found in 45 CFR 46.408(c) stems from FDA's specific regulatory scheme. We explained in the preamble to the interim rule that the only exceptions to our requirements for informed consent are found in the emergency exceptions listed in part 50 of our regulations.

(Comment 12) We received six comments on this provision. Four comments supported our decision not to adopt the waiver provision for permission by parents or guardians. Two comments objected to our decision not to adopt the waiver provision.

Of the two comments that objected to our decision not to adopt the waiver provision, one comment suggested that the waiver provision for parental permission in HHS subpart D is appropriate in certain, unusual circumstances and suggested that we adopt it in limited, appropriate circumstances. The comment provided two possible examples of circumstances it considered unusual: (1) The development of a new test kit for a sexually transmitted disease or (2) studies involving children who have been the victims of sexual abuse. The comment also asked that FDA clarify that the option to waive informed consent in emergency settings applies to pediatric research and that FDA specifically state that the possible exceptions in § 50.24 apply to children as well.

The other comment that objected to our decision not to adopt the provision for waiver of parental permission asked us to interpret the FD&C Act to enable mature adolescents to consent to involvement in certain types of clinical studies without parental permission. The comment stressed that if such an interpretation of the law is not possible, we should seek to change the law to allow FDA and HHS regulations to be consistent in this area. The comment stated that if the waiver provision is not adopted, vital research involving mature adolescents for whom seeking parental permission is not in their best interest will not be conducted.

The comment cited the example of research studies using new therapeutic modalities for the human immunodeficiency virus (HIV) and the acquired immunodeficiency virus (AIDS) in the HIV epidemic in the late 1980s and early 1990s and stated that many adolescents who sought treatment for HIV requested that their diagnosis be kept confidential from their parents. The comment stated that such confidential treatment was provided to these adolescents based on State laws allowing physicians to treat adolescents for sexually transmitted diseases without parental involvement. The comment continued that when new drugs became available only under research protocols, these adolescents would not have been afforded the potential benefits from participation in such clinical trials if parental permission were required. The comment stated that clinicians responded to this problem by asking IRBs to invoke 45 CFR 46.408(c) of HHS subpart D to allow the research to proceed without informing the parents of adolescents who requested confidentiality. This comment also urged the development of guidance to protect the interests of adolescents and children who are research subjects.

We have reviewed this issue and have decided not to adopt the waiver of parental or guardian permission. We acknowledge that FDA and HHS regulations are not harmonized on this point; however, as discussed in the paragraphs that follow, we consider this difference to be necessary and appropriate in light of FDA's existing

statutory and regulatory scheme. Furthermore, we conclude that, notwithstanding the decision not to adopt the waiver of parental or guardian permission, FDA's regulations will ensure that, as required by section 2701 of the Children's Health Act, all FDA-regulated clinical investigations are in compliance with 45 CFR part 46. Section 46.408(c) of HHS subpart D does not represent a requirement that must be met in order for a clinical investigation to be conducted in compliance with HHS subpart D; rather, this waiver provision allows for a waiver of certain requirements of HHS subpart D.

We recognize that mature adolescents may contract diseases such as HIV–AIDS and other sexually transmissible diseases, and that there are important issues relating to the confidentiality of treatment sought. We note that in some situations a State may grant certain classes of mature adolescents of a specific age the right to consent to treatments or procedures involved in a clinical investigation. These mature minors would not meet the definition of children under § 50.3(o) and thus would not be subject to the requirements of this subpart. Similarly, minors deemed ''emancipated'' by state law also would not meet the definition of children under § 50.3(o) and would not be subject to the requirements of this subpart. Mature or emancipated minors would be allowed to consent to participation in FDA-regulated research without the need for parental or guardian permission. Thus, we consider reliance on established state and/or local laws that establish an adolescent as mature and/or emancipated to be appropriate in this context. Furthermore, it would be difficult to limit the interpretation and application of a waiver provision to narrowly apply to a limited set of circumstances or appropriate conditions, as suggested by one comment.

In FDA's view, adopting the waiver provision in 45 CFR 46.408(c) would be prohibited by the FD&C Act in certain circumstances, and would be inconsistent with FDA's implementing regulations. Specifically, section 520(g)(3) of the FD&C Act, which was added to the FD&C Act as part of the Medical Device Amendments of 1976 (Pub. L. 94–295), requires that informed consent be obtained from each human subject in a clinical trial of a device, except when an exception is granted in certain narrow emergency situations. Thus, the circumstances in which an exception from the requirement for informed consent can be granted in a clinical investigation of a medical device are specifically set forth in FDA's statute. When FDA issued its informed consent regulations (46 FR 8942, January 27, 1981), the agency sought to create a single set of informed consent regulations (part 50), including provisions for an exception from the requirement for informed consent, that would provide consistent protections for subjects in trials subject to FDA jurisdiction, regardless of the type of product being investigated. Accordingly, the provisions in part 50 pertaining to exceptions from the requirement for informed consent are based on those in section 520(g)(3) of the FD&C Act, and apply to all FDA-regulated clinical investigations.

Because parental or guardian permission takes the place of informed consent when the human subject is a child, a waiver of permission (as in 45 CFR 46.408(c) of the HHS regulations) is equivalent to a waiver of or exception from the requirement for informed consent, regardless of whether child assent is obtained. If we were to amend our regulations to allow for IRB waiver of or exception from the requirement to obtain permission in certain clinical investigations involving children, we would be prohibited from doing so by section 520(g)(3) of the FD&C Act with regard to medical device trials. Thus, we would have two disparate standards of human subject protection (one for clinical trials of devices and one for other trials regulated by FDA) based not on ethical considerations, but rather based solely on the type of product being studied. We conclude that this result would not be in the interest of public health and safety, and that public health and safety is best served by having uniform informed consent requirements across medical product categories and that the informed consent requirements should not vary depending on whether a clinical trial regulated by FDA involves a drug, biological product, device, or other product subject to FDA jurisdiction.

We note that § 50.23 sets forth an exception from the general requirement to obtain informed consent in certain situations when a human subject is confronted by a life-threatening situation necessitating the use of a test article when there is not sufficient time to obtain consent from the subject or the subject's legal representative. FDA interprets this provision to apply to children when there is not sufficient time to obtain parental or guardian permission. The regulation therefore allows a test article to be administered to a child if the investigator and an independent physician who is not otherwise participating in the clinical investigation certify in writing, before use of the test article, that certain conditions are met, including that there is no alternative method of approved or generally recognized therapy that provides an equal or greater likelihood of saving the life of the child. However, § 50.23 also provides that, if immediate use of the test article is, in the investigator's opinion, required to preserve the life of the subject (in this context, the child), and time is not sufficient to obtain the required independent determination in advance of using the test article, the determinations of the clinical investigator shall be made and, within 5 working days after the use of the article, be reviewed and evaluated in writing by a physician who is not participating in the clinical investigation. In either situation, the written documentation must be submitted to the IRB within 5 working days after the use of the test article.

With regard to the concerns in the comment about emergency research involving children, we wish to clarify that the emergency research provisions in § 50.24 apply, and always were intended to apply, to clinical investigations involving children. We have added language to § 50.55(e) that originates from § 46.408(b) of HHS subpart D and was inadvertently omitted from the interim rule, indicating that the exceptions from informed consent for emergency research described in § 50.24 apply to research in children. Section 50.55(e) now reads, ''In addition to the determinations required under other applicable sections of this subpart D, the IRB must determine, *in accordance with and to the extent that consent is required under part 50,* that the permission of each child's parents or guardian is granted'' (emphasis added). This change is being made to confirm that the emergency provisions in part 50 apply to clinical investigations involving children.

F. Wards

(Comment 13) We received five comments on the participation of children who are wards in clinical investigations. One comment supported the appointment of an advocate for children who are wards. One comment asked for clarification about the appointment process, noting that the preamble to the interim rule states that the IRB itself must appoint the advocate rather than assure that an advocate has been appointed. Two comments asked for clarification about the role and responsibilities of an advocate, and the obligations of a central IRB and sponsor in monitoring the appointment of

advocates. One comment stated that the text of the preamble overstated the meaning of § 50.56 by specifying that an IRB appoint an advocate for each child, noting that an IRB-appointed advocate would essentially duplicate the role of an advocate who may already have been appointed by the State or any other agency, institution, or entity. The comment stated that the role of the IRB should be to review and confirm that an advocate who meets the requirements of § 50.56 has been appointed. The comment stated that the advocate need not be the same individual appointed by the State to serve as a guardian or in loco parentis and that IRBs should be empowered to reject the selection of the advocate presented for confirmation if the IRB believes that individual to be unsuitable.

We agree with the comment that the preamble overstated the requirement, as set forth in § 50.56, for the appointment of an advocate. As § 50.56 states, the IRB must require appointment of an advocate for each child who is a ward, not appoint the advocate itself. This advocate will serve in addition to any other individual acting on behalf of the child as guardian or in loco parentis and will act in the best interest of the child for the duration of the child's participation in the clinical investigation. We note that § 50.56 only addresses the circumstances in which wards can be included in clinical investigations approved under § 50.53 or § 50.54, and therefore only requires the appointment of an advocate in such clinical investigations. It does not address the appointment of an advocate in clinical investigations approved under § 50.51 or § 50.52; however, the regulations do not preclude an IRB from considering the appointment of an advocate in such clinical investigations in order to assure that there is someone who will act in the best interest of the child for the duration of the child's participation in the clinical investigation. Before enrolling any child who is a ward in a clinical investigation, IRBs should ensure that each child has a guardian and/or advocate with the background, experience and commitment to act in the best interest of the child.

We do not consider it necessary to codify a provision specifically empowering the IRB to reject the selection of an advocate if the IRB finds that individual to be unsuitable. Other regulatory provisions, including § 56.113, provide the IRB with authority to suspend or terminate research if it determines that any aspect of the research is not in conformance with the regulations. This would include any noncompliance with § 50.56.

G. Biological Products

(Comment 14) One comment requested that we clarify that the regulations apply to biological products. Section 50.1 of part 50—Protection of Human Subjects, and § 56.101 of part 56—Institutional Review Boards, clearly state that they apply to clinical investigations regulated by FDA under sections 505(i) and 520(g) of the FD&C Act, as well as clinical investigations that support applications for research or marketing permits for products regulated by FDA, including human drug and biological products; medical devices for human use; foods, including dietary supplements, that bear a nutrient content claim or health claim; infant formula; food and color additives; and electronic products. Because §§ 50.1 and 56.101 apply to this final rule, it is unnecessary for us to include specific language in this final rule indicating that it applies to biological products.

H. Economic Analysis

We received three comments on the economic analysis in the interim rule.

(Comment 15) One comment stated that the estimate of additional time to be spent by IRBs to review and document the level of risk may be underestimated at one person-hour. The comment also raised concern that the additional IRB responsibilities, including ensuring age-appropriate explanations for assent and assessing strategies for the appointment of advocates, will add to the time spent by IRBs to ensure the safe conduct of pediatric clinical trials. The comment requested clarification on the nature and scope of the documentation necessary.

Under current regulations and guidance, IRBs are already required to make several determinations concerning risk to participants and to document those risks. The additional requirements of this rule state that IRBs must specifically identify which of the four risk categories applies to children in a clinical trial. We expect that this determination will require some additional effort, but take at most one person-hour of additional time. This estimate includes time for the documentation required to identify the selected risk category.

(Comment 16) Two comments stated that they did not agree with our assumption that there would be no costs associated with clinical holds. These comments noted that we did not calculate the potential impact of the widespread accreditation of IRBs. These comments stated that inspection of studies will be common as IRBs go through the accreditation process and that, particularly in the pediatric area, IRBs themselves may increase their inspection of studies to avoid findings of ''noncompliance'' by accrediting bodies. The comments concluded that increased inspections will probably uncover more circumstances in which studies will be put on clinical hold.

This rule does not require IRBs to undergo any accreditation process. We do not know of any plans to require federally mandated accreditation of IRBs, nor do we endorse any particular accreditation body. Therefore, there are no costs from accreditation related to this rule. While IRB reviews of pediatric clinical trials may become more comprehensive if there are concerns about noncompliance, any increase in IRB reviews because of noncompliance would not be attributable to this rule, but to problems with noncompliance generally.

I. Requests for Additional Requirements

(Comment 17) Two comments raised concerns that ethical standards were not codified in the regulation. One comment called on us to ensure that the pharmaceutical industry focuses on the ethical conduct of clinical trials in children and not financial gain. The other comment raised concern that the regulations do not include standards for conflict of interest or require that such conflicts by investigators or institutions be revealed on informed consent documents to parents or guardians. The comment also noted that the regulations do not mention rules for recruitment. This comment suggested that there should be prohibitions against ''bribing'' parents with high payments to offer their children for research and that compensation should cover only direct expenses such as travel, meals and lodging costs, and daycare for other children.

FDA's regulations under 21 CFR part 54 govern financial disclosure by clinical investigators and requires disclosure of certain financial relationships between the sponsors of covered studies and the clinical investigators, including interests of the clinical investigators in the product under study or in the sponsor of the covered studies. We use this information in conjunction with information about the design and purpose of the study, as well as information obtained through onsite inspections, in our assessment of the reliability of data presented.

In August 2000, HHS held a conference on human subject protection and financial conflicts of interest. As a result of this conference, HHS issued a

final guidance in May 2004 entitled ''Financial Relationships and Interests in Research Involving Human Subjects: Guidance for Human Subject Protection'' (Ref. 14). Since that time, FDA has issued additional guidance related to this issue, including a draft guidance issued in May 2011 entitled ''Guidance for Clinical Investigators, Industry, and FDA Staff: Financial Disclosure by Clinical Investigators'' (Ref. 15), and a final guidance issued in October 2009 entitled ''Guidance for Industry: Investigator Responsibilities—Protecting the Rights, Safety, and Welfare of Study Subjects'' (Ref. 16).

Additionally, we note that ethical considerations for IRBs are covered under several provisions of our regulations. Sections 56.107(a) and 56.111 require IRBs to ensure that appropriate safeguards exist to protect the rights and welfare of research subjects. In fulfilling these responsibilities, an IRB is expected to review all the research documents and activities that bear directly on the rights and welfare of the subjects of proposed research. The protocol, the consent document and, for studies conducted under the Investigational New Drug (IND) regulations, the investigator's brochure are examples of documents that the IRB should review. The IRB should also review the methods and material that investigators propose to use to recruit subjects (see ''Recruiting Study Subjects—Information Sheet,'' Ref. 17). Section 56.107 on IRB membership contains several provisions designed to prevent conflicts of interest. Section 56.107(e) states that no IRB may have a member participate in the IRB's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the IRB.

Regulatory requirements for recordkeeping and retention of records provide one means for FDA oversight of IRBs. Section 56.115(c) states that we may refuse to consider a clinical investigation in support of an application for a research or marketing permit if the institution or the IRB that reviewed the investigation refuses to allow inspections of its records or reports. Similarly, subpart E of part 56 outlines various actions we may take against IRBs if we observe during an inspection that an IRB is not complying with the regulations. These actions include disqualification of an IRB, referral for civil or criminal judicial proceedings, and any other appropriate regulatory action. We may also refer matters to another Federal, State, or local government Agency for any action that the Agency determines to be appropriate.

Although it is always possible that an IRB will not be in compliance with all of our regulations, our current IRB regulations, along with other human subject protection regulations, provide us with multiple tools to ensure ethical conduct by IRBs, clinical investigators, and sponsors. The 2001 OHRP report identified the need for guidance on payment (financial or otherwise) that may be provided either to children involved in research as subjects or to their parents, under circumstances that minimize the possibility of coercion or undue influence (Ref. 4). While the 2004 IOM report concluded that payments related to research participation have a role to play in reducing barriers and equalizing access to research participation, it recommended that IRBs should develop written guidance and policies on payments to children or parents related to research participation (Ref. 5). Should HHS propose changes to its regulations pertaining to IRB oversight, we will review our regulations and consider revising them as appropriate.

IV. Legal Authority

This rule finalizes the interim rule published in 2001 to bring FDA regulations into compliance with provisions of the Children's Health Act (Pub. L. 103–310). Title XXVII, section 2701 of the Children's Health Act required that within 6 months of enactment all research involving children that is conducted, supported, or regulated by HHS be in compliance with HHS regulations providing additional protections for children involved as subjects in research. The HHS regulations are codified at 45 CFR part 46 subpart D. FDA interprets the Children's Health Act to require FDA to issue regulations to ensure that clinical investigations of FDA-regulated products are conducted in compliance with HHS subpart D.

Additional authority for this rule derives from sections 505(i) and 520(g) of the FD&C Act regarding clinical investigations of FDA-regulated drugs, biological products, and devices for human use. These provisions direct the Commissioner to issue regulations for exempting such investigational products from the general requirements for preapproval or presubmission review. Among other stated objectives, this final rule fulfills that mandate by enhancing protections for children involved as subjects in clinical research of FDA-regulated drugs, biological products, and devices for human use.

A further source of authority for this rule is section 701 of the FD&C Act (21 U.S.C. 371), which authorizes the Commissioner to issue regulations for the efficient enforcement of the FD&C Act. This final rule helps the efficient enforcement of the FD&C Act by enhancing clarity and certainty in FDA's oversight of clinical investigations involving children as subjects.

V. Environmental Impact

The Agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act

This final rule contains no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and therefore review by the Office of Management and Budget (OMB) is not required. The information requested for clinical investigations in children of FDA-regulated products is already covered by the collections of information in the IND regulations (21 CFR part 312), the investigational device exemption (IDE) regulations (21 CFR part 812), the IRB regulations (§ 56.115), the food additive petition and nutrient content claim petition regulations (21 CFR 101.69 and 101.70), and the infant formula regulations (21 CFR parts 106 and 107), all of which are approved by OMB. Specifically, the information collected under the IND regulations is currently approved under OMB control number 0910–0014. The information collected under the IDE regulations is currently approved under OMB control number 0910–0078. The information collected under the IRB regulations is currently approved under OMB control number 0910–0130. The information collected in food additive and nutrient content claim petitions is currently approved under OMB control number 0910–0381 (general requirements) and 0910–0016 (FDA Form 3503). The information collected under the infant formula regulations is currently approved under OMB control number 0910–0256 (general requirements) and 0910–0188 (infant formula recalls).

VII. Analysis of Impacts

A. Introduction

FDA has examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and

the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this final rule is not a significant regulatory action under Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The Agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $139 million, using the most current (2011) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

B. Updated Analysis

The interim final rule (66 FR 20589 at 20596, April 24, 2001) imposed an additional burden on IRBs reviewing investigations which involve children. The estimated costs of the interim final rule were estimated to be small ($933,000 in year 2001 and $23,550 per year in years 2002 through 2009). As the interim final rule has been in effect since April 2001, the publication of this final rule will have little additional impact. However, we update the estimated costs of the interim rule for the post-2001 period to adjust for inflation and availability of more recent data. The total annual cost of reviewing pediatric clinical trials remains at $933,000 (this includes a one-time cost of $900,000 to conduct a one-time review and update standard operating procedures plus $33,000 for annual reviews) for the year 2001. The revised annual review cost for the post-2001 period ranges between $79,817 and $112,357 per year (see table 1 in this document).

The revised post-2001 costs per year are revised as follows. First, the annual IRB costs per year are in inflation-adjusted (2010) dollars. Second, we use recent data from the various FDA centers reviewing protocols involving pediatrics, and update the total number of studies affected by the rule to be between 872 and 1,227 per year. We note that given data limitations we are unable to use the same period of analysis across centers. To the extent that there has been an increase in the number of protocols involving children since 2001, then using the most recently available data would provide an upper bound estimate on the average number of protocols received after 2001. However, over the past few years, most offices within FDA's Center for Drug Evaluation and Research (CDER) did not observe a significant increase in the percentage change of protocols received. Thus, we believe that the impact of using different periods of data is negligible. The data and methodology used are discussed in more detail in the paragraphs that follow.

The estimated number of drug- and biologics-related protocols involving pediatrics ranges from 561 to 637. The number of drug-related or biologics-related protocols (553 to 610) provided by CDER was based on data from fiscal year 2011. The range of protocols related to biological products regulated by FDA's Center for Biologics Evaluation and Research (CBER) represents the minimum (8 in fiscal year 2004) and maximum (27 in fiscal year 2011) number of pediatric protocols received by CBER during fiscal years 2002–2011. The count is adjusted up 30 percent [1] to account for IND-exempt protocols.

We estimate that 305 to 572 medical device protocols involve pediatrics. This is calculated by using the average number of applications or submissions (including supplements) reviewed by FDA's Center for Devices and Radiological Health per year and an estimate on the percent of medical device applications involving children. We estimate that, using the number of approved IDE pediatric studies as reported by FDA's Center Tracking System (7 to 13), and the average number of original IDE submissions (219) in fiscal years 2008–2009, 3 percent to 6 percent of medical device protocols involve pediatrics. We note that there could be some high-risk medical devices which might not be included in our estimated number of protocols for medical devices; however, data limitations do not permit us to quantify the extent to which our estimates would have to be adjusted up.

Finally, the estimated number of protocols for food additives and infant formula are extrapolated using the average High-to-Low ratio (3-to-1) across the other products and the initial estimates in the final rule. For instance, to determine the upper-bound estimate for infant formula we multiply the 2001 estimate by the High-to-Low ratio (5 × 3).

TABLE 1—ESTIMATED NUMBER OF IRB REVIEWS PER YEAR FOR CLINICAL INVESTIGATIONS IN CHILDREN

		Per year post-2001	
	2001	Low	High
Drugs and Biological Products	264	561	637
Medical Devices	170	305	572
Foods and Food Additives:			
Infant Formula	5	5	15
Food Additives	1	1	3
Total IRB Reviews per year	440	872	1,227
Total IRB Costs per year	$33,000	$79,817	$112,357

[1] This estimate is determined based on discussions with academic and commercial IRBs on the estimated percent of pediatric protocols which are exempt from filing an IND application.

VIII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the Agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. References

The following references have been placed on display in the Division of Dockets Management, Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857 and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.go*. (FDA has verified the Web site addresses, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. FDA ''Guidance for Industry: ICH E11 Clinical Investigation of Medicinal Products in the Pediatric Population,'' December 2000, available at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM073143.pdf,* accessed June 21, 2012.

2. FDA ''Guidance for Industry: Acute Bacterial Otitis Media: Developing Drugs for Treatment,'' September 2012, available at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM070947.pdf,* accessed October 15, 2012.

3. FDA ''Guidance for Industry: Orally Inhaled and Intranasal Corticosteroids: Evaluation of the Effects on Growth in Children,'' March 2007, available at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm071968.pdf,* accessed June 21, 2012.

4. OHRP ''Protections for Children in Research: A Report to Congress in Accord with Section 1003 of P.L. 106–310, Children's Health Act of 2000,'' May 2001, available at: *http://www.hhs.gov/ohrp/archive/reports/ohrp502.pdf,* accessed June 21, 2012.

5. Committee on Clinical Research Involving Children, Board on Health Sciences Policy, Institute of Medicine of the National Academies, ''Ethical Conduct of Clinical Research Involving Children,'' Marilyn J. Field and Richard E. Behrman, Eds., The National Academies Press, 2004, available at *http://www.iom.edu/Reports/2004/Ethical-Conduct-of-Clinical-Research-Involving-Children.aspx,* accessed June 21, 2012.

6. FDA ''Guidance for Industry: E 10 Choice of Control Group and Related Issues in Clinical Trials,'' May 2001, available at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM073139.pdf,* accessed June 25, 2012.

7. Committee on Drugs, American Academy of Pediatrics, ''Guidelines for the Ethical Conduct of Studies to Evaluate Drugs in Pediatric Populations,'' *Pediatrics,* vol. 95, No. 2, pp. 286–294, February 1995.

8. FDA ''FDA Pediatric Ethics Working Group Consensus Statement on Pediatric Advisory Subcommittee's September 11, 2000,'' available at *http://www.fda.gov/Drugs/DevelopmentApprovalProcess/DevelopmentResources/ucm077894.htm,* accessed June 25, 2012.

9. FDA Pediatric Ethics Subcommittee of the Pediatric Advisory Committee, June 9–10, 2008 meeting. The agenda, briefing information, slides, minutes and transcripts can be found at *http://www.fda.gov/ohrms/dockets/ac/oc08.html#pac,* accessed June 27, 2012. Relevant excerpts of the transcripts are on display in the FDA Division of Dockets Management.

10. FDA ''Guidance for Clinical Trial Sponsors: Establishment and Operation of Clinical Trial Data Monitoring Committees,'' March 2006, available at *http://www.fda.gov/downloads/RegulatoryInformation/Guidances/ucm127073.pdf,* accessed June 25, 2012.

11. FDA ''Guidance for Clinical Investigators, Institutional Review Boards and Sponsors; Process for Handling Referrals to FDA Under 21 CFR 50.4: Additional Safeguards for Children in Clinical Investigations, '' December 2006, available at *http://www.fda.gov/downloads/RegulatoryInformation/Guidances/ucm127605.pdf,* accessed June 25, 2012.

12. HHS Office of Human Research Protections ''Children Involved as Subjects in Research: Guidance on the HHS 45 CFR 46.407 (''407'') Review Process,'' May 2005, available at *http://www.hhs.gov/ohrp/policy/populations/guidance_407process.html,* accessed on June 25, 2012.

13. FDA ''Guidance for Industry: E6 Good Clinical Practice: Consolidated Guidance,'' April 1996, available at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM073122.pdf,* accessed June 25, 2012.

14. Department of Health and Human Services, ''Final Guidance Document: Financial Relationships and Interests in Research Involving Human Subjects: Guidance for Human Subject Protection'' May 2004, available at *http://www.hhs.gov/ohrp/policy/fguid.pdf,* accessed June 25, 2012.

15. FDA ''Guidance for Clinical Investigators, Industry, and FDA Staff: Financial Disclosure by Clinical Investigators,'' May 2011, available at *http://www.fda.gov/downloads/RegulatoryInformation/Guidances/UCM256525.pdf,* accessed June 25, 2012.

16. FDA ''Guidance for Industry: Investigator Responsibilities—Protecting the Rights, Safety, and Welfare of Study Subjects,'' October 2009, available at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM187772.pdf*, accessed on June 25, 2012.

17. FDA ''Recruiting Study Subjects—Information Sheet. Guidance for Institutional Review Boards and Clinical Investigators,'' page last updated: 10/18/2010, available at *http://www.fda.gov/RegulatoryInformation/Guidances/ucm126428.htm,* accessed June 25, 2012.

List of Subjects

21 CFR Part 50

Human research subjects, Prisoners, Reporting and recordkeeping requirements, Safety.

21 CFR Part 56

Human research subjects, Report and recordkeeping requirements, Safety.

Accordingly, the interim rule amending 21 CFR parts 50 and 56 which was published at 66 FR 20589, on April 24, 2001, is adopted as a final rule with the following changes:

PART 50—PROTECTION OF HUMAN SUBJECTS

■ 1. The authority citation for 21 CFR part 50 continues to read as follows:

Authority: 21 U.S.C. 321, 343, 346, 346a, 348, 350a, 350b, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 379e, 381; 42 U.S.C. 216, 241, 262, 263b–263n.

§ 50.3 [Amended]

■ 2. Amend § 50.3 by revising paragraphs (n), (r), and (s) to read as follows:

§ 50.3 Definitions.

* * * * *

(n) *Assent* means a child's affirmative agreement to participate in a clinical investigation. Mere failure to object should not, absent affirmative agreement, be construed as assent.

* * * * *

(r) *Permission* means the agreement of parent(s) or guardian to the participation of their child or ward in a clinical investigation.

(s) *Guardian* means an individual who is authorized under applicable State or local law to consent on behalf of a child to general medical care.

■ 3. Revise § 50.51 to read as follows:

§ 50.51 Clinical investigations not involving greater than minimal risk.

Any clinical investigation within the scope described in §§ 50.1 and 56.101 of this chapter in which no greater than minimal risk to children is presented may involve children as subjects only if the IRB finds that:

(a) No greater than minimal risk to children is presented; and

(b) Adequate provisions are made for soliciting the assent of the children and the permission of their parents or guardians as set forth in § 50.55.

■ 4. Revise the introductory text of § 50.52 to read as follows:

§ 50.52 Clinical investigations involving greater than minimal risk but presenting the prospect of direct benefit to individual subjects.

Any clinical investigation within the scope described in §§ 50.1 and 56.101 of this chapter in which more than minimal risk to children is presented by an intervention or procedure that holds out the prospect of direct benefit for the individual subject, or by a monitoring procedure that is likely to contribute to the subject's well-being, may involve children as subjects only if the IRB finds that:

* * * * *

■ 5. Revise the introductory text of § 50.53 to read as follows:

§ 50.53 Clinical investigations involving greater than minimal risk and no prospect of direct benefit to individual subjects, but likely to yield generalizable knowledge about the subjects' disorder or condition.

Any clinical investigation within the scope described in §§ 50.1 and 56.101 of this chapter in which more than minimal risk to children is presented by an intervention or procedure that does not hold out the prospect of direct benefit for the individual subject, or by a monitoring procedure that is not likely to contribute to the well-being of the subject, may involve children as subjects only if the IRB finds that:

* * * * *

■ 6. Revise paragraph (a) of § 50.54 to read as follows:

§ 50.54 Clinical investigations not otherwise approvable that present an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of children.

* * * * *

(a) The IRB finds that the clinical investigation presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children; and

* * * * *

■ 7. Revise paragraph (e) of § 50.55 to read as follows:

§ 50.55 Requirements for permission by parents or guardians and for assent by children.

* * * * *

(e) In addition to the determinations required under other applicable sections of this subpart D, the IRB must determine, in accordance with and to the extent that consent is required under part 50, that the permission of each child's parents or guardian is granted.

(1) Where parental permission is to be obtained, the IRB may find that the permission of one parent is sufficient for clinical investigations to be conducted under § 50.51 or § 50.52.

(2) Where clinical investigations are covered by § 50.53 or § 50.54 and permission is to be obtained from parents, both parents must give their permission unless one parent is deceased, unknown, incompetent, or not reasonably available, or when only one parent has legal responsibility for the care and custody of the child.

* * * * *

PART 56—INSTITUTIONAL REVIEW BOARDS

■ 8. The authority citation for 21 CFR part 56 continues to read as follows:

Authority: 21 U.S.C. 321, 343, 346, 346a, 348, 350a, 350b, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 379e, 381; 42 U.S.C. 216, 241, 262, 263b–263n.

■ 9. Revise in § 56.109 the second sentence of paragraph (h) to read as follows:

§ 56.109 IRB review of research.

* * * * *

(h) * * * When some or all of the subjects in a study that was ongoing on April 30, 2001, are children, an IRB must conduct a review of the research to determine compliance with part 50, subpart D of this chapter, either at the time of continuing review or, at the discretion of the IRB, at an earlier date.

Dated: February 21, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–04387 Filed 2–25–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID: DOD–2011–HA–0059]

RIN 0720–AB52

TRICARE; Elimination of the Non-Availability Statement (NAS) Requirement for Non-Emergency Inpatient Mental Health Care

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule eliminates the requirement that states a NAS is needed for non-emergency inpatient mental health care in order for a TRICARE Standard beneficiary's claim to be paid. Currently, NAS are required for non-emergency inpatient mental health care for TRICARE Standard beneficiaries who live within a military treatment facility catchment area. At this time, the number of NASs issued is negligible as most mental health admissions are emergency admissions. Requiring a NAS for a relatively few non-emergency inpatient mental health admissions is disproportionate to the cost of maintaining the systems necessary to process and coordinate the NAS.

DATES: Effective March 28, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Hart, TRICARE Policy and Operations, TRICARE Management Activity, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041, 703–681–0047.

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose of This Regulatory Action

a. Currently, NAS are required for non-emergency inpatient mental health care for TRICARE Standard beneficiaries who live within a military treatment facility catchment area. Pursuant to section 1080(c)(2) of title 10, United States Code, the Secretary can waive the requirement to obtain NASs following an evaluation of the effectiveness of such statements in optimizing the use of

facilities of the uniformed services. At this time, the number of NASs issued is negligible as most mental health admissions are emergency admissions. Requiring a NAS for a relatively few non-emergency inpatient mental health admissions is disproportionate to the cost of maintaining the systems necessary to process and coordinate the NAS. This final rule eliminates the requirement for a NAS for non-emergency inpatient mental health care in order for the TRICARE Standard beneficiary's claim to be paid.

b. Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

II. Summary of the Major Provisions of This Regulatory Action

This final rule eliminates the requirement for a NAS for non-emergency inpatient mental health care in order for the TRICARE Standard beneficiary's claim to be paid.

The elimination of the requirement for a NAS for non-emergency inpatient mental health care for TRICARE Standard beneficiaries is separate and distinct from the ongoing right of first refusal for specialty services requested by a civilian provider under TRICARE Prime, if the services are available at the MTF, or the ongoing statutory requirement for preadmission authorization before inpatient mental health services may be provided. This final rule does not eliminate the right of first refusal or requirement for preadmission authorization.

In reviewing the proposed rule, we discovered that we had inadvertently deleted not only the requirement to obtain a NAS for non-emergency inpatient mental health services for TRICARE Standard beneficiaries living within the 40-mile catchment area of a military treatment facility, but also the Department's general implementation of section 721 of Public Law 106–398, as amended by section 735 of Public Law 107–107, regarding the Secretary's statutory authority to require a NAS. We have remedied that oversight in this final rule, thereby preserving the option to impose the requirement to obtain NASs in the future, consistent with existing statutory authority, should circumstances change and a demonstration be made that, by performing specific procedures at affected military medical treatment facilities, use of such facilities would be optimized and significant costs avoided. Section 199.4(a)(9) is thereby amended to retain this general authority while still eliminating the current requirement to obtain a NAS for non-emergency inpatient mental health services.

III. Costs and Benefits of This Regulatory Action

There are no anticipated budgetary health care cost increases. Requiring a NAS for a relatively few non-emergency inpatient mental health admissions is disproportionate to the cost of maintaining the systems necessary to process and coordinate the NAS.

Public Comments

The proposed rule was published in the **Federal Register** on September 16, 2011 (76 FR 57690). No public comments were received.

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Order 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. This final rule is not economically significant nor a significant regulatory action as defined under these executives orders.

Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

This rule does not contain unfunded mandates. It does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

The Regulatory Flexibility Act (RFA) requires that each Federal Agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This final rule will not have a significant impact on a substantial number of small entities for purposes of the RFA. Thus this final rule is not subject to this requirement.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511)

This final rule will not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, ''Federalism''

We have examined the impacts of the rule under Executive Order 13132 and it does not have policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.4 is amended by revising paragraph (a)(9) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(a) * * *

(9) *Nonavailability Statements within a 40-mile catchment area.* Unless required by action of the Assistant Secretary of Defense for Health Affairs (ASD(HA)) under this paragraph (a)(9), nonavailability statements are not required. If they are required by ASD(HA) action, in some geographic locations, CHAMPUS beneficiaries not enrolled in TRICARE Prime may be required to obtain a nonavailability statement from a military medical treatment facility in order to receive specifically identified health care services from a civilian provider. If the required care cannot be provided through the Uniformed Service facility, the hospital commander, or a designee, will issue a Nonavailability Statement (NAS) (DD Form 1251). Failure to secure such a statement may waive the beneficiary's rights to benefits under CHAMPUS/TRICARE.

(i) With the exception of maternity services, the ASD(HA) may require an NAS prior to TRICARE cost-sharing for additional services from civilian sources if such services are to be provided to a beneficiary who lives within a 40-mile catchment area of an MTF where such services are available and the ASD(HA):

(A) Demonstrates that significant costs would be avoided by performing specific procedures at the affected MTF or MTFs; or

(B) Determines that a specific procedure must be provided at the

affected MTF or MTFs to ensure the proficiency levels of the practitioners at the MTF or MTFs; or

(C) Determines that the lack of NAS data would significantly interfere with TRICARE contract administration; and

(D) Provides notification of the ASD(HA)'s intent to require an NAS under this authority to covered beneficiaries who receive care at the MTF or MTFs that will be affected by the decision to require an NAS under this authority; and

(E) Provides at least 60-day notification to the Committees on Armed Services of the House of Representatives and the Senate of the ASD(HA)'s intent to require an NAS under this authority, the reason for the NAS requirement, and the date that an NAS will be required.

(ii) Rules in effect at the time civilian medical care is provided apply. The applicable rules and regulations regarding Nonavailability Statements in effect at the time the civilian care is rendered apply in determining whether a NAS is required.

(iii) The Director, TMA is responsible for issuing the procedural rules and regulations regarding Nonavailability Statements. Such rules and regulations should address:

(A) When and for what services a NAS is required. However, a NAS may not be required for services otherwise available at an MTF located within a 40-mile radius of the beneficiary's residence when another insurance plan or program provides the beneficiary's primary coverage for the services. This requirement for an NAS does not apply to beneficiaries enrolled in TRICARE Prime, even when those beneficiaries use the point-of-service option under § 199.17(n)(3) of this part; and

(B) When and how notifications will be made to a beneficiary who is not enrolled in TRICARE Prime as to whether or not he or she resides in a geographic area that requires obtaining a NAS; and

(C) What information relating to claims submissions, including the documentation, if any, that is required to document that a valid NAS was issued. However, when documentation of a NAS is required, then that documentation shall be valid for the adjudication of CHAMPUS claims for all related care otherwise authorized by this part which is received from a civilian source while the beneficiary resided within the Uniformed Service facility catchment area which issued the NAS.

(iv) In the case of any service subject to a NAS requirement under this paragraph (a)(9) and also subject to a preadmission (or other pre-service) authorization requirement under § 199.4 or § 199.15 of this part, the administrative processes for the NAS and pre-service authorization may be combined.

* * * * *

Dated: February 1, 2013.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–03418 Filed 2–25–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID: DOD–2011–HA–0035]

RIN 0720–AB49

TRICARE; TRICARE Sanction Authority for Third-Party Billing Agents

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule will provide the Director, TRICARE Management Activity (TMA), or designee, with the authority to sanction third-party billing agents by invoking the administrative remedy of exclusion or suspension from the TRICARE program. Such sanctions may be invoked in situations involving fraud or abuse on the part of third-party billing agents that prepare or submit claims presented to TRICARE for payment.

DATES: *Effective date:* This rule is effective March 28, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Ann N. Fazzini, Medical Benefits and Reimbursement Branch, TMA, telephone, (303) 676–3803.

SUPPLEMENTARY INFORMATION:

I. Executive Summary and Overview

A. Purpose of the Regulatory Action

As stated in the proposed rule, TRICARE has regulatory authority under 32 Code of Federal Regulations (CFR) 199.9 to invoke sanctions in situations involving fraud or abuse on the part of providers of TRICARE services. A provider is defined in 32 CFR 199.2 as, ''A hospital or other institutional provider, a physician, or other individual professional provider, or other provider of services or supplies as specified in § 199.6 of this part.'' Third-party billing agents do not meet the definition of a provider as stated in 32 CFR 199.2, nor do TRICARE regulations currently define third-party billing agents.

Title 42 of the CFR subpart C—Exclusions at 42 CFR 402.200(b)(1) provides for the imposition of an exclusion from the Medicare and Medicaid programs (and, where applicable, other Federal health care programs) against persons that violate the provisions provided in § 402.1(e) (and further described in § 402.1(c)). However, TRICARE had no independent regulatory authority to sanction or exclude third-party billing agents. This final rule provides that authority.

B. Summary of Major Provisions

This final rule establishes that such entities, when acting on behalf of a provider, are held to an equal standard in regard to accuracy and honesty when filing claims for services and supplies under the TRICARE program. As such, these entities should be subject to the same administrative controls applied to providers in ensuring that funds are disbursed appropriately. This rule will allow TRICARE to sanction third-party billing agents to prevent the payment of false or improper billings.

C. Summary of Costs and Benefits

By expanding the scope of sanctioning authority to include third-party billing agents, TRICARE costs are not anticipated to increase in this area. Rather, by expanding the sanctioning authority to include third-party billing agents in situations of fraud or abuse, the program is safeguarding benefit dollars from being expended for fraudulent or abusive charges. The anticipated result of this final rule is a savings benefit to the program.

II. Department of Defense Inspector General Report on TRICARE Controls Over Claims Prepared by Third-Party Billing Agents

The Department of Defense, Office of Inspector General (DoD IG) initiated an audit in February 2008 to review TRICARE controls over claims submitted by third-party billing agents (Department of Defense Inspector General Report No. D–2009–037—''TRICARE Controls Over Claims Prepared by Third-Party Billing Agencies''). The DoD IG published a report on December 31, 2008. The report included a recommendation that the Director, TMA strengthen internal controls by initiating action to obtain statutory or regulatory authority to sanction billing agencies or any entities that prepare or submit improper health care claims to TRICARE contractors.

III. Review of Public Comments

In the **Federal Register** of September 20, 2011, (76 FR 58202), the Office of the Secretary of Defense published for public comment a Proposed Rule regarding sanction authority for third-party billing agents.

We received one comment on the proposed rule. The commenter recommended that the Code of Federal Regulations (CFR) rule be expanded to prohibit sanctioned providers or third party billing agents from pursing collection activities against patients in the event that sanctions are implemented. We appreciate this comment and note that there is presently policy and regulations that address this issue. By their very nature, third-party billing agents have a contractual relationship with the health care provider that requires them to file claims on behalf of the provider. This should normally require that the third-party billing agreement meet the claims filing requirements of the entity or agency that would be paying the claim. In the case of a DoD beneficiary, claims must be filed in accordance with the Code of Federal Regulations, including the requirements relating to the maximum allowable payments and any balance billing limitations. Additionally, TRICARE benefit payments are payable directly to the provider, not the third-party billing agent, as federal regulations prohibit the general assignment of claims. The agent has no independent right to payment from either TRICARE or the beneficiary.

Per 32 CFR 199.9(h)(4)(i)(c), participating providers are considered to have forfeited or waived any right or entitlement to bill TRICARE beneficiaries for care involved in claims for services furnished on or after the effective date of the provider's exclusion or suspension. As a result, any third-party billing agent purporting to act on behalf of a sanctioned provider would also be prohibited from billing TRICARE beneficiaries on behalf of that provider. Additionally, if the proposed authority to sanction third-party billing agents is invoked, a suspended or excluded third-party billing agent would also be prohibited from submitting a claim to TRICARE on behalf of any authorized provider or to bill any TRICARE beneficiary directly. Any claim received from an excluded third-party billing agent would be returned to the provider with instructions to resubmit the claim directly or through another third-party billing agent. As long as the provider of services has not been sanctioned and remains an authorized TRICARE provider pursuant to the requirements in 32 CFR 199.6, the provider remains entitled to reimbursement for covered services. Under either of these scenarios, TRICARE beneficiaries should not be subject to collection actions.

It is also important to note that the authority sought under the proposed rule to sanction third-party billing agents by invoking administrative remedies under 32 CFR 199.9 is in addition to, and not in lieu of, any other remedies or sanctions authorized by law or regulation, including potential criminal convictions and civil judgments for fraud and abuse.

IV. Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Sec. 801 of Title 5, United States Code (U.S.C.), and Executive Orders 12866 and 13563 require certain regulatory assessments and procedures for any major rule or significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy of which would have other substantial impacts. This final rule is not a significant regulatory action.

Public Law 104–4, Section 202, ''Unfunded Mandates Reform Act''

Section 202 of Public Law 104–4, ''Unfunded Mandates Reform Act,'' requires that an analysis be performed to determine whether any Federal mandate may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of $100 million in any one year. It has been certified that this final rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year, and thus this rule is not subject to this requirement.

Public Law 96–354, ''Regulatory Flexibility Act'' (RFA) (5 U.S.C. 601)

Public Law 96–351, ''Regulatory Flexibility Act'' (RFA) (5 U.S.C. 601), requires each Federal agency to prepare a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This final rule is not an economically significant regulatory action, and it has been certified that it will not have a significant impact on a substantial number of small entities. Therefore, this final rule is not subject to the requirements of RFA.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This final rule does not contain a ''collection of information'' requirement, and will not impose additional information collection requirement on the public under Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35).

Executive Order 13132, ''Federalism''

E.O. 13132, ''Federalism,'' requires that an impact analysis be performed to determine whether the rule has federalism implications that would 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. It has been certified that this final rule does not have federalism implications, as set forth in E.O. 13132.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, DoD amends 32 CFR part 199 as follows:

PART 199—CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS)

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.2 is amended by adding in alphabetical order to paragraph (b), a definition of ''Third-party billing agent'' to read as follows:

§ 199.2 Definitions

* * * * *

(b) * * *

Third-party billing agent. Any entity that acts on behalf of a provider to prepare, submit and monitor claims, excluding those entities that act solely as a collection agency.

* * * * *

■ 3. Section 199.9 is amended by adding paragraph (n) to read as follows:

§ 199.9 Administrative remedies for fraud, abuse, and conflict of interest

* * * * *

(n) Third-party billing agents as defined in § 199.2(b) of this part, while not considered providers, are subject to the provisions of this section to the same extent as such provisions apply to providers.

Dated: February 1, 2013.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–03416 Filed 2–25–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

34 CFR Chapter IV

[Docket ID ED–2012–OVAE–0053]

Final Requirements, Definitions, and Selection Criteria—Native American Career and Technical Education Program (NACTEP)

[Catalog of Federal Domestic Assistance (CFDA) Number: 84.101A.]

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Final requirements, definitions, and selection criteria.

SUMMARY: The Assistant Secretary for Vocational and Adult Education announces requirements, definitions, and selection criteria under the Native American Career and Technical Education Program (NACTEP). The Assistant Secretary may use these requirements, definitions, and selection criteria for a competition in fiscal year (FY) 2013 and possibly in later years. We take this action to notify all interested parties and eligible applicants in particular, of the requirements, definitions, and selection criteria that we may use in upcoming competitions under section 116 of the Carl D. Perkins Career and Technical Education Act of 2006 (the Act).

DATES: *Effective Date:* March 28, 2013.

FOR FURTHER INFORMATION CONTACT: Gwen Washington, by telephone: (202) 245–7790, or by email: *gwen.washingon@ed.gov;* or Linda Mayo, by telephone: (202) 245–7792, or by email: *linda.mayo@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: Under NACTEP, the Secretary provides grants, cooperative agreements, or enters into contracts with Indian tribes, tribal organizations, or Alaska Native entities to improve career and technical education programs that are consistent with the purposes of the Act and that benefit Native Americans and Alaska Natives.

Program Authority: 20 U.S.C. 2301 et seq., particularly 2326(a)–(g).

We published a notice of proposed requirements, definitions, and selection criteria for this program in the **Federal Register** on November 20, 2012 (77 FR 69579) (November 20, 2012 Notice), which contained background information and our reasons for proposing our requirements, definitions, and selection criteria. Except for minor technical changes, there are no differences between the proposed requirements, definitions, and selection criteria and the final requirements, definitions and selection criteria.

Public Comment: In response to our invitation in the November 20, 2012 Notice, we received three comments in support of our proposals and one request for clarification of certain elements of our Notice. The following is a discussion of those comments with our responses. We made no changes in response to comments we received.

Analysis of Comments:

Comment: Two comments we received were from current NACTEP grantees supporting our proposed requirements, definitions, and selection criteria. These commenters indicated that their current NACTEP grants had enabled them to serve the career and technical education needs of their Indian student populations in the face of high unemployment rates and great need for career and technical education. One of the commenters represented a reservation with an unemployment rate of 66 percent where most reservation inhabitants are living in poverty. This commenter indicated that its current NACTEP grant had had a considerable positive effect on the reservation and members of the commenters' tribe by preparing the tribe's students to fulfill expected local workforce needs during the period covered by the current grant. Both commenters agreed with the Department's proposed approach of retaining programmatic elements developed for the first NACTEP competition following enactment of the Act for grant competitions funded with appropriations under this statute.

Discussion: We agree with the commenters, and in this notice we announce as final the NACTEP requirements, definitions, and selection criteria we proposed in our November 20, 2012 Notice.

Change: None.

Comment: We received one comment saying that the approach of retaining current requirements developed following the 2006 reauthorization of the Act was one of consistency and strength and would provide for program continuity. This commenter expressed the view that the Department's approach had worked well for NACTEP and that there was no need to make changes.

The commenter also requested that the Department not impose a page limit for applications in the next competition so as to allow applicants the greatest flexibility in their applications.

Discussion: With regard to the comment about our overall approach, we agree with the commenter, and in this notice we announce as final the NACTEP requirements, definitions, and selection criteria we proposed in our November 20, 2012 Notice.

The commenter requested that we not impose application page limitations. We do not do so through these requirements, definitions, or selection criteria.

Change: None.

Comment: We received one comment requesting clarification of the November 20, 2012 Notice's ''Authorized Programs, Services, and Activities'' section, (subsection II within the ''Proposed Requirements'' section), asking whether applicants would be required to meet all three elements under ''Authorized programs'' or any combination of those elements. Also with regard to ''Authorized Programs, Services, and Activities,'' the commenter asked for clarification on challenging academic standards in reading/language arts and in mathematics, stating that the November 20, 2012 Notice proposed the integration of academics with career and technical education only at the secondary level. This commenter also asked where the term ''special population'' is defined.

Discussion: Yes, applicants are required to meet all three elements under ''Authorized programs.'' To ensure consistency with the Act, in the ''Authorized Programs, Services, and Activities'' section of our November 20, 2012 Notice, we require alignment of NACTEP projects with other programs authorized under the Act, including requirements that recipients of Perkins funds provide individuals with coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills and improve career and technical education programs. Section 116(e) of the Act requires the Assistant Secretary to ensure that activities funded under NACTEP will improve career and technical education programs. And, section 3(5) of the Act defines the term ''career and technical education'' as requiring certain elements.

Therefore, we require that NACTEP programs meet all of the elements of the Act's definition of ''career and technical education.'' In addition, we require

NACTEP programs with CTE at the secondary level provide individuals with coherent and rigorous academic curriculum aligned with challenging academic content standards and student academic achievement standards in reading or language arts and in mathematics that the State in which the applicant is located has established under the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6301 et seq.) (ESEA). Also, projects must develop new programs, services, or activities or improve or expand on existing programs, services, or activities that are consistent with the purposes of the Act, and must fund, by which we meant support, career and technical education programs, services, or activities that are entirely new, would improve or expand existing career and technical education programs, or would inherently improve career and technical education. We provided a note to explain what we meant by a program, service or activity that ''inherently improves'' career and technical education.

By identifying these program elements in detail, we intend to clearly identify those programmatic elements that NACTEP applicants would be required to include and address in their applications and in their proposed projects, to fully reflect NACTEP program requirements of section 116 and, where appropriate, of the broader Act.

As to the commenter's second request for clarification, in addition to the elements we are requiring for all NACTEP-funded programs, we are requiring that NACTEP programs with CTE at the secondary level, provide individuals with coherent and rigorous academic curriculum aligned with challenging academic content standards and student academic achievement standards in reading or language arts and in mathematics that the State in which the applicant is located has established under the ESEA.

Based on the Act's definition of ''career and technical education,'', we are requiring that all programs, activities, or services funded under NACTEP provide coherent sequences of courses including organized educational activities that include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills, and knowledge of all aspects of an industry, including entrepreneurship, of an individual. Contrary to the commenter's conclusion on this point, our proposed requirement for competency-based applied learning referred broadly to authorized activities and included career and technical education activities at postsecondary level.

As to the commenter's third request for clarification, we did not define the term ''special populations'' in our November 20, 2012 Notice because this term is defined in the section 3(29) of the Act. As we indicated in the Notice, we did not intend to include in our November 20, 2012 Notice, nor were seeking public comment on, statutory requirements or definitions.

Note that we changed the introductory paragraph in section II of the requirements to more accurately reflect the definition of ''career and technical education'' in section 3(5) of the Act.

Change: We changed the introductory paragraph in section II of the requirements from stating we announce the requirements ''to align NACTEP with other authorized programs that require recipients of funds under the Act to develop challenging academic standards and improve career and technical education'' to specify that we announce the requirements ''to align NACTEP with other authorized programs that require recipients of funds under the Act to provide coherent and rigorous content aligned with challenging academic standards and improve career and technical education programs.''

Comment: None.

Discussion: We inadvertently left out the word ''race'' in paragraph (e)(1) of the proposed selection criteria. We correct this omission in the final selection criteria. Change: With the addition of the word, ''race,'' paragraph (e)(1) now reads, ''the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.''

Final Requirements, Definitions, and Selection Criteria:

Final Requirements:

I. Demonstration of Eligibility

(a) The Assistant Secretary for Vocational and Adult Education announces that an eligible applicant (as determined by the Act) must include documentation in its application showing that it and, if appropriate, its consortium members, are eligible to apply.

(b) As defined in the Indian Self-Determination and Education Assistance Act (ISDEA) (25 U.S.C. 450b(l)), the term ''tribal organization'' means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: provided, that in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant. In accordance with this statutory definition, any tribal organization proposing to provide NACTEP services for the benefit of more than one Indian tribe must first obtain the approval of each Indian tribe it proposes to serve and must submit documentation of such approval with its NACTEP application and that documentation of tribal approval is a prerequisite to the awarding of a NACTEP grant to any tribal organization proposing to serve more than one Indian tribe.

II. Authorized Programs, Services, and Activities

Consistent with the Act, the Assistant Secretary for Vocational and Adult Education announces the following requirements, to align NACTEP with other authorized programs that require recipients of funds under the Act to provide coherent and rigorous content aligned with challenging academic standards and improve career and technical education programs.

(a) *Authorized programs.* Section 116(e) of the Act requires the Secretary to ensure that activities funded under NACTEP ''will improve career and technical education programs'' (20 U.S.C. 2326(e)). Therefore, under NACTEP the Assistant Secretary will award grants to carry out projects that—

(1) Propose organized educational activities offering a sequence of courses that—

(i) Provide individuals with coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions;

(ii) Provide technical skill proficiency, an industry-recognized credential, a certificate, or an associate degree; and

(iii) Include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills,

work attitudes, general employability skills, technical skills, and occupation-specific skills, and knowledge of all aspects of an industry, including entrepreneurship, of an individual. Projects may include prerequisite courses (other than remedial courses) that meet the definitional requirements of section 3(5) of the Act. (20 U.S.C. 2302(5)) In addition, at the secondary level, coherent and rigorous academic curriculum must be aligned with challenging academic content standards and student academic achievement standards in reading or language arts and in mathematics that the State in which the applicant is located has established under the ESEA. Contacts for State ESEA programs may be found on the Internet at: *www.ed.gov/about/contacts/state/index.html.*

(2) Develop new programs, services, or activities or improve or expand existing programs, services, or activities that are consistent with the purposes of the Act. In other words, the Department will support ''expansions'' or ''improvements'' that include, but are not limited to, the expansion of effective programs or practices; upgrading of activities, equipment, or materials; increasing staff capacity; adoption of new technology; modification of curriculum; or implementation of new policies to improve program effectiveness and outcomes.

(3) Fund a career and technical education program, service, or activity that—

(i) Is a new program, service, or activity that was not provided by the applicant during the instructional term (a defined period, such as a semester, trimester, or quarter, within the academic year) that preceded the request for funding under NACTEP;

(ii) Will improve or expand an existing career and technical education program; or

(iii) Inherently improves career and technical education.

Note: A program, service, or activity ''inherently improves career and technical education'' if it—

(a) Develops new career and technical education programs of study that will be approved by the appropriate accreditation agency;

(b) Strengthens the rigor of the academic and career and technical components of funded programs;

(c) Uses curriculum that is aligned with industry-recognized standards and will result in students attaining industry-recognized credentials, certificates, or degrees;

(d) Integrates academics (other than remedial courses) with career and technical education programs through a coherent sequence of courses to ensure learning in the core academic and career and technical subjects;

(e) Links career and technical education at the secondary level with career and technical education at the postsecondary level and facilitates students' pursuit of a baccalaureate degree;

(f) Expands the scope, depth, and relevance of curriculum, especially content that provides students with a comprehensive understanding of all aspects of an industry and a variety of hands-on, job-specific experiences; and

(g) Offers—

(1) Work-related experience, internships, cooperative education, school-based enterprises, entrepreneurship, community service learning, and job shadowing that are related to career and technical education programs;

(2) Coaching/mentoring, support services, and extra help for students after school, on weekends and/or during the summers, so they can meet higher standards;

(3) Career guidance and academic counseling for students participating in career and technical education programs;

(4) Placement services for students who have successfully completed career and technical education programs and attained a technical skill proficiency that is aligned with industry-recognized standards;

(5) Professional development programs for teachers, counselors, and administrators;

(6) Strong partnerships among grantees and local educational agencies, postsecondary institutions, community leaders, adult education providers, and, as appropriate, other entities, such as employers, labor organizations, parents, and local partnerships, to enable students to achieve State academic standards and career and technical skills;

(7) The use of student assessment and evaluation data to improve continually instruction and staff development with the goal of increasing student achievement in career and technical education programs; or

(8) Research, development, demonstration, dissemination, evaluation and assessment, capacity-building, and technical assistance, related to career and technical education programs.

(b) *Student stipends.* In accordance with section 116(c)(2) of the Act, a portion of an award under this program may be used to provide stipends (as defined in the Definitions section of this notice) to one or more students to help meet the students' costs of participation in a NACTEP project. A grantee must apply the following procedures for determining student eligibility for stipends and appropriate amounts to be awarded as stipends:

(1) To be eligible for a stipend a student must—

(i) Be enrolled in a career and technical education project funded under this program;

(ii) Be in regular attendance in a NACTEP project and meet the training institution's attendance requirement;

(iii) Maintain satisfactory progress in his or her program of study according to the training institution's published standards for satisfactory progress; and

(iv) Have an acute economic need that—

(A) Prevents participation in a project funded under this program without a stipend; and

(B) Cannot be met through a work-study program.

(2) The amount of a stipend is the greater of either the minimum hourly wage prescribed by State or local law or the minimum hourly wage established under the Fair Labor Standards Act.

(3) A grantee may only award a stipend if the stipend combined with other resources the student receives does not exceed the student's financial need. A student's financial need is the difference between the student's cost of attendance and the financial aid or other resources available to defray the student's cost of participating in a NACTEP project.

(4) To calculate the amount of a student's stipend, a grantee would multiply the number of hours a student actually attends career and technical education instruction by the amount of the minimum hourly wage that is prescribed by State or local law, or by the minimum hourly wage that is established under the Fair Labor Standards Act.

Example: If a grantee uses the Fair Labor Standards Act minimum hourly wage of $7.25 and a student attends classes for 20 hours a week, the student's stipend would be $145 for the week during which the student attends classes ($7.25 × 20 = $145.00).

Note: In accordance with applicable Department statutory requirements and administrative regulations, grantees must maintain records that fully support their decisions to award stipends and the amounts that are paid, such as proof of a student's enrollment in a NACTEP project, stipend applications, timesheets showing the number of attendance hours confirmed in writing by an instructor, student financial status information, and evidence that a student would not be able to participate in the

NACTEP project without a stipend. (20 U.S.C. 1232f; 34 CFR 75.700–75.702; 75.730; and 75.731)

(5) An eligible student may receive a stipend when taking a course for the first time. However, generally a stipend may not be provided to a student who has already taken, completed, and had the opportunity to benefit from a course and is merely repeating the course.

(6) An applicant must include in its application the procedure it intends to use to determine student eligibility for stipends and stipend amounts, and its oversight procedures for the awarding and payment of stipends.

(c) *Direct assistance to students.* A grantee may provide direct assistance to students if the following conditions are met:

(1) The recipient of the direct assistance is an individual who is a member of a special population and who is participating in the grantee's NACTEP project.

(2) The direct assistance is needed to address barriers to the individual's successful participation in that project.

(3) The direct assistance is part of a broader, more generally focused program or activity to address the needs of an individual who is a member of a special population.

Note: Direct assistance to individuals who are members of special populations is not, by itself, a ''program or activity for special populations.''

(4) The grant funds used for direct assistance must be expended to supplement, and not supplant, assistance that is otherwise available from non-Federal sources. (20 U.S.C. 2391(a)) For example, generally, a postsecondary educational institution could not use NACTEP funds to provide child care for single parents if non-Federal funds previously were made available for this purpose, or if non-Federal funds are used to provide child care services for single parents participating in non-career and technical education programs and these services otherwise would have been available to career and technical education students in the absence of NACTEP funds.

(5) In determining how much of the NACTEP grant funds it will use for direct assistance to an eligible student, a grantee must consider whether the specific services to be provided are a reasonable and necessary cost of providing career and technical education programs for special populations. However, the Assistant Secretary does not envision a circumstance in which it would be a reasonable and necessary expenditure of NACTEP project funds for a grantee to use a majority of a project's budget to pay direct assistance to students, in lieu of providing the students served by the project with career and technical education.

III. Additional Final Requirements

(a) *Career and technical education agreement.* Any applicant that is not proposing to provide career and technical education directly to its students and proposes instead to use NACTEP funds to pay one or more qualified educational entities to provide education to its students must include with its application a written career and technical education agreement between the applicant and that entity. This written agreement must describe the commitment between the applicant and each educational entity and must include, at a minimum, a statement of the responsibilities of the applicant and the entity. The agreement must be signed by the appropriate individuals on behalf of each party, such as the authorizing official or president of a tribe or tribal organization, a college president, or a college dean.

(b) *Evaluation Requirements.* To help ensure the high quality of NACTEP projects and the achievement of the goals and purposes of section 116 of the Act, each grantee must budget for and conduct an ongoing evaluation of the effectiveness of its NACTEP project. An independent evaluator must conduct the evaluation. The evaluation must—

(1) Be appropriate for the project and be both formative and summative in nature;

(2) Include—

(i) Applicable performance measures for NACTEP;

(ii) Qualitative and quantitative data with respect to—

(A) Academic and career and technical competencies demonstrated by the participants and the number and kinds of academic and work credentials acquired by individuals, including participation in programs providing skill proficiency assessments, industry certifications, or training at the associate degree level that is articulated with an advanced degree option;

(B) Enrollment, completion, and placement of participants by gender for each occupation for which training was provided;

(C) Job or work skill attainment or enhancement, including participation in apprenticeship and work-based learning programs, and student progress in achieving technical skill proficiencies necessary to obtain employment in the field for which the student has been prepared, including attainment or enhancement of technical skills in the industry the student is preparing to enter;

(D) Activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for disseminating information on project activities and results;

(E) The number and percentage of students who obtained industry-recognized credentials, certificates, or degrees;

(F) If available, the outcomes of students' technical assessments, by type and scores; and

(G) The rates of attainment of a proficiency credential or certificate, in conjunction with a secondary school diploma.

(3) Measure the effectiveness of the project, including—

(i) A comparison between the intended and observed results; and

(ii) A demonstration of a clear link between the observed results and the specific treatment given to project participants;

(4) Measure the extent to which information about or resulting from the project was disseminated at other sites, such as through the grantee's development and use of guides or manuals that provide step-by-step directions for practitioners to follow when initiating similar efforts; and

(5) Measure the long-term impact of the project, such as, follow-up data on students' employment, sustained employment, promotions, and further/continuing education or training, or the impact the project had on tribal economic development or career and technical education activities offered by tribes.

Final Definitions:

The Assistant Secretary for Vocational and Adult Education announces the following definitions for program terms not defined in the Act, by cross-references in the Act to other Federal statutes, or in the Education Department General Administrative Regulations:

Acute economic need means an income that is at or below the national poverty level according to the latest available data from the U.S. Department of Commerce or the U.S. Department of Health and Human Services Poverty Guidelines.

Direct assistance to students means tuition, dependent care, transportation, books, and supplies that are necessary for a student to participate in a project funded under this program.

Stipend means a subsistence allowance for a student that is necessary

for the student to participate in a project funded under this program.

Final Selection Criteria:

The Assistant Secretary for Vocational and Adult Education announces the following selection criteria for evaluating an application under this program. We may apply one or more of these criteria in any year in which this program is in effect. We will announce the maximum possible points assigned to each criterion in the notice inviting applications, in the application package, or both.

(a) *Need for project.* In determining the need for the proposed project, we consider the extent of the need for the services to be provided or the activities to be carried out by the proposed project, as evidenced by data on such phenomena as local labor market demand or occupational trends, or from surveys, recommendations from accrediting agencies, or tribal economic development plans.

(b) *Significance.* In determining the significance of the proposed project, we consider the following factors:

(1) The potential contribution of the proposed project toward increasing the understanding of educational needs, issues, or strategies for providing career and technical education to American Indians and Alaska Natives.

(2) The likelihood that the proposed project will result in system change or improvement in the applicant's educational program as evidenced by the types of training and activities identified in the project application.

(3) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the career and technical needs of the target population.

(c) *Quality of the project design.* In determining the quality of the design of the proposed project, we consider the following factors:

(1) The extent to which goals, objectives, and outcomes are clearly specified and measurable (e.g., identification of the requirements for each course of study to be provided under the project, the technical skill proficiencies to be taught and the industry-recognized standards or competency assessments to be used, including related training areas and a description of the industry certifications, credentials, certificates, or degrees that students may earn; expected enrollments, completions, and student placements in jobs, military specialties, and continuing education/training opportunities in each career training area; the number of teachers, counselors, and administrators to be trained).

(2) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs, as evidenced by the applicant's description of programs and activities that align with the target population's needs.

(3) The extent to which the design for implementing and evaluating the proposed project plans for and is likely to result in the development of information that will guide possible dissemination of information on project practices, activities, or strategies, including information about the effectiveness of the approach or strategies employed by the project, planned dissemination activities, the kind of practices, activities, or strategies to be disseminated, the target audience for the dissemination of such practices, activities, or strategies, and the proposed uses for such disseminated practices, activities, or strategies.

(4) The extent to which the proposed project will establish linkages with or will be coordinated with similar or related efforts, and with community, State, or Federal resources, where such opportunities and resources exist.

(d) *Quality of project services.* In determining the quality of the services to be provided by the proposed project, we consider the following factors:

(1) The extent to which the training or professional development services to be provided by the proposed project would be of sufficient quality, intensity, and duration to lead to improvements in practice among the project staff and instructors, including the extent to which the proposed training and professional development plans address ways in which learning gaps will be addressed and how continuous review of performance will be conducted to identify training needs.

(2) The extent to which the services to be provided by the proposed project will create opportunities for students to receive an industry-recognized credential; become employed in high-skill, high-wage, and high-demand occupations; or both.

(3) The extent to which the services proposed in the project will create opportunities for students to acquire technical skill proficiencies, industry certifications, or the skills identified by State or industry-recognized career and technical education programs or professions. In describing the services, there must be a clear link between the services and the skill proficiencies, industry certifications, credentials, certificates, or degrees that students may earn.

(e) *Quality of project personnel.* In determining the quality of project personnel, we consider the following factors:

(1) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(2) The qualifications, including relevant training, expertise, and experience, of the project director, key personnel, and project consultants.

(3) The extent to which the project will use instructors who are certified to teach in the field in which they will provide instruction.

(f) *Adequacy of resources.* In determining the adequacy of resources for the proposed project, we consider the following factors:

(1) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization(s) and the tribal entity or entities to be served.

(2) The extent to which the budget is adequate and costs are reasonable in relation to the objectives of the proposed project.

(3) The relevance and demonstrated commitment (e.g., through written career and technical education agreements, memoranda of understanding, letters of support and commitment, or commitments to employ project participants, as appropriate) of the applicant, members of the consortium, local employers, or tribal entities to be served by the project.

(4) The potential for continued support of the project after Federal funding ends.

(g) *Quality of the management plan.* In determining the quality of the management plan for the proposed project, we consider the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and the milestones and performance standards for accomplishing project tasks.

(2) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(3) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(h) *Quality of the project evaluation.* In determining the quality of the

evaluation, we consider the following factors:

(1) The extent to which the methods of evaluation proposed by the grantee are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(2) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and the Government Performance and Results Act of 1993 (GPRA) performance measures, and will produce quantitative and qualitative data, to the extent possible.

(3) The extent to which the methods of the evaluation include processes that consider the validity and integrity of data collection and analysis; accessibility of appropriate and timely data; accurate descriptions of performance; collection processes that yield unbiased, unprejudiced, and impartial data results; and the extent to which representation of the data clearly communicates an accurate picture of performance.

(4) The extent to which the methods of evaluation will provide performance feedback and continuous improvement toward achieving intended outcomes.

(5) The quality of the evaluation to be conducted by an external evaluator with the necessary background and technical expertise to carry out the evaluation.

Additional Selection Factors

In accordance with the requirement in section 116(e) of the Act, we have included the following additional selection factors and will award additional points to any application addressing the following factors, as indicated.

We will award—

(a) Up to 10 additional points to applications that propose exemplary approaches that involve, coordinate with, or encourage tribal economic development plans; and

(b) Five points to applications from tribally controlled colleges or universities that—

(1) Are accredited or are candidates for accreditation by a nationally recognized accreditation organization as an institution of postsecondary career and technical education; or

(2) Operate career and technical education programs that are accredited or are candidates for accreditation by a nationally recognized accreditation organization and issue certificates for completion of career and technical education programs (20 U.S.C. 2326(e)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these requirements, definitions, and selection criteria, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final requirements, definitions, and selection criteria only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

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Dated: February 21, 2013.

Brenda Dann-Messier,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 2013–04424 Filed 2–25–13; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2012–0943, FRL–9784–6]

Findings of Failure To Submit a Complete State Implementation Plan for Section 110(a) Pertaining to the 2008 Lead National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finding that seven states have not made complete state implementation plan (SIP) submissions to address certain SIP elements, as required by the Clean Air Act (CAA). Specifically, the EPA is determining that these seven states have not submitted complete SIPs that provide the basic CAA program elements necessary to implement the 2008 lead national ambient air quality standards (NAAQS). The EPA refers to these SIP submissions as ''infrastructure'' SIPs. Of the seven states, three are incomplete only due to prevention of significant deterioration (PSD)-related elements, for which a federal implementation plan (FIP) is in place. The remaining 43 states have made complete submissions. Each finding of failure to submit establishes a 24-month deadline for the EPA to promulgate FIPs to address the outstanding SIP elements unless prior to the EPA promulgating a FIP an affected state submits, and the EPA approves, a SIP that corrects the deficiency.

DATES: The effective date of this rule is March 28, 2013.

FOR FURTHER INFORMATION CONTACT: General questions concerning this notice should be addressed to Ms. Mia South: telephone (919) 541–5550, email *south.mia@epa.gov;* or Mr. Larry Wallace: telephone (919) 541–0906, email *wallace.larry@epa.gov,* Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C504–2, 109 TW Alexander Drive, Research Triangle Park, NC 27709.

SUPPLEMENTARY INFORMATION: Section 553 of the Administrative Procedures Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because no significant EPA judgment is involved in making a finding of failure to submit SIPs, or elements of SIPs, required by the CAA, where states have made no submissions, or incomplete submissions, to meet the requirement. Thus, notice and public procedure are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

For questions related to specific states mentioned in this notice, please contact the appropriate EPA Regional Office:

Regional offices	States
EPA Region I: Dave Conroy, Air Program Branch Manager, Air Programs Branch, EPA New England, 1 Congress Street, Suite 1100, Boston, MA 02203–2211.	Massachusetts and Vermont.
EPA Region II: Richard Ruvo, Acting Chief, Air Programs Branch, EPA Region II, 290 Broadway, 21st Floor, New York, NY 10007–1866.	New Jersey.
EPA Region III: Cristina Fernandez, Air Program Manager, Air Quality Planning Branch, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2187.	Maryland and Pennsylvania.
EPA Region V: John Mooney, Air Program Branch Manager, Air Programs Branch, EPA Region V, 77 West Jackson Street, Chicago, IL 60604.	Illinois.
EPA Region VI: Guy Donaldson, Chief, Air Planning Section, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202–2733.	Oklahoma.
EPA Region VIII: Monica Morales, Air Program Manger, Air Quality Planning Unit, EPA Region VIII Air Program, 1595 Wynkoop St. (8P–AR), Denver, CO 80202–1129.	Colorado and South Dakota.
EPA Region IX: Doris Lo, Acting Air Program Manager, Air Planning Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.	Hawaii.
EPA Region X: Debra Suzuki, Air Program Manager, Air Planning Unit, EPA Region X, Office of Air, Waste, and Toxics, Mail Code AWT–107, 1200 Sixth Avenue, Seattle, WA 98101.	Oregon and Washington.

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I. Background and Overview

On October 15, 2008, the EPA promulgated revised NAAQS for lead.[1] The agency revised the level of the primary lead standard from 1.5 micrograms per cubic meter (μg/m^3) to 0.15 μg/m^3, and revised other aspects of the standard. The EPA also revised the secondary NAAQS to make it identical to the revised primary standard.

The CAA section 110(a) imposes an obligation upon states to make a SIP submission with respect to the 2008 lead NAAQS. CAA section 110(a)(1) requires states to submit SIPs that provide for the implementation, maintenance and enforcement of a new or revised NAAQS within 3 years following the promulgation of the new or revised NAAQS. The EPA has not prescribed a shorter deadline; therefore, October 15, 2011, was the statutory deadline. Section 110(a)(2) lists specific requirements that states must meet in these SIP submissions, as applicable. The EPA refers to this type of SIP submission as the ''infrastructure'' SIP. The requirements for infrastructure SIPs include basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. The contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS necessarily affect the content of the submission. The content of such a SIP submission may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 2008 lead NAAQS, the EPA believes that many states have met many of the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS.

Two elements identified in section 110(a)(2) are not governed by the 3-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area requirements are not due within 3 years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 191.[2] These requirements are: (i) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a nonattainment area new source review permit program for major sources as required in part D of title I of the CAA; and (ii) submissions required by section 110(a)(2)(I) which pertains to the nonattainment planning requirements of part D of title I of the CAA. Therefore, this action does not cover these specific SIP elements in section 110(a)(2). This action does cover the requirement that infrastructure SIPs provide for a minor source permitting program.

The EPA is also not, in this notice, issuing any findings of failure to submit SIPs addressing section 110(a)(2)(D)(i)(I) of the CAA. The EPA has historically interpreted section 110(a)(1) of the CAA as establishing the required submittal date for SIPs addressing all of the ''interstate transport'' requirements in section 110(a)(2)(D) including the provisions in section 110(a)(2)(D)(i)(I) regarding significant contribution to nonattainment and interference with maintenance. The D.C. Circuit's recent opinion in *EME Homer City Generation* v. *EPA,* 696 F.3d 7, 31 (D.C. Cir. 2012), however, concluded that a SIP cannot be deemed to lack a required submission or deemed deficient for failure to meet the 110(a)(2)(D)(i)(I) obligation until after the EPA quantifies that obligation. At this time, the deadline for asking the Supreme Court to review this decision has not passed, and the United States has made no decision regarding whether to seek further appeal. Nonetheless, the EPA intends to act in accordance with the holdings in the *EME Homer City* opinion. Therefore, at this time the EPA is not making findings that states failed to submit SIPs to comply with section 110(a)(2)(D)(i)(I).

On September 24, 2012, litigants sued the EPA for failure to perform certain mandatory duties under the CAA, including a failure to find that the following states had failed to submit infrastructure SIPs for the 2008 lead NAAQS: Colorado, Hawaii, Illinois, Maryland, Massachusetts, New Jersey, Oklahoma, Oregon, Pennsylvania, South Dakota, Vermont and Washington.[3] As of February 14, 2013, the states of Colorado, Maryland, Oklahoma, Pennsylvania and South Dakota have made complete submittals for their respective infrastructure SIPs for the 2008 lead NAAQS. With respect to the remaining states, the EPA is making findings of failure to submit, in whole or in part.

After excluding SIP elements required by CAA sections 110(a)(2)(C) to the extent that subsection refers to a nonattainment area new source review permit program for major sources as required in part D of title I of the CAA, 110(a)(2)(I) regarding plans for nonattainment areas, and 110(a)(2)(D)(i)(I) regarding interstate transport affecting attainment and maintenance of the NAAQS, as explained above, the remaining elements that are relevant to this action are the requirements of CAA sections 110(a)(2)(A), (B), (C) (but not with respect to the permitting program required by CAA title I subpart D), (D)(i)(II), (D)(ii), (E)–(H) and (J)–(M).

For those states cited in this litigation that have not yet made an infrastructure SIP submittal and those states that have made a submittal that was not complete with respect to each relevant element of section 110(a)(2), as applicable, the EPA is making a finding of failure to submit. Four states have not made any submittal, and for these states the EPA is making a finding with respect to all of the relevant section 110(a)(2) SIP elements. Three states made a SIP submittal that was found complete with respect to all required elements except those elements that are related to PSD in sections 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J).[4] For these three states, the EPA is issuing findings of failure to submit only with respect to the PSD-related elements. For both sets of states, these findings reflect submissions received or not received as of February 14, 2013.

These findings establish a 24-month deadline for the promulgation by the EPA of a FIP, in accordance with section 110(c)(1) for those states for which the EPA is making a finding unless the EPA has approved a final SIP by that date. These findings of failure to submit do not impose sanctions, or set deadlines for imposing sanctions as described in section 179 of the CAA, because these findings do not pertain to the elements of a part D, title I plan for nonattainment areas as required under section 110(a)(2)(I), and because these states have not failed to make submissions in response to a SIP call pursuant to section 110(k)(5). Moreover, the EPA has already promulgated a FIP that

[1] *See* 73 FR 66964, November 12, 2008, National Ambient Air Quality Standards for Lead, Final Rule.

[2] Nonattainment area plans required by part D title I of the CAA for the 2008 lead NAAQS are due 18 months after the effective date of designation of an area as nonattainment. The nonattainment plans are due June 30, 2012, for the first round of designations and June 30, 2013, for the second round of designations.

[3] *Center for Biological Diversity, et al.,* v. *EPA,* (N.D. Cal. No. 12–cv–04968).

[4] The PSD-related requirements are the requirements for a PSD permitting program in sections 110 (a)(2)(C) and (J), the requirements in section 110(a)(2)(D)(a)(ii) not to interfere with measures to prevent significant deterioration in another state's SIP and the requirement for notifications to other states in section 110 (a)(2)(D)(ii).

addresses PSD-related requirements for each of the states for which the EPA is making a finding of failure to submit only for PSD-related requirements. Therefore, this action will not trigger any additional PSD FIP obligations in these three states. Two of the four states that did not make any submittal also are currently subject to PSD FIPs. The EPA recognizes that these five states may choose to have the existing PSD FIP continue to govern the permitting of their sources, in which case the current permitting process in each state will continue without the need for further action by the state.

To summarize, the EPA is finding that seven states, as identified in section II of this notice, have not made a complete infrastructure SIP submission to meet certain requirements of section 110(a)(2) that are relevant to this action, as applicable, for the 2008 lead NAAQS. The EPA is committed to working with these states to expedite submissions as necessary, and to working with all the states to review and act on their infrastructure SIP submissions in accordance with the requirements of the CAA.

II. Findings of Failure to Submit for States That Failed to Make an Infrastructure SIP Submittal in Whole or in Part for the 2008 Lead NAAQS

The EPA is making findings that certain states identified below have failed to submit a complete infrastructure SIP that provides certain basic program elements of section 110(a)(2) necessary to implement the 2008 lead NAAQS, by February 14, 2013. The EPA is establishing a 24-month deadline by which time the EPA must promulgate a FIP for each affected state to address the identified section 110(a)(2) requirements, unless the state submits and the EPA approves a SIP revision that corrects the deficiency before the EPA promulgates a FIP for the state, in accordance with section 110(c)(1). This action will be effective 30 days after publication, on March 28, 2013.

A. Findings of Failure To Submit for States That Failed To Make a Submittal

As of February 14, 2013, New Jersey, Oregon, Vermont and Washington failed to make a submittal to address the requirements of section 110(a)(2)(A), (B), (C) (but not with respect to the permitting program required by CAA title I subpart D), (D)(i)(II), (D)(ii), (E)–(H) and (J)–(M).

The effective date of this action starts a 24-month FIP clock for the EPA to approve a SIP for the affected states that addresses those requirements of section 110(a)(2), or for the EPA to finalize a FIP. The EPA notes that it has already promulgated FIPs to address PSD-related requirements for New Jersey and Washington and therefore this action will not trigger additional PSD FIP obligations for these states.

B. Findings of Failure To Submit Specific Elements of Section 110(a)(2)

Hawaii, Illinois and Massachusetts made submittals as of February 14, 2013, that address all of the section 110(a)(2) requirements, with the exception of the PSD-related requirements in sections 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J). The EPA notes that it has already promulgated a FIP to address PSD-related requirements for each of these states and therefore this action will not trigger any additional FIP obligations for these states.

III. Statutory and Executive Order Reviews

A. Executive Orders 12866: Regulatory Planning and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under EO 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This final rule does not establish any new information collection requirement apart from what is already required by law. This rule relates to the requirement in the CAA for states to submit SIPs under section 110(a) to satisfy certain infrastructure and general authority-related elements required under section 110(a)(2) of the CAA for the 2008 lead NAAQS. Section 110(a)(1) of the CAA requires that states submit SIPs that implement, maintain and enforce a new or revised NAAQS which satisfy the requirements of section 110(a)(2) within 3 years of promulgation of such standard, or such shorter period as the EPA may provide.

Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in the 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 Procedures Act (APA) or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions. For the purpose of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business that is a small industry entity as defined in the U.S. Small Business Administration (SBA) size standards *(See* 13 CFR part 121); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. This action relates to the requirement in the CAA for states to submit SIPs under section 110(a) to satisfy certain infrastructure and general authority-related elements required under section 110(a)(2) of the CAA for the 2008 lead NAAQS. Section 110(a)(1) of the CAA requires that states submit SIPs that implement, maintain and enforce a new or revised NAAQS which satisfies the requirements of section 110(a)(2) within 3 years of promulgation of such standard, or such shorter period as the EPA may provide.

D. Unfunded Mandates Reform Act of 1995 (UMRA)

This action contains no federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538 for state, local and tribal governments and the private sector. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of section 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action relates to the requirement in the CAA for states to submit SIPs under section 110(a) to satisfy certain infrastructure and general authority-related elements required under section 110(a)(2) of the CAA for the 2008 lead NAAQS. Section 110(a)(1) of the CAA requires that states submit SIPs that implement, maintain and enforce a new or revised NAAQS which satisfies the requirements of section 110(a)(2) within 3 years of promulgation of such standard, or such shorter period as the EPA may provide.

E. Executive Order 13132: Federalism

EO 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the 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 EO to include regulations that have ''substantial direct effects on the states, or the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government.'' This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. The CAA establishes the scheme whereby states take the lead in developing plans to meet the NAAQS. This rule will not modify the relationship of the states and the EPA for purposes of developing programs to implement the NAAQS. Thus, EO 13132 does not apply to this rule.

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

EO 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' This final rule does not have tribal implications, as specified in EO 13175. This rule responds to the requirement in the CAA for states to submit SIPs under section 110(a) to satisfy certain elements required under section 110(a)(2) of the CAA for the 2008 lead NAAQS. Section 110(a)(1) of the CAA requires that states submit SIPs that provide for implementation, maintenance and enforcement of a new or revised NAAQS, and which satisfy the applicable requirements of section 110(a)(2), within 3 years of promulgation of such standard, or within such shorter period as the EPA may provide. No tribe is subject to the requirement to submit an implementation plan under section 110(a) within 3 years of promulgation of a new or revised NAAQS.

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

The EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it is not an action that concerns health or safety risks. This action is finding that certain states have failed to submit a complete SIP that provides certain basic program elements of section 110(a)(2) necessary to implement the 2008 lead NAAQS.

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

This rule is not a ''significant energy action'' as defined in EO 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. VCS are technical standards (*e.g.,* materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by VCS bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable VCS. This action does not involve technical standards. Therefore, the EPA did not consider the use of any VCS.

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

EO 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. The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment. This notice is making a finding that certain states have failed to submit a complete SIP that provides certain basic program elements of section 110(a)(2) necessary to implement the 2008 lead NAAQS.

K. Congressional Review Act

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

''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective March 28, 2013.

L. Judicial Review

Section 307(b)(1) of the CAA indicates which federal Courts of Appeal have venue for petitions of review of final agency actions by the EPA under the CAA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit (i) when the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

This final rule consisting of findings of failure to submit certain of the required infrastructure SIP provisions is ''nationally applicable'' within the meaning of section 307(b)(1). This rule affects seven states across the country that are located in five of the ten EPA Regions, five different federal circuits, and multiple time zones. In addition, the rule addresses a common core of knowledge and analysis involved in formulating the decision and a common interpretation of the requirements of 40 CFR 51 appendix V applied to determining the completeness of SIPs in states across the country.

This determination is appropriate because in the 1977 CAA Amendments that revised CAA section 307(b)(1), Congress noted that the Administrator's determination that an action is of ''nationwide scope or effect'' would be appropriate for any action that has ''scope or effect beyond a single judicial circuit.'' H.R. Rep. No. 95–294 at 323–324, reprinted in 1977 U.S.C.C.A.N. 1402–03. Here, the scope and effect of this action extends to the five judicial circuits that include the states across the country affected by this action. In these circumstances, section 307(b)(1) and its legislative history authorize the Administrator to find the rule to be of ''nationwide scope or effect'' and thus to indicate that venue for challenges lies in the D.C. Circuit. Accordingly, the EPA is determining that this is a rule of nationwide scope or effect. Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**. Filing a petition for review by the Administrator of this final action does not affect the finality of the action for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. Thus, any petitions for review of this action must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date this final action is published in the **Federal Register**.

List of Subjects in 40 CFR Part 52

Approval and promulgation of implementation plans, Environmental protection, Administrative practice and procedures, Air pollution control, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: February 15, 2013.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2013–04293 Filed 2–25–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2012–0003; Internal Agency Docket No. FEMA–8271]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

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

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial

FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR Part 64 is amended as follows:

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region I				
New Hampshire:				
Albany, Town of, Carroll County	330174	May 17, 1993, Emerg; March 1, 1995, Reg; March 19, 2013, Susp.	March 19, 2013	March 19, 2013
Bartlett, Town of, Carroll County	330010	April 21, 1976, Emerg; May 1, 1979, Reg; March 19, 2013, Susp.	.....do	Do.*
Brookfield, Town of, Carroll County	330179	April 22, 1976, Emerg; May 17, 1977, Reg; March 19, 2013, Susp.	.....do	Do.
Conway, Town of, Carroll County	330011	December 2, 1974, Emerg; April 16, 1979, Reg; March 19, 2013, Susp.	.....do	Do.
Effingham, Town of, Carroll County	330012	July 9, 2008, Emerg; August 1, 2009, Reg; March 19, 2013, Susp.	.....do	Do.
Freedom, Town of, Carroll County	330013	August 20, 1992, Emerg; December 1, 1992, Reg; March 19, 2013, Susp.	.....do	Do.
Hart's Location, Town of, Carroll County.	330213	May 30, 1996, Emerg; March 2, 1998, Reg; March 19, 2013, Susp.	.....do	Do.
Jackson, Town of, Carroll County	330014	August 21, 1975, Emerg; July 2, 1979, Reg; March 19, 2013, Susp.	.....do	Do.
Madison, Town of, Carroll County	330220	May 19, 2005, Emerg; August 1, 2005, Reg; March 19, 2013, Susp.	.....do	Do.
Moultonborough, Town of, Carroll County.	330015	April 8, 1999, Emerg; March 1, 2000, Reg; March 19, 2013, Susp.	.....do	Do.
Ossipee, Town of, Carroll County	330016	April 30, 1975, Emerg; June 17, 1991, Reg; March 19, 2013, Susp.	.....do	Do.
Sandwich, Town of, Carroll County	330017	November 3, 1975, Emerg; July 17, 1986, Reg; March 19, 2013, Susp.	.....do	Do.
Tamworth, Town of, Carroll County	330018	July 21, 1976, Emerg; July 16, 1991, Reg; March 19, 2013, Susp.	.....do	Do.
Tuftonboro, Town of, Carroll County	330234	June 15, 1976, Emerg; May 4, 1989, Reg; March 19, 2013, Susp.	.....do	Do.
Wakefield, Town of, Carroll County	330019	November 22, 1976, Emerg; June 17, 1991, Reg; March 19, 2013, Susp.	.....do	Do.
Wolfeboro, Town of, Carroll County	330239	November 26, 1976, Emerg; May 17, 1989, Reg; March 19, 2013, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
West Virginia: Mineral County, Unincorporated Areas.	540129	December 30, 1975, Emerg; September 27, 1991, Reg; March 19, 2013, Susp.	.....do	Do.
Region IV				
Kentucky:				
Cadiz, City of, Trigg County	210354	December 15, 1997, Emerg; July 1, 2001, Reg; March 19, 2013, Susp.	.....do	Do.
Trigg County, Unincorporated Areas	210315	December 15, 1997, Emerg; July 1, 2001, Reg; March 19, 2013, Susp.	.....do	Do.
Region VI				
Louisiana:				
Benton, Town of, Bossier County	220032	September 10, 1975, Emerg; July 26, 1977, Reg; March 19, 2013, Susp.	.....do	Do.
Bossier City, City of, Bossier County	220033	June 26, 1974, Emerg; April 4, 1983, Reg; March 19, 2013, Susp.	.....do	Do.
Bossier Parish, Unincorporated Areas ..	220031	February 14, 1975, Emerg; April 18, 1983, Reg; March 19, 2013, Susp.	.....do	Do.
Region VIII				
Montana:				
Belt, Town of, Cascade County	300009	May 13, 1975, Emerg; December 5, 1979, Reg; March 19, 2013, Susp.	.....do	Do.
Cascade County, Unincorporated Areas	300008	May 22, 1975, Emerg; April 15, 1980, Reg; March 19, 2013, Susp.	.....do	Do.
Great Falls, City of, Cascade County ...	300010	May 19, 1972, Emerg; September 30, 1977, Reg; March 19, 2013, Susp.	.....do	Do.
Neihart, Town of, Cascade County	300183	May 6, 1997, Emerg; N/A, Reg; March 19, 2013, Susp.	.....do	Do.

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

Dated: January 30, 2013.

David L. Miller,

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

[FR Doc. 2013–04326 Filed 2–25–13; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 00–167; FCC 04–221]

Broadcast Services; Children's Television; Cable Operators

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of rules published in the **Federal Register** on January 3, 2005. The final rules revised the obligation of television broadcasters to protect and serve children in their audience.

DATES: The amendment to 47 CFR 73.3526(e)(11)(iii) published in the **Federal Register** at 70 FR 25, January 3, 2005, is effective February 26, 2013.

FOR FURTHER INFORMATION CONTACT: For additional information contact John Norton, 202–418–2120, Media Bureau, Policy Division.

SUPPLEMENTARY INFORMATION: In a Third Report and Order in Report and Order in MM Docket No. 00–167, FCC 04–103, published in the **Federal Register**, 70 FR 25, January 3, 2005, the Commission adopted rules which contained information collection requirements subject to the Paperwork Reduction Act. The document stated that the rule changes requiring OMB approval would become effective after OMB approval and announcement in the **Federal Register**. On June 23, 2006, the Office of Management and Budget (OMB) approved the information collection requirements contained in 47 CFR 73.3526(e)(11)(iii). The information collection is assigned to OMB Control No. 3060–0754.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–03931 Filed 2–25–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MM Docket No. 00–10; FCC 01–123 and MM Docket No. 93–215; FCC 95–502]

Establishment of Class A TV Service and Cable Television Rate Regulation; Cost of Service Rules—Clarification Regarding Information Collection Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification and announcement of effective dates.

SUMMARY: The Federal Communications Commission published requirements related to Establishment of Class A TV Service and Cable Television Rate Regulation; Cost of Service Rules, which were determined to contain information collection requirements that were subject to OMB review. After further review, we have found OMB approval is not required. This document intends to provide clarification that these rules are effective and that it has been determined that these provisions are not subject to OMB review.

DATES: 47 CFR 73.1545(e) and 47 CFR 76.922(i)(6)(i) and (i)(7) are effective February 26, 2013.

FOR FURTHER INFORMATION CONTACT: John Norton, 202–418–2120, Media Bureau, Policy Division.

SUPPLEMENTARY INFORMATION: The Commission published documents in the **Federal Register** identifying rules that required OMB approval. After further review, we have found OMB approval is not required. The affected CFR sections are 47 CFR 73.1545(e) and 47 CFR 76.922(i)(6)(i) and (i)(7).

The following regulations are no longer pending OMB approval for the sections listed: 73.1545(e)–66 FR 21681, May 1, 2001 76.922(i)(6)(i) and (i)(7)–61 FR 9367, March 8, 1996.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–03944 Filed 2–25–13; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 78, No. 38
Tuesday, February 26, 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 ENERGY

10 CFR Part 430

[Docket Number EERE–2012–BT–STD–0022]

RIN 1904–AC78

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Residential Water Heaters

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including residential water heaters. EPCA also requires the U.S. Department of Energy (DOE) to determine whether more stringent amended standards would be technologically feasible and economically justified, and would save a significant amount of energy. Accordingly, DOE established amended energy conservation standards for several classes of residential water heaters in an April 2010 final rule. Subsequent to the publication of that final rule, a number of utility companies brought forth concerns regarding the amended energy conservation standard levels for electric storage water heaters and the impact of these standards on electric thermal storage programs that utility companies administer to manage peak load. In this document, DOE proposes to establish a waiver process that will mitigate the concerns of utility companies regarding the implementation of the April 2010 standard levels by allowing for the manufacture of certain large-volume electric storage water heaters provided that they meet a set of conditions discussed in this proposed rule. The document also announces a public meeting to receive comment on the proposed waiver process and criteria for obtaining a waiver.

DATES:

Meeting: DOE will hold a public meeting on Friday, March 15, 2013, from 9:00 a.m. to 1:00 p.m., in Washington, DC. The meeting will also be broadcast as a Webinar. For information about the public meeting and Webinar, see section 0, ''Public Participation.''

Comments: DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NPRM) before and after the public meeting, but no later than April 29, 2013. See section 0, ''Public Participation,'' for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. For more information, refer to section 0, ''Public Participation.''

Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov*. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2012–BT–STD–0022 and/or RIN 1904–AC78, by any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov*. Follow the instructions for submitting comments.

2. *Email: ResWaterHtrsRFI–2012–STD–0022@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

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, 950 L'Enfant Plaza SW., Suite 600, 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.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Office of Energy Efficiency and Renewable Energy through the methods listed above and by email to *Chad_S_Whiteman@omb.eop.gov*.

Instructions: All submissions received must include the agency name and docket number and/or RIN for this rulemaking. No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section 0 of this document (Public Participation).

Docket: The docket is available for review at *http://www.regulations.gov*, including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *http://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;D=EERE-2012-BT-STD-0022*. See section 0, ''Public Participation,'' for further information on how to submit comments through www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–6590. Email: *Ashley.Armstrong@ee.doe.gov.*

Mr. Ari Altman, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6307. Email: *Ari.Altman@hq.doe.gov.*

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Summary of the Proposed Rule

DOE believes that electric thermal storage (ETS) programs involving water heaters provide numerous benefits to consumers, utilities, and the Nation, and that an alternative approach to energy conservation standards for certain, limited electric water heaters appears to be warranted in order to ensure the viability of these programs. After considering several options, DOE determined that a waiver process is the most appropriate, and thus, is proposing to adopt such a process in this notice of proposed rulemaking (NPRM). The proposed process would allow any manufacturer of electric water heaters, any electric utility company, or a combination of the two, to request a waiver granting exemption from the energy conservation standards established in an April 16, 2010 final rule (75 FR 20112; referred to hereinafter as the ''April 2010 final rule'') for certain electric water heaters with rated storage volumes greater than 55 gallons. Each waiver granted by the U.S. Department of Energy (DOE), would allow, for a one-year period, manufacturers to produce limited numbers of electric water heaters with rated storage volumes above 55 gallons exclusively for the purpose of installation in residences enrolled in a specific utility company ETS program. Parties would be allowed to apply for additional one-year waivers in subsequent years. This proposed rule, if adopted, or the granting of a waiver under this rule, would not amend the energy conservation standard otherwise applicable to electric water heaters with rated storage volumes above 55 gallons.

The following sections include: (1) A description of DOE's statutory authority for setting energy conservation standards for residential water heaters; (2) a discussion of the standards promulgated in the April 2010 final rule and concerns of utility companies regarding those standards; (3) a summary of the comments received in response to DOE's June 13, 2012 request for information (RFI) on this topic (77 FR 35299; hereinafter referred to as the ''June 2012 RFI'') and DOE's responses to those comments, including a discussion of the appropriate mechanism to address the concerns of utility companies; and (4) a description of the waiver process that DOE proposes to establish.

Introduction

The following section briefly discusses the statutory authority underlying DOE's standards for residential water heaters and this NPRM, as well as some of the relevant historical background regarding the establishment of standards for residential water heaters.

A. Authority

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (''EPCA'' or ''the Act''), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) sets forth a variety of provisions designed to improve energy efficiency and establishes the Energy Conservation Program for Consumer Products Other Than Automobiles,[2] a program covering most major household appliances (collectively referred to as ''covered products''), which includes the types of residential water heaters that are the subject of this NPRM. (42 U.S.C. 6292(a)(4))

Under EPCA, this program generally consists of four parts: (1) Testing; (2) labeling; (3) establishing Federal energy conservation standards; and (4) certification and enforcement procedures. The Federal Trade Commission (FTC) is primarily responsible for labeling consumer products, and DOE implements the remainder of the program. Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6293) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. *Id.* The DOE test procedures for residential water heaters currently appear at Title 10 of the Code of Federal Regulations (CFR) part 430, Subpart B, Appendix E.

EPCA, as codified, contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States of any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4)).

B. Background

1. Current Standards

Before being amended by the National Appliance Energy Conservation Act of 1987 (NAECA; Pub. L. 100–12), Title III of EPCA included residential water heaters as covered products. NAECA's amendments to EPCA established energy conservation standards for

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

[2] All references to EPCA in this document refer to the statute as amended through the Energy Independence and Security Act of 2007, Public Law 110–140 (Dec. 19, 2007).

residential water heaters. (42 U.S.C. 6295(e)(1); 42 U.S.C. 6295(e)(4)) DOE initially amended the statutorily-prescribed standards for water heaters in 2001 (66 FR 4474 (Jan. 17, 2001)) and amended standards for water heaters for a second time in the April 2010 Final Rule.

The energy conservation standards for residential water heaters in the April 2010 Final Rule will apply to products manufactured on or after April 16, 2015. 75 FR 20112. The amended energy conservation standards consist of minimum energy factors [3] (EF) that vary based on the rated storage volume of the water heater, the type of energy it uses (*i.e.,* gas, oil, or electricity), and whether it is a storage, instantaneous, or tabletop model. 10 CFR 430.32(d). The currently applicable water heater energy conservation standards, as well as those that will be applicable starting April 16, 2015, are set forth in Table II.1 below. Of particular relevance for this NPRM, on April 16, 2015, electric water heaters with a rated storage volume above 55 gallons will be required to have an energy factor of at least 2.057 − (0.00113 × Rated Storage Volume in gallons). Such a level is currently achievable only by using heat pump water heater technology and cannot be achieved in electric water heaters that rely solely on electric resistance elements.

TABLE II.1—ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL WATER HEATERS

Product class	Energy factor as of January 20, 2004	Energy factor as of April 16, 2015
Gas-fired Water Heater	0.67 − (0.0019 × Rated Storage Volume in gallons)	For tanks with a Rated Storage Volume at or below 55 gallons: EF = 0.675 − (0.0015 × Rated Storage Volume in gallons). For tanks with a Rated Storage Volume above 55 gallons: EF = 0.8012 − (0.00078 × Rated Storage Volume in gallons).
Oil-fired Water Heater	0.59 − (0.0019 × Rated Storage Volume in gallons)	EF = 0.68 − (0.0019 × Rated Storage Volume in gallons).
Electric Water Heater	0.97 − (0.00132 × Rated Storage Volume in gallons)	For tanks with a Rated Storage Volume at or below 55 gallons: EF = 0.960 − (0.0003 × Rated Storage Volume in gallons). For tanks with a Rated Storage Volume above 55 gallons: EF = 2.057 − (0.00113 × Rated Storage Volume in gallons).
Tabletop Water Heater	0.93 − (0.00132 × Rated Storage Volume in gallons)	EF = 0.93 − (0.00132 × Rated Storage Volume in gallons).
Instantaneous Gas-fired Water Heater.	0.62 − (0.0019 × Rated Storage Volume in gallons)	EF = 0.82 − (0.0019 × Rated Storage Volume in gallons).
Instantaneous Electric Water Heater.	0.93 − (0.00132 × Rated Storage Volume in gallons)	EF = 0.93 − (0.00132 × Rated Storage Volume in gallons).

2. Utility Concerns With the April 2010 Final Rule for Electric Storage Water Heaters

Subsequent to the publication of the April 2010 Final Rule, several stakeholders (*i.e.,* National Rural Electric Cooperative Association (NRECA), PJM Interconnection (PJM), American Public Power Association (APPA), and Steffes Corporation) indicated to DOE their concerns about the interaction of the amended standards in the April 2010 final rule and the use of electric storage water heaters with tanks having greater than 55 gallons of rated storage volume (referred to hereinafter as ''large-volume'' electric storage water heaters) used in ETS programs. Utilities use ETS programs, sometimes also known as load shifting or demand response programs, to manage peak demand load by limiting the times when certain appliances are operated. ETS programs typically allow the utility to control the appliance remotely to allow operation of the appliance only during off-peak hours. During off-peak operation, the electricity consumed is stored by the appliance as thermal energy for use during peak hours when it is not allowed to operate. Large-volume electric storage water heaters are a key component of utility ETS programs that target electric water heaters because these larger-volume products allow for the storage of enough hot water to meet consumer usage during peak demand times when the water heater would not be allowed to turn on.

As shown in Table II.1 and noted above, the April 2010 Final Rule established an energy conservation standard that would effectively require the use of heat pump technology to meet the minimum energy conservation standard for large-volume electric storage water heaters. Utility companies presented concerns about the feasibility of continuing ETS programs without the use of large-volume electric resistance water heaters (ERWHs). Utilities believe the practicability of heat pump water heaters (HPWHs) are such that HPWHs may not be able to fill the same role as large-volume ERWHs in ETS programs. (The capability of HPWHs or multiple small-volume (*i.e.,* storage volume of 55 gallons or less) water heaters to serve the needs of ETS programs is discussed further in section 0.) In light of the perceived lack of viable alternatives to large volume ERWHs for ETS programs, utility companies are concerned that participation in ETS programs may be reduced or eliminated after the standards take effect in 2015, which would eliminate the numerous benefits to consumers, utilities, and the Nation resulting from ETS programs. (See section 0 for discussion of the benefits from ETS programs.) Because of their concerns, utilities requested that DOE consider allowing for the manufacture of large-volume ERWHs solely for ETS applications.

[3] Energy factor is a measure of overall water heater efficiency that accounts for efficiency during active, standby, and cyclical operation.

3. June 2012 Request for Information

To seek feedback from interested parties related to the issues raised by utility companies, DOE published the June 2012 RFI. 77 FR 35299, June 13, 2012. The RFI described utility ETS programs for water heaters and the utility's concerns over the amended standard levels for electric storage water heaters with storage volumes above 55 gallons, and sought comment on these topics as well as a number of related issues. Specifically, DOE requested comment on (1) the penetration of ETS programs and the impacts of such programs on consumers and the Nation; (2) the impacts of the April 2010 standard levels on utility ETS programs; (3) information on any feature or features for residential water heaters used in ETS programs that are unique to those water heaters and whether such feature(s) would justify a separate standard from other residential water heaters; and (4) information on potential solutions that would resolve the concerns of utilities that administer ETS programs for residential water heaters and require the use of large-volume electric storage water heaters, including several potential approaches identified in the RFI. 77 FR 35304.

DOE received 127 [4] comments from interested parties, including 109 from individual utility companies or utility associations (including the electric power research institute (EPRI)), 6 from manufacturers, 1 from an individual efficiency advocate, 1 comment from a trade association, 4 comments from U.S. Congressmen, and 3 joint comments—2 joint comments from multiple utilities, one of which also included a manufacturer of ETS controls (referred to as the ''Joint Utilities comment'') and one of which did not (referred to as the ''Joint Utilities Supplemental comment''), 1 joint comment from several efficiency advocates (referred to as the ''Joint Efficiency Advocates comment''), and 1 joint comment from efficiency advocates and a utility company located in the northwestern U.S. (referred to as the ''Northwest Advocates comment'').[5] The utilities who responded to the June 2012 RFI serve approximately 5.3 million [6] customers, of which approximately 1.7 million [7] currently utilize electric resistance water heaters, and approximately 630,000 [8] currently participate in ETS programs. The responses generally centered on recommendations for DOE's path forward and whether heat pump water heaters are a viable alternative to electric resistance water heaters for ETS programs. The comments helped DOE to formulate the proposals in this NPRM and are discussed in section A.

Discussion

A. Comments Received in Response to June 2012 RFI

As noted, DOE received 127 unique comments in response to the June 2012 RFI. The comments focused on four main issues: (1) whether DOE should take action to address the utility company concerns and the benefits of ETS programs; (2) the technological capability of alternatives to large-volume ERWHs to be utilized in ETS programs; (3) the potential for implementing a waiver program to allow the manufacture of certain water heaters specifically for use in ETS programs; and 4) the potential for implementing a separate product class for water heaters used in ETS programs (*i.e.,* ''grid-interactive'' water heaters). The comments and DOE responses related to these four topics are summarized in sections 0 through 0 immediately below.

1. Whether DOE Should Take Action

Of the 127 comments received by DOE, 120 recommended that DOE should take some action to mitigate the issue that the April 2010 standard would potentially cause for utility ETS programs. (See section 2 for a brief description of the utility concerns.) (Buckeye Power, Inc. (Buckeye), No. 3 at p. 1; Codington-Clark Electric Cooperative (Codington-Clark), No. 4 at pp. 1–3; Rappahannock Electric Cooperative (Rappahannock), No. 5 at pp. 1–3; Northern Plains Electric Cooperative (Northern Plains), No. 6 at p. 1; Itasca-Mantrap Cooperative Electrical Association (Itasca-Mantrap), No. 7 at pp. 1–2; Northwest Iowa Power Cooperative (Northwest Iowa Power), No. 8 at p. 1; PowerSouth Energy Cooperative (Powersouth), No. 10 at pp. 1–3; Barron Electric Cooperative (Barron), No. 11 at p. 2; Clark Electric Cooperative (Clark), No. 13 at p. 1; Woodbury County Rural Electric Cooperative (Woodbury), No. 14 at p. 1; North West Rural Electric Cooperative (North West), No. 15 at p. 1; Bayfield Electric Cooperative (Bayfield), No. 16 at p. 2; Union County Electric Cooperative (Union County), Inc., No. 17 at p. 1; Allamakee-Clayton Electric Cooperative (Allamakee-Clayton), No. 18 at p. 1; Lower Valley Energy, No. 19 at p. 1; AO Smith, No. 20 at p. 1; Wabash Valley Power (Wabash), No. 21 at p. 1; Heartland Power Cooperative (Heartland), No. 22 at p. 1; South Central Electric Association (South Central), No. 23 at p. 1; Cass County Electric Cooperative (Cass County), No. 24 at p. 1; East River Electric Power Cooperative (East River), No. 25 at p. 1;

[4] In total there were 155 filings, but 26 comments were either exact duplicates or data supplements, so they are not included in the final count. Additionally two commenters submitted multiple filings with generally the same ideas expressed in each filing, and were only counted once in the final count.

[5] One joint comment was received from four utilities/associations—PJM, NRECA, APPA, Edison Electric Institute (EEI)—as well as Steffes Corporation (Steffes), which manufactures thermal storage water heater controls. This is referred to as the ''Joint Utilities comment'' in this document. A supplemental comment to this joint comment was received from the four utilities only (*i.e.,* PJM, NRECA, APPA, and EEI), which is referred to as the ''Joint Utilities Supplemental Comment.'' One joint comment was from three efficiency advocates, the American Council for an Energy Efficient Economy (ACEEE), Natural Resources Defense Council (NRDC), and Appliance Standards Awareness Project (ASAP). This comment is referred to as the ''Joint Efficiency Advocates comment'' in this document. One joint comment was from three stakeholders—Northwest Energy Efficiency Alliance (NEEA) and the Northwest Power and Conservation Council (NPCC), and the Bonneville Power Administration (BPA) utility. This comment is referred to as the ''Northwest Advocates comment'' in this document.

[6] In instances where both a group of cooperatives and its individual cooperative members gave figures, only the figures from the group of cooperatives were counted to avoid double counting. This includes figures provided by: Corn Belt, Dairyland, East River, ECSC, Dakota Electric Association, East Central, Federated, Goodhue, Kandiyohi, McLeod, Minnesota Valley, Nobles, Stearns Wright-Hennepin, Northwest Iowa Power, Buckeye Power, Rappahannock, PowerSouth, Lower Valley, Wabash, Cass County, Powell Valley, Tri-State, NOVEC, Black Hills, Verendrye, Lake Country, Mountain Electric, Leavenworth-Jefferson, Thumb Electric, SCIREC, Jackson County, Duck River, Shenandoah Valley, Adams, Tri-County Rural, Habersham Electric, Flint, Dakota Valley, Northern Plains, Aurelia, United Electric.

[7] In instances where both a group of cooperatives and its individual cooperative members gave figures, only the figures from the group of cooperatives were counted to avoid double counting. This total includes figures provided by: Farmers Electric, Midland, Dairyland, East River, ECSC, Great River, NIPCO, PowerSouth, Lower Valley, Bristol, Central Georgia EMC, Jackson County, Duck River, Shenandoah Valley, Adams, Shelby Electric, Flint, Aurelia.

[8] In instances where both the distribution cooperative and its individual cooperative members gave figures, only the distribution cooperatives figures were counted to avoid double counting. This number includes figures from: Farmers Electric Cooperative, Corn Belt, Dairyland, East River, ECSC, Connexus, Dakota Electric Association, East Central, Federated, Goodhue, Itasca-Mantrap, Kandiyohi, McLeod, Minnesota Valley, Nobles, Stearns, Wright-Hennepin, NIPCO, Buckeye, Rappahannock, PowerSouth, Lower Valley, Wabash, Cass County, Bristol Tennessee Essential Services, Powell Valley Electric Cooperative, Central Georgia EMC, Otter Tail, Black Hills, Verendrye, Mountain Electric, Leavenworth-Jefferson, Thumb, SCIREC, Jackson County, Duck River, Shenandoah Valley, Adams, Shelby Electric, Habersham, Flint, Dakota Valley, Northern Plains, Aurelia, United Electric.

Richland Electric Cooperative (Richland), No. 26 at p. 1; Lyon-Lincoln Electric Cooperative, No. 27 at pp. 1–3; Central Electric Power Cooperative (Central), No. 28 at p. 1; Tri-County Electric Cooperative (Tri-County), No. 29 at pp. 1–4; Price Electric Cooperative (Price), No. 30 at p. 1; Bristol Tennessee Essential Services (Bristol), No. 31 at pp. 1–2; FEM Electric (FEM), No. 32 at p. 1; The Berkeley Electric Cooperative (BEC), Inc., No. 33 at p. 1; Powell Valley Electric Cooperative (Powell Valley), No. 34 at p. 1; Humboldt County Rural Electric Cooperative (Humboldt), No. 35 at p. 1; Dakota Electric, No. 36 at p. 4; Nishnabotna Valley Rural Electric Cooperative (Nishnabotna Valley REC), No. 37 at p. 1; Corn Belt Power Cooperative (Corn Belt), No. 39 at p. 1; Clay-Union Electric Corporation (Clay-Union), No. 40 at p. 1; Great River Energy (Great River), No. 41 at p. 1; Central Georgia Electric Membership Corporation (Central Georgia EMC), No. 42 at p. 1; Otter Tail Power Company (Otter Tail), No. 44 at p. 1; Electric Cooperatives of South Carolina (ECSC), No. 45 at p. 1; Aiken Electric Cooperative (Aiken), Inc., No. 46 at p. 1; Connexus Energy (Connexus), No. 47 at p. 1; Dairyland Power Cooperative (Dairyland), No. 48 at p. 1; Pee Dee Electric Cooperative (Pee Dee), No. 49 at p. 1; Oconto Electric Cooperative (Oconto), No. 50 at p. 1; Wright-Hennepin Cooperative Electric Association (Wright-Hennepin), No. 51 at p. 1; Midland Power Cooperative (Midland), No. 52 at p. 1; Lynches River Electric Cooperative, Inc. (Lynches), No. 53 at p. 1; Pierce Pepin Cooperative Services (Pierce Pepin), No. 54 at p. 1; Dunn Energy Cooperative (Dunn), No. 55 at p. 1; Palmetto Electric Cooperative, Inc. (Palmetto), No. 56 at p. 1; Horry Electric Cooperative (Horry), No. 57 at p. 1; Joint Utilities, No. 58 at p. 4; Fairfield Electric Cooperative (Fairfield), No. 59 at p. 1; National Electrical Manufacturers Association (NEMA), No. 60 at p. 4; Tri-State Generation and Transmission Association (Tri-State), No. 61 at p. 1; Santee Electric Cooperative (Santee), No. 62 at p. 1; Cuyahoga Falls Electric Department (Cuyahoga Falls), No.63 at p. 1; Newberry Electric Cooperative, Inc. (Newberry), No. 64 at p. 1; Giant Factories, Inc. (Giant Factories), No. 65 at p. 2; People's Energy Cooperative (People's Energy), No. 66 at p. 1; Michigan Electric Cooperative Association (MECA), No. 67 at p. 1; Joint Efficiency Advocates, No. 68 at p. 1; Eau Claire Energy Cooperative (Eau Clair), No. 69 at p. 1; Edisto Electric Cooperative (Edisto), No. 70 at p. 1; Coastal Electric Cooperative (Coastal), No. 71 at p. 1; Vaughn Thermal Corporation (Vaughn), No. 72 at p. 1; York Electric Cooperative (York), No. 73 at p. 1; Black River Electric Cooperative, Inc. (Black River), No. 76 at p. 1; Mid-Carolina Electric Cooperative, Inc. (MCEC), No. 77 at p. 1; Prairie Energy Cooperative (Prairie), No. 78 at p. 1; Alexandria Light and Power (ALP), No. 79 at p. 1; Alliance to Save Energy, No. 80 at p. 1; Blue Ridge Electric Cooperative (Blue Ridge), No. 82 at p. 1; Freeborn-Mower Cooperative Services (Freeborn-Mower), No. 83 at p. 2; American Public Power Association (APPA), No. 84 at p. 3; Rheem Manufacturing Company (Rheem), No. 86 at p. 2; Heat Transfer Products, Inc. (HTP), No. 87 at p. 1; Nebraska Public Power District (Nebraska Public Power), No. 88 at p. 1; Clark Public Utilities, No. 90 at p. 1; Northern Virginia Electric Cooperative (NOVEC), No. 91 at p. 1; Congressman Todd Rokita, No. 93 at p. 1; Black Hills Electric Cooperative (Black Hills), No. 96 at p. 1; Verendrye Electric Cooperative (Verendrye), No. 97 at p. 1; Dakota Energy Cooperative (Dakota Energy), No. 98 at p. 1; Minnesota Rural Electric Association (Minnesota Rural), No. 99 at p. 1; Minnesota Valley Electric Cooperative (Minnesota Valley), No.101 at p. 1; McLeod Cooperative Power (McLeod), No.102 at p. 1; Lake Country Power (Lake Country), No.108 at p. 1; Mountain Electric Cooperative (Mountain Electric), No.109 at p. 1; Leavenworth-Jefferson Electric Cooperative (Leavenworth-Jefferson), No. 110 at p. 1; Riverland Energy Cooperative (Riverland), No. 111 at p. 1; Meeker Cooperative Light & Power (Meeker), No.112 at p. 1; Federated Rural Electric (Federated), No.113 at p. 1; Iowa Lakes Electric Cooperative (Iowa Lakes), No. 114 at p. 1; Thumb Electric Cooperative (Thumb), No. 115 at p. 1; South Central Indiana Rural Electric Cooperative (South Central Indiana REC), No. 117 at p. 1; Tri-County Electric Cooperative (Tri-County Electric), No. 118 at p. 1; Nobles Cooperative Electric (Nobles), No. 119 at p. 1; Lake Region Electric Cooperative (Lake Region), No. 120 at p. 1; Congressman Dan Burton, No. 122 at p. 1; Sioux Valley Energy (Sioux Valley), No. 123 at p. 1; East Central Energy (East Central), No. 124 at p. 1; Jackson County Rural Electric Membership Corporation (Jackson County), No. 126 at p. 1; Duck River Electric Membership Corporation (Duck River), No. 127 at p. 1; Shenandoah Valley Electric Cooperative (Shenandoah Valley), No. 128 at p. 1; Adams Electric Cooperative (Adams), No.129 at p. 1; Goodhue County Cooperative (Goodhue), No.130 at p. 1; Adams-Columbia Electric Cooperative (Adams-Columbia), No.132 at p. 1; Stearns Electric Association (Stearns), No.134 at p. 1; Senator John Thune, No. 137 at p. 1; Kandiyohi Power Cooperative (Kandiyohi), No.138 at p. 1; Shelby Electric Cooperative (Shelby), No. 143 at p. 1; Tri-County Rural Electric Cooperative, Inc. (Tri-County REC), No. 144 at p. 1; Beltrami Electric Cooperative, No. 145 at p. 1 (Beltrami); Habersham Electric Membership Cooperative (Habersham), No.146 at p. 1; Flint Energy Membership Corporation (Flint), No. 147 at p. 1; Dakota Valley and Northern Plains, No.149 at p. 1; Aurelia Municipal Electric (Aurelia), No. 151 at p. 1; United Electric Cooperative (United Electric), No. 153 at p. 1)

The Northwest Advocates stated that action should be taken, but only if analysis concludes that the net benefits of resistance-only water heaters including load shifting and ancillary service benefits are greater than those of HPWHs. (Northwest Advocates, No. 89 at p. 2)

Only two commenters—one manufacturer, General Electric (GE), and one utility company, Farmers Electric Cooperative—recommended that DOE take no action to address the utility company concerns regarding the April 2010 final rule energy conservation standard for large-volume electric water heaters. (GE, No. 85 at pp. 1–4; Farmers Electric Cooperative, No. 2 at p. 1) Farmers Electric Cooperative cited the considerable energy conservation benefits and cost savings to consumers from heat pump water heaters as a reason for supporting the April 2010 standard. Farmers Electric Cooperative emphasized that HPWHs reduce electricity demand up to three times. GE argued that viable alternatives are available (including heat pump water heaters) to meet the needs of ETS programs (see additional discussion of alternatives in section 0 below). GE also stated that there is no basis for creating a new product class for grid interactive water heaters and that doing so would impede the development of the market for HPWHs (see additional discussion of the potential for a new product class in section 3). GE contended that such an approach would also create a loophole that would erase some of the consumer and national benefits achieved by the April 2010 standards, which would be contrary to DOE's goals. (GE, No. 85 at p. 2)

EPRI took no position on whether DOE should take action, but rather noted that large-volume grid interactive

ERWH appear to provide value to both utilities and consumers and stated its intent to conduct further research to quantify the value of overall system efficiencies of grid-interactive water heaters. (EPRI, No. 74 at p. 4) EPRI expressed concerns that without the continued availability of large volume electric water heaters beyond April 2015, the industry may permanently forego a potential resource to provide grid support, especially in light of the integration of renewable electricity sources. (EPRI, No. 74 at p. 5)

The majority of the comments received in support of DOE action described the benefits of ETS programs for consumers, utilities, and the Nation as the main reason that DOE should take action to preserve utility ETS programs. Generally these commenters believe that DOE should take some action (generally either establishing a new product class or establishing a waiver program) to preserve the ability of manufacturers to produce and utility companies to use large-volume electric resistance storage water heaters. These stakeholders supported action due to the considerable benefits that they believe ETS programs provide to consumers, utilities and the electric grid, and due to the perceived lack of alternative products capable of meeting the needs of ETS programs for electric water heaters. In total, the utility respondents indicated that they realize a combined peak load reduction of approximately 145 MW,[9] and a cost savings of approximately 60 million dollars [10] in annual savings from being able to utilize more efficient, less expensive energy sources. Many utility companies stated that participation in ETS programs allows consumers to benefit from discounted energy rates and financial incentives such as rebates, financing, or free and reduced cost repair and maintenance. (Buckeye, No. 3 at p. 2; Codington-Clark, No. 4 at p. 2; Rappahannock, No. 5 at p. 2; Northern Plains No. 6 at p. 1; Itasca-Mantrap, No. 7 at p. 1; Northwest Iowa Power, No. 8 at p. 2; Barron, No. 11 at p. 1; Clark, No. 13 at p. 2; Woodbury, No. 14 at p. 2; North West, No. 15 at p. 2; Bayfield, No. 16 at p. 2; Union County, No. 17 at p. 3; Allamakee-Clayton, No. 18 at p. 2; Lower Valley Energy, No. 19 at p. 2; Wabash, No. 21 at p. 2; Heartland, No. 22 at p. 2; South Central, No. 23 at p. 2; Cass County, No. 24 at p. 2; East River, No. 25 at p. 2; Richland, No. 26 at p. 2; Lyon-Lincoln, No. 27 at p. 2; Price, No. 30 at p. 2; FEM, No. 32 at p. 2; BEC, No. 33 at p. 2; Powell Valley, No. 34 at p. 2; Dakota Electric, No. 36 at p. 2; Nishnabotna Valley REC, No. 37 at p. 2; Iowa Lakes, No. 114 at p. 2; Corn Belt, No. 39 at p. 2; Clay-Union, No. 40 at p. 2; Great River, No. 41 at p. 2; Central Georgia EMC, No. 42 at p. 2; Otter Tail, No. 44 at p. 2; ECSC, No. 45 at p. 2; Aiken, No. 46 at p. 1; Connexus, No. 47 at p. 1; Dairyland, No. 48 at p. 2; Pee Dee, No. 49 at p. 1; Oconto, No. 50 at p. 2; Wright-Hennepin, No. 51 at p. 1; Lynches, No. 53 at p. 2; Horry, No. 57 at p. 2; Pierce Pepin, No. 54 at p. 2; Palmetto, No. 56 at p. 2; Fairfield, No. 59 at p. 2; Tri-State, No. 61 at p. 2; Santee, No. 62 at p. 2; Newberry, No. 64 at p. 2; People's Energy, No. 66 at p. 2; Eau Claire, No. 69 at p. 2; Edisto, No. 70 at p. 2; Coastal, No. 71 at p. 2; Black River, No. 76 at p. 1; MCEC, No. 77 at p. 2; Blue Ridge, No. 82 at p. 2; NOVEC, No. 91 at p. 1; Black Hills, No. 96 at p. 2; Verendrye, No. 97 at p. 1; Minnesota Valley, No. 101 at p. 1; McLeod, No. 102 at p. 2; Mountain Electric, No. 109 at p. 1; Leavenworth-Jefferson, No. 110 at p. 2; Meeker, No. 112 at p. 3; Federated, No. 113 at p. 2; Thumb Electric, No. 115 at p. 2; South Central Indiana REC, No. 117 at p. 2; Tri-County Electric, No. 118 at p. 2; Nobles, No. 119 at p. 2; Lake Region, No. 120 at p. 2; Sioux Valley, No. 123 at p. 1; East Central, No. 124 at p. 2; Jackson County, No. 126 at p. 2; Shenandoah Valley, No. 128 at p. 2; Adams Electric, No. 129 at p. 1; Adams-Columbia, No. 132 at p. 1; Stearns, No. 134 at p. 1; Kandiyohi, No. 138 at p. 1; Habersham, No. 146 at p. 2; Flint, No. 147 at p. 3; Dakota Valley and Northern Plains, No. 149 at p. 2; Aurelia, No. 151 at p. 2; United Electric, No. 153 at p. 2).

The joint utility commenters cited a survey conducted by NRECA of its cooperatively owned utility members which found that the average bill credit for participating customers per water heater is $58 a year. In addition to the bill credit, customers are often eligible to receive an upfront rebate to offset a portion of the purchase cost of certain eligible types of electric water heaters when the customer agrees to participate in the direct load control program. The average rebate among survey respondents that also offered the bill credits is $230. (Joint Utilities, No. 58 at p. 8)

Through ETS programs for electric water heaters, utilities can require customers to heat and store hot water in times when overall electric demand and power-supply costs are low, thus lowering peak demand when costs are highest. Utilities contended that eliminating large volume electric resistance water heaters would reduce or eliminate ETS programs and would in turn result in higher electricity prices to consumers. (Buckeye, No. 3 at p. 2; Codington-Clark, No. 4 at p. 2; Rappahannock, No. 5 at p. 1; Itasca-Mantrap, No. 7 at p. 1; Northwest Iowa Power, No. 8 at p. 1; PowerSouth, No. 10 at p. 1; Barron, No. 11 at p. 1; Clark, No. 13 at p. 1; Woodbury, No. 14 at p. 2; North West, No. 15 at p. 1; Bayfield, No. 16 at p. 2; Union County, No. 17 at p. 1; Allamakee-Clayton, No. 18 at p. 1; Lower Valley Energy, No. 19 at p. 2; AO Smith, No. 20 at p. 1; Wabash, No. 21 at pp.1–2; Heartland, No. 22 at p. 1; South Central, No. 23 at p. 2; Cass County, No. 24 at p. 1; East River, No. 25 at p. 1; Richland, No. 26 at p. 3; Lyon-Lincoln Electric Cooperative, No. 27 at pp. 1–3; Central, No. 28 at p. 1; Tri-County, No. 29 at p. 1; Price, No. 30 at pp. 1–2; Bristol, No. 31 at p. 2; FEM, No. 32 at p. 1; BEC, No. 33 at p. 1; Powell Valley, No. 34 at p. 2; Humboldt, No. 35 at p. 1; Dakota Electric, No. 36 at p. 1; Nishnabotna Valley REC, No. 37 at p. 1; Corn Belt, No. 39 at p. 1; Clay-Union, No. 40 at p. 1; Great River, No. 41 at p. 1; Central Georgia EMC, No. 42 at p. 1; Otter Tail, No. 44 at p. 1; ECSC, No. 45 at p. 1; Aiken, No. 46 at p. 1; Connexus, No. 47 at p. 1; Dairyland, No. 48 at p. 1; Pee Dee, No. 49 at p. 1; Oconto, No. 50 at p. 1; Wright-Hennepin, No. 51 at p. 1; Midland, No. 52 at p. 1; Lynches, No. 53 at p. 1; Pierce Pepin, No. 54 at p. 2; Dunn, No. 55 at p. 1; Palmetto, No. 56 at p. 1; Horry, No. 57 at p. 1; Joint Utility Commenters, No. 58 at p. 4; Fairfield, No. 59 at p. 1; Tri-State, No. 61 at p. 1; Santee, No. 62 at p. 1; Newberry, No. 64 at p. 1; People's Energy, No. 66 at p. 2; MECA, No. 67 at p. 1; Eau Claire, No. 69 at p. 2; Edisto, No. 70 at p. 1; Coastal, No. 71 at p. 1; York, No. 73 at p. 1; Black River, No. 76 at p. 1; MCEC, No. 77 at p. 1; Prairie, No. 78 at p. 1; Blue Ridge, No. 82 at p. 1; Freeborn-Mower, No. 83 at p. 2; APPA, No. 84 at p. 3; Nebraska Public Power, No. 88 at p. 1; Clark Public Utilities, No. 90 at p. 1; NOVEC, No. 91 at p. 1; Black Hills, No. 96 at p. 1;

[9] In instances where both a group of cooperatives and its individual members gave figures, only the figures from the group of cooperatives were counted to avoid double counting. This total includes figures provided by: Humboldt, Heartland, Dairyland, FEM, South Central, Federated, Itasca-Mantrap, Northern Plains, PowerSouth, Bristol, Otter Tail, Shelby, Habersham, and Flint.

[10] In instances where both a group of cooperatives and its individual members gave figures, only the figures from the group of cooperatives were counted to avoid double counting. This total includes figures provided by: Humbolt, Dairyland, East River, ECSC, Dakota Electric, ECE, Federated, Goodhue, Mcleod, NIPCO, Buckeye, PowerSouth, Wabash, NOVEC, Lower Valley, Cass County, Bristol, Power Valley, Central Georgia EMC, Pierce Pepin, Eau Claire, Black Hills, Verendrye, Thumb Electric, SCIREMC, Tri-County, Shenandoah Valley, Adams, Tri-County, Flint, Dakota Valley and Northern Plains, United Electric, Iowa Lakes, Itasca-Mantrap, Kandiyohi, and Minnesota Valley Electric.

Verendrye, No. 97 at p. 1; Dakota Energy, No. 98 at p. 1; Minnesota Rural, No. 99 at p. 1; Minnesota Valley, No. 101 at p. 1; McLeod, No. 102 at p. 1; Lake Country, No. 108 at p. 1; Mountain Electric, No. 109 at p. 1; Leavenworth-Jefferson, No. 110 at p. 1; Riverland, No. 111 at p. 1; Meeker, No. 112 at p. 1; Federated, No. 113 at p. 1; Iowa Lakes, No. 114 at p. 1; Thumb Electric, No. 115 at p. 1; South Central Indiana REC, No. 117 at p. 1; Tri-County Electric, No. 118 at p. 1; Nobles, No. 119 at p. 1; Lake Region, No. 120 at p. 1; Sioux Valley, No. 123 at p. 1; East Central, No. 124 at p. 1; Jackson County, No. 126 at p. 1; Duck River, No. 127 at p. 1; Shenandoah Valley, No. 128 at p. 1; Adams, No. 129 at p. 1; Goodhue, No. 130 at p. 1; Adams-Columbia, No. 132 at p. 1; Stearns, No. 134 at p. 1; Kandiyohi, No. 138 at p. 1; Shelby, No. 143 at p. 1; Beltrami, No. 145 at p. 1: Habersham, No. 146 at p. 1; Flint, No. 147 at p. 2; Dakota Valley and Northern Plains, No. 149 at p. 1; Aurelia, No. 151 at p. 2; United Electric, No. 153 at p. 1)

Many utilities stated that ETS water heating programs have become a popular low-cost option for their members who do not have access to natural gas, as it allows them to heat water using electricity at lower cost. (Itasca-Mantrap, No. 7 at p. 2; Northwest Iowa Power, No. 8 at p. 2; Barron, No. 11 at p. 1; Clark, No. 13 at p. 2; Woodbury, No. 14 at p. 2; North West, No. 15 at p. 1; Bayfield, No. 16 at p. 2; Cass County, No. 24 at p. 2. Price, No. 30 at p. 2; Dakota Electric, No. 36 at p. 5; Nishnabotna Valley REC, No. 37 at p. 2; Great River, No. 41 at p. 2; Otter Tail, No. 44 at p. 2; Dairyland, No. 48 at p. 2; Wright-Hennepin, No. 51 at p. 2; Pierce Pepin, No. 54 at p. 2; Dunn, No. 55 at p. 2; People's Energy, No. 66 at p. 2; Eau Claire, No. 69 at p. 1; Freeborn-Mower, No. 83 at p. 2; Minnesota Rural, No. 99 at p. 1; Minnesota Valley, No. 101 at p. 1; McLeod, No. 102 at p. 1; Riverland, No. 111 at p. 2; Meeker, No. 112 at p. 2; Federated, No. 113 at p. 2; Lake Region, No. 120 at p. 1; Goodhue, No. 130 at p. 1; Stearns, No. 134 at p. 1; Kandiyohi, No. 138 at p. 1)

Some utilities also stated that their ETS programs provide energy savings benefits because they serve as a tool to educate their members to help them understand and participate in programs that save energy and money for all members. (Union County, No. 17 at p. 1; Humboldt, No. 35 at p. 1; Dakota Electric, No. 36 at p. 2; Corn Belt, No. 39 at p. 2; Oconto, No. 50 at p. 2; Lake Country, No. 108 at p. 1; Jackson County, No. 126 at p. 2; Duck River, No. 127 at p. 2) Utilities stated that their ETS programs promote energy conservation because the amount of energy used for domestic hot water needs is determined more by the amount of water used than by the efficiency of the water heater, and customers who know they have limits on their hot water capacity tend to conserve hot water. (Rappahannock, No. 5 at p. 2; Northwest Iowa Power, No. 8 at p. 2; Woodbury, No. 14 at p. 2; North West, No. 15 at p. 1; Dakota Electric, No. 36 at p. 2; Nishnabotna Valley REC, No. 37 at p. 2;Otter Tail, No. 44 at p. 3; Dairyland, No. 48 at p. 6, Minnesota Valley, No. 101 at p. 2; McLeod, No. 102 at p. 2; Meeker, No. 112 at p. 1; South Central Indiana REC, No. 117 at p. 1; Lake Region, No. 120 at p. 2; Goodhue, No. 130 at p. 1; Stearns, No. 134 at p. 2; Kandiyohi, No. 138 at p. 2; Aurelia, No. 151 at p. 2)

Dairyland commented that studies indicate that participation in certain demand response programs can also result in an energy conservation effect. Specifically, Dairyland cited a 2005 study [11] of more than 200 demand response programs which found that dynamic pricing programs resulted in average total energy savings of four percent. The study also found that programs that combine dynamic pricing with automated control of consumer devices produce an even greater energy conservation effect, because according to the study, dynamic pricing programs cause participants to have a higher awareness of how they use energy, which, in turn, results in lower consumption. (Dairyland, No. 48 at p. 6)

Utilities also described how the utilities themselves benefit from an increased ability to manage peak load. Many utility companies indicated that the reduction or elimination of ETS programs would force utilities to spend more money on meeting increased peak generation needs. (Rappahannock, No. 5 at p. 2; PowerSouth, No. 10 at p. 1; Clark, No. 13 at p. 2; Bayfield, No. 16 at p. 2; Union County, No. 17 at p. 3; Lower Valley Energy, No. 19 at p. 2; Wabash, No. 21 at p. 2; Heartland, No. 22 at p. 2; Cass County, No. 24 at p. 3; East River, No. 25 at p. 1; Central, No. 28 at p. 2; Tri-County, No. 29 at p. 2; Price, No. 30 at p. 2; Bristol, No. 31 at p. 2; FEM, No. 32 at p. 2; BEC, No. 33 at p. 2; Central Georgia EMC, No. 42 at p. 2; ECSC, No. 45 at p. 2; Aiken, No. 46 at p. 2; Dairyland, No. 48 at pp. 2–3; Oconto, No. 50 at p. 2; Wright-Hennepin, No. 51 at p. 2; Lynches, No. 53 at p. 2; Pierce Pepin, No. 54 at p. 2; Dunn, No. 55 at p. 2; Palmetto, No. 56 at p. 2; Horry, No. 57 at p. 1; Fairfield, No. 59 at p. 2; Tri-State, No. 61 at p. 5; Santee, No. 62 at p. 2; Newberry, No. 64 at p. 2; People's Energy, No. 66 at p. 2; Eau Claire, No. 69 at p. 2; Edisto, No. 70 at p. 2; Coastal, No. 71 at p. 2; York, No. 73 at p. 2; Black River, No. 76 at p. 2; MCEC, No. 77 at p. 2; Blue Ridge, No. 82 at p. 2; Freeborn-Mower, No. 83 at p. 2; APPA, No. 84 at p. 2; Clark Public Utilities, No. 90 at p. 1; Mountain Electric, No. 109 at p. 1; Tri-County Electric, No. 118 at p. 2; Sioux Valley, No. 123 at p. 2; East Central, No. 124 at p. 1; Jackson County, No. 126 at p. 2; Habersham, No. 146 at p. 1; Flint, No. 147 at p. 3)

A number of utility companies also argued that ETS programs benefit the electric grid by improving reliability and reducing system losses. Commenters stated that these effects are the result of improved utilization of the generation and transmission system infrastructure and improved system load factors. (Buckeye, No. 3 at pp. 1–3; Codington-Clark, No. 4 at p. 1; Itasca-Mantrap, No. 7 at p. 1; PowerSouth, No. 10 at p. 2; Union County, No. 17 at p. 3; Allamakee-Clayton, No. 18 at p. 2, Lower Valley Energy, No. 19 at p. 1–2; Wabash, No. 21 at p. 2; Heartland, No. 22 at p. 1; South Central, No. 23 at p. 1; Cass County, No. 24 at p. 2; East River, No. 25 at p. 2; Lyon-Lincoln, No. 27 at p. 1–2; Central, No. 28 at p. 1; Tri-County, No. 29 at p. 2; Bristol, No. 31 at p. 2; FEM, No. 32 at p. 1; BEC, No. 33 at p. 1; Powell Valley, No. 34 at p. 2; Dakota Electric, No. 36 at p. 3; Corn Belt, No. 39 at p. 2; Dairyland, No. 48 at p. 2; Clay-Union, No. 40 at p. 1; Great River, No. 41 at p. 1; No. 48 at p. 3; Central Georgia EMC, No. 42 at p. 1; Otter Tail, No. 44 at p. 2; ECSC, No. 45 at p. 1; Aiken, No. 46 at p. 1; Connexus, No. 47 at p. 2; Pee Dee, No. 49 at p. 1; Oconto, No. 50 at p. 2; Lynches, No. 53 at p. 1; Palmetto, No. 56 at p. 2; Horry, No. 57 at p. 1; Joint Utility Commenters, No. 58 at p. 17; Fairfield, No. 59 at p. 2; NEMA, No. 60 at p. 2; Tri-State, No. 61 at p. 5; Santee, No. 62 at p. 2; Newberry, No. 64 at p. 1; MECA, No. 67 at p. 1; Edisto, No. 70 at p. 1; Coastal, No. 71 at p. 1; York, No. 73 at p. 1; Black River, No. 76 at p. 1; MCEC, No. 77 at p. 2; Prairie, No. 78 at p. 1; ALP, No. 79 at p. 1; Blue Ridge, No. 82 at p. 2; NOVEC, No. 91 at p. 1; Wright-Hennepin, No. 51 at p. 2; Black Hills, No. 96 at p. 1; Verendrye, No. 97 at p. 1; Dakota Energy, No. 98 at p. 1; Lake Country, No. 108 at p. 1; Mountain

[11] Chris King and Dan Delurey, *Efficiency and Demand Response: Twins, Siblings, or Cousins? Analyzing the conservation effects of demand response programs.* Public Utilities Fortnightly, March 2005. Available at: *http://www.demandresponsecommittee.org/resource-1009/efficiency%20and%20demand%20response%20puf%2005%2003.pdf.*

Electric, No. 109 at p. 1; Meeker, No. 112 at p. 1; Federated, No. 113 at p. 1; Iowa Lakes, No. 114 at p. 1; Thumb Electric, No. 115 at p. 1; South Central Indiana REC, No. 117 at p. 1; Tri-County Electric, No. 118 at p. 1; Nobles, No. 119 at p. 1; Lake Region, No. 120 at p. 1; Sioux Valley, No. 123 at p. 1; Jackson County, No. 126 at p. 2; Duck River, No. 127 at p. 2; Shenandoah Valley, No. 128 at p. 1; Adams, No. 129 at p. 1; Senator John Thune, No. 137 at p. 1; Shelby, No. 143 at p. 1; Habersham, No. 146 at p. 1; Flint, No. 147 at p. 3; Dakota Valley and Northern Plains, No. 149 at p. 1; United Electric, No. 153 at p. 1) Several utilities also mentioned that their load control program can help facilitate the restoration of electric service during extreme weather emergencies. (Powell Valley, No. 34 at p. 2; Blue Ridge, No. 82 at p. 1; NOVEC, No. 91 at p. 2; United Electric, No. 153 at p. 1)

According to utility companies, the reduction in energy usage during peak times from ETS programs allows the utilities to increase utilization of more efficient generation facilities while simultaneously providing a method of integrating intermittent renewable energy sources into the electric grid. (Central Georgia EMC, No. 42 at p. 2; Codington-Clark, No. 4 at p. 2; Itasca-Mantrap, No. 7 at p. 1; Northwest Iowa Power, No. 8 at p. 2; Barron, No. 11 at p. 1; Clark, No. 13 at p. 1; Woodbury, No. 14 at p. 2; North West, No. 15 at p. 2; Bayfield, No. 16 at p. 1; Allamakee-Clayton, No. 18 at p. 2; Lower Valley Energy, No. 19 at p. 2; AO Smith, No. 20 at p. 1; Wabash, No. 21 at p. 2; South Central, No. 23 at p. 2; East River, No. 25 at p. 2; Richland, No. 26 at p. 3; Lyon-Lincoln Electric Cooperative, No. 27 at p. 2; Price, No. 30 at p. 1; BEC, No. 33 at p. 3; Humboldt, No. 35 at p. 1; Dakota Electric, No. 36 at p. 2; Nishnabotna Valley REC, No. 37 at p. 2; Great River, No. 41 at p. 3; Otter Tail, No. 44 at p. 3; Connexus, No. 47 at p. 1; Dairyland, No. 48 at p. 3; Midland, No. 52 at p. 2; Pierce Pepin, No. 54 at p. 2; Dunn, No. 55 at p. 2; Tri-State, No. 61 at p. 2; People's Energy, No. 66 at p. 2; MECA, No. 67 at p. 1; Eau Claire, No. 69 at p. 1; EPRI, No. 74 at p 2–4; Prairie, No. 78 at p. 2; Freeborn-Mower, No. 83 at p. 2; Nebraska Public Power, No. 88 at p. 1; Corn Belt, No. 39 at p. 2; Clay-Union, No. 40 at p. 2; Wright-Hennepin, No. 51 at p. 2; HTP, No. 87 at p. 1; NOVEC, No. 91 at p. 4; Black Hills, No. 96 at p. 2; Minnesota Rural, No. 99 at p. 1; Minnesota Valley, No. 101 at p. 1; McLeod, No. 102 at p. 1; Lake Country, No. 108 at p. 1; Riverland, No. 111 at p. 1; Meeker, No. 112 at p. 2; Federated, No. 113 at p. 2; Nobles, No. 119 at p. 1; Lake Region, No. 120 at p. 1; Congressman Dan Burton, No. 122 at p. 1; East Central, No. 124 at p. 2; Goodhue, No. 130 at p. 2; Stearns, No. 134 at p. 2; Senator John Thune, No. 137 at p. 1; Beltrami, No. 145 at p. 1; Habersham, No. 146 at p. 3; Aurelia, No. 151 at p. 2)

After considering the information presented by stakeholders regarding the benefits of ETS programs to consumers, utilities, and the Nation, DOE is persuaded by the information submitted by the utility companies given their expertise in administering demand response programs, regarding the benefits of ETS programs. DOE believes that the evidence presented indicates that these programs provide a number of valuable benefits to consumers, utilities, and the Nation. As a result, DOE agrees with the majority of commenters that action should be taken to mitigate the impacts of the April 2010 final rule standard levels on utility ETS programs in order to help preserve these benefits, if no practical alternatives exist to allow for the continuation of ETS programs in the absence of large-volume ERWHs. Accordingly, DOE considered whether practical alternatives exist that would allow the existing ETS programs to continue to be effective despite the potential unavailability of large volume ERWHs. DOE's consideration of this issue, as well as comments received, are discussed in section 0.

2. Alternatives to Large-Volume Electric Resistance Water Heaters To Serve the Needs of ETS Programs

DOE recognizes that participants in ETS programs need more hot water storage capacity than they would require absent their participation in such programs. However, as noted in the June 2012 RFI, DOE believes that there are potential alternatives that may be able to provide a comparable amount of water storage capacity required for these programs. These potential alternatives include large-volume HPWHs and multiple (two or more) small-volume ERWHs. A number of stakeholders argued that heat pump water heaters and multiple small-volume water heaters are not well-suited for ETS programs and would not be a viable replacement for large-volume ERWHs in these applications. The points that the commenters raised are discussed below.

Many utility company commenters emphasized that managing a load control program is a balance of controlling load while maintaining customer satisfaction. Utilities stated that large volume ERWHs are required to ensure ETS program participants have enough hot water and remain satisfied with the program. These commenters asserted that smaller tanks reduce the amount of storage capacity and thus require more recharge time between control periods to ensure customers have enough hot water. Conversely, large capacity water heaters allow consumers to have enough hot water during control periods. (Buckeye, Inc. No. 3 at p. 1; Codington-Clark, No. 4 at p. 2; Northwest Iowa Power, No. 8 at p. 2; PowerSouth, No. 10 at p. 2; Barron, No. 11 at p. 1; Clark, No. 13 at p. 1; Woodbury, No. 14 at p. 1; North West, No. 15 at p. 2; Bayfield, No. 16 at p. 2; Union County, No. 17 at p. 1; South Central, No. 23 at p. 1; Cass County, No. 24 at p. 3; East River, No. 25 at p. 2; Richland, No. 26 at p. 1; Lyon-Lincoln Electric Cooperative, No. 27 at p. 2; Price, No. 30 at p. 1; Bristol, No. 31 at p. 2; FEM, No. 32 at p. 2; Nishnabotna Valley REC, No. 37 at p. 2; Corn Belt, No. 39 at pp. 2–3; Clay-Union, No. 40 at p. 2; Great River, No. 41 at p. 1; Central Georgia EMC, No. 42 at p. 2; Otter Tail, No. 44 at p. 2; Wright-Hennepin, No. 51 at p. 1; Pierce Pepin, No. 54 at p. 2; Dunn, No. 55 at p. 1; Horry, No. 57 at p. 2; Fairfield, No. 59 at p. 2; Tri-State, No. 61 at p. 3; People's Energy, No. 66 at p. 2; Eau Claire, No. 69 at p. 1; Prairie, No. 78 at p. 2; Freeborn-Mower, No. 83 at p. 2; Black Hills, No. 96 at p. 2; Riverland, No. 111 at p. 1; Meeker, No. 112 at p. 1; Tri-County Electric, No. 118 at p. 2; Nobles, No. 119 at p. 2; Sioux Valley, No. 123 at p. 2; East Central, No. 124 at p. 2; Jackson County, No. 126 at p. 1; Goodhue, No. 130 at p. 1;Aurelia, No. 151 at p. 2; United Electric, No. 153 at p. 2)

A number of parties stated that the heat pump unit is, by itself, incapable of heating water to the temperatures needed for ETS programs. (PowerSouth, No. 10 at p. 3; Barron, No. 11 at p. 2; Clark, No. 13 at p. 2; Bayfield, No. 16 at p. 2; Allamakee-Clayton, No. 18 at p. 2; A. O. Smith, No. 20 at p. 2; Richland, No. 26 at p. 3; Price, No. 30 at p. 2; Bristol, No. 31 at p. 1; Great River, No. 41 at p. 4; Dairyland, No. 48 at p. 4; Pierce Pepin, No. 54 at p. 2; Dunn, No. 55 at p. 2; Joint Utilities, No. 58 at p. 13; People's Energy, No. 66 at p. 2; Eau Claire, No. 69 at p. 2; Vaughn, No. 72 at p. 6; ALP, No. 79 at p. 1; Freeborn-Mower, No. 83 at p. 2; APPA, No. 84 at p. 2; Clark Public Utilities, No. 90 at p. 1; NOVEC, No. 91 at p. 4; Riverland, No. 111 at p. 2; Adams-Columbia, No. 132 at p. 2; Habersham, No. 146 at p. 3)

GE and the Northwest Advocates comment noted that using the electric resistance elements of an HPWH, it is possible to reach higher temperatures as

well as heat the water faster. (GE, No. 85 at p. 3; Northwest Advocates, No. 89, at p. 4) AO Smith commented that not all HPWHs have electric resistance elements that are large enough to allow them to achieve the necessary temperatures for ETS programs. But AO Smith also stated that even for HPWHs that do have a resistance element that is large enough to achieve the needed tank temperature, the unit would be operating like a very expensive ERWH. (Rappahannock, No. 5 at p. 2; A. O. Smith, No. 20 at p. 2; Great River, No. 41 at p. 4; Dairyland, No. 48 at p. 4; Joint Utilities, No. 58 at p. 16; NEMA, No. 60 at p. 4; EPRI, No. 74 at p. 3; NOVEC, No. 91 at p. 4; Adams-Columbia, No. 132 at p. 2; Habersham, No. 146 at p. 3; Dakota Valley and Northern Plains, No. 149 at p. 1; ECE, No. 124 at p. 3)

DOE believes that most HPWHs are technically capable of heating water to the temperatures needed for ETS programs, but would need to use the electric resistance elements in order to heat the tank to temperatures above the maximum temperature limits of current HPWH refrigerants. The need to use the electric resistance element would lower overall efficiency and reduce the energy and cost savings that would otherwise result from the use of a HPWH. DOE has not attempted to quantify such energy and cost savings differences in this NPRM, but could do so in evaluating specific waiver requests.

Several interested parties noted that use of HPWHs in ETS programs would lead to deterioration of the compressor due to frequent on/off cycling for demand response purposes, and the frequent on/off cycle would also reduce the efficiency of the HPWH. (PowerSouth, No. 10 at p. 3; Barron, No. 11 at p. 2; Clark, No. 13 at p. 2; Bayfield, No. 16 at p. 2; Allamakee-Clayton, No. 18 at p. 2; Richland, No. 26 at p. 3; Tri-Country, No. 29 at p. 2; Price, No. 30 at p. 2; Powell Valley, No. 34 at p. 3; Great River, No. 41 at p. 3; Dairyland, No. 48 at p. 4; Pierce Pepin, No. 54 at p. 2; Dunn, No. 55 at p. 2; Joint Utilities, No. 58 at p. 14; NEMA, No. 60 at p. 3; People's Energy, No. 66 at p. 2; Eau Claire, No. 69 at p. 2; EPRI, No. 74 at p. 3; ALP, No. 79 at p. 1; Freeborn-Mower, No. 83 at p. 2; APPA, No. 84 at p. 2; Clark Public Utilities, No. 90 at p. 1; NOVEC, No. 91 at p. 4; Riverland, No. 111 at p. 2; Federated, No. 113 at p. 2; Habersham, No. 146 at p. 3) EPRI stated that using variable speed compressors in HPWHs is a solution to the start-stop operation problem, but additional research is needed in order to understand whether this HPWH design can yield efficiency gains and emerge as a cost-effective solution for customers and the grid. (EPRI, No. 74 at p. 3)

DOE understands that while a HPWH might cycle frequently in some ETS applications, the minimum run times for existing HPWHs are sufficiently long (30 minutes) that on/off cycling is unlikely to lead to deterioration of the compressor. DOE agrees that variable speed compressors may be useful, but notes that the benefits of this technology have not yet been demonstrated and the cost of this option is still uncertain.

Several stakeholders stated that using a vapor-compression cycle to heat water increases operating time compared to electric resistance heating, so there would be a smaller time window for load reduction and less opportunity for load shifting. (Buckeye, No. 3 at p. 2; Codington-Clark, No. 4 at p. 2; Bayfield, No. 16 at p. 2; Union County, No. 17 at p. 3; A. O. Smith, No. 20 at p. 4; Cass County, No. 24 at p. 4; East River, No. 25 at p. 2; Richland, No. 26 at p. 3; Lyon-Lincoln, No. 27 at p. 2; Corn Belt, No. 39 at p. 3; Clay-Union, No. 40 at p. 2; Great River, No. 41 at p. 3; ECSC, No. 45 at p. 3; Dairyland, No. 48 at p. 4; Pee Dee, No. 49 at p. 2; Lynches, No. 53 at p. 3; Pierce Pepin, No. 54 at p. 2; Palmetto, No. 56 at p. 2; Joint Utilities, No. 58 at p. 16; Fairfield, No. 59 at p. 3; NEMA, No. 60 at p. 3; York, No. 73 at p. 4; EPRI, No. 74 at p. 4; Black River, No. 76 at p. 2; Prairie, No. 78 at p. 2; ALP, No. 79 at p. 1; Blue Ridge, No. 82 at p. 2; Freeborn-Mower, No. 83 at p. 2; APPA, No. 84 at p. 2; Clark Public Utilities, No. 90 at p. 1; NOVEC, No. 91 at p. 4; Nobles, No. 119 at p. 2; Adams-Columbia, No. 132 at p. 2; Habersham, No. 146 at p. 3; ECE, No. 124 at p. 2; FEM, No. 32 at p. 2; Iowa Lakes, No. 114 at p. 3; Aiken, No. 46 at p. 2; Itasca-Mantrap, No. 7 at p. 2)

DOE agrees that HPWHs have slower recovery when operating in heat pump only mode, but believes that this issue could be overcome by utilizing the backup electric resistance elements or by using water heaters with even larger rated volumes than currently used in ETS programs. However, DOE notes that if prolonged operation using electric resistance elements is required, the overall efficiency of the water heater will be lowered.

Several parties stated that HPWHs have additional total installed cost, which makes them less economically feasible for ETS programs. (PowerSouth, No. 10 at p. 3; Bayfield, No. 16 at p. 2; Cass County, No. 24 at p. 5; East River, No. 25 at p. 2; Richland, No. 26 at p. 2; Tri-Country, No. 29 at p. 3; BEC, No. 33 at p. 3; Dakota Electric, No. 36 at p. 4; Otter Tail, No. 44 at p. 3; ECSC, No. 45 at p. 3; Connexus, No. 47 at p. 1; Dairyland, No. 48 at p. 5; Pee Dee, No. 49 at p. 2; Wright-Hennepin, No. 51 at p. 1; Lynches, No. 53 at p. 3; Palmetto, No. 56 at p. 2; Horry, No. 57 at p. 4; Joint Utilities, No. 58 at p. 14; Fairfield, No. 59 at p. 3; Newberry, No. 64 at p. 3; Edisto, No. 70 at p. 3; Coastal, No.71 at p. 3; Vaughn, No. 72 at p. 2 to 3; York, No. 73 at p. 2; Black River, No.76 at p. 3; MCEC, No. 77 at p. 2; Blue Ridge, No. 82 at p. 2; Clark Public Utilities, No. 90 at p. 1; NOVEC, No. 91 at p. 4; Verendrye, No. 97 at p. 1; Dakota Energy, No. 98 at p. 1; Minnesota Rural, No. 99 at p. 1; Mountain Electric, No. 109 at p. 1; Leavenworth-Jefferson, No. 110 at p. 1; Meeker, No. 112 at p. 2; Iowa Lakes, No. 114 at p. 2; Federated, No. 115 at p. 2; Thumb Electric, No. 115 at p. 1; SCI REMC, No. 117 at p. 1; Tri-County, No. 118 at p. 1; Nobles, No. 119 at p. 1; LREC, No. 120 at p. 1; Sioux Valley, No. 123 at p. 1; Jackson County, No. 126 at p. 2; Adams-Columbia, No. 132 at p. 2; People's Energy, No. 142 at p. 1; Beltrami, No. 145 at p. 1; Habersham, No. 146 at p. 3; Flint, No. 147 at p. 1; Aurelia, No. 151 at p. 1; United Electric, No. 153 at p. 1; ECE, No. 124 at p. 2; Iowa Lakes, No. 114 at p. 3; Aiken, No. 46 at p. 2; Santee, No. 62 at p. 1)

DOE agrees that a large HPWH would have much higher installed cost than a large ERWH. The extent to which this would be balanced by lower operating costs would vary among ETS programs. DOE notes this increase in first installed cost could have an adverse impact on utility ETS programs, in which customer participation is voluntary, because a utility customer may be less willing to take on the additional installed cost of a HPWH to participate in the program.

Several of the interested parties stated that HPWHs require larger installation space and larger surrounding air volume. Some of the parties also stated that such requirements could force the consumer to switch to two smaller ERWHs, which would lead to increased costs for purchase and maintenance (as compared to a large-volume ERWH) and lower efficiency. (Rappahannock, No. 5 at p. 2; PowerSouth, No. 10 at p. 3; Woodbury, No. 14 at p. 1; North West, No. 15 at p. 1; Bayfield, No. 16 at p. 2; Union County, No. 17 at p. 3; Cass County, No. 24 at p. 3; Lyon-Lincoln, No. 27 at p. 2; Tri-Country, No. 29 at p. 4; Price, No. 30 at p. 2; Bristol, No. 31 at p. 1; BEC, No. 33 at p. 2; Dakota Electric, No. 36 at p. 2; Corn Belt, No. 39 at p. 3; Clay-Union, No. 40 at p. 2; Otter Tail, No. 44 at p. 3; ECSC, No. 45 at p. 3; Connexus, No. 47 at p. 1; Pee Dee, No. 49 at p. 2; Lynches, No. 53 at p. 3; Dunn, No. 55 at p. 2; Palmetto, No.

56 at p. 2; Horry, No. 57 at p. 4; Joint Utilities, No. 58 at p. 19; Fairfield, No. 59 at p. 3; NEMA, No. 60 at p. 4; Newberry, No. 64 at p. 2; Eau Claire, No. 69 at p. 3; Edisto, No. 70 at p. 3; Coastal, No. 71 at p. 3; Vaughn, No. 72 at p. 5; York, No. 73 at p. 2; Black River, No. 76 at p. 3; MCEC, No. 77 at p. 2; Blue Ridge, No. 82 at p. 2; Freeborn-Mower, No. 83 at p. 2; APPA, No. 84 at p. 2; Clark Public Utilities, No. 90 at p. 1; NOVEC, No. 91 at p. 5; Minnesota Valley, No. 101 at p. 1; Federated, No. 113 at p. 2; Tri-County, No. 118 at p. 2; Nobles, No. 119 at p. 2; Shenandoah Valley, No. 128 at p. 2; Goodhue, No. 130 at p. 1; Adams-Columbia, No. 132 at p. 2; Stearns, No. 134 at p. 1; Habersham, No. 146 at p. 3; Flint, No. 147 at p. 1; Aurelia, No. 151 at p. 1; McLeod, No. 102 at p. 1; ECE, No. 124 at p. 2; Kandiyohi, No. 138–141 at p. 1; FEM, No. 32 at p. 2; Nishnabotna Valley REC, No. 37 at p. 1; Iowa Lakes, No. 114 at p. 3; Aiken, No. 46 at p. 2; Santee, No. 62 at p. 2) AO Smith stated that using two smaller water heaters in place of one large water heater for ETS programs is technologically achievable, but it would increase the complexity and cost of the control scheme and installation. (AO Smith, No. 20 at p. 3) Several utilities noted that a large portion of consumers enrolled in their ETS programs live in mobile homes, which are particularly challenging to retrofit with HPWHs due to space constraints. (Tri-Country, No. 29 at p. 2; BEC, No. 33 at p. 3; ECSC, No. 45 at p. 3; Pee Dee, No. 49 at p. 2; Lynches, No. 53 at p. 3; Palmetto, No. 56 at p. 2; Fairfield, No. 59 at p. 3; Newberry, No. 64 at p. 3; Edisto, No. 70 at p. 3; Coastal, No. 71 at p. 3; York, No. 73 at p. 2; Black River, No. 76 at p. 3; MCEC, No. 77 at p. 3; Blue Ridge, No. 82 at p. 2; Adams-Columbia, No. 132 at p. 2; Aiken, No. 46 at p. 2; Santee, No. 62 at p. 3)

DOE believes that the use of two smaller water heaters in place of one large water heater for ETS programs could be a viable option in some cases. However, DOE agrees that there are situations where a consumer in an ETS program would have difficulty physically accommodating a HPWH or multiple smaller water heaters, resulting in higher installation expenses.

The Northwest Advocates commented that HPWHs can provide the same load shifting and ancillary services (load following and regulation) and benefits that are provided by ERWHs. They also stated that with additional programming (and no additional material costs) the HPWH controls can be adapted to provide ETS capabilities and the same functionality as resistance-only grid-interactive water heaters. (Northwest Advocates, No. 89, at p. 2) Similarly, GE argued that because all HPWHs use electronic controls as opposed to the electromechanical controls found on most standard electric water heaters, these products can much more easily interact with the grid and provide simpler ETS capability. (GE, No. 85 at p. 2) GE stated that the concerns that HPWHs will not be able to fill the same role as large volume resistance water heaters are not technologically justified. GE added that new larger capacity HPWH models may need to be produced, but there is no inherent reason why that cannot be done. (GE, No. 85 at p. 3)

DOE believes that from a technical perspective HPWHs could substitute for ERWHs in ETS programs. Future improvements in HPWH design such as variable speed compressors, use of higher temperature refrigerants and refinements to controls may improve HPWHs' suitability for use in ETS programs. DOE also believes that multiple smaller ERWHs are a feasible alternative to a large-volume ERWH, but may lower the system efficiency of the water heating process and may not be an option in space constrained installations. Additionally, DOE believes that the installed cost of currently available HPWH models or multiple small-volume ERWHs instead of a single large-volume ERWH and the need to often operate HPWHs in electric resistance mode to serve the demands of ETS programs could limit the attractiveness of participation in ETS programs. Additional analysis and data would be needed to determine the precise effect of unavailability of large-volume ERWHs on participation in ETS programs.

Based on the above considerations, DOE concludes that products that are currently available on the market that meet the April 2010 standard levels may not be practical to fulfill the needs of utility ETS programs. Therefore, as discussed immediately below, DOE considered two approaches—establishing a separate product class and establishing a waiver process. See sections 3 and 0, respectively.

3. Potential for a Separate Product Class for ''Grid-Interactive'' Electric Storage Water Heaters

Twenty-three utility companies and associations, four manufacturers, one trade association (NEMA), and three U.S. Congressmen recommended that DOE establish a separate product class for grid interactive water heaters. (Itasca-Mantrap No. 7 at p. 2; Barron, No. 11 at p. 2; Clark, No. 13 at p. 2; Bayfield, No. 16 at p. 2; East River, No. 25 at p. 3; Richland, No. 26 at p. 3; Lyon-Lincoln Electric Cooperative, No. 27 at p. 3; Price, No. 30 at p. 2; Dakota Electric, No. 36 at p. 5; Corn Belt, No. 39 at p. 3; Otter Tail, No. 44 at p. 4; Dairyland, No. 48 at p. 6; Pierce Pepin, No. 54 at p. 2; Dunn, No. 55 at p. 2; Joint Utilities, No. 58 at p. 4; People's Energy, No. 66 at p. 2; MECA, No. 67 at p. 1; Eau Claire, No. 69 at p. 3; ALP, No. 79 at p. 1; Freeborn-Mower, No. 83 at pp. 2–3; APPA, No. 84 at p. 3; HTP, No. 87 at p. 1; Nebraska Public Power, No. 88 at p. 1; Rheem, No. 86 at p. 2; Giant Factories, No. 65 at p. 2; AO Smith [12], No. 20 at p. 2; NEMA, No. 60 at p. 4; Congressman Todd Rokita, No. 93 at p. 1; Riverland, No. 111 at p. 2; Congressman Dan Burton, No. 122 at p. 1; Senator John Thune, No. 137 at p. 1)

The Joint Utilities urged the Secretary to use the authority granted pursuant to 42 U.S.C. 6295(o)(2)(A) to develop a new standard for large-volume electric resistance water heaters that interact with the grid. Specifically, the Joint Utilities believe that the grid connectivity feature of certain large volume ERWHs differentiates them from the broader ERWH product class and warrants a separate classification and standard. (Joint Utilities, No. 58 at p. 4) The Joint Utilities further argued that grid-interactive water heaters are clearly distinguishable from water heaters that are not responsive to grid signals, and proposed a definition (discussed below) that would distinguish those products from other water heaters. The Joint Utilities also stated that grid-interactive water heaters provide uninterrupted hot water to consumers, large amounts of energy storage during times when there is an excess of unused, available renewable energy, the ability to reduce load on the grid to enhance reliability or reduce congestion on the transmission grid, and reliability services in the form of frequency regulation or other grid ancillary services, all of which make this specific group of water heaters different from the general class of electric water heaters, and thus deserving of a new classification pursuant to Section 6295 (o)(2)(A). (Joint Utilities, No. 58 at p. 17)

The Joint Utilities proposed that a ''Grid-Interactive Water Heater'' be defined as a separate product class consisting of products with the following characteristics: (1) A storage

[12] AO Smith's comment stated that they ''would not object to'' a new product class. DOE interprets this as implying support for this approach because AO Smith also indicated that it supports the continued existence of electric resistance storage water heaters with storage volumes above 55 gallons, disagreed with all of the other options listed, and did not offer an alternative.

tank greater than 55 gallons; (2) a control device capable of receiving communication from a grid operator, electric utility, or other energy services company that provides real-time control of the heating element; (3) evidence that the appliance owner is enrolled in a grid operator, electric utility, or other energy services company program to provide demand response or related interactive electric grid services; (4) a thermostatic mixing valve if the water heater is capable of heating water greater than 120 degrees Fahrenheit. (Joint Utilities, No. 58 at pp. 17–18)

Further, the Joint Utilities supplemental comment suggested that if ''grid interactive water heaters'' were established as a separate product class and required ongoing reporting from utilities in order to track manufacturer sales versus utility installations, this should be done through the addition of a single question onto the Energy Information Administration (EIA) forms EIA–861 and EIA–861S in order to minimize burdens on utilities and DOE/EIA. The Joint Utility commenters proposed adding the following question: ''If you have a demand side management (DSM) program for grid-interactive water heaters (as defined by DOE), how many grid-interactive water heaters were added to your program this/last year?'' The Joint Utilities commented that the information collected by EIA could be made available to DOE for tracking purposes. (Joint Utilities Supplemental, No. 156 at pp. 1–2)

Rheem commented on the four criteria of the proposed product class for ''grid-interactive water heater.'' Rheem expressed support for the first requirement proposed by the Joint Utilities in the definition of ''grid-interactive water heater'' requiring such water heaters to have a storage volume of greater than 55 gallons, but noted this requirement may have a limiting effect on the potential application and associated benefits in the field. Rheem also supported the second criterion proposed by the Joint Utilities that a control device must be present with the understanding that these control devices are provided in the field by the utility to the consumer in support of their ETS program, giving the utility the ability to turn the water heater on or off. Rheem also agreed with the third criterion proposed by utilities (*i.e.,* agreement to be enrolled in a grid operator, electric utility, or other energy services company program to provide demand response or other electric grid services) with the additional clarification that the agreement is a contractual arrangement between utility and consumer, not part of a product definition. Lastly, Rheem did not support the requirement of a mixing valve at 120 °F, noting that almost all ERWHs can be adjusted to heat water to 170 °F and most if not all manufacturers encourage use of a mixing valve. Rheem stated that requiring a mixing valve at 120 °F for this product class only would be inconsistent given that other product classes and the majority of residential electric storage water heaters do not require such a device. (Rheem, No. 86 at p. 3)

AO Smith also commented on the four criteria for defining a ''grid-interactive water heater'' product class, as proposed by the Joint Utilities. AO Smith supported the first and third criteria listed above (*i.e.,* that the water heater must have a storage volume greater than 55 gallons, and that the water heater must be enrolled in a utility grid-interactive program). However, AO Smith expressed concern with the criterion that the unit must be equipped with a communication-capable control device due to the large number of different devices currently in use with differing operating characteristics and communication protocols. AO Smith stated that unless there was a standardized communication protocol and operational algorithm, it would be difficult for water heater manufacturers to justify making a small number of water heaters for ETS programs with each customer (utility) requiring a different control device in an even smaller number of heaters. AO Smith stated that it would support the criterion if it were altered to provide as an option that the water heater may be without a control device if it has a provision for connection to a utility-provided communication device that would interact with the water heater control to provide equivalent grid communication. Regarding the fourth proposed criterion, AO Smith stated that it does not object to the inclusion of thermostatic mixing valve in the definition, but noted that almost all ERWHs can be adjusted to 170 °F and commented that 120 °F is too low for many purposes. AO Smith expressed preference for a criteria that specifies that since the heater will be heated to a high water temperature during off-peak periods, a means (such as a thermostatic mixing valve) should be provided to adjust the outlet water to the desired delivery temperature, which in most cases will be less than storage temperature. (AO Smith, No. 20 at p. 2)

Contrary to the Joint Utilities' and manufacturers' position, the Joint Efficiency Advocates stated that a separate product class for grid-interactive water heaters is not appropriate. (Joint Efficiency Advocates, No. 68 at p. 1) The Joint Efficiency Advocates stated that given the novelty of grid-interactive water heaters, the variety of possible applications, and the variety of possible product designs and features, it would be unclear how to meaningfully define such a product class to enable the benefits while reducing risk and minimizing costs. (Joint Efficiency Advocates, No. 68 at p. 3) The Joint Efficiency Advocates were also concerned that there would be a significant risk that a new product class may be abused as a loophole to bypass the efficiency standards, rather than to deliver grid benefits. The Joint Efficiency Advocates pointed out that the benefits remain unquantified and generally unassessed, making it impossible to consider whether the benefits outweigh the risks and costs. Lastly, the Joint Efficiency Advocates stated that creating a new product class would likely run afoul of the ''anti-backsliding'' provision. The Joint Efficiency Advocates argued that all water heaters, including those that include grid interactive controls, are now subject to the 2010 standards, which prevents DOE from creating a new class with lower standards for a grid interactive water heater. (Joint Efficiency Advocates, No. 68 at p. 3)

GE also argued against the creation of a product class for grid interactive water heaters, stating that it is not justified under DOE's criteria for establishing product classes since it would not preserve a utility that would otherwise be eliminated by the standard. (GE, No. 85 at p. 3) GE stated that even if a certain consumer utility is at risk, that concern should have been raised during the rulemaking when it could have been thoroughly evaluated by DOE and all interested parties. (GE, No. 85 at p. 3) Further, GE commented that grid interactive water heaters do not have capacity or other performance related features that HPWHs do not, or could not, have, and opined that creating a separate product class would impede development of the market for high-performing HPWH products. (GE, No. 85 at p. 3) GE also argued that DOE is prevented under the ''anti-backsliding'' provision at 42 U.S.C. 6295(o)(1) from amending the standard to waive its requirements as applicable to a subset of covered products, especially if doing so increases maximum allowable energy use or decreases minimum energy efficiency. (GE, No. 85 at pp. 4)

After considering the comments regarding the potential for establishing a separate product class for ''grid-

interactive water heaters'' as proposed by the Joint Utilities, DOE has tentatively concluded not to propose such an approach. In particular, DOE agrees with the Joint Efficiency Advocates and GE that under 42 U.S.C. 6295(o)(1), DOE is prohibited from promulgating any standard that increases the maximum allowable energy use or decreases minimum energy efficiency of a covered product. The standards established for electric water heaters in the April 2010 final rule apply to all electric water heaters meeting the applicable regulatory definitions. Therefore, establishing a separate product class for a segment of electric storage water heaters and setting a lower energy conservation standard level than the required energy efficiency of such products would be prohibited under the ''anti-backsliding'' provision contained in 42 U.S.C. 6295(o)(1). Accordingly, DOE has tentatively concluded that it will not propose to establish a separate product class for ''grid-interactive'' water heaters with energy conservation standards that are less stringent than those promulgated in the April 2010 final rule. However, DOE does agree with the suggestion by the Joint Utilities that the number of water heaters in ETS programs should be tracked, and that adding a question to the EIA–861 and EIA–861S forms are an appropriate way to achieve this goal while minimizing burdens on all parties. DOE's proposal in this regard is discussed further in section 0 below.

4. Potential for Establishing a Waiver Process

In the June 2012 RFI, DOE also requested comment on the potential for establishing a waiver process that would allow for production of limited number of large-volume ERWHs solely for ETS programs. Both the joint comment received from Joint Efficiency Advocates, ACEEE, NRDC, and ASAP, and the joint comment received from the Northwest Advocates, NEEA, NPCC, and BPA, generally supported a waiver system. (Joint Efficiency Advocates, No. 68 at p. 1; Northwest Advocates, No. 89 at p. 2) Several utility companies also indicated that the waiver option could potentially be a viable alternative, but most of the utility company commenters preferred the product class approach discussed above. (East River, No. 25 at p. 3; Lyon-Lincoln, No. 27 at p. 3; Bristol, No. 31 at p. 2; Corn Belt, No. 39 at p. 3; Otter Tail, No. 44 at p. 5)

The Joint Efficiency Advocates argued that a waiver approach is legal under 42 U.S.C. 7194(a) and could allow manufacturers to produce small quantities of large-volume ERWHs and sell them directly to utilities that operate such programs. (Joint Efficiency Advocates, No. 68 at p. 4) The Joint Efficiency Advocates stated that a waiver program has precedent and cited the waivers granted for small-duct, high-velocity central air conditioners from the standards for residential central air conditioners as an example. The Joint Efficiency Advocates stated that a waiver system would add flexibility and reduce the likelihood of loopholes, and would facilitate ongoing creativity and dynamism from the utility and manufacturing industries, given the ability to revisit waiver conditions. The Joint Efficiency Advocates argued that a waiver system would also encourage and facilitate ongoing assessment by DOE, industry, and other stakeholders, leading to greatly improved understanding of the benefits and costs of grid-interactive water heaters, and form the basis for well-informed future decisions of a more permanent nature. (Joint Efficiency Advocates, No. 68 at p. 4)

The Joint Efficiency Advocates stated that any waiver would need to be limited to cover units sold to utilities that actually have demand response programs, and the utilities must be required to sell or provide grid-interactive water heaters only to customers who agree to participate in the demand response program. In addition, the Joint Efficiency Advocates suggested that any application for waiver should have to demonstrate that it is impossible to operate a demand response program with water heaters that meet the standard. The Joint Efficiency Advocates also argued that waiver applications should be made jointly by a manufacturer and a utility. (Joint Efficiency Advocates, No. 68 at p. 4)

The Northwest Advocates stated that prior to determining whether to grant a waiver, DOE should determine the net economic benefits of such an action. (Northwest Advocates, No. 89 at p. 2) The Northwest Advocates also stated that the mechanism enforcing the conditions of any program waiver that may be established should be given very careful consideration because binding new homeowners to agreements made by previous homeowners has significant legal complications. The commenters also noted that the required level of program oversight and cost of enforcement should be considered. (Northwest Advocates, No. 89 at pp. 4–5) Similarly, Otter Tail stated that when customers move the water heater stays with the home, but the new homeowner may or may not want to have a controlled water heater that is part of an ETS program. (Otter Tail, No. 44 at p. 5)

The Joint Utilities, Rheem, and AO Smith generally opposed the option of establishing a waiver process. Opposition was primarily due to concerns about how distribution would be affected if the waiver were to require some control or direct distribution from a manufacturer to a utility program. AO Smith stated that not all water heater manufacturers sell directly to utilities, meaning the level of control DOE assumes the manufacturers possess may not exist. (AO Smith, No. 20 at p.3) Similarly, Rheem stated that a waiver type system concept cannot be managed effectively by a manufacturer, since a manufacturer has little to no distribution control over the intended application of its product. (Rheem, No. 86 at p. 3) Further, AO Smith argued that using a waiver system would introduce a very high degree of uncertainty to the manufacturer (and the utility) as to their business planning for such water heaters and has the potential to slow down the manufacturing process if a waiver must be granted each time a water heater is to be manufactured. AO Smith added that if the intent is to allow a ''blanket waiver,'' DOE should establish a standing program instead as both actions achieve the same end. (AO Smith, No. 20 at p.3)

The Joint Utilities comment pointed out that a number of regulatory proceedings at the state level led to utilities being required under state regulation to terminate programs where the utility was active in the sale of an appliance to the consumer. (Joint Utilities, No. 58 at p. 18) The Joint Utilities comment stated that if DOE appears to be reinstating utility appliance programs, it would be running afoul of years of state regulations and legislation, which would inevitably lead to litigation. (Joint Utilities, No. 58 at p. 18)

As noted above, several utility company commenters, while preferring the product class approach discussed in section III.A.3, indicated that the waiver option could potentially be a viable solution. (East River, No. 25 at p. 3; Lyon-Lincoln, No. 27 at p. 3; Bristol, No. 31 at p. 2; Corn Belt, No. 39 at p. 3; Otter Tail, No. 44 at p. 5) Otter Tail stated that although they are open to the concept of the waiver option, not all utilities' business models support the business of selling appliances and for the most part utilities do not compete with other retail businesses. (Otter Tail, No. 44 at p. 3) Two utilities stated that they sell water heaters directly to their participants. (Eau Claire, No. 69 at p. 2; Bristol, No. 31 at p. 2) Dakota Electric commented

that after unsuccessfully trying to sell small numbers of Rheem ''Marathon'' water heaters, Dakota Electric partnered with an independent small business water heater distributor that handles all of their member-owners' water heater supply needs. Dakota Electric stated that returning to small volume sales and the associated internal overhead costs, delivery and warranty problems would drive up the price to member-owners. (Dakota Electric, No. 36 at p. 4)

After considering the comments on the waiver process, DOE has tentatively concluded that a waiver system would achieve DOE's goal of mitigating the impacts of the April 2010 final rule on utility ETS programs, while also being allowable under EPCA. A waiver process will address the concerns raised by utility companies and has the added benefit of having the potential for frequent evaluation. Thus, DOE is proposing in this NPRM to establish a waiver system for large-volume electric storage water heaters. The waiver, if granted, would allow, for a one-year period, manufacturers to produce limited numbers of electric water heaters with storage volumes above 55 gallons exclusively for the purpose of installation in residences enrolled in a utility company electric thermal storage (ETS) program. Parties would be allowed to apply for additional one-year waivers in subsequent years. The proposed criteria and method for petitioning for a waiver, and the proposed requirements that any granted waivers will impose are discussed in section 0.

DOE recognizes the concerns of certain stakeholders with regard to the establishment of a waiver program. In particular, DOE believes that manufacturers, the Joint Utilities, and other utility companies made compelling arguments regarding the lack of control of the distribution chain, as well as local regulations that may prevent certain utilities from selling water heaters directly to consumers. For these reasons, DOE's proposed waiver program will not include any requirements that the manufacturer sell directly to the utility, or that the utility sell the units covered under waiver directly to the consumer. Also, recognizing that situations may occur where new homeowners move into a residence with a grid-interactive water heater installed but do not wish to participate in an ETS program or where a consumer purchases a water heater for use an ETS program but later decides not to participate, DOE is not including in its waiver program any criterion that the homeowner have an agreement to be enrolled in a utility ETS program. Rather, DOE is including other requirements to ensure that the waiver program is targeted, including an annual limit on the number of units to which the waiver will apply and a requirement that the water heater be shipped with the control device that will be used for the ETS program. These requirements are discussed further in section III.B.2.

In response to the comment from NEEA, NPCC, and BPA stating that DOE must consider the economic impacts of any waiver that is granted, DOE agrees that an economic analysis may provide helpful information in determining whether to grant a waiver, but also believes it may be infeasible to individually calculate the economic benefits for every waiver request received depending on the volume of requests.

B. Waiver Process

Any waiver process established by DOE must include a clear procedure for obtaining a waiver, with guidelines for circumstances under which the waiver will be granted, instructions regarding how to apply for and document the waiver, and a description of conditions that must be met for the waiver to be granted. The following sections describe the waiver process that DOE proposes to establish, including the criteria necessary to obtain a waiver, the requirements that must be met to comply with the waiver, and a process for reviewing the waiver to ensure its effectiveness in addressing the issue at hand.

1. Criteria for Obtaining a Waiver

In order to obtain a waiver that would allow for the manufacture and sale of limited numbers of electric water heaters with storage volumes above 55 gallons for a one year period exclusively for the purpose of installation in residences enrolled in a utility company ETS program, DOE proposes that manufacturers and/or utility companies, or a utility company and a manufacturer jointly, must request such a waiver from DOE. Further, the request must come from a manufacturer of water heaters and/or a utility company that administers an electric thermal storage program utilizing large-volume electric water heaters. No other parties may apply for a waiver. If the request is made individually by a manufacturer, it must identify each of the utility ETS programs for which the water heaters are intended to participate. Similarly, if the request is made by a utility, it must identify the manufacturer that would be responsible for producing the units.

To request an exception from the DOE energy conservation standards for residential water heaters, a manufacturer and/or utility company must submit a letter to the Assistant Secretary for Energy Efficiency and Renewable Energy detailing the waiver request. Descriptions of how to petition for the waiver, the information that should be contained in the request, and additional requirements that must be met if the waiver is granted are discussed in section 0.

2. Requirements and Method for Obtaining Waiver

DOE proposes that, if a manufacturer and/or utility company believes that it (they) can meet these requirements, in order to receive a waiver it (they) must first submit a letter to the Assistant Secretary for Energy Efficiency and Renewable Energy requesting that a waiver be granted. The waiver request should include the petitioning company contact information. If the application is filed jointly, it must contain contact information for all parties. If not filed jointly, the request must contain information about any additional entity (*i.e.,* manufacturer or utility) that will be a party to the waiver.

Second, the waiver should include the model information (manufacturer, brand, basic model number, rated storage volumes and energy factor for each basic model that the manufacturer plans to produce and the utility plans to use in an ETS program coinciding with the DOE certification record). In addition, the application must include a list of the utility names that administer each of the ETS programs for which the basic models subject to the waiver application will be utilized and the specific number of units for each ETS program which exemption from the standards is requested. The utility company that is a party to the request must submit information on the current stock of ERWHs in their ETS programs and any planned expansion of the programs that would justify the number of units requested to be covered by waiver. DOE proposes to limit the number of units for which the waiver would apply annually to reduce the likelihood of significant numbers of large-volume ERWHs being used in applications without ETS programs.

The waiver request must also include a description of the control device that will be used to control any potentially waiver-covered water heaters for the ETS program. The control device must be capable of receiving communication from a grid operator, electric utility, or other energy services company that provides real-time control of the heating element.

Upon reviewing the application, DOE will determine whether to grant the waiver. If such determination is positive, DOE will specify the residential water heater basic model (or models) that the waiver applies to and the number of units that are covered under the waiver, as well as the expiration date of that waiver. DOE will also specify an alternative minimum energy conservation standard that would apply to any models covered under waiver. DOE will notify the petitioner(s) in writing and the public through publication of a **Federal Register** notice once a decision is made regarding the status of a waiver request. DOE proposes the waiver would expire one calendar year after it is granted, after which time it will not be applicable. Consequently, if a manufacturer and/or utility company would like to continue the waiver for a longer period, DOE proposes that a new waiver application would need to be submitted each year to ensure a continued evaluation of the waivers.

In addition, DOE believes that in order to effectively enforce this waiver program, DOE must have some means of physically distinguishing between water heaters for ETS programs and other electric resistance water heaters. In order to ensure that water heaters manufactured under a waiver are intended for use in ETS programs and encourage their use in ETS programs, DOE proposes to require that the units for which a waiver is granted are shipped from the manufacturer with the ETS control device installed on the water heater or packaged with the water heater. DOE is aware that currently the control mechanism is typically provided by a third party manufacturer (*i.e.,* a manufacturer other than the water heater manufacturer) and is often installed by the utility company or a contractor to the utility company rather than the water heater original equipment manufacturer. In addition, DOE recognizes the concerns stated earlier in this document that there are a number of different control devices available, which may present difficulties to water heater manufacturers in installing these devices at the factory. However, DOE believes that without the control device being installed at the point of water heater manufacture, it would be difficult to ensure that the unit is intended for use in an ETS program. In order to enforce the provisions of the waiver, DOE believes that the control device must be present on all units subject to the waiver when they leave the water heater manufacturer, and thus proposes to include this requirement as a condition of any waivers that may be granted under this process. No consideration will be given to add-on control devices for ETS programs that are to be installed in the field as an addition to a traditional ERWH. DOE requests comment on this proposal, and this is identified as issue 1 in section V.E, ''Issues on Which DOE Seeks Comment.''

In summary, to apply for a waiver, DOE proposes that a manufacturer and/or utility must submit a request to DOE that includes the following information: (1) Contact and company information for all parties involved in the waiver request (including both the manufacturer of the water heaters and the utilities administering the ETS program); (2) number of units of a given basic model broken down by utility for which the waiver is requested; (3) specific information about the water heaters, including manufacturer, brand, basic model number, rated storage volume, and energy factor; and (4) a description of the control device to be used on the water heaters and documentation of the integration of that control device into the water heater design if the waiver is granted. If DOE grants the waiver, as a condition of the waiver, DOE proposes that the covered water heaters leave the manufacturer with the ETS control device installed on the water heater or packaged with the water heater.

3. Periodic Review of Waiver Mechanism

DOE believes that a critical component of the waiver process proposed in this NPRM will be periodic reviews of the waiver mechanism to ensure that it is achieving its goals of serving its intended purpose while limiting the potential for circumvention of the April 2010 energy conservation standards for products not used in ETS programs. Periodic reviews will allow DOE to assess any new technologies that are available on the market and to evaluate whether the concerns of utility companies are still valid in light of any new information or products on the market that may become available. In addition, periodic reviews would account for any new technologies that make products meeting DOE's energy conservation standards appropriate for use in ETS programs.

DOE believes that its proposal that each granted waiver will be applicable for only one year creates a de facto review period. As waivers expire and manufacturers and/or utility companies must apply for new waivers, DOE will re-evaluate any previous decisions made under this process. DOE also plans to review the waiver process each year. In order to conduct these evaluations, DOE is proposing to implement the suggestion contained in the Joint Utilities supplemental comment (discussed previously in section 3) that a question be added to forms EIA–861 and EIA–861S that tracks the number of models that are actually installed in utility ETS applications. (Joint Utilities Supplemental, No.156 at p.1) This information would allow DOE to compare the number of units for which a waiver is granted to the number actually installed in ETS applications each year to ensure that this process achieves its goals. DOE proposes to include with minor modifications the additional question on forms EIA–861 and EIA–861S suggested by the Joint Utilities. Rather than ask how many grid-interactive water heaters were added to each program this/last year, as proposed by the Joint Utilities, DOE proposes to include a question that asks for the total number of water heaters enrolled in a given ETS program. The question DOE proposes to add would read as follows: ''If you have a demand side management (DSM) program for electric storage water heaters, how many electric storage water heaters with storage volumes above 55 gallons were utilized in your program this/last year?'' DOE seeks comment on its proposal to add this question to forms EIA–861 and EIA–861S, and this is identified as issue 2 in section V.E, ''Issues on Which DOE Seeks Comment.''

At the time of each review, DOE can update the waiver process, if necessary, through a notice and comment rulemaking to amend the criteria and requirements to comply with the waiver. Similarly, if new technologies come to market or new information comes to light that mitigate the concerns raised by utility companies to date (*e.g.,* a product that meets DOE minimum energy conservation standards and is suitable for utility ETS programs), DOE could discontinue the granting of waivers if justified.

Procedural Requirements

A. Review Under Executive Orders 12866 and 13563

Section 1(b)(1) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that

problem. The problems that today's standards address are as follows:

(1) There is a lack of consumer information and/or information processing capability about energy efficiency opportunities in the home appliance market.

(2) There is asymmetric information (one party to a transaction has more and better information than the other) and/or high transactions costs (costs of gathering information and effecting exchanges of goods and services).

(3) There are external benefits resulting from improved energy efficiency of residential water heaters that are not captured by the users of such equipment. These benefits include externalities related to environmental protection and energy security that are not reflected in energy prices, such as reduced emissions of greenhouse gases.

In addition, this regulatory action is not an ''economically significant regulatory action'' under section 3(f)(1) of Executive Order 12866. Accordingly, DOE is not required under section 6(a)(3) of the Executive Order to prepare a regulatory impact analysis (RIA) on this NPRM and the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) is not required to review this rule.

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

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that this NPRM is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

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 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 has made its procedures and policies available on the Office of the General Counsel's Web site (*http://energy.gov/gc/office-general-counsel*).

In this notice, DOE is not proposing to amend the existing energy conservation standards for residential water heaters to adopt more stringent levels, but rather is proposing a waiver process that would allow, for a one-year period, manufacturers to produce limited numbers of electric water heaters with storage volumes above 55 gallons exclusively for the purpose of installation in residences enrolled in a utility company electric thermal storage (ETS) program.

For manufacturers of residential water heaters, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 13 CFR part 121.The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*. Residential water heater manufacturing is classified under NAICS 335228—''Other Major Household Appliance Manufacturing.'' The SBA sets a threshold of 500 employees or less for an entity to be considered as a small business for this category. DOE has identified one small business manufacturer of electric storage water heaters.

DOE does not expect that this proposed rule, if adopted, would have a significant impact on any small business manufacturers. The proposed waiver process does impose several requirements, including that manufacturers may have to apply for the waiver (unless they are part of a joint application in which a utility company is submitting the application), and will be responsible for ensuring that the control device is installed on any water heaters that are manufactured under a waiver. DOE expects the impact of both of these requirements to be minimal for all manufacturers. In addition, DOE believes it is reasonable to assume that because the waiver process is optional, these potential benefits outweigh the small burdens of obtaining a waiver, as manufacturers would otherwise not opt to participate in the waiver process. Thus, DOE certifies that waiver process set forth in this proposed rule, if promulgated, 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 will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

DOE requests comment on its above conclusions, as well as any information concerning small businesses that could be impacted by this rulemaking and the nature and extent of those potential impacts of the proposed waiver process on small residential water heater manufacturers. This is identified as issue 3 in section V.E, ''Issues on Which DOE Seeks Comment.''

C. Review Under the Paperwork Reduction Act

Manufacturers of residential water heaters 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 residential water heaters, 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 residential water heaters. 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). Public reporting burden for the certification is estimated to average 4 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

Pursuant to the National Environmental Policy Act (NEPA) of 1969, DOE has determined that the proposed rule fits within the category of actions included in Categorical Exclusion (CX) B5.1 and otherwise meets the requirements for application of a CX. See 10 CFR Part 1021, App. B, B5.1(b); 1021.410(b) and Appendix B, B(1)–(5). The proposed rule fits within the category of actions because it is a rulemaking that establishes a waiver process that would allow, for a one-year period, manufacturers to produce limited numbers of electric water heaters with storage volumes above 55 gallons exclusively for the purpose of installation in residences enrolled in a utility company electric thermal storage (ETS) program. DOE has determined that none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this proposed rule. DOE's CX determination for this proposed rule is available at *http://cxnepa.energy.gov/*.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism.'' 64 FR 43255 (Aug. 10, 1999) imposes certain requirements on Federal 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this 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) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 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; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). 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 section 3(a) and section 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, this 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. Public Law 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. DOE's policy statement is also available at *http://energy.gov/gc/office-general-counsel*.

This proposed rule does not contain a Federal intergovernmental mandate, and it will not require expenditures of $100 million or more by State, local, and Tribal governments, in the aggregate, or by the private sector. Accordingly, no further action is required under the UMRA.

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 (Mar. 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 Federal 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 this NPRM 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 OIRA at 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 promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; 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.

DOE has tentatively concluded that this regulatory action, which sets forth a waiver process for energy conservation standards for residential water heaters, is not a significant energy action because the proposed waiver process is not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on the proposed rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions. 70 FR 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report'' dated February 2007 has been disseminated and is available at the following Web site: *www1.eere.energy.gov/buildings/appliance_standards/peer_review.html*.

Public Participation

A. Attendance at the Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this notice. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov*. As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE of this fact as soon as possible by contacting Ms. Brenda Edwards to initiate the necessary procedures.

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 at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/waterheaters.html*. Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Requests To Speak and Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this notice, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the public meeting. Such persons may hand-deliver requests to speak to the address shown in the **ADDRESSES** section at the beginning of this notice between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Requests may also be sent by mail or email to: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121, or *Brenda.Edwards@ee.doe.gov*. Persons who wish to speak should include with their request a computer diskette or CD–ROM in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

DOE requests persons scheduled to make an oral presentation to submit an advance copy of their statements at least one week before the public meeting. DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Program. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of the 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. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. 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 allow, 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 NPRM and will be accessible on the DOE Web site. 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, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this NPRM.

Submitting comments via regulations.gov. The regulations.gov web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. 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 itself 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. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

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/courier, 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 in 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/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (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, that are written in English, and that 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. Pursuant 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/courier 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 concerning the following issues:

1. DOE's proposal to require that the units for which a waiver is granted are shipped from the manufacturer with the ETS control device installed on the water heater.

2. DOE's proposal to add a question to forms EIA–861 and EIA–861S that would read as follows: ''If you have a demand side management (DSM) program for electric storage water heaters, how many electric storage water heaters with storage volumes above 55 gallons were utilized in your program this/last year?''

3. DOE's conclusion that the proposed waiver process will not have significant adverse impacts on a substantial number of small business manufacturers. DOE also seeks any information concerning small businesses that could be impacted by this rulemaking and the nature and extent of those potential impacts of the proposed waiver process on small residential water heater manufacturers.

Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, and Small businesses.

Issued in Washington, DC, on February 15, 2013.

David T. Danielson,

Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons set forth in the preamble, DOE proposes to amend part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Add § 430.36 to read as follows:

§ 430.36 Petitions for waiver for electric water heaters used in electric thermal storage programs.

(a) Any manufacturer of residential water heaters or utility company that administers an electric thermal storage program for electric water heaters, or combination of these two, may submit a petition to allow, for a one-year period, manufacturers to produce limited numbers of electric water heaters with rated storage volumes above 55 gallons exclusively for the purpose of installation in residences enrolled in a utility company electric thermal storage (ETS) program.

(b) A petition for waiver shall be submitted to the Assistant Secretary for Energy Efficiency and Renewable Energy, United States Department of Energy by email. Each petition for waiver shall:

(1) Identify the company or companies, whether manufacturer or utility company or combination of the two, requesting the waiver, and provide contact information (*i.e.,* name of company official, address for the applicant, phone number, and email address) for those entities. Note, if the manufacturer is applying for the waiver, it should include a list of all utility companies administering the ETS programs to which it plans to sell the basic models. If the utility is applying for the waiver, the utility should include a list of all of the manufacturers from which it plans to purchase electric water heaters with rated storage volumes above 55 gallons exclusively for the purpose of installation in residences enrolled in a utility company electric thermal storage (ETS) program.

(2) Identify the particular manufacturer, brand, basic model(s), rated storage volume, and energy factor for which a waiver is requested.

(3) Identify the number of units per utility program on an annual basis for each of the basic models for which a waiver is requested (*i.e.,* total number of units per year of a given basic model that will be participating in an ETS program for a specific utility).

(4) Provide information from the utility company regarding the current stock of electric water heaters used in the electric thermal storage programs at the time the waiver is submitted and any planned expansion of the programs for the annual period the waiver will cover that would justify the number of units requested to be covered by waiver.

(5) Identify and describe the control device that will be installed on the unit. The control device must be capable of receiving communication from a grid operator, electric utility, or other energy services company that provides real-time control of the heating element. Provide documentation that the control device is integrated into the water heater design at the point of manufacture, including but not limited to any marketing and labeling material from the manufacturer describing the basic model(s) for which the waiver is requested.

(6) Be signed by a company official. In accordance with the provisions set forth in 10 CFR 1004.11, any request for confidential treatment of any information contained in a petition for waiver or in supporting documentation must be accompanied by a copy of the petition, application or supporting documentation from which the information claimed to be confidential has been deleted. DOE shall publish in the **Federal Register** the petition and supporting documents from which confidential information, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11.

(c) The Assistant Secretary for Energy Efficiency and Renewable Energy shall issue a decision on the petition as soon as is practicable following receipt and review of the petition for waiver and other applicable documents. The Assistant Secretary for Energy Efficiency and Renewable Energy will grant a waiver upon determining that the basic model for which the waiver was requested is particularly well suited for use in the electric thermal storage program, the requester or combination of requesters is an appropriate party to be granted such a waiver, the quantity of units to be manufactured under the waiver is sufficiently limited, and that an appropriate control device will be present on any water heaters manufactured and shipped pursuant to a waiver. Manufacture of units authorized by a waiver granted under this section will not constitute violations of an applicable energy conservation standard, provided that the units are distributed and installed in accordance with the terms of the waiver.

(d) Any granted waiver will specify the manufacturer, utilities, brand, basic model number, number of units of a particular basic model and the applicable energy conservation standard for units authorized by the waiver. Any

granted waiver will terminate 365 days after issuance.

(e) Any basic model for which a waiver has been granted shall be shipped from the water heater original equipment manufacturer with a control device that is compatible with the utility company administered electric thermal storage program. Any changes to the basic model design which results in the unit consuming more energy or alters the control device from which the waiver was granted shall require a new waiver application. The control device must be installed on the water heater before it leaves the original equipment manufacturer. The control device must be capable of receiving communication from a grid operator, electric utility, or other energy services company that provides real-time control of the heating element. The water heater must be clearly labeled and marketed for use exclusively in ETS programs, including a description of the control device integrated into the water heater, before it leaves the original equipment manufacturer.

[FR Doc. 2013–04099 Filed 2–25–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0094; Directorate Identifier 2012–NM–160–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A318, A319, A320, and A321 series airplanes. This proposed AD was prompted by reports that certain trimmable horizontal stabilizer actuators (THSA) were found with corrosion that affected the ballscrew lower splines between the tie-bar and screw-jack. This proposed AD would require repetitive inspections of the THSA; ballscrew integrity tests, if necessary; and replacement of affected THSAs. We are proposing this AD to detect and correct corrosion in the ballscrew lower splines, which, if the ballscrew ruptured, could lead to transmission of THSA torque loads from the ballscrew to the tie-bar, prompting THSA blowback, and possible loss of control of the airplane.

DATES: We must receive comments on this proposed AD by April 12, 2013.

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

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

For Airbus service information identified in this proposed AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com.* For Goodrich service information identified in this proposed AD, contact Goodrich Corporation, Actuation Systems, Stafford Road, Fordhouses, Wolverhampton WV10 7EH, England; telephone +44 (0) 1902 624938; fax +44 (0) 1902 788100; email *techpubs.wolverhampton@goodrich.com*; Internet *http://www.goodrich.com/TechPubs.You* may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0094; Directorate Identifier 2012–NM–160–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0175, dated September 7, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Some Trimmable Horizontal Stabilizer Actuators (THSA), Part Number (P/N) 47147–500 fitted on A330/A340 aeroplanes have been found with corrosion, affecting the ballscrew lower splines between the tie bar and the screw-jack. The affected ballscrew is made of steel and anti-corrosion protection is ensured, except on both extremities (upper and lower splines) where Molykote is applied.

The results of the technical investigations have identified that the corrosion was caused by a combination of:

—contact/friction between the tie bar and the inner surface of the ballscrew, leading to the removal of Molykote (corrosion protection) at the level of the tie bar splines,
—humidity ingress initiating surface oxidation starting from areas where Molykote is removed, and
—water retention in THSA lower part leading to corrosion spread out and to the creation of a brown deposit (iron oxide).

The results of the technical investigations have also concluded that A320 family THSA P/N 47145–XXX (where XXX stands for any numerical

value) ballscrews might be affected by this corrosion issue.

This condition, if not detected and corrected, may lead, in case of ballscrew rupture, to loss of transmission of THSA torque loads from the ballscrew to the tie-bar, prompting THSA blowback, possibly resulting in loss of control of the aeroplane.

For the reasons described above, this [EASA] AD requires repetitive detailed inspections of the ballscrew lower splines of THSAs having P/N 47145–XXX to detect corrosion and, depending on findings, the accomplishment of applicable corrective actions.

The required action is repetitive detailed inspections of the gaps between the ballscrew shaft and tie-rod splines of the affected THSAs to determine the corrosion category. Depending on the corrosion category, additional actions include a ballscrew shaft integrity test and replacing the THSA with a new THSA if necessary. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Service Bulletin A320–27–1214, including Appendix 01, dated February 23, 2012; and Goodrich has issued Service Bulletin 47145–27–16, dated November 7, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 755 products of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $256,700, or $340 per product.

In addition, we estimate that any necessary follow-on actions would take about 15 work-hours and require parts costing $2,203, for a cost of $3,478 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2013–0094; Directorate Identifier 2012–NM–160–AD.

(a) Comments Due Date

We must receive comments by April 12, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Model A318–111, –112, –121, and –122 airplanes; Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Airbus Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Airbus Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Reason

This AD was prompted by reports that certain trimmable horizontal stabilizer actuators (THSA) were found with corrosion that affected the ballscrew lower splines between the tie-bar and screw-jack. We are issuing this AD to detect and correct corrosion in the ballscrew lower splines, which, if the ballscrew ruptured, could lead to transmission of THSA torque loads from the ballscrew to the tie-bar, prompting THSA blowback, and possible loss of control of the airplane.

(f) Compliance

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

(g) Explanation of THSA First Flight

For the purposes of this AD, the definition of THSA first flight is the THSA ''entry into service date,'' as identified in Goodrich Service Bulletin 47145–27–16, dated November 7, 2011. If the THSA part number (P/N) is not identified in Goodrich Service Bulletin 47145–27–16, dated November 7, 2011, the THSA first flight is the manufacturing date engraved on the THSA identification plate.

(h) Repetitive Inspections

At the later of the times in paragraphs (h)(1) and (h)(2) of this AD: Do a detailed inspection of the gaps between the ballscrew shaft and tie-rod splines on any THSA having P/N 47145–XXX (where XXX stands for any numerical value) to determine if the corrosion category is Type I, Type II, or Type III, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1214, including Appendix 01, dated February 23, 2012; and the Accomplishment Instructions and the flowchart following the Accomplishment Instructions of Goodrich Service Bulletin 47145–27–16, dated November 7, 2011. Repeat the inspection thereafter at intervals not to exceed 24 months.

(1) Within 22 years accumulated by the THSA since the THSA's first flight, but no earlier than 20 years accumulated by the THSA since its first flight.

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

(i) Ballscrew Integrity Test and Corrective Actions

If, during any inspection required by paragraph (h) of this AD, it is determined that a THSA has Type II or Type III corrosion: Before further flight, do a ballscrew integrity test, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1214, including Appendix 01, dated February 23, 2012; and the Accomplishment Instructions and the flowchart following the Accomplishment Instructions of Goodrich Service Bulletin 47145–27–16, dated November 7, 2011. If Type I corrosion is found, no action is required by this paragraph.

(1) For THSAs having Type II or Type III corrosion and for which the results of the ballscrew integrity test are not correct, as specified in Airbus Service Bulletin A320–27–1214, including Appendix 01, dated February 23, 2012: Before further flight, replace the affected THSA with a new THSA, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1214, including Appendix 01, dated February 23, 2012.

(2) For THSAs having Type III corrosion and on which the results of the ballscrew integrity test are correct, as specified in Airbus Service Bulletin A320 27–1214, including Appendix 01, dated February 23, 2012: Within 10 days after the most recent inspection, replace the THSA with a new THSA, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1214, including Appendix 01, dated February 23, 2012.

(3) For THSAs having Type II corrosion and on which the results of the ballscrew integrity test are correct, as specified in Airbus Service Bulletin A320 27–1214, including Appendix 01, dated February 23, 2012: Within 24 months or 5,000 flight cycles after the most recent inspection, whichever occurs first, replace the THSA with a new THSA, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1214, including Appendix 01, dated February 23, 2012.

(j) Replacement of a THSA Is Not Terminating Action

Replacement of a THSA, as required by paragraph (i) of this AD, does not constitute terminating action for the repetitive inspections required by paragraph (h) of this AD.

(k) Reporting Requirement

If any corrosion type is found during any inspection required by paragraph (h) of this AD, at the applicable time in paragraph (k)(1) or (k)(2) of this AD, report the findings to Airbus, Customer Services Engineering—SEEL5, Flight Control Systems A320 Family, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax +33 5 61 93 44 25. The report must include the information specified in Appendix 01 of Airbus Service Bulletin A320–27–1214, dated February 23, 2012.

(1) If the inspection was done on or after the effective date of this AD: Within 90 days after that inspection.

(2) If the inspection was done before the effective date of this AD: Within 90 days after the effective date of this AD.

(l) Parts Installation Limitations

As of the effective date of this AD, no person may install a THSA having P/N 47145–XXX (where XXX stands for any numerical value), on any airplane, unless that THSA meets the criteria specified in paragraphs (l)(1) and (l)(2) of this AD.

(1) The THSA has not accumulated 20 years since the THSA's first flight, or the THSA has been inspected as required by paragraph (h) of this AD and it has been determined that the THSA had Type I corrosion (no corrosion) at the time of installation; and

(2) The THSA is thereafter inspected as required by paragraph (h) of this AD, and any applicable actions specified in paragraph (i) of this AD are accomplished.

(m) 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

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

(n) Special Flight Permits

Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the airplane can be modified (if the operator elects to do so), provided that, if any THSA corrosion is found during any action required by paragraph (h) of this AD, that corrosion is classified as Type I or Type II, as defined in Goodrich Service Bulletin 47145–27–16, dated November 7, 2011.

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information European Aviation Safety Agency Airworthiness Directive 2012–0175, dated September 7, 2012, and the service information specified in paragraphs (o)(1)(i) and (o)(1)(ii) of this AD, for related information.

(i) Airbus Service Bulletin A320–27–1214, including Appendix 01, dated February 23, 2012.

(ii) Goodrich Service Bulletin 47145–27–16, dated November 7, 2011.

(2) For Airbus service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com.* For Goodrich service information identified in this AD, contact Goodrich Corporation, Actuation Systems, Stafford Road, Fordhouses, Wolverhampton WV10 7EH, England; telephone +44 (0) 1902 624938; fax +44 (0) 1902 788100; email *techpubs.wolverhampton@goodrich.com*; Internet *http://www.goodrich.com/TechPubs.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW.,

Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–04339 Filed 2–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0095; Directorate Identifier 2011–NM–197–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede two existing airworthiness directives (AD) that apply to all The Boeing Company Model 767 airplanes. One AD currently requires a functional check of the shear rivets in all six elevator power control actuator (PCA) bellcrank assemblies to determine the condition of the shear rivets, and replacement or rework of the bellcrank assemblies if necessary. The other AD currently requires repetitive testing of the elevator control system to determine if an elevator PCA is rigged incorrectly, and follow-on actions if necessary. Since we issued those ADs, a terminating modification has been designed. This proposed AD would require an inspection to determine the part numbers and condition of the bellcrank assemblies; modification or replacement of the PCA bellcrank assembly, if necessary; and a repetitive functional test and mis-rig check, and corrective actions if necessary. We are proposing this AD to prevent continued operation with yielded or failed shear rivets in the elevator PCA bellcrank assemblies, and to prevent certain failures or jams in the elevator system from causing a hardover of the elevator surface, resulting in a significant pitch upset and possible loss of control of the airplane.

DATES: We must receive comments on this proposed AD by April 12, 2013.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Marie Hogestad, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6418; fax: 425–917–6590; email: *marie.hogestad@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0095; Directorate Identifier 2011–NM–197–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On August 18, 2000, we issued AD 2000–17–05, Amendment 39–11879 (65 FR 51754, August 25, 2000), for certain The Boeing Company Model 767–200, –300, and –300F series airplanes. That AD requires a one-time functional check of the shear rivets in all six PCA bellcrank assemblies to determine the condition of the shear rivets; and replacement or rework of the bellcrank assemblies, if necessary. That AD resulted from reports that elevator bellcrank assemblies with failed shear rivets had been found on three Model 767 airplanes. We issued that AD to detect and correct any failed or partially yielded shear rivets of the elevator PCA bellcrank assemblies. Failure of two bellcrank assemblies on one side can result in that single elevator surface moving to a hardover position, independent of pilot command, resulting in a significant pitch upset recoverable by the crew. Failure of three bellcrank assemblies on one side could result in loss of control of the airplane.

On February 21, 2001, we issued AD 2001–04–09, Amendment 39–12128 (66 FR 13227, March 5, 2001), for all The Boeing Company Model 767 airplanes. That AD requires repetitive testing of the elevator control system to determine if an elevator PCA is rigged incorrectly due to yielded or failed shear rivets in a bellcrank assembly of the elevator PCA, and follow-on actions if necessary. That AD resulted from reports that several Model 767 airplanes failed the one-time functional check of the shear rivets in the bellcrank assemblies of the elevator PCA required by AD 2000–17–05, Amendment 39–11879 (65 FR 51754, August 25, 2000). We issued AD 2001–04–09, Amendment 39–12128 (66 FR 13227, March 5, 2001), to prevent continued operation with yielded or failed shear rivets in a bellcrank assembly of the elevator PCA, which could result in loss of control of the airplane.

Actions Since Existing AD 2000–17–05, Amendment 39–11879 (65 FR 51754, August 25, 2000); and AD 2001–04–09, Amendment 39–12128 (66 FR 13227, March 5, 2001) Issued

The preambles to AD 2000–17–05, Amendment 39–11879 (65 FR 51754, August 25, 2000); and AD 2001–04–09, Amendment 39–12128 (66 FR 13227,

March 5, 2001); specify that we consider the requirements ''interim action.'' Those ADs explain that we might consider further rulemaking if a modification is developed, approved, and available. The manufacturer now has developed such a modification, and we have determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

Relevant Service Information

We reviewed Boeing Service Bulletins 767–27–0186, dated June 25, 2007 (for Model 767–200, –300, and –300F series airplanes); and 767–27–0187, dated June 25, 2007 (for Model 767–400ER series airplanes). This service information describes procedures for doing a general visual inspection of the PCA bellcrank assemblies on each elevator to determine if the bellcrank assembly has shear rivets; and installing a solid elevator PCA bellcrank assembly or reworking the bellcrank assembly to replace the shear rivets with solid rivets, if necessary. This service information also describes procedures for the initial test of the elevator PCA input rod assemblies (pogo check), and replacement or overhaul if necessary; and an elevator PCA rigging check.

We also reviewed Boeing Service Bulletins 767–27–0200, dated June 25, 2007 (for Model 767–200, –300, and –300F series airplanes); and 767–27–0201, dated June 27, 2007 (for Model 767–400ER series airplanes). This service information describes procedures for repetitive testing of the elevator PCA input rod assemblies (pogo check), and replacing or overhauling the elevator PCA input rod assembly, if necessary.

We reviewed Boeing Service Bulletins 767–27–0202, Revision 1, dated February 21, 2008 (for Model 767–200, –300, and –300F series airplanes); and 767–27–0203, Revision 1, dated February 21, 2008 (for Model 767–400ER series airplanes). This service information describes procedures for doing repetitive checks of the elevator PCA rigging, and adjusting the PCA input rod assemblies and structural inspection, if necessary.

Other Relevant Rulemaking

AD 2007–24–08, Amendment 39–15274 (72 FR 67236, November 28, 2007), was issued for Model 767 airplanes. That AD requires repetitive measurements of the rudder and elevator freeplay, related investigative and corrective actions if necessary, and repetitive lubrications of the rudder and elevator components. For certain airplanes, we require concurrent actions.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would retain certain requirements of AD 2000–17–05, Amendment 39–11879 (65 FR 51754, August 25, 2000); and AD 2001–04–09, Amendment 39–12128 (66 FR 13227, March 5, 2001). This proposed AD would require an inspection to determine the part numbers and condition of the bellcrank assemblies; modification or replacement of the PCA bellcrank assembly, if necessary; and repetitive post-modification testing and corrective actions, if necessary. This proposed AD would also require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.''

Change to Existing AD 2001–04–09 (66 FR 13227, March 5, 2001) and AD 2000–17–05, Amendment 39–11879 (65 FR 51754, August 25, 2000)

Boeing Commercial Airplanes has received an Organization Designation Authorization (ODA). We have revised this proposed AD to delegate the authority to approve an alternative method of compliance for any repair required by this proposed AD to the Boeing Commercial Airplanes ODA rather than a Designated Engineering Representative (DER).

Since AD 2000–17–05, Amendment 39–11879 (65 FR 51754, August 25, 2000); and AD 2001–04–09, Amendment 39–12128 (66 FR 13227, March 5, 2001); were issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in previous AD	Corresponding requirement in this proposed AD
Paragraph (a) of AD 2000–17–05, Amendment 39–11879 (65 FR 51754, August 25, 2000)	paragraph (g).
Paragraph (b) of AD 2000–17–05	paragraph (g)(4).
Paragraph (a) of AD 2001–04–09, Amendment 39–12128 (66 FR 13227, March 5, 2001)	paragraph (h).
Paragraph (b) of AD 2001–04–09	paragraph (i).

In addition, we have revised certain headings pertaining to restated material throughout this AD.

Differences Between the Proposed AD and the Service Information

This proposed AD will allow for an alternate grease (BMS 3–33) when accomplishing the actions specified in Boeing Service Bulletins 767–27–0186 and 767–27–0187, both dated June 25, 2007.

Although Boeing Service Bulletins 767–27–0202 and 767–27–0203, both Revision 1, both dated February 21, 2008, do not specify a corrective action following a structural inspection, this proposed AD would require operators to repair conditions using a method approved by the FAA.

Costs of Compliance

We estimate that this proposed AD affects 415 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	U.S. airplanes	Cost per product	Cost on U.S. operators
Functional check of the shear rivets (existing requirement for AD 2000–17–05, Amendment 39–11879 (65 FR 51754, August 25, 2000)).	4 work-hours × $85 per hour = $340.	$0	330	$340	$112,200.
Repetitive inspection of bellcrank assemblies (existing requirement for AD 2001–04–09, Amendment 39–12128 (66 FR 13227, March 5, 2001)).	2 work-hours × $85 per hour = $170 per inspection cycle.	0	335	$170 per inspection cycle.	$56,950 per inspection cycle.
Inspection of elevator PCA bellcrank assemblies, functional test (pogo check), and elevator mis-rig check (new proposed actions for Model 767 airplanes having line numbers 1–901).	23 work-hours × $85 per hour = $1,955.	0	390	$1,955	$762,450.
Repetitive functional test (pogo check) (new proposed action for all Model 767 airplanes).	32 work-hours × $85 per hour = $2,720 per inspection cycle.	0	415	$2,720 per inspection cycle.	$1,128,800 per inspection cycle.
Repetitive elevator mis-rig check (new proposed action for all Model 767 airplanes).	2 work-hours × $85 per hour = $170 per inspection cycle.	0	415	$170 per inspection cycle.	$70,550 per inspection cycle.

We estimate the following costs to do any necessary repairs or replacements that would be required based on the results of the proposed inspection, tests, and checks. We have no way of determining the number of aircraft that might need these repairs or replacements.

We estimate that reworking the bellcrank assembly would take about 6 work-hours, for a labor cost of $510 per airplane; however, we have no definitive data to determine the cost of parts required. We have received no definitive data that would enable us to provide a cost estimate for replacing or overhauling the elevator PCA input rod assembly, adjusting the elevator PCA input rod assemblies, and doing structural inspections specified in this proposed AD.

According to the manufacturer, some of the costs of this proposed AD might be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directives (ADs) 2000–17–05, Amendment 39–11879 (65 FR 51754, August 25, 2000); and 2001–04–09, Amendment 39–12128 (66 FR 13227, March 5, 2001); and adding the following new AD:

The Boeing Company: Docket No. FAA–2013–0095; Directorate Identifier 2011–NM–197–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by April 12, 2013.

(b) Affected ADs

This AD supersedes AD 2000–17–05, Amendment 39–11879 (65 FR 51754, August 25, 2000); and AD 2001–04–09, Amendment 39–12128 (66 FR 13227, March 5, 2001). This AD affects AD 2007–24–08, Amendment 39–15274 (72 FR 67236, November 28, 2007).

(c) Applicability

This AD applies to all The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Unsafe Condition

This AD was prompted by reports of failed shear rivets in the bellcrank assemblies of the elevator power control actuator (PCA). We are issuing this AD to prevent continued operation with yielded or failed shear rivets in the elevator PCA bellcrank assemblies, and to prevent certain failures or jams in the elevator system from causing a hardover of the elevator surface, resulting in a significant pitch upset and possible loss of control of the airplane.

(f) Compliance

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

(g) Retained Functional Check

This paragraph restates the requirements of paragraph (a) of AD 2000–17–05, Amendment 39–11879 (65 FR 51754, August 25, 2000). For Model 767–200, –300, and –300F series airplanes, line numbers 1 through 800 inclusive: Within 30 days after September 11, 2000 (the effective date AD 2000–17–05), perform a functional check of one shear rivet in all six elevator PCA bellcrank assemblies to determine the condition of the shear rivets, in accordance with Paragraph 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0166, dated August 17, 2000. Doing the actions required by paragraphs (j), (k), and (l) of this AD terminates the requirements of paragraph (g) of this AD.

(1) If all penetration depths, when measured per Figure 2 of Boeing Alert Service Bulletin 767–27A0166, dated August 17, 2000, are 0.50 inch or more, no further action is required by paragraph (g) of this AD.

(2) If any penetration depth, when measured per Figure 2 of Boeing Alert Service Bulletin 767–27A0166, dated August 17, 2000, is 0.35 inch or more, but less than 0.50 inch, rework or replace the bellcrank assembly with a new or serviceable bellcrank assembly within 400 flight hours after accomplishing the functional check. After installation of a new or serviceable bellcrank assembly, and prior to further flight, repeat the functional check of all the bellcrank assemblies to make sure the rivets are still in good condition (as specified in Boeing Alert Service Bulletin 767–27A0166, dated August 17, 2000) after installation, in accordance with Figure 2 of Boeing Alert Service Bulletin 767–27A0166, dated August 17, 2000.

(3) If any penetration depth, when measured per Figure 2 of Boeing Alert Service Bulletin 767–27A0166, dated August 17, 2000, is less than 0.35 inch, prior to further flight, rework or replace the bellcrank assembly with a new or serviceable bellcrank assembly. After installation of a new or serviceable bellcrank assembly, and prior to further flight, repeat the functional check of all the bellcrank assemblies to make sure the rivets are still in good condition (as specified in Boeing Alert Service Bulletin 767–27A0166, dated August 17, 2000) after installation, in accordance with Figure 2 of Boeing Alert Service Bulletin 767–27A0166, dated August 17, 2000.

(h) Retained Repetitive Tests

This paragraph restates the requirements of paragraph (a) of AD 2001–04–09, Amendment 39–12128 (66 FR 13227, March 5, 2001), with revised provisions for repetitive tests. For all airplanes: Within 90 days after March 20, 2001 (the effective date of AD 2001–04–09), perform a test of the elevator PCA bellcranks to determine if an elevator PCA is rigged incorrectly due to yielded or failed shear rivets in a bellcrank assembly, in accordance with Boeing Alert Service Bulletin 767–27A0168 (for Model 767–200, –300, and –300F series airplanes) or 767–27A0169 (for Model 767–400ER series airplanes), both dated November 21, 2000. Repeat the test thereafter at least every 400 flight hours. As of March 20, 2001 (the effective date of AD 2001–04–09), and until the accomplishment of the actions required by paragraphs (j), (k), and (l) of this AD, as applicable. Accomplishment of the repetitive tests required by paragraph (h) of this AD are acceptable for compliance with the functional check of the elevator system required by a certification maintenance requirement (CMR) that is documented as Item Number 27–31–00–5B in the Boeing 767 Maintenance Planning Document (MPD). Doing the actions required by paragraphs (j), (k), and (l) of this AD terminates the requirements of paragraph (h) of this AD. After accomplishment of the actions required by paragraphs (j), (k), and (l) of this AD, accomplishment of the repetitive tests required by paragraph (h) of this AD are not acceptable for compliance with the functional check of the elevator system required by a CMR that is documented as Item Number 27–31–00–5B in the Boeing 767 MPD.

(i) Retained Follow-On Actions

This paragraph restates the requirements of paragraph (b) of AD 2001–04–09, Amendment 39–12128 (66 FR 13227, March 5, 2001). For all airplanes: If an elevator PCA is determined to be rigged incorrectly during any test required by paragraph (h) of this AD, before further flight, do a one-time inspection to measure penetration depth of the shear rivets of all three elevator bellcrank assemblies of the affected elevator surface, in accordance with Boeing Alert Service Bulletin 767–27A0168 (for Model 767–200, –300, and –300F series airplanes) or 767–27A0169 (for Model 767–400ER series airplanes), both dated November 21, 2000. Doing the actions required by paragraphs (j), (k), and (l) of this AD terminates the requirements of paragraph (i) of this AD.

(1) If the measured penetration depth of the shear rivets on all bellcrank assemblies is 0.50 inch or more: Before further flight, re-rig the elevator PCA correctly, in accordance with Boeing Alert Service Bulletin 767–27A0168 (for Model 767–200, –300, and –300F series airplanes) or 767–27A0169 (for Model 767–400ER series airplanes), both dated November 21, 2000.

(2) If the measured shear rivet penetration depth on any single bellcrank assembly is less than 0.50 inch: Before further flight, repair the bellcrank assembly by replacing the shear rivets or replace the bellcrank assembly, and reassemble and re-rig the elevator control system, in accordance with Boeing Alert Service Bulletin 767–27A0168 (for Model 767–200, –300, and –300F series airplanes) or 767–27A0169 (for Model 767–400ER series airplanes), both dated November 21, 2000.

(j) New Inspection and Modification

For airplanes having line numbers 1 through 901 inclusive: Within 72 months after the effective date of this AD, do a general visual inspection of the three PCA bellcrank assemblies on each elevator to determine the part numbers (P/Ns) of the bellcrank assemblies and to determine whether the bellcrank assembly has shear rivets, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–27–0186, dated June 25, 2007 (for Model 767–200, –300, and –300F series airplanes); or 767–27–0187, dated June 25, 2007 (for Model 767–400ER series airplanes).

(1) If the bellcrank assembly has P/N 252T2118–4 or 252T2118–5, and has solid rivets, no further action is required by this paragraph.

(2) If the bellcrank is a solid one-piece bellcrank with no rivets, no further action is required by this paragraph.

(3) If the bellcrank assembly has P/N 252T2118–1, 252T2118–2, or 252T2118–3, and has shear rivets, before further flight, do the action specified in either paragraph (j)(3)(i) or (j)(3)(ii) of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–27–0186, dated June 25, 2007 (for Model 767–200, –300, and –300F series airplanes); or 767–27–0187, dated June 25, 2007 (for Model 767–400ER series airplanes); except as provided by paragraph (n) of this AD.

(i) Rework the existing bellcrank to replace the shear rivets with solid rivets.

(ii) Install a new, solid one-piece (no rivets) bellcrank assembly having P/N 252T2118–6.

(k) New Repetitive Functional Test (Pogo Check)

(1) For airplanes having line numbers 1 through 901 inclusive: Before further flight after doing the inspection and applicable corrective actions required by paragraph (j) of this AD, do a functional test (pogo check) on each of the six elevator PCA input rod assemblies, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–27–0186, dated June 25, 2007 (for Model 767–200, –300, and –300F series airplanes); or 767–27–0187, dated June 25, 2007 (for Model 767–400ER series airplanes).

(2) For all airplanes: At the latest of the times specified in paragraphs (k)(2)(i), (k)(2)(ii), and (k)(2)(iii) of this AD, do a

functional test (pogo check) on each of the six elevator PCA input rod assemblies, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–27–0200, dated June 25, 2007 (for Model 767–200, –300, and –300F series airplanes); or 767–27–0201, dated June 27, 2007 (for Model 767–400ER series airplanes). Repeat the pogo check thereafter at intervals not to exceed 12,000 flight hours.

(i) Before the accumulation of 12,000 total flight hours.

(ii) Within 12,000 flight hours after completion of the most recent pogo check.

(iii) Within 6,000 flight hours after the effective date of this AD.

(3) If any elevator PCA input rod assembly fails to meet any functional test requirement of this AD, before further flight, replace the elevator PCA input rod assembly with a new or serviceable assembly, or overhaul the elevator PCA input rod assembly, in accordance with the applicable service information identified in paragraphs (k)(3)(i) and (k)(3)(ii) of this AD, except as provided by paragraph (n) of this AD.

(i) For replacing or overhauling the assembly on Model 767–200, –300, and –300F airplanes: Use Boeing Service Bulletin 767–27–0186, dated June 25, 2007; or 767–27–0200, dated June 25, 2007; as applicable.

(ii) For replacing or overhauling the assembly on Model 767–400ER airplanes: Use Boeing Service Bulletin 767–27–0187, dated June 25, 2007; or 767–27–0201, dated June 27, 2007; as applicable.

(l) New Elevator PCA Check (Mis-Rig Check)

(1) For airplanes having line numbers 1 through 901 inclusive: Before further flight after doing the actions required by paragraphs (j) and (k) of this AD, do a check of the elevator PCA rigging, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–27–0186, dated June 25, 2007 (for Model 767–200, –300, and –300F series airplanes); or 767–27–0187, dated June 25, 2007 (for Model 767–400ER series airplanes).

(2) For all airplanes: At the latest of the times specified in paragraphs (l)(2)(i), (l)(2)(ii), and (l)(2)(iii) of this AD, do a check of the elevator PCA rigging, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–27–0202, Revision 1, dated February 21, 2008 (for Model 767–200, –300, and –300F series airplanes); or 767–27–0203, Revision 1, dated February 21, 2008 (for Model 767–400ER series airplanes). Repeat the mis-rig check thereafter at intervals not to exceed 6,000 flight hours.

(i) Before the accumulation 6,000 total flight hours.

(ii) Within 6,000 flight hours after the completion of the most recent mis-rig check, or after completion of the most recent bellcrank repetitive check, as specified in Boeing Alert Service Bulletin 767–27A0168.

(iii) Within 6,000 flight hours after the effective date of this AD.

(3) If a mis-rig condition is found, before further flight, adjust the PCA input rod assemblies and do a structural inspection for damage, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–27–0202, Revision 1, dated February 21, 2008 (for Model 767–200, –300, and –300F airplanes); or 767–27–0203, Revision 1, dated February 21, 2008 (for Model 767–400ER airplanes). If any damage is found during any structural inspection, before further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. 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.

(m) Terminating Action

Accomplishment of the requirements of paragraphs (j), (k), and (l) of this AD terminates the requirements of paragraphs (g), (h), and (i) of this AD.

(n) Service Bulletin Exception

Where Boeing Service Bulletins 767–27–0186 and 767–27–0187, both dated June 25, 2007, specify the use of grease BMS 3–24, this AD allows the alternate use of grease BMS 3–33.

(o) Method of Compliance for Paragraph (k) of AD 2007–24–08, Amendment 39–15274 (72 FR 67236, November 28, 2007)

For airplanes identified in paragraphs (o)(1) and (o)(2) of this AD: Doing the actions required by paragraphs (j), (k), and (l) of this AD is acceptable for compliance with the actions required by paragraph (k) of AD 2007–24–08, Amendment 39–15274 (72 FR 67236, November 28, 2007).

(1) Group 1, Configuration 2, airplanes identified in Boeing Special Attention Service Bulletin 767–27–0197, Revision 1, dated July 19, 2007.

(2) Group 1, Configuration 1, airplanes identified in Boeing Special Attention Service Bulletin 767–27–0198, Revision 1, dated July 19, 2007.

(p) Parts Installation Prohibition

As of the effective date of this AD, no person may install a bellcrank assembly, P/N 252T2118–1, 252T2118–2, or 252T2118–3, on any airplane.

(q) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (l) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 767–27–0202 (for Model 767–200, –300, and –300F airplanes) or 767–27–0203, (for Model 767–400ER airplanes), both dated June 25, 2007.

(r) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. 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 2001–04–09, Amendment 39–12128 (66 FR 13227, March 5, 2001), are approved as AMOCs for the corresponding requirements of this AD.

(s) Related Information

(1) For more information about this AD, contact Marie Hogestad, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6418; fax: (425) 917–6590; email: *marie.hogestad@faa.gov.*

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

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–04338 Filed 2–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0093; Directorate Identifier 2011–NM–109–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP (Type Certificate Previously Held by Israel Aircraft Industries, Ltd.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to all Gulfstream Aerospace

LP (Type Certificate Previously Held by Israel Aircraft Industries, Ltd.) Model Gulfstream 100 airplanes, and Model Astra SPX and 1125 Westwind Astra airplanes. The existing AD currently requires amending the airplane flight manuals (AFMs) to include additional procedures for verifying complete closure and locking of the main entry door (MED). The existing AD also currently requires modifying the warning and caution lights panel (WACLP), changing the WACLP and MED wiring, changing the wiring harness connecting the MED to the WACLP, and revising the log of modification of the AFM if necessary. Since we issued that AD, we have determined that the compliance time must be revised to ensure the unsafe condition is addressed on low utilization airplanes. We have also removed one airplane from the applicability. We are proposing this AD to prevent incomplete closure of the MED, which may result in the door opening in flight and possible separation of the door, causing damage to the airplane structure and left engine by flying debris and objects.

DATES: We must receive comments on this proposed AD by April 12, 2013.

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

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

For service information identified in this proposed AD, contact Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D–25, Savannah, Georgia 31402–2206; telephone 800–810–4853; fax 912–965–3520; email *pubs@gulfstream.com;* Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–227–1622; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0093; Directorate Identifier 2011–NM–109–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On May 7, 2010, we issued AD 2010–11–02, Amendment 39–16307 (75 FR 28485, May 21, 2010), which superseded AD 2007–03–05, Amendment 39–14916 (72 FR 4414, January 31, 2007). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2010–11–02, Amendment 39–16307 (75 FR 28485, May 21, 2010), we have determined that the compliance time must be revised to ensure the unsafe condition is addressed on low utilization airplanes. We have also removed one airplane from the applicability. The Civil Aviation Authority of Israel (CAAI), which is the aviation authority for Israel, has issued Israeli Airworthiness Directive 31–06–11–05R1, dated May 18, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

To increase pilots' awareness to the possibility of incomplete closure of the Main Entry Door (MED) by the following means:

1. Splitting the common caution light *CABIN DOOR* signaling both MED Improper Closure and MED Inflatable Seal Failure into two separate lights: *CABIN DOOR* and *CABIN DOOR SEAL.*

2. Converting the separated *CABIN DOOR* Caution light into a Warning light by changing its color to red.

Note: Airplane Flight Manuals (AFM'S) refer to these changes as MOD G1–20052.

Incomplete closure of the MED may be followed by in-flight opening and possible separation of the door. As a result, the MED, the adjacent fuselage structure and other parts of the aircraft may be damaged due to opening forces and landing impact.

Damage to the aircraft structure and to the left engine by flying debris and objects may also occur.

* * * * *

This proposed AD retains the actions required by AD 2010–11–02. This proposed AD limits the existing compliance time by specifying ''no later than 6 months after the effective date of this AD.'' This proposed AD also removes the airplane having serial number (S/N) 158 from the applicability because the modification was done in production. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Gulfstream Aerospace LP (Type Certificate Previously Held by Israel Aircraft Industries, Ltd.) has issued Service Bulletin 100–31–284, Revision 1, dated May 27, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

The new requirements of this AD add no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators, as follows:

Based on the service information, we estimate that this proposed AD would

affect about 160 products of U.S. registry.

The actions that are required by AD 2010–11–02, Amendment 39–16307 (75 FR 28485, May 21, 2010) and retained in this proposed AD take about 60 work-hours per product, at an average labor rate of $85 per work hour. Required parts cost about $600 per product. Based on these figures, the estimated cost of the currently required actions is $5,700 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2010–11–02, Amendment 39–16307 (75 FR 28485, May 21, 2010), and adding the following new AD:

Gulfstream Aerospace LP (Type Certificate Previously Held by Israel Aircraft Industries, Ltd.): Docket No. FAA–2013–0093; Directorate Identifier 2011–NM–109–AD.

(a) Comments Due Date

We must receive comments by April 12, 2013.

(b) Affected ADs

This AD supersedes AD 2010–11–02, Amendment 39–16307 (75 FR 28485, May 21, 2010).

(c) Applicability

This AD applies to Gulfstream Aerospace LP (Type Certificate previously held by Israel Aircraft Industries, Ltd.) Model Gulfstream 100 airplanes, and Model Astra SPX and 1125 Westwind Astra airplanes; certificated in any category; all serial numbers except serial number 158.

(d) Subject

Air Transport Association (ATA) of America Code 31: Indicating/Recording Systems.

(e) Reason

This AD was prompted by a report of a main entry door (MED) opening in flight on an unmodified airplane. We are issuing this AD to prevent incomplete closure of the main entry door, which may result in the door opening in flight and possible separation of the door, causing damage to the airplane structure and left engine by flying debris and objects.

(f) Compliance

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

(g) Retained Actions and Compliance

This paragraph restates the requirements of paragraph (f) of AD 2010–11–02, Amendment 39–16307 (75 FR 28485, May 21, 2010). Within 10 days after February 15, 2007 (the effective date of AD 2007–03–05, Amendment 39–14916 (72 FR 4414, January 31, 2007)), amend Section IV, Normal Procedures, of the following Gulfstream airplane flight manuals (AFMs): Model 1125 Astra, 25W–1001–1; Model Astra SPX, SPX–1001–1; and Model G100, G100–1001–1; as applicable; to include the following statement. Insertion of copies of this AD at the appropriate places of the AFMs is acceptable. The actions required by this paragraph may be accomplished by a holder of a Private Pilot's License.

1. BEFORE ENGINE START:

(PRE and POST Mod 20052/Gulfstream Service Bulletin 100–31–284):
CABIN DOOR—CLOSED (Physically verify door latch handle pin is fully engaged in the handle lock)

2. BEFORE TAXIING:

Change the CABIN DOOR procedure as follows (POST Mod 20052/Gulfstream Service Bulletin 100–31–284):
Check CABIN DOOR light—OUT

3. BEFORE TAKE-OFF:

Insert between the POSITION lights switch and the THRUST LEVERS procedures:

(PRE Mod 20052/Gulfstream Service Bulletin 100–31–284):
Check CABIN DOOR light—OUT (50% N1 may be required)
(POST Mod 20052/Gulfstream Service Bulletin 100–31–284):
Check CABIN DOOR light—OUT
CABIN DOOR SEAL light—OUT (50% N1 may be required)

Note 1 to paragraph (g) of this AD: Mod 20052 is equivalent to Gulfstream Service Bulletin 100–31–284, dated August 17, 2006.

(h) Retained Modification With Reduced Compliance Time

This paragraph restates the requirements of paragraph (g) of AD 2010–11–02, Amendment 39–16307 (75 FR 28485, May 21, 2010), with reduced compliance time and new service information.

(1) Within 250 flight hours after June 25, 2010 (the effective date of AD 2010–11–02, Amendment 39–16307 (75 FR 28485, May 21, 2010)), but no later than within 6 months after the effective date of this AD: Modify the warning and caution lights panel (WACLP), in accordance with the Accomplishment Instructions of the applicable service bulletin identified in table 1 of this AD.

TABLE 1—MODIFICATION SERVICE INFORMATION

Honeywell Service Bulletin—	Dated—
80–0548–31–0001	April 1, 2006.
80–0548–31–0002	March 1, 2006.
80–5090–31–0001	March 1, 2006.

(2) Within 250 flight hours after June 25, 2010 (the effective date of AD 2010–11–02, Amendment 39–16307 (75 FR 28485, May 21, 2010)), but no later than within 6 months after the effective date of this AD: Change the

WACLP and MED wiring, in accordance with the Accomplishment Instructions of Gulfstream Service Bulletin 100–31–284, dated August 17, 2006; or Gulfstream Service Bulletin 100–31–284, Revision 1, dated May 27, 2011. As of the effective date of this AD, Gulfstream Service Bulletin 100–31–284, Revision 1, dated May 27, 2011, must be used to accomplish the actions required by this paragraph.

(3) Within 250 flight hours after June 25, 2010 (the effective date of AD 2010–11–02, Amendment 39–16307 (75 FR 28485, May 21, 2010)), but no later than within 6 months after the effective date of this AD: Change the wiring harness connecting the MED to the WACLP, in accordance with the Accomplishment Instructions of Gulfstream Service Bulletin 100–31–284, dated August 17, 2006; or Gulfstream Service Bulletin 100–31–284, Revision 1, dated May 27, 2011. As of the effective date of this AD, Gulfstream Service Bulletin 100–31–284, Revision 1, dated May 27, 2011, must be used to accomplish the actions required by this paragraph.

(4) Within 250 flight hours after June 25, 2010 (the effective date of AD 2010–11–02, Amendment 39–16307 (75 FR 28485, May 21, 2010)), but no later than within 6 months after the effective date of this AD: Verify that the log of modification of the relevant AFM includes reference to MOD G1–20052, and, if no reference is found, revise the log of modification of the AFM to include reference to the modification.

(5) Doing the modifications specified in paragraphs (h)(1), (h)(2), (h)(3), and (h)(4) of this AD terminates the requirements of paragraph (g) of this AD, and after the modifications have been done, the AFM limitation required by paragraph (g) of this AD may be removed from the AFM.

(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: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–227–1622; 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 Israeli Airworthiness Directive 31–06–11–05R1, dated May 18, 2011; and the applicable service information identified in paragraphs (j)(1) through (j)(5) of this AD; for related information.

(1) Gulfstream Service Bulletin 100–31–284, Revision 1, dated May 27, 2011.

(2) Gulfstream Service Bulletin 100–31–284, dated August 17, 2006.

(3) Honeywell Service Bulletin 80–0548–31–0001, dated April 1, 2006.

(4) Honeywell Service Bulletin 80–0548–31–0002, dated March 1, 2006.

(5) Honeywell Service Bulletin 80–5090–31–0001, dated March 1, 2006.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–04336 Filed 2–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 142 and 143

[USCBP–2013–0009]

RIN 1515–AD96

Establishment of Due Process Procedures on License-Like Processes

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the U.S. Customs and Border Protection (CBP) regulations to set forth due process procedures for CBP to follow before suspending or revoking assigned entry filer codes, immediate delivery privileges or remote location filing privileges. These proposed changes will codify in the regulations due process procedures consistent with the Administrative Procedure Act before CBP takes actions on these programs depriving an importer of these privileges.

DATES: Comments must be received on or before April 29, 2013.

ADDRESSES: You may submit comments, identified by *USCBP docket number,* by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2013–0009.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 90 K Street NE. (10th Floor), Washington, DC 20229–1177.

Instructions: All submissions received must include the agency name and USCBP docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, 90 K St. NE., 10th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: For operational questions, Laurie Dempsey, Trade Policy and Programs, Office of International Trade, Tel. (202) 863–6509. For legal questions, Blake Harden, Trade and Finance, Office of Chief Counsel, Tel. (202) 344–2972.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. If appropriate to a specific comment, the commenter should reference the specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

When an agency acts to deprive a person of a property interest, the Constitution of the United States requires procedures that appropriately

balance three factors: the private interest affected by government action; the risk of erroneous deprivation of such interest; and, the government's interest, including the function involved and the burdens the government would face in providing greater process. *Mathews* v. *Eldridge,* 424 U.S. 319, 335 (1976). An individual's expectation of continued eligibility in a federal program is a ''property interest'' under the Due Process Clause. *Mathews* v. *Eldridge.* at 332. *See also Goldberg* v. *Kelly,* 397 U.S. 254 (1970). In the matter of *Lizarraga Customs Broker* v. *Bureau of Customs and Border Protection,* No. 08–00400, slip op. 10–113 (Ct. Int'l Trade Oct. 4, 2010) (''Lizarraga''), CBP suspended a broker's assigned entry-filer code without providing notice of the proposed action. *Lizarraga,* at 5. CBP acknowledged that brokers are entitled to the procedural protections of the Administrative Procedure Act (APA) if their entry filer code is deactivated. *Lizarraga,* at 16. As such, CBP has reviewed its current regulations in title 19 of the Code of Federal Regulations (19 CFR) which affords license-like programs and has determined that its regulations should be amended to provide due process procedures required by the APA if an importer's or broker's assigned entry filer code is proposed to be suspended or revoked.

The APA (Section 558 of title 5 of the United States Code) provides, in relevant part, that except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings, the licensee has been given—(1) Notice by the agency in writing of the facts or conduct which may warrant the action; and (2) opportunity to demonstrate or achieve compliance with all lawful requirements. 5 U.S.C. 558(c).

Since participation in CBP programs involving entry filer codes, immediate delivery, and remote location filing all require the satisfaction of certain eligibility requirements, they are akin to licenses for the purpose of the APA. To comply with the due process requirements, CBP proposes to amend 19 CFR parts 142 and 143 by adding notice requirements and appeal procedures for the suspension or revocation of an assigned entry filer code and for the discontinuance of immediate delivery and remote location filing procedures before CBP takes action on these programs depriving an importer or broker of these privileges.

Entry Filer Code

An entry filer code is a unique three character (alphabetic, numeric, or alpha numeric) number assigned by CBP to all licensed brokers filing CBP consumption entries and all importers filing CBP entries through the Automated Broker Interface (ABI) system. *See* 19 CFR 142.3a(b)(1) and 143.2(f). This assigned three digit code comprises the beginning three characters of the entry number that a broker or importer files for all of its CBP entries into the CBP database.

In order to file electronically, an importer or broker must have an active entry filer code and be approved to use the ABI system. The ABI is a module of CBP's automated systems that permits qualified participants to electronically file required import data with CBP. *See* 19 CFR 143.1.

Current CBP regulations provide that the Assistant Commissioner, Office of International Trade, or his designee may refuse to allow use of an assigned entry filer code if it is misused by the importer or broker. *See* 19 CFR 142.3a(d).

In this document, CBP is proposing to amend the CBP regulations by limiting its ability to invalidate an entry filer code in order to provide due process protections to approved ABI entry filers with regard to the suspension or revocation of entry filer codes. More specifically, this document proposes to revise § 142.3a(d) of title 19 of the CFR to provide notice requirements and appeal procedures for suspending or revoking an entry filer code.

CBP proposes to add new subsection (1) to paragraph (d) in § 142.3a to provide that, in the event a port director finds that an assigned entry filer code has been misused by the importer or broker, CBP will provide the importer or broker with written notice proposing the suspension or revocation of the entry filer code, including a description of the facts or conduct warranting the action. The importer or broker will have the opportunity to appeal the port director's decision in writing within 10 calendar days of receiving the written notice. Within 30 working days after receiving a timely filed appeal, the Assistant Commissioner, Office of International Trade, or his designee, will issue a decision in writing on the proposed action. If the importer or broker does not timely appeal the written notice, the notice proposing the suspension or revocation of the entry filer code becomes CBP's final decision as of the date that the appeal period expires. This section provides that the importer or broker may continue to use the entry filer code during the appeal period and that the entry filer code will not be suspended or revoked unless the appeal process has been concluded with a decision adverse to the importer or broker.

CBP also proposes to add § 142.3a(d)(2) to title 19 of the CFR to allow the port director to immediately suspend an entry filer code upon written notice to the importer or broker in the case of willfulness or in those cases in which public health, interest, or safety so requires. The written notice provided to the importer or broker will contain a description of the facts or conduct warranting the immediate action. The importer or broker will be offered the opportunity to appeal the port director's decision within 10 calendar days of receiving the written notice providing for immediate discontinuance. Within 15 working days after receiving a timely filed appeal from the importer or broker, the Assistant Commissioner, Office of International Trade, or his designee, will issue a decision in writing on the discontinuance. If no timely appeal is received, the notice becomes the final decision of CBP as of the date that the appeal period expires. This section provides that the entry filer code remains suspended or revoked unless the appeal is resolved in favor of the importer or broker.

CBP also proposes to amend the procedures for discontinuing immediate delivery and remote location filing privileges.

Immediate Delivery

Section 448(b) of the Tariff Act of 1930, as amended, authorizes the Secretary of the Treasury to promulgate regulations allowing the issuance of special permits for delivery, prior to formal entry, of perishable articles and other articles for which immediate delivery is necessary. 19 U.S.C. 1448(b).

Accordingly, under certain circumstances merchandise may be released under a special permit for immediate delivery. *See* 19 CFR 142.21. In most respects, the procedures for immediate delivery are similar to filing an entry. The same CBP Form 3461 is used as the release document; however, the filer will designate the CBP Form 3461 as a special permit instead of as an entry. A CBP Form 7501 entry/entry summary with estimated duties attached must generally be filed within 10 working days of release. Immediate delivery is allowed, at the discretion of the port director, in the following circumstances: land shipments from Canada and Mexico; shipments of fresh fruits and vegetables from Canada and

Mexico, which are transported to the importer's warehouse at the port of arrival for examination, resulting in entry being made only on those portions with commercial value; shipments of certain quota class merchandise; shipments of articles for a trade fair; U.S. government shipments; split shipments for which an election for incremental release has been made; and other shipments when authorized by CBP Headquarters.

Currently, the port director has the authority to discontinue immediate delivery privileges under certain circumstances. *See* 19 CFR 142.25. In this document, CBP proposes to amend 19 CFR 142.25 to provide due process protections to the importing public with regard to the discontinuance of immediate delivery privileges.

Specifically, CBP proposes to add § 142.25(c)(1) to title 19 of the CFR to require CBP to provide the importer with written notice proposing the discontinuation of the immediate delivery privileges, including a description of the facts or conduct warranting the action. The importer will have the opportunity to appeal the port director's decision in writing within 10 calendar days of receiving the written notice. Within 30 working days after receiving a timely filed appeal from the importer, the Assistant Commissioner, Office of International Trade, or his designee, will issue a decision in writing on the proposed action. If the importer does not timely appeal the written notice, the notice proposing the discontinuation of the immediate delivery privilege becomes the final decision of CBP as of the date that the appeal period expires. This section provides that in the case of a proposed discontinuance, the importer may continue to use immediate delivery during the appeal period and immediate delivery privileges will not be discontinued unless the appeal process has been concluded with a decision adverse to the importer or broker.

CBP also proposes to add § 142.25(c)(2) to title 19 of the CFR to allow the port director to immediately discontinue immediate delivery privileges upon written notice to the importer in the case of willfulness or those in which public health, interest, or safety so requires. The written notice provided to the importer will contain a description of the facts or conduct warranting the immediate action. The importer will be offered the opportunity to appeal the port director's decision within 10 calendar days of receiving the written notice providing for immediate discontinuance. Within 15 working days after receiving a timely filed appeal from the importer, the Assistant Commissioner, Office of International Trade, or his designee, will issue a decision in writing on the discontinuance. If no timely appeal is received, the notice becomes the final decision of CBP as of the date that the appeal period expires. This section provides that in the case of an immediate discontinuance, immediate delivery privileges remain discontinued unless the appeal is resolved in favor of the importer or broker.

Remote Location Filing

Remote location filing is an elective method of making entry by which a customs broker with a national permit electronically transmits all data associated with an entry that CBP can process in a completely electronic data interchange, filed from a location other than where the goods are being entered. *See* 19 CFR 143.42(a). Importers filing on their own behalf may file electronically in any port, subject to ABI filing requirements. *See* 19 CFR 143.42(a). A remote filing is accepted at CBP locations within the customs territory of the United States that are staffed with CBP personnel who have been trained in remote location filing procedures and who have operational experience with the Electronic Invoice Program (EIP). *See* 19 CFR 143.42(b).

Section 1414(a)(2) of title 19 of the U.S. Code sets forth the requirements for a program participant to file from a remote location. Program participant is defined as any party entitled to enter merchandise under 19 U.S.C. 1484(a)(2)(B). *See* 19 U.S.C. 1414(d)(2). The eligibility criteria for remote location filing are further described at 19 CFR 143.43. To be eligible for remote location filing, an importer of record or licensed customs broker must be: (1) Operational on the ABI; (2) operational on the EIP prior to applying for remote location filing; and (3) operational on the Automated Clearinghouse (ACH) (or any other CBP-approved method of electronic payment), for purposes of directing the electronic payment of duties, taxes and fees, 30 days before transmitting a remote location filing entry. *See* 19 CFR 143.43(a). In addition, a licensed customs broker must hold a valid national permit. *See* 19 CFR 143.43(b); *see also* 19 CFR 111.19(f). Finally, a remote location filing entry must be secured with a continuous bond. *See* 19 CFR 143.43(c).

Currently, so long as a remote location filer meets all of the compliance requirements and operational standards for remote location filing and adheres to all applicable laws and regulations, it qualifies for filing from a remote location. *See* 19 U.S.C. 1414(a)(3). In this document, CBP proposes to amend 19 CFR Part 143 to provide the criteria under which a port director will discontinue remote location filing privileges. CBP also proposes to amend the regulations to provide due process protections to the importing public with regard to the discontinuation of remote location filing privileges.

Specifically, this document proposes to amend subpart E of Part 143 of 19 CFR by adding a new § 143.46, entitled *Discontinuance of RLF privileges.* CBP proposes to add § 143.46(a) to 19 CFR to allow CBP to discontinue remote location filing privileges if the filer no longer meets the eligibility criteria set forth in 19 CFR 143.43, or fails to file all additional information required by CBP pursuant to 19 CFR 143.45. Two additional proposed paragraphs will provide procedures for the discontinuance of remote location filing privileges.

CBP proposes to add § 143.46(b)(1) to 19 CFR to require CBP to provide the remote location filer with written notice proposing the discontinuance of the remote location filing privileges, including a description of the facts or conduct warranting the action. The remote location filer will have the opportunity to appeal the port director's decision in writing within 10 calendar days of receiving the written notice. Within 30 working days after receiving a timely filed appeal from the remote location filer, the Assistant Commissioner, Office of International Trade, or his designee, will issue a decision in writing on the proposed action. If an appeal is not timely received, the notice proposing the discontinuance of the remote location filing privilege becomes the final decision of CBP as of the date that the appeal period expires. This section provides that in the case of a proposed discontinuance, the remote location filer may continue to file remotely during the appeal period and remote location filing privileges will not be discontinued unless the appeal process has been concluded with a decision adverse to the filer.

CBP also proposes to add § 143.46(b)(2) to 19 CFR to allow the port director to immediately discontinue remote location filing privileges upon written notice to the remote location filer in the case of willfulness or those in which public health, interest, or safety so requires. The written notice provided to the remote location filer will contain a description of the facts or conduct warranting the immediate action. The remote location filer will be offered the

opportunity to appeal the port director's decision within 10 calendar days of receiving the written notice providing for immediate discontinuance. Within 15 working days after receiving a timely filed appeal from the remote location filer, the Assistant Commissioner, Office of International Trade, or his designee, will issue a decision in writing on the discontinuance. If no timely appeal is received, the notice becomes the final decision of CBP as of the date that the appeal period expires. This section provides that in the case of an immediate discontinuance, remote location filing privileges remain discontinued unless the appeal is resolved in favor of the remote location filer.

Executive Order 12866

This rule is not a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563, and has not been reviewed by the Office of Management and Budget (OMB) under that order.

Regulatory Flexibility Act

This section examines the impact of the rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 603), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

As stated above, CBP exercises its authority to suspend or revoke entry filer codes, immediate delivery privileges, or remote location filing privileges fewer than ten times a year for each type of authority. It is unknown how many of the affected parties, primarily customs brokers, are small businesses, but the number will be very small. In addition, the impact to these parties is expected to be low (cost to prepare and submit the appeal to CBP) and beneficial (establishment of due process). CBP will certify, therefore, that this rule will not have a significant impact on a substantial number of small entities if it does not receive any comments to the contrary.

Paperwork Reduction Act

As the collection of information proposed in this document applies to fewer than ten respondents annually, the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) do not apply.

Signing Authority

This proposed regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 142

Canada, Customs duties and inspection, Mexico, Reporting and recordkeeping requirements.

19 CFR Part 143

Customs duties and inspection, Reporting and recordkeeping requirements.

Proposed Amendments to the CBP Regulations

For the reasons set forth in the preamble, parts 142 and 143 of title 19 of the CFR (19 CFR parts 142 and 143) are proposed to be amended as set forth below.

PART 142—ENTRY PROCESS

■ 1. The authority citation for part 142 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

■ 2. Section 142.3a is amended by revising paragraph (d) to read as follows:

§ 142.3a. Entry numbers.

* * * * *

(d) *Suspension or revocation of the entry filer code.*

(1) *Proposed suspension or revocation.* If the port director finds that an assigned entry filer code has been misused by the importer or broker, the importer or broker will be provided with written notice proposing the suspension or revocation of the entry filer code along with a description of the facts or conduct warranting the action. Any notice to suspend or revoke a filer code will also specify that participation in Remote Location Filing would also be suspended or revoked pursuant to § 143.46. The importer or broker will be offered the opportunity to appeal the port director's decision in writing within 10 calendar days of receipt of the written notice. The Assistant Commissioner, Office of International Trade, or his designee, will issue a decision in writing on the proposed action within 30 working days after receiving a timely filed appeal. If no timely appeal is received, the proposed notice becomes the final decision of the Agency as of the date that the appeal period expires. A proposed suspension or revocation of an importer's or broker's entry filer code will not take effect unless the appeal process under this paragraph has been concluded with a decision adverse to the importer or broker.

(2) *Immediate suspension or revocation.* In the case of willfulness or those in which public health, interest, or safety so requires, the port director may immediately suspend or revoke an entry filer code upon written notice to the importer or broker. The notice will contain a description of the facts or conduct warranting the immediate action. The importer or broker will be offered the opportunity to appeal the port director's decision within 10 calendar days of receipt of the written notice providing for immediate suspension or revocation. The immediate suspension or revocation will remain in effect during the appeal period. The Assistant Commissioner, Office of International Trade, or his designee, will issue a decision in writing on the suspension or revocation within 15 working days after receiving a timely filed appeal from the importer or broker. If no timely appeal is received, the notice becomes the final decision of the Agency as of the date that the appeal period expires.

* * * * *

■ 3. Section 142.25 is amended by adding a new paragraph (c) to read as follows:

§ 142.25. Discontinuance of immediate delivery privileges.

* * * * *

(c) *Procedures for discontinuance of immediate delivery privileges.*

(1) *Proposed discontinuance.* If the port director finds that there is a basis for the discontinuance of immediate delivery privileges, the importer will be provided with written notice proposing the discontinuance with a description of the facts or conduct warranting the action. The importer will be offered the opportunity to appeal the port director's decision in writing within 10 calendar days of receipt of the written notice. The Assistant Commissioner, Office of International Trade, or his designee, will issue a decision in writing on the proposed action within 30 working days after receiving a timely filed appeal from the importer. If no timely appeal is received, the proposed notice becomes the final decision of the Agency as of the date that the appeal period expires. A proposed discontinuance of an importer's immediate delivery privileges will not take effect unless the appeal process under this paragraph has been concluded with a decision adverse to the importer.

(2) *Immediate discontinuance.* In the case of willfulness or those in which public health, interest, or safety so requires, the port director may immediately discontinue immediate delivery privileges upon written notice to the importer. The notice will contain a description of the facts or conduct warranting the immediate action. The importer will be offered the opportunity to appeal the port director's decision within 10 calendar days of receipt of the written notice providing for immediate discontinuance. The immediate discontinuance will remain in effect during the appeal period. The Assistant Commissioner, Office of International Trade, or his designee, will issue a decision in writing on the discontinuance within 15 working days after receiving a timely filed appeal from the importer. If no timely appeal is received, the notice becomes the final decision of the Agency as of the date that the appeal period expires.

PART 143—SPECIAL ENTRY PROCEDURES

■ 4. The authority citation for part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1414, 1481, 1484, 1498, 1624, 1641.

■ 5. Add new § 143.46 to read as follows:

§ 143.46. Discontinuance of RLF privileges.

(a) *Authority of the port director.* The port director will discontinue RLF privileges if the RLF filer:

(1) No longer meets the eligibility criteria set forth in § 143.43,

(2) Fails to file all additional information required by CBP pursuant to § 143.45; or

(3) Fails to adhere to all applicable laws and regulations.

(b) *Procedures for discontinuance of RLF privileges.*

(1) *Proposed discontinuance.* If the port director finds that there is a basis for the discontinuance of RLF privileges, the RLF filer will be provided with written notice proposing the discontinuance with a description of the facts or conduct warranting the action. The notice will also specify whether the RLF filer's participation in the Automated Broker Interface (ABI) is being suspended or revoked pursuant to § 143.6 or § 143.7. The RLF filer will be offered the opportunity to appeal the port director's decision in writing within 10 calendar days of receipt of the written notice. The Assistant Commissioner, Office of International Trade, or his designee, will issue a decision in writing on the proposed action within 30 working days after receiving a timely filed appeal from the RLF filer. If no timely appeal is received, the proposed notice becomes the final decision of the Agency as of the date that the appeal period expires. A proposed discontinuance of a filer's RLF privileges will not take effect unless the appeal process under this paragraph has been concluded with a decision adverse to the RLF filer.

(2) *Immediate discontinuance.* In the case of willfulness or those in which public health, interest, or safety so requires, the port director may immediately discontinue RLF privileges upon written notice to the RLF filer. The notice will contain a description of the facts or conduct warranting the immediate action. The RLF filer will be offered the opportunity to appeal the port director's decision within 10 calendar days of receipt of the written notice providing for immediate discontinuance. The immediate discontinuance will remain in effect during the appeal period. The Assistant Commissioner, Office of International Trade, or his designee, will issue a decision in writing on the discontinuance within 15 working days after receiving a timely filed appeal from the RLF filer. If no timely appeal is received, the notice becomes the final decision of the Agency as of the date that the appeal period expires.

David V. Aguilar,

Deputy Commissioner, U.S. Customs and Border Protection.

Approved: February 20, 2013.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2013–04320 Filed 2–25–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–162–FOR; Docket ID: OSM–2012–0022]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (''OSM''), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM announces receipt of a proposed amendment to the Pennsylvania regulatory program under the Surface Mining Control and Reclamation Act of 1977 (''SMCRA'' or the ''Act''). Pennsylvania's proposed amendment consists of the addition of new definitions and revisions to Pennsylvania's regulations on the use of the Coal Refuse Disposal Control Fund (''CRDCF'') and permit and reclamation fees.

This document provides the times and locations that the Pennsylvania program and proposed amendment are available for public inspection, the comment period during which you may submit written comments, and the public hearing procedures if a hearing is requested.

DATES: We will accept written comments on these amendments until 4:00 p.m., Eastern Standard Time (''EST'') March 28, 2013. If requested, we will hold a public hearing on the amendment on March 25, 2013. We will accept requests to speak at a hearing until 4:00 p.m., EST on March 13, 2013.

ADDRESSES: You may submit comments, identified by SATS No. PA–162–FOR by any of the following methods:

- *Mail/Hand Delivery:* Mr. Ben Owens, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, 3rd Floor, Pittsburgh, Pennsylvania 15220
- *Fax:* (412) 937–2888
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID OSM–2012–0022. If you would like to submit comments, go to *http://www.regulations.gov* and follow the instructions.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Pennsylvania regulations, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendments by contacting OSM's Pittsburgh Field Division Office; or you can view the full text of the program amendment available for you to read at *www.regulations.gov*.

In addition, you may review a copy of the amendment during regular business hours at one of the following locations:

Appalachian Regional Coordinating Center, Ben Owens, Chief, Pittsburgh Field Division, Office of Surface

Mining Reclamation and Enforcement, 3 Parkway Center, 3rd Floor, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937–2827, Email: *bowens@osmre.gov*.

Pennsylvania Department of Environmental Protection, Thomas Callaghan, P.G., Director, Bureau of Mining and Reclamation, Rachel Carson State Office Building, P.O. Box 8461, Harrisburg, Pennsylvania 17105–8461, Telephone: (717) 787–5015, Email: *tcallaghan@state.pa.us*.

FOR FURTHER INFORMATION CONTACT: Ben Owens, Chief, Pittsburgh Field Division; Telephone: (412) 937–2827. Email: *bowens@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the SMCRA permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * * ; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program, effective July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning the Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15, and 938.16.

II. Description of the Proposed Amendment

By letter dated December 19, 2012, (Administrative Record Number PA 895.00), Pennsylvania sent OSM a request to approve regulations related to Pennsylvania coal fees. Pennsylvania is requesting approval of regulations found at 25 Pa. Code Chapter 86, sections 1, 3, and 17.

Pennsylvania proposes the addition of two terms to the ''Definitions'' section of Chapter 86, of the Pennsylvania regulations dealing with general aspects of surface and underground coal mining. Pennsylvania proposes to add the terms ''major permit revision'' and ''permit application fee'' to this section. The definition of ''major permit revision'' is proposed to be, a revision to a coal mining permit that requires public notice. The definition of ''permit application fee'' is proposed to be, a nonrefundable filing fee due at the time of submission of an application. The permit application fee is required for an application to be considered complete.

Additionally, Pennsylvania proposes to add a subsection to section 86.3, regarding the use of the CRDCF. The new subsection (b) will, if approved, require permit application fees submitted under the Coal Refuse and Disposal Act to be used to finance the costs of review of the applications.

Further, Pennsylvania proposes to increase the permit application fees. Currently, a permit application for coal mining activities or an application for a coal preparation plant is required to be submitted with an application fee of $250. Currently, coal refuse disposal activities require a fee of $500 plus an additional $10 per acre for acreage in excess of 50 acres. The proposed amendment increases the fees and creates new categories of permits with differing fees. Surface mining and coal refuse disposal permits will be assessed a fee of $3,250; coal refuse reprocessing permits will be assessed a fee of $1,900; coal preparation plant, anthracite underground mining, and incidental extraction permits will be assessed a fee of $1,650; bituminous underground mining permits will be assessed a fee of $5,750; and post-mining activity permits will be assessed a fee of $300. Under subsection (b)(2) of the proposed amendment, a new fee is imposed for major permit revisions. This fee is either $300 or $1,250, dependent upon the permit type. The proposed subsection (b)(3) introduces a new fee of $250 for permit transfers. The renewal fee assessed under the current regulation still exists at the rate of $250. The details of this fee are detailed in proposed subsection (b)(4). Additionally, a new fee for auger safety and bond liability revisions is proposed to be assessed in the amount of $200 and $100, respectively.

The proposed subsection (c) describes how the collected fees will be allocated. Permit application fees collected for surface coal mine facilities, coal refuse reprocessing facilities, and coal mining activity facilities will be deposited in the Surface Mining Conservation and Reclamation Fund. Permit application fees for bituminous underground mines will be deposited in the Bituminous Mine Subsidence and Land Reclamation Fund. The fees collected for coal refuse disposal facilities are to be deposited in the CRDCF. The proposed amendment also proposes adding a new component at subsection (d). This subsection requires the Department of Environmental Protection to review the adequacy of the permit application fees at least once every three years. The results of this review must be submitted in writing to the Environmental Quality Board. Specifically, the proposed report will identify and reconcile any disparity between the amount of income generated by the fees and the costs to administer these programs as well as recommend a fee increase, if necessary.

Subsection (e) of the current regulation will remain unaltered.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether Pennsylvania's proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of Pennsylvania's State Program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analysis of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., EST, on March 13, 2013. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public; if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (''OMB'') under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 29, 2013.

Thomas Shope,

Regional Director, Appalachian Region.

[FR Doc. 2013–04373 Filed 2–25–13; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[SATS No. WY–045–FOR; Docket ID OSM–2013–0002]

Wyoming Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Wyoming regulatory program (hereinafter, the ''Wyoming program'') under the Surface Mining Control and Reclamation Act of 1977 (''SMCRA'' or ''the Act''). Wyoming proposes both revisions of and additions to its coal rules and regulations concerning ownership and control, adds a provision concerning variable topsoil depths during reclamation, and addresses four deficiencies that were identified by OSM during the review of a previous program amendment (WY–038–FOR; Docket ID No. OSM–2009–0012). Wyoming intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA, clarify ambiguities, and improve operational efficiency.

This document gives the times and locations that the Wyoming program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., m.d.t. March 28, 2013. If requested, we will hold a public hearing on the amendment on March 25, 2013. We will accept requests to speak until 4:00 p.m., m.d.t. on March 13, 2013.

ADDRESSES: You may submit comments by either of the following two methods:

- *Federal eRulemaking Portal: www.regulations.gov.* This proposed rule has been assigned Docket ID: OSM–2013–0002. If you would like to submit comments through the Federal eRulemaking Portal, go to *www.regulations.gov* and follow the instructions.
- *Mail/Hand Delivery/Courier:* Jeffrey Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, POB 11018, 150 East B Street, Casper, Wyoming 82601–1018.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''III. Public Comment Procedures'' in the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to viewing the docket and obtaining copies of documents at *www.regulations.gov,* you may review copies of the Wyoming program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, may be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of the amendment by contacting OSM's Casper Field Office.

Jeffrey Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, POB 11018, 150 East B Street, Casper, Wyoming 82601–1018, (307) 261–6547, *jfleischman@osmre.gov.*

Todd Parfitt, Director, Wyoming Department of Environmental Quality, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002, (307) 777–7555, *todd.parfitt@wyo.gov.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Telephone: (307) 261–6547. Internet: *jfleischman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Wyoming Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal

and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a) (1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Wyoming program on November 26, 1980. You can find background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Wyoming program in the November 26, 1980, **Federal Register** (45 FR 78637). You can also find later actions concerning Wyoming's program and program amendments at 30 CFR 950.12, 950.15, 950.16, and 950.20.

II. Description of the Proposed Amendment

By letter dated January 8, 2013, Wyoming sent us a proposed amendment to its approved regulatory program (Administrative Record Docket ID No. OSM–2013–0002) under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming submitted the amendment to address required rule changes OSM identified in a letter to Wyoming dated October 2, 2009, under 30 CFR 732.17(c). These included changes to Wyoming's rules for ownership and control. The amendment also adds a provision concerning variable topsoil depths during reclamation and addresses four deficiencies that OSM identified in response to Wyoming's formally submitted revegetation rule package (WY–038–FOR; Docket ID No. OSM–2009–0012).

Specifically, Wyoming proposes to amend the Land Quality Division Coal Rules and Regulations at Chapter 1, Section 2 (definitions related to ownership and control including ''Applicant violator system or AVS,'' ''Control or controller,'' ''Notice of violation,'' and ''Own, owner or ownership''); Chapter 2, Section 2(a)(i) and (ii) (ownership and control permit application information including identification of interests and a complete statement of compliance); Chapter 12, Section 1(a)(viii)–(xiv) (the review process, procedures, and requirements for making permit eligibility determinations including: Review of applicant and operator information, review of permit history, review of compliance history, and related AVS entry requirements); and Chapter 16, Section 2(h) and (j) (notification requirements related to Wyoming's enforcement regulations and AVS entry requirements). Wyoming also proposes to add a provision which allows for variable replacement depths for topsoil during reclamation at Chapter 4, Section 2(c)(v). Lastly, Wyoming addresses four deficiencies that OSM identified in response to Wyoming's formally submitted revegetation rule package (WY–038–FOR; Docket ID No. OSM–2009–0012)) including: Adding the term ''surface'' back into Wyoming's rules where it had been deleted and reinstating the definition of ''Surface coal mining and reclamation operations'' at Chapter 1, Section 2(ez) that had been removed from Wyoming's rules; adding the 1:24,000 scale requirement for maps that are submitted with permit applications back into Wyoming's rules at Chapter 2, Section 1(c); adding language to clarify that wildlife enhancement is not limited to revegetation efforts at Chapter 2, Section 5(a)(viii); and correcting numerous inaccurate citations to other sections of Wyoming's rules and regulations. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Wyoming program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available in the electronic docket for this rulemaking at *www.regulations.gov.* 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.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t. on March 13, 2013. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public; if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 18, 2013.

Allen D. Klein,

Director, Western Region.

[FR Doc. 2013–04376 Filed 2–25–13; 8:45 am]

BILLING CODE 4310–05–P

POSTAL SERVICE

39 CFR Part 111

New Intelligent Mail Package Barcode Standards To Enhance Package Visibility; Opportunity for Comments in Advance of Rulemaking

AGENCY: Postal Service™.

ACTION: Request for comments.

SUMMARY: The Postal Service is exploring the advisability of requiring the use of Intelligent Mail® package barcodes (IMpb) or unique tracking Intelligent Mail barcodes (IMb™) on all commercial parcels, and providing support to mailers to assure their ability to apply unique tracking barcodes to all commercial parcels.

DATES: Comments are due on March 28, 2013.

ADDRESSES: Mail or deliver written comments to the manager, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 4446, Washington, DC 20260–5015. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor North, Washington, DC, by appointment only between the hours of 9 a.m. and 4 p.m., Monday through Friday. Call 1–202–268–2906 in advance for an appointment. Email comments, containing the name and address of the commenter, may be sent to: *MailingStandards@usps.gov,* with a subject line of ''Package Visibility.'' Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Freeman at 202–268–2922 or Kevin Gunther at 202–268–7208.

SUPPLEMENTARY INFORMATION: The Postal Service continues to enhance its operational capability to provide scanning data of IMpb and other tracking barcodes through the use of automated processing equipment and Intelligent Mail scanning devices. The tracking data provided by IMpb, including acceptance, enroute, and delivery status data, will provide value to the Postal Service, to mailers and to their shared customer base.

IMpb can offer a number of additional benefits by providing mailers with access to piece-level visibility throughout the Postal Service's processing and delivery operations. The basic structure of IMpb includes:

- A routing code to facilitate the processing of parcels on automated sorting equipment.
- A channel-specific Application Identifier (AI) that associates the barcode to the payment method, supporting revenue assurance.
- A 3-digit service type code, which identifies the exact mail class and service combination, eliminating the need for multiple barcodes on a parcel.
- An option to use a 6-digit or 9-digit numeric Mailer ID (MID), to accommodate all mailers.
- A serial number that enables uniqueness and supports piece-level visibility.

These features contribute to the data-stream efficiency within USPS® mail processing, delivery, payment, and reporting. Intelligent Mail package barcodes also include specific ''mail class only'' service type codes that may be used for parcels without extra services.

The mailing industry was first provided notice of the intent of the Postal Service to require the mandatory use of IMpb on all domestic packages via an advanced notice of proposed rulemaking, **Federal Register** notice (75 FR 56922–56923) on September 17, 2010. In response to input from the mailing community, this broad requirement was narrowed to generally apply only to commercial parcels mailed at presort or destination-entry prices. On January 28, 2013, the Postal Service implemented this initial phase of its IMpb standards by requiring IMpb use, including use of version 1.6 of the electronic shipping services manifest, for all commercial parcels (except Standard Mail parcels) claiming presort or destination-entry pricing.

The Postal Service is now considering the addition, at a future date, of a new requirement for all remaining commercial parcels to bear an IMpb. Mailers of these parcels will also be required to transmit electronic documentation to the Postal Service using version 1.6 (or a newer version) of the Shipping Services Manifest File. If this requirement is adopted, it would apply to all commercial parcels, without regard to presort or entry level, and would generally include commercial parcels of all classes with the exception of Express Mail entered through Express Mail Corporate Account. The Postal Service would expect to implement these new standards on or about July 28, 2013.

Additionally, the Postal Service is investigating alternative processes that would permit some categories of Standard Mail to bear a unique IMb instead of an IMpb. If the Postal Service determines that the use of an IMb is a viable option in these limited circumstances, those mailers using this option will be required to transmit piece-level data to the Postal Service in a Mail.dat or Mail.XML format. Mailers who use the IMb format will not receive delivery scans on their pieces unless they comply with Postal Service requirements for additional identifying marks indicating that confirmation services are requested. The Postal Service is also exploring options to accommodate a modified tracking process for some categories of Standard mail parcels, such as Simple Samples™ and parcels bearing simplified addresses.

Mailers will benefit from the tracking services provided with IMpb, both from improved service performance and from more efficient postal operations. The Postal Service anticipates that the enhancements to parcel visibility following these changes in standards will produce the following benefits:

- Enable customer-level service reporting;
- Support accurate customer volume reporting;
- Provide data for identifying, diagnosing, and correcting service issues;
- Enable the use of scanning technology to reduce distribution costs in delivery units by allowing non-scheme-trained employees to perform parcel distribution to carrier routes, resulting in greater flexibility in staffing and savings on training expenses;

• Provide advance notice of workload to improve planning in processing and delivery operations;

• Support improved understanding of, and opportunities to reduce, postal costs;

If these new standards are adopted, the Postal Service also expects to provide support to its smaller and mid-sized mailers in applying IMpb-compliant labels to every commercial parcel. The Postal Service intends to provide pre-printed IMpb-compliant tracking barcodes to permit imprint and postage meter mailers for use with non-presorted mailings, and to provide tools for Merchandise Return Service (MRS) permit holders to enable their customers to print IMpb-compliant MRS labels online.

To improve piece-level visibility within USPS processing, the Postal Service is investigating the operational feasibility of electronically associating individual parcel tracking numbers with specific sacks, trays, pallets, or similar containers. Depending on the results, the Postal Service may, at a future date, establish a requirement for all commercial parcel mailers to electronically transmit Intelligent Mail tray barcode (IMtb) and Intelligent Mail container barcode (IMcb) nesting data to the Postal Service. Nesting data would be required to be included in the shipment manifest or to be transmitted through another approved electronic documentation method. Recognizing that package mailers have not previously been required to use these barcodes, if this requirement is adopted, the Postal Service will work with the industry to support transitioning to the use of these barcodes, and to determine the proper timing for its implementation.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2013–04302 Filed 2–25–13; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2013–0055; FRL–9785–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Allegheny County Reasonably Available Control Technology Under the 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for Allegheny County Health Department (ACHD). This SIP revision consists of a demonstration that Allegheny County's portion of the Pennsylvania requirements of reasonably available control technology (RACT) for nitrogen oxides (NOx) and volatile organic compounds (VOCs) satisfies the RACT requirements set forth by the Clean Air Act (CAA). This SIP revision demonstrates that all requirements for RACT are met either through Certification that previously adopted RACT controls in Allegheny County's SIP that were approved by EPA under the 1-hour ozone national ambient air quality standards (NAAQS) are based on the currently available technically and economically feasible controls, and continue to represent RACT for the 8-hour ozone NAAQS, a negative declaration demonstrating that no facilities exist in Allegheny County for certain control technology guideline (CTG) categories; and a new RACT determination for a specific source. This action is being taken under the CAA.

DATES: Written comments must be received on or before March 28, 2013.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2013–0055 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: Fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2013–0055, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2013–0055. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201. Copies are also available at Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Emlyn Velez-Rosa, (215) 814–2038, or by email at *Velez-Rosa.Emlyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Ozone is formed in the atmosphere by photochemical reactions between VOC, NOx, and carbon monoxide (CO) in the presence of sunlight. In order to reduce ozone concentrations in the ambient air, the CAA requires all nonattainment

areas to apply controls on VOC/NOx emission sources to achieve emission reductions.

Since the 1970s, EPA has consistently interpreted RACT to mean the lowest emission limit that a particular source is capable of meeting by the application of the control technology that is reasonably available considering technological and economic feasibility. *See* 72 FR 20586, 20610 (April 25, 2007). Section 182 of the CAA sets forth two separate RACT requirements for ozone nonattainment areas. The first requirement, contained in section 182(a)(2)(A) of the CAA, and referred to as RACT fix-up, requires the correction of RACT rules for which EPA identified deficiencies before the CAA was amended in 1990. The Pennsylvania RACT fix-up SIP submittal was approved with a conditional limited approval on March 23, 1998 (63 FR 13789) and later converted to a full approval on October 22, 2008 (73 FR 62891).

The second requirement, set forth in section 182(b)(2) of the CAA, applies to moderate (or worse) ozone nonattainment areas and attainment areas in the ozone transport region (OTR) established pursuant to section 184 of the CAA. These areas are required to implement RACT controls on all major VOC and NOx emission sources and on all sources and source categories covered by a CTG issued by EPA. Allegheny County has adopted all CTGs and they are listed in Section II of this notice. Further details of Allegheny County's RACT requirements can be found in a Technical Support Document (TSD) prepared for this rulemaking and included in the docket at EPA–R03–OAR–2013–0055.

Section 182(b)(2) of the CAA required Allegheny County to implement RACT on all sources and source categories covered by a CTG issued by EPA. Stationary sources with the potential to emit 50 tons per year or more of VOCs or 100 tons per year or more of NOx that were not covered by a CTG were also required to implement RACT.

The ozone transport region (OTR) is established by section 184 of the CAA. Areas in the OTR are subject to OTR-specific RACT requirements. Section 184(b)(1)(B) of the CAA requires the implementation of RACT with respect to all sources of VOC covered by a CTG. Additionally, section 184(b)(2) of the CAA requires the implementation of major stationary source requirements as if the area was a moderate nonattainment area on any stationary source with a potential to emit at least 50 tons per year of VOC or 100 tons per year of NOx. Because Allegheny County is in Pennsylvania which is in the OTR, Allegheny County must comply with section 184(b)(1)(B) and (2) of the CAA.

EPA requires for the 8-hour ozone NAAQS that states meet the CAA RACT requirements, either through a certification that previously adopted RACT controls in their SIP approved by EPA under the 1-hour ozone NAAQS represent adequate RACT control levels for 8-hour ozone NAAQS attainment purposes or through the establishment of new or more stringent requirements that represent RACT control levels. *See Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule To Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline* (Phase 2 Rule), 70 FR 71612, 71655 (November 29, 2005). Sections 172(c)(1) and 182(b)(2) of the CAA require that all SIPs satisfy the NOx and VOCs RACT requirements that apply in areas that have not attained the NAAQS for ozone. *See* 42 U.S.C. 7502(c)(1), 7511a(b)(2), and 7511a(f). EPA has determined that states that have RACT provisions approved in their SIPs for 1-hour ozone nonattainment areas have several options for fulfilling the RACT requirements for the 8-hour ozone NAAQS. If a state meets certain conditions, it may certify that previously adopted 1-hour ozone RACT controls in the SIP continue to represent RACT control levels for purposes of fulfilling 8-hour ozone RACT requirements. Alternatively, a state may establish new or more stringent requirements that represent RACT control levels, either in lieu of or in conjunction with a certification.

As set forth in the preamble to the Phase 2 Rule, a certification must be accompanied by appropriate supporting information such as consideration of information received during the public comment period and consideration of new data (70 FR 71612, 71655). This information may supplement existing RACT guidance documents that were developed for the 1-hour ozone standard, such that the state's SIP accurately reflects RACT for the 8-hour ozone standard based on the current availability of technically and economically feasible controls. Establishment of new RACT requirements will occur when states have new stationary sources not covered by existing RACT regulations, or when new data or technical information indicates that a previously adopted RACT measure does not represent a newly available RACT control level. Another 8-hour ozone NAAQS requirement for RACT is to submit a negative declaration if there are no CTG sources or major sources of VOC and NOx emissions in lieu of or in addition to a certification.

II. Summary of the SIP Revision

On May 5, 2009, the Pennsylvania Department of Environmental Protection (PADEP) submitted a revision on behalf of ACHD for its SIP that addresses the requirements of RACT under the 8-hour ozone NAAQS set forth by the CAA. Allegheny County's SIP revision is consistent with the process in the Phase 2 Rule preamble and satisfies the requirements of RACT set forth by the CAA under the 8-hour ozone NAAQS through: (1) Certification that previously adopted RACT controls in Allegheny County's SIP, which were approved by EPA under the 1-hour ozone NAAQS, are based on the currently available, technically and economically feasible controls and continue to represent RACT for the 8-hour ozone NAAQS; (2) a negative declaration demonstrating that no facilities exist in Allegheny County for the applicable CTG categories; and (3) a new RACT determination for a single source based upon reliance on the Maximum Achievable Control Technology (MACT) standard as allowed in the Phase 2 Rule.

A. VOC CTG RACT Controls

Allegheny County's Regulations, codified at Article XXI, contain the County's CTG VOC RACT controls that were implemented and approved in the Allegheny County SIP under the 1-hour ozone NAAQS. Table 1 lists Allegheny County's VOC RACT controls for which Allegheny County has provided the required evaluation and is certifying as meeting the 8-hour ozone NAAQS RACT requirements. Revisions to Article XXI section 2105.10 for surface coating processes and related definitions found in Article XXI section 2101.20 were made after this May 5, 2009 SIP submittal and approved by EPA into the Pennsylvania SIP on December 28, 2010 (75 FR 81480) and supersede the May 5, 2009 submittal. EPA approved new regulations in the December 28, 2010 rulemaking action including emission limits for Large Appliance and Metal Surface Coatings, Article XXI section 2105.77 and emission limits for Paper, Film, and Foil Surface Coatings, Article XXI section 2105.79. Allegheny County also incorporated by reference Pennsylvania's Consumer Products Rule that amended Article XXI section 2105.88, which was finalized by EPA on

November 29, 2012 (77 FR 71115) and supersedes the May 5, 2009 submittal. In this proposal EPA is not taking action on those CTG Rules below that have been revised and approved by EPA after the May 5, 2009 submittal.

TABLE 1—ALLEGHENY COUNTY'S CTG VOC RACT CONTROLS

Article XXI Section	Existing stationary sources—40 CFR 52.2020(C)			
	CTG for RACT basis	State effective date	**Federal Register** date for SIP approval	Citation
2105.10 VOC Sources Surface Coating Processes.	Control of Volatile Organic Emissions from Existing Stationary Sources, Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks. Control of Volatile Organic Emissions from Existing Stationary Sources, Volume III: Surface Coating of Metal Furniture. Control of Volatile Organic Emissions from Existing Stationary Sources, Volume IV: Surface Coating for Insulation of Magnet Wire. Control of Volatile Organic Emissions from Existing Stationary Sources, Volume V: Surface Coating of Large Appliances. Control of Volatile Organic Emissions from Existing Stationary Sources, Volume VI: Surface Coating of Miscellaneous Metal Parts and Products.	10/20/1995 07/10/03	11/14/2002 06/24/2005	67 FR 68935 70 FR 36511
2105.11 VOC Sources Graphic Arts Systems.	Control of Volatile Organic Emissions from Existing Stationary Sources, Volume VIII: Graphic Arts—Rotogravure and Flexography.	10/20/1995	11/14/2002	67 FR 68935
2105.12 VOC Sources VOC Storage Tanks.	Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks.	10/20/1995	11/14/2002	67 FR 68935
2105.13 Gasoline Loading Facilities.	Control of Volatile Organic Emissions from Bulk Gasoline Plants. Design Criteria for Stage I Vapor Control Systems—Gasoline Service Stations.	10/20/1995	11/14/2002	67 FR 68935
2105.15 Degreasing Operations	Control of Volatile Organic Emissions from Solvent Metal Cleaning.	10/20/1995	11/14/2002	67 FR 68935
2105.16 Cutback Asphalt Paving ..	Control of Volatile Organic Compounds from Use of Cutback Asphalt.	10/20/1995	11/14/2002	67 FR 68935
2105.17 Ethylene Production Facilities.	.....	10/20/1995	11/14/2002	67 FR 68935
2105.19 Synthetic Organic Chemical and Polymer Manufacturing—Fugitive Emissions.	Control of Volatile Organic Compound Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment.	10/20/1995	11/14/2002	67 FR 68935
2105.70 Petroleum Refineries	.....	10/20/1995	11/14/2002	67 FR 68935
2105.71 Pharmaceutical Products	Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products.	10/20/1995	11/14/2002	67 FR 68935
2105.72 Manufacture of Pneumatic Rubber Tires.	Control of Volatile Organic Emissions from Manufacture of Pneumatic Rubber Tires.	10/20/1995	11/14/2002	67 FR 68935
2105.74 Aerospace Manufacturing and Rework.	Aerospace	07/10/2003	06/24/2005	70 FR 36511
2105.75 Mobile Equipment Repair and Refinishing.	ACT: Automobile Body refinishing	07/10/2003	06/24/2005	70 FR 36511
2105.76 Wood Furniture Manufacturing Operations.	Wood Furniture	07/10/2003	06/24/2005	70 FR 36511

ACHD also submitted a negative declaration certifying that the following VOC CTG sources listed in table 2 do not exist in Allegheny County, and therefore ACHD does not need to adopt CTGs for these sources. Table 2 lists VOC CTG sources in Allegheny County's negative declaration.

TABLE 2—VOC CTG SOURCES FOR WHICH NO APPLICABLE FACILITIES EXIST IN ALLEGHENY COUNTY

Control of Volatile Organic Compound Emissions From Large Petroleum Dry Cleaners.
Control of Volatile Organic Emissions From Existing Stationary Sources, Volume II: Factory Surface Coating of Flat Wood Paneling.
Control of Volatile Organic Compound Equipment Leaks From Natural Gas/Gasoline Processing Plants.
Control of Volatile Organic Compound Emissions From Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry.
Control of Volatile Organic Compound Emissions From Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry.
Control Techniques Guidelines for Shipbuilding and Ship Repair Operations.

B. Source-Specific RACT Controls

Table 3 lists Allegheny County's source-specific RACT controls, which were implemented and approved into the SIP under the 1-hour ozone NAAQS, for which Allegheny County is certifying as meeting the 8-hr ozone NAAQS RACT requirements for VOC and/or NO_X. EPA approved into the Pennsylvania SIP new NO_X emission control regulation for Glass Melting Furnaces in Allegheny County on November 29, 2012 (77 FR 71117) which regulation supersedes the source-specific RACT determinations submitted in the May 5, 2009 submittal for sources where Article XXI, section 2105.101 is applicable. Allegheny County submitted a revision on January 25, 2012 removing all references to the cap and trade programs, NO_X SIP Call or Clean Air Interstate Rule (CAIR) because it certified that those electrical generating units (EGUs) subject to such programs have source-specific RACT controls that do not rely on the trading programs and because the U.S. Court of Appeals for the District of Columbia Circuit ruled in the *National Resources Defense Council* v. *EPA,* 571 F.3d 1245, 1256 (July 10, 2009), that ''regionwide RACT-level reductions in emissions do not meet the statutory requirement that the reductions be from sources in the nonattainment area.''

TABLE 3—SOURCE-SPECIFIC RACT CONTROLS

Facility name	State effective date	Pollutant	**Federal Register** date	Citation
Allegheny Ludlum Corporation	12/19/1996	NO_X/VOC	10/18/2001	66 FR 52857.
Ashland Specialty Chemical Co	12/30/1996	NO_X/VOC	10/16/2001	66 FR 52506.
Bay Valley Foods	06/09/2005	NO_X	05/11/2006	71 FR 27394.
Bellefield Boiler Plant	12/19/1996	NO_X	10/12/2001	66 FR 52044.
Eastman Chemical Resins, Inc	11/01/1999	NO_X/VOC	10/16/2001	66 FR 52506.
GE Lighting LLC	12/19/1996	NO_X	10/16/2001	66 FR 52527.
Guardian Industries Corp	08/27/1996	NO_X	10/16/2001	66 FR 52527.
Koppers Industries, Inc	08/27/1996	VOC	10/17/2001	66 FR 52700.
Neville Chemical Co	12/13/1996	NO_X/VOC	10/16/2001	66 FR 52506.
NRG Energy Center	06/09/2005	NO_X	05/11/2006	71 FR 27394.
Orion Power Brunot Island	08/27/1996	NO_X/VOC	10/15/2001	66 FR 52327.
Orion Power Cheswick	03/08/1996	NO_X	10/18/2001	66 FR 52867.
PACT—Pennsylvania Allegheny County Thermal	03/04/1996	NO_X	10/12/2001	66 FR 52044.
Port Glenshaw Glass, LLC	03/10/2000	NO_X/VOC	10/16/2001	66 FR 52527.
PPG Industries, Inc Springdale	12/19/1996	VOC	10/12/2001	66 FR 52050.
Pressure Chemical Company	06/11/1997	VOC	10/17/2001	66 FR 52700.
Shenango Inc	12/30/1996	NO_X/VOC	10/16/2001	66 FR 52511.
US Steel Clairton	12/30/1996	NO_X/VOC	10/16/2001	66 FR 52511.
US Steel Edgar Thomas	12/30/1996	NO_X/VOC	10/16/2001	66 FR 52511.
US Steel Irvin	12/30/1996	NO_X/VOC	10/16/2001	66 FR 52511.

Finally, the Laurel Mountain Whirlpool facility did not have a 1-hour ozone NAAQS RACT determination, but is subject to the MACT standards of 40 CFR 63 subpart WWWW, which has been determined sufficient for VOC 8-hour ozone NAAQS RACT in accordance with the Phase 2 Rule. Further details of ACHD's RACT re-evaluations can be found in the TSD prepared for this rulemaking.

III. Proposed Action

EPA is proposing to approve the ACHD SIP revision that addresses the requirements of RACT under the 8-hour ozone NAAQS, which was submitted on May 5, 2009. This SIP revision includes a combination of: (1) Certifications that previously adopted RACT controls in Pennsylvania's SIP which were approved by EPA under the 1-hour ozone NAAQS are based on the currently available, technically and economically feasible controls and continue to represent RACT for the 8-hour ozone NAAQS; (2) a negative declaration demonstrating that no facilities exist in Allegheny County for the applicable CTG categories; and (3) a new RACT determination for a single source. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

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

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

practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

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

Dated: February 14, 2013.

Shawn M. Garvin,

Regional Administrator, Region III.

[FR Doc. 2013–04409 Filed 2–25–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 515, 520, and 532

[Docket No. 11–22]

RIN 3072–AC51

Non-Vessel-Operating Common Carrier Negotiated Rate Arrangements; Tariff Publication Exemption

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to impose registration requirements on foreign-based unlicensed non-vessel-operating common carriers (NVOCCs) and to extend an exemption from certain provisions and requirements of the Shipping Act of 1984 and the Commission regulations to foreign-based unlicensed non-vessel-operating common carriers that agree to negotiated rate arrangements (NRAs). The extension of the exemption is to make NRAs more useful and to enhance competition among all NVOCCs.

DATES: Comments or suggestions due on or before: April 29, 2013.

ADDRESSES: Submit all comments concerning this proposed rule to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, Phone: (202) 523–5725, Email: *secretary@fmc.gov.*

FOR FURTHER INFORMATION CONTACT: Rebecca A. Fenneman, General Counsel, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, Phone: (202) 523–5740, Email: *generalcounsel@fmc.gov.*

SUPPLEMENTARY INFORMATION:

Submit Comments: Submit an original and 5 copies in paper form, and if possible, send a PDF of the document by email to *secretary@fmc.gov.* Include in the subject line: Docket No. 11–22, Comments on Non-Vessel-Operating Common Carrier Negotiated Rate Arrangements; Tariff Publication Exemption.

Background

On March 2, 2011, the Commission published a final rule promulgating 46 CFR part 532, Docket No. 10–03, *Non-Vessel-Operating Common Carrier Negotiated Rate Arrangements,* which exempted licensed non-vessel-operating common carriers (NVOCCs) that enter into negotiated rate arrangements (NRAs) from the tariff rate publication requirements of the Shipping Act of 1984 and certain provisions and requirements of the Commission's regulations. 76 FR 11351 (Mar. 2, 2011).

However, concerns about extending the exemption to foreign-based unlicensed NVOCCs were raised by staff. *Id.* at 11355–11356. Foreign-based unlicensed NVOCCs are not subject to the same stringent requirements as licensed NVOCCs, such as review of the experience and character of the shareholders, major officers, and Qualifying Individual of the license applicant. Accordingly, the Commission decided at the time to permit the NRAs only to licensed NVOCCs, while stating that it will commence proceedings to obtain and consider additional comments on potential modifications to the final rule, including possible extension of the exemption to foreign-based unlicensed NVOCCs. *Id.* at 11357.

The Commission later issued a Notice of Inquiry, Docket No. 11–22, *Non-Vessel-Operating Common Carrier Negotiated Rate Arrangements; Tariff Filing Exemption,* seeking comments on ways to make the NRA rules more useful and on its possible extension to foreign-based unlicensed NVOCCs. 76 FR 80866 (Dec. 27, 2011). Adopting suggestions by a number of ocean transportation intermediaries and U.S. and foreign trade associations, the Commission published a direct final rule eliminating some of the technical requirements of the rule. 77 FR 33971 (June 8, 2012). The Commission, however, decided to continue to consider other suggestions, including possible extension of the exemption to foreign-based unlicensed NVOCCs, at a future date. *Id.* at 33972.

Discussion

The Commission may exempt any specified future activity from any requirements of the Shipping Act of 1984 ''if the Commission finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce.'' 46 U.S.C. 40103. The Commission may attach conditions to an exemption and may, by order, revoke an exemption. *Id.* In Docket No. 10–03, the Commission found that allowing licensed NVOCCs to opt out of the requirements to publish tariff rates will enhance competition, rather than result in a substantial reduction in competition among licensed NVOCCs. 76 FR 11351, 11352. After reviewing all of the comments received and in light of the conditions for using NRAs, the Commission also found that permitting licensed NVOCCs the option of operating under NRAs would not be detrimental to commerce. *Id.* at 11353.

Commission staff, however, raised concerns that extending the exemption to foreign-based unlicensed NVOCCs could hamper the Commission's ability to protect the shipping public, as the exemption is predicated, among other things, on the prompt availability of records. *Id.* at 11353. There were also concerns about the lack of oversight of foreign-based unlicensed NVOCCs. *Id.* at 11356. The licensing process for licensed NVOCCs includes a detailed review of the experience and character of the applicant's Qualifying Individual, and the character of its major officers and shareholders. *Id.* Further, the Commission's Bureau of Certification and Licensing's review of applicants includes a thorough vetting of the Commission's complaint and enforcement records system as well as commercial databases to analyze the applicant's financial background. *Id.* While the Commission approves a license based upon substantive and verified information, the Commission knows little more than the name and address of foreign-based unlicensed NVOCCs. *Id.* Further, foreign-based unlicensed NVOCCs are not required to designate a Qualifying Individual. *Id.*

Those discussions brought to light the need for a registration process for foreign-based unlicensed NVOCCs. The registration process requires such NVOCCs submit a registration form to the Commission that identifies the NVOCCs' legal name, trade name(s), principal address, contact information including name of a contact person, and name, address, and contact person for a

designated legal agent for service of process in the U.S. A proposed form is not included within this document.

A strong majority of comments received by the Commission in Docket No. 10–03 [1] supported extending the exemption of 46 CFR part 532 to foreign-based unlicensed NVOCCs. 76 FR 11351, 11355. With the imposition of the registration process and certain other requirements enumerated below, the Commission believes that extending the NRAs to foreign-based unlicensed NVOCCs will make the NRAs more useful and thus enhance competition among all NVOCCs. Pursuant to the Commission's above-referenced review and analysis under section 16 of the Shipping Act in Docket No. 10–03, the Commission now finds that, with the adoption of these conditions and requirements, extending the NRAs to foreign-based unlicensed NVOCCs will not result in substantial reduction in competition or be detrimental to commerce. Consequently, to encourage better and fair competition among NVOCCs generally, the Commission proposes to extend the exemption from the Shipping Act and the Commission's regulation contained in 46 CFR part 532 to foreign-based unlicensed NVOCCs.

Without the registration requirements and other conditions, extending the exemption to foreign-based unlicensed NVOCCs may be detrimental to commerce by reducing the Commission's ability to protect the shipping public. Therefore, to address those concerns, the Commission proposes extending the exemption subject to the following:

- Foreign-based unlicensed NVOCCs must be registered with the Commission in accordance with § 515.19 of this proposed rule.
- Such registrations are effective for 3 years, as stated in § 515.19(d) of this proposed rule.
- Such registrations may be terminated or suspended pursuant to § 515.19(g) of this proposed rule, which includes failure to comply with 46 CFR 515.24 Agent for service of process.
- As stated in § 532.7 of this proposed rule, all NVOCCs that enter into NRAs are subject to the Commission's inspection and reproduction requests and must produce the requested NRAs promptly in response to a Commission request. All records produced must be in English or be accompanied by a certified English translation.

[1] The Commission has incorporated the record in Docket No. 10–03 into this proceeding, Docket No. 11–22. 77 FR 33971 (June 8, 2012).

Statutory Review

The collection of information requirements contained in this proposed 46 CFR parts 515 and 532 have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980, as amended. 44 U.S.C. 3501 *et seq.* Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Ronald D. Murphy, Managing Director, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, email: *OMD@fmc.gov,* or fax: (202) 523–3646; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Maritime Commission, 17th Street and Pennsylvania Avenue NW., Washington, DC 20503.

According to the Small Business Administration's regulation, ''a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.'' 13 CFR 121.105(a)(1). As foreign-based unlicensed NVOCCs have their principal place of business in foreign countries and operate primarily in foreign countries, they are not small businesses as defined by the regulation and, thus, are not small entities under the Regulatory Flexibility Act (RFA). 5 U.S.C. 601–612. Therefore, this rulemaking is not subject to the RFA.

This proposed rule is not a ''major rule'' under 5 U.S.C. 804(2).

List of Subjects

46 CFR Part 515

Freight, Freight forwarders, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 520

Freight, Intermodal transportation, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 532

Exports, Non-vessel-operating common carriers, Ocean transportation intermediary.

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, the Federal Maritime Commission proposes to amend 46 CFR parts 515, 520, and 532 as follows:

PART 515—LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES

■ 1. The authority citation for part 515 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. 305, 40102, 40104, 40501–40503, 40901–40904. 41101–41109, 41301–41302, 41305–41307; Pub. L. 105–383, 112 Stat. 3411; 21 U.S.C. 862.

■ 2. In subpart B, add new § 515.19 to read as follows:

§ 515.19 Registration of foreign-based unlicensed NVOCC.

(a) Any person whose primary place of business is located outside the United States that elects to operate as a registered NVOCC in the United States foreign trade shall register with the Commission by submitting to the Director of the Bureau of Certification and Licensing (BCL) a completed registration form, Form FMC–65 (Foreign-based Unlicensed NVOCC Registration/Renewal). A notice of each registration shall be published on the Commission's Web site www.fmc.gov. It is a violation of the Commission's regulations implementing the Shipping Act for a foreign-based unlicensed non-vessel-operating common carrier to provide NVOCC services in the U.S. foreign trade without a valid registration and an effective tariff.

(b) A registration form which appears, upon submission, to be substantially incomplete may be rejected. If rejected, a notice, together with the reasons therefore, shall be sent to the foreign-based unlicensed NVOCC and the filing fee shall be refunded. Persons who have had a registration rejected may submit a new registration at any time together with the applicable fee.

(c) Registrations are complete upon receipt of a registration form which meets the requirements of this section and upon evidence of financial responsibility being furnished pursuant to § 515.21.

(d) Registrations shall be effective for a period of three (3) years. Thereafter, registrations will be renewed for sequential three year periods upon submission of an updated registration form.

(e) A tariff shall not be published and NVOCC service shall not commence until the Commission receives valid proof of financial responsibility from the registrant and a Form FMC–1 has been filed.

(f) Any changes to legal name(s) or trade name(s), principal place of business address (including telephone number, facsimile number), contact

person and email address (including physical address if different from principal place of business), name of resident agent(s) (including physical address, mailing address, email address, telephone and facsimile number(s), and contact person) in the United States for receipt of service of judicial and administrative process (including subpoenas) must be reported to BCL within 30 days of such changes.

(g) *Termination or suspension of the registration of a registered NVOCC.*

(1) *Grounds.* A registration shall become automatically ineffective for a failure of a registered NVOCC to maintain proof of financial responsibility on file with the Commission. The effectiveness of such a registration may otherwise be terminated or suspended, after notice and the opportunity for a hearing, for any of the following reasons:

(i) Violation of any provision of the Act, or any other statute or Commission order or regulation related to carrying on the business of an ocean transportation intermediary;

(ii) Failure to respond to any lawful order or inquiry by the Commission or an authorized Commission representative;

(iii) Making a materially false or misleading statement to the Commission in connection with a registration or renewal thereof;

(iv) Failure to honor financial obligations to the Commission;

(v) Failure to timely renew a registration;

(vi) Failure to maintain a Form FMC–1 and a tariff in compliance with 46 CFR Part 520;

(vii) Knowingly and willfully processing, booking, or accepting cargo from, or transporting cargo for the account of, an NVOCC that is not licensed or registered, or has not provided proof of financial responsibility or published an effective tariff; and

(viii) Failure to designate and maintain a person in the United States as legal agent for the receipt of judicial and administrative process, including subpoenas, as required by § 515.24.

(2) [Reserved].

(3) *Publication of Notice.* The Commission shall publish on the Commission's Web site, *www.fmc.gov*, a notice of each termination or suspension.

■ 3. In § 515.24, revise paragraphs (b), (c), and (d) to read as follows:

§ 515.24 Agent for service of process.

* * * * *

(b) Service of administrative process, other than subpoenas, may be effected upon the legal agent by dispatching a copy of the document to be served by mail or courier service. Administrative subpoenas shall be served in accordance with § 502.134 of this chapter.

(c) If the designated legal agent cannot be served because of death, disability, unavailability, termination or expiration of the designation, or if a legal agent authorized to receive such service is not designated in compliance with this section, the Secretary of the Federal Maritime Commission will be deemed to be the legal agent for service of process. Any person serving the Secretary must also send to the ocean transportation intermediary, or group or association of ocean transportation intermediaries which provide financial coverage for the financial responsibilities of a member ocean transportation intermediary, by mail or courier service at the ocean transportation intermediary's, or group's, address published in its tariff, a copy of each document served upon the Secretary, and shall attest to that service at the time service is made upon the Secretary. For purposes of this paragraph, it is sufficient that a person seeking to serve process on an ocean transportation intermediary, or group of such intermediaries, affirm to the Commission's Secretary that: They have contacted, or attempted to contact, the designated agent to confirm whether it remained authorized to accept service of process; or, if no legal agent is designated in the tariff, that it has no knowledge of the identity of the ocean transportation intermediary's legal agent. Designation of the Commission's Secretary as the legal agent shall survive any cancellation of the OTI's license or tariff and shall continue for the entire period during which claims may be made under the OTI's financial responsibility instrument.

(d) Designations of legal agent under paragraphs (a) and (b) of this section and provisions relating to service of process under paragraph (c) of this section shall be published in the ocean transportation intermediary's tariff, when required, in accordance with part 520 of this chapter.

* * * * *

PART 520—CARRIER AUTOMATED TARIFFS

■ 4. The authority citation for part 520 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. 305, 40101–40102, 40501–40503, 40701–40706, 41101–41109.

■ 5. In § 520.13, revise paragraph (e) to read as follows:

§ 520.13 Exemptions and exceptions.

* * * * *

(e) *NVOCC negotiated rate arrangements.* An NVOCC that satisfies the requirements of part 532 of this chapter is exempt from the requirement in this part that it include rates in a tariff open to public inspection in an automated tariff system.

PART 532—NVOCC NEGOTIATED RATE ARRANGEMENTS

■ 6. The authority citation for part 532 continues to read as follows:

Authority: 46 U.S.C. 40103.

■ 7. Revise § 532.1 to read as follows:

§ 532.1 Purpose.

The purpose of this Part, pursuant to the Commission's statutory authority, is to exempt non-vessel-operating common carriers (NVOCCs) from the tariff rate publication and adherence requirements of the Shipping Act of 1984, as enumerated herein.

■ 8. Amend § 532.2 as follows:

■ a. Revise introductory text to read as follows; and

■ b. Amend paragraph (g) by revising the second sentence to read as follows.

§ 532.2 Scope and applicability.

This Part exempts NVOCCs duly licensed pursuant to 46 CFR 515.3 or registered pursuant to 46 CFR 515.19, holding adequate proof of financial responsibility pursuant to 46 CFR 515.21, and meeting the requirements of 46 CFR 532.4 through 532.7, from the following requirements and prohibitions of the Shipping Act and the Commission's regulations:

* * * * *

(g) * * * Any NVOCC failing to maintain its bond or license or registration as set forth above, or who has had its tariff suspended by the Commission, shall not be eligible to invoke this exemption.

■ 9. In § 532.7, revise paragraph (b) to read as follows:

§ 532.7 Recordkeeping and audit.

* * * * *

(b) NRAs are subject to inspection and reproduction requests by the Commission. An NVOCC shall produce the requested NRAs promptly in response to a Commission request. All records produced must be in English or be accompanied by a certified English translation.

* * * * *

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2013–04392 Filed 2–25–13; 8:45 am]

BILLING CODE 6730–01–P

Notices

Federal Register

Vol. 78, No. 38

Tuesday, February 26, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 20, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by March 28, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GO*V or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Submission of Itineraries

OMB Control Number: 0579–0361

Summary of Collection: The Animal Welfare Act (AWA) was first enacted as the Laboratory Animal Welfare Act (LAWA) (Pub. L. 89–544) on August 24, 1966, and amended in 1970, 1976, 1985, 1990, 2002, 2007, 2008, and 2010. The AWA requires the U.S. Department of Agriculture (USDA) to regulate the humane care and handling of most warm-blooded animals, including marine mammals, used for research or exhibition purposes, sold as pets, or transported in commerce. This legislation and its amendments were the results of extensive demand by organized animal welfare groups and private citizens requesting a Federal law to protect such animals. USDA, Animal and Plant Health Inspection Service (APHIS), Animal Care (AC) has the responsibility to enforce the AWA and the provisions of 9 CFR, Chapter 1, Subchapter A, which implements the AWA.

Need and Use of the Information: APHIS requires licensees or registrants who intend to exhibit animals away from their approved sites to submit itineraries in accordance with § 2.126 of the regulations. APHIS uses the submission of itineraries to provide data necessary for the review and evaluation of program compliance by regulated facilities, and provides a workable enforcement system to carry out the requirements of the AWA and the intent of Congress, on a practical daily basis, without resorting to more detailed and stringent regulations and standards which could be more burdensome to regulated facilities. The itinerary must include the name and/or other animal identification, species name, sex, and age of each animal, the name of the person exhibiting the animal, the owner of the animal(s) if not the licensee or registrant, the business name of the exhibitor and owner, any names being used to promote the tour, and the current USDA licensee or registration number(s), the date the animal(s) will be away from the facility, all anticipated dates for all stops, and all site names and complete addresses of all stops and layovers. Without this information, valuable time and resources are wasted trying to track down exhibitors when APHIS is investigating complaints.

Description of Respondents: Individuals or households; Business or other for-profit

Number of Respondents: 425

Frequency of Responses: Reporting: On occasion

Total Burden Hours: 1,025

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–04330 Filed 2–25–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation of West Lafayette (IN) To Provide Class X or Class Y Weighing Services

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: GIPSA is announcing the designation of Titus Grain Inspection, Inc. (Titus) to provide Class X or Class Y weighing services under the United States Grain Standards Act (USGSA), as amended.

DATES: Effective Date: November 20, 2012.

ADDRESSES: Eric J. Jabs, Chief, USDA, GIPSA, FGIS, QACD, QADB, 10383 North Ambassador Drive, Kansas City, MO 64153.

FOR FURTHER INFORMATION CONTACT: Eric J. Jabs, 816–659–8408 or Eric.J.Jabs@usda.gov.

SUPPLEMENTARY INFORMATION: In the May 25, 2010 **Federal Register** (75 FR 29310), GIPSA announced the designation of Titus to provide official services under the USGSA, effective July 1, 2010 to June 30, 2013. Subsequently, Titus asked GIPSA to amend their designation to include official weighing services. Section 79a of the USGSA authorizes the Secretary to designate authority to perform official weighing to an agency providing official inspection services within a specified geographic area, if such agency is

qualified under section 79(f) of the USGSA. GIPSA evaluated information regarding the designation criteria in section 79(f) of the USGSA and determined that Titus is qualified to provide official weighing services in their currently assigned geographic area.

Titus's present designation is amended to include Class X or Class Y weighing within their assigned geographic area, effective November 20, 2012 to June 30, 2013.

Interested persons may obtain official services by contacting Titus at 765–497–2202.

Authority: 7 U.S.C. 71–87k.

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2013–04306 Filed 2–25–13; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Sandusky, MI; Davenport, IA; Enid, OK; Keokuk, IA; Marshall, MI; and Omaha, NE Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: GIPSA is announcing the designation of Detroit Grain Inspection Service, Inc. (Detroit); Eastern Iowa Grain Inspection and Weighing Service, Inc. (Eastern Iowa); Enid Grain Inspection Company, Inc. (Enid); Keokuk Grain Inspection Service (Keokuk); Michigan Grain Inspection Services, Inc. (Michigan); and Omaha Grain Inspection Service, Inc. (Omaha) to provide official services under the United States Grain Standards Act (USGSA), as amended.

DATES: *Effective Date:* April 1, 2013.

ADDRESSES: Eric J. Jabs, Chief, USDA, GIPSA, FGIS, QACD, QADB, 10383 North Ambassador Drive, Kansas City, MO 64153.

FOR FURTHER INFORMATION CONTACT: Eric J. Jabs, 816–659–8408 or *Eric.J.Jabs@usda.gov.*

Read Applications: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

SUPPLEMENTARY INFORMATION: In the September 13, 2012 **Federal Register** (77 FR 56608), GIPSA requested applications for designation to provide official services in the geographic areas presently serviced by Detroit, Eastern Iowa, Enid, Keokuk, Michigan, and Omaha. Applications were due by October 15, 2012.

Detroit, Eastern Iowa, Enid, Keokuk, Michigan, and Omaha were the sole applicants for designation to provide official services in these areas. As a result, GIPSA did not ask for additional comments.

GIPSA evaluated all available information regarding the designation criteria in section 79(f) of the USGSA (7 U.S.C. 79(f)) and determined that Detroit, Eastern Iowa, Enid, Keokuk, Michigan, and Omaha are qualified to provide official services in the geographic area specified in the **Federal Register** on September 13, 2012. This designation action to provide official services in these specified areas is effective April 1, 2013 and terminates on March 31, 2016.

Interested persons may obtain official services by contacting these agencies at the following telephone numbers:

Official agency	Headquarters location and telephone	Designation start	Designation end
Detroit	Sandusky, MI (810) 404–3786	4/1/2013	3/31/2016
Eastern Iowa	Davenport, IA (563) 322–7149	4/1/2013	3/31/2016
Enid	Enid, OK (580) 233–1122	4/1/2013	3/31/2016
Keokuk	Keokuk, IA (319) 524–4682	4/1/2013	3/31/2016
Michigan	Marshall, MI (269) 781–2711	4/1/2013	3/31/2016
Omaha	Omaha, NE (402) 341–6739	4/1/2013	3/31/2016

Section 79(f) of the USGSA authorizes the Secretary to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79 (f)).

Under section 79(g) of the USGSA, designations of official agencies are effective for no longer than three years unless terminated by the Secretary; however, designations may be renewed according to the criteria and procedures prescribed in section 79(f) of the USGSA.

Authority: 7 U.S.C. 71–87k.

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2013–04304 Filed 2–25–13; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–15–2013]

Foreign-Trade Zone 122—Corpus Christi, Tx; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Port of Corpus Christi Authority, grantee of FTZ 122, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on February 20, 2013.

FTZ 122 was approved by the Board on September 5, 1985 (Board Order 310, 50 FR 38020, 9/19/1985) and expanded on December 6, 1991 (Board Order 545, 56 FR 65884, 12/19/1991), and on September 1, 1995 (Board Order 764, 60 FR 47149, 9/11/1995). The current zone includes the following sites in Corpus Christi: *Site 1* (7,155 acres)—Port of Corpus Christi Inner Harbor Terminal Complex (excluding the areas on which Subzones 122H and 122R are located); *Site 3* (14 acres)—Ray West Warehouses, Inc., located within 2 miles of the Port

and downtown Corpus Christi; *Site 4* (176 acres)—American Petrofina Marketing, Inc., located at the mouth of the ship channel; *Site 7* (18.2 acres)—GateFront, LLC, located at 7102 Marvin L. Berry Road; and, *Site 8* (3.71 acres)—C.C. Distributors, Inc., located at 210 McBride Lane. (**Note:** Sites 2, 5 and 6 were removed from the zone via minor boundary modification procedures in November 2010 (A(27f)–81–2010).)

The grantee's proposed service area under the ASF would be the Counties of Nueces, San Patricio, Aransas, Jim Wells, Kleberg and Bee, Texas, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Corpus Christi Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project to include existing Site 1 as a ''magnet'' site and existing Sites 3, 7 and 8 as ''usage-driven'' sites. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. The applicant is also requesting to remove Site 4 from the zone. No additional subzones/usage-driven sites are being requested at this time. The application would have no impact on FTZ 122's previously authorized subzones.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 29, 2013. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 13, 2013.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: February 20, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–04420 Filed 2–25–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–844]

Certain Lined Paper Products From India: Notice of Partial Rescission of Countervailing Duty Administrative Review; 2011

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

DATES: *Effective Date:* February 26, 2013.

FOR FURTHER INFORMATION CONTACT: Patricia Tran, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1009.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 2012, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the countervailing duty order on certain lined paper products from India.[1]

Pursuant to requests from interested parties, the Department published in the **Federal Register** the notice of initiation of this countervailing duty administrative review with respect to 82 companies for the period January 1, 2011, through December 31, 2011.[2] On November 27, 2012, petitioners [3] withdrew their review request in its entirety, including its requests for both Navneet Publications (India) Ltd. (Navneet) and A.R. Printing & Packaging India Pvt. Ltd. (A.R. Printing & Packaging).[4] On December 13, 2012, the Department published in the **Federal Register** the notice of partial rescission of this countervailing duty administrative review for all companies except Navneet and A.R. Printing & Packaging, both of whom requested their own review.[5] On January 3, 2013, Navneet withdrew its review request.[6] Petitioners and Navneet were the only parties which requested a review of the company.

Partial Rescission of the 2011 Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. The Department published the *Initiation* on October 31, 2012.[7] Navneet's withdrawal request was submitted within the 90-day period following the publication of the *Initiation* and, thus, is timely. Therefore, in accordance with 19 CFR 351.213(d)(1), and consistent with our practice, we are rescinding this review of the countervailing duty order on certain lined paper products from India with respect to Navneet. The instant review will continue with respect to A.R. Printing & Packaging which requested a review.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries. For the company for which this review is rescinded countervailing duties shall be assessed at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2011, through December 31, 2011, in accordance with 19 CFR 351.212(c)(1)(i).

The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under an APO in accordance

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[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 77 FR 53863 (September 4, 2012).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 77 FR 65858 (October 31, 2012) (*Initiation*).

[3] Petitioners are the Association of American School Paper Suppliers.

[4] *See* petitioners' November 27, 2012, Withdrawal of Request for Administrative Review.

[5] *See Certain Lined Paper From India: Notice of Partial Rescission of Countervailing Duty Administrative Review,* 77 FR 74172 (December 13, 2012).

[6] *See* Navneet's January 3, 2013, letter titled, ''Certain Lined Paper Products from India: Withdrawal of Request for Countervailing Duty Administrative Review of Navneet Publications (India) Ltd.''

[7] *See Initiation.*

with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: February 19, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–04416 Filed 2–25–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–984]

Drawn Stainless Steel Sinks From the People's Republic of China: Final Affirmative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (''the Department'') determines that countervailable subsidies are being provided to producers and exporters of drawn stainless steel sinks (''SS sinks'') from the People's Republic of China (''PRC''). For information on the estimated subsidy rates, *see* the ''Suspension of Liquidation'' section of this notice.

DATES: *Effective Date:* February 26, 2013.

FOR FURTHER INFORMATION CONTACT: Shane Subler or Austin Redington, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0189 or (202) 482–1664, respectively.

Petitioner

The petitioner in this investigation is Elkay Manufacturing Company (''Petitioner'').

Period of Investigation

The period for which we are measuring subsidies, or period of investigation, is January 1, 2011, through December 31, 2011.

Case History

The following events have occurred since the *Preliminary Determination.*[1]

On August 7, 2012, the Department initiated its investigation of new subsidy allegations.[2] Questionnaires regarding these subsidies were sent to the Government of the People's Republic of China (''GOC''), Guangdong Yingao Kitchen Utensils Co., Ltd. and Foshan Magang Kitchen Utensils Co., Ltd. (collectively, ''Yingao''), and Zhongshan Superte Kitchenware Co., Ltd. and Foshan Zhaoshun Trade Co., Ltd. (collectively, ''Superte''), and we received responses between August 22 and October 23, 2012.

On September 20, 2012, the Department published a notice aligning the deadline for this final countervailing duty (''CVD'') determination with the deadline for the final determination in the antidumping duty (''AD'') investigation.[3]

We conducted verification of Yingao's, Superte's and the GOC's questionnaire responses from November 5, to November 16, 2012, and subsequently issued verification reports.

On January 8, 2013, the Department issued post-preliminary analyses for Yingao and Superte on January 8, 2013.[4]

The GOC, Yingao, Superte, and Petitioner submitted case briefs on January 17, 2013, and rebuttal briefs on January 25, 2013.

Scope Comments

In accordance with the preamble to the Department's regulations,[5] in the *Initiation Notice,*[6] we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice.* As described in the *Preliminary Determination,* we received scope comments from Blanco America, Inc. (''Blanco''), an importer of subject merchandise, on April 10, 2012. Blanco's scope comments were addressed in the preliminary determination of the corresponding AD investigation to this case.[7] As stated in the *AD Preliminary Determination,* we have determined not to change the scope language as presented below and in the *Initiation Notice.*

Scope of the Investigation

The products covered by the scope of this investigation are SS sinks with single or multiple drawn bowls, with or without drain boards, whether finished or unfinished, regardless of type of finish, gauge, or grade of stainless steel. Mounting clips, fasteners, seals, and sound-deadening pads are also covered by the scope of this investigation if they are included within the sales price of the SS sinks.[8] For purposes of this scope definition, the term ''drawn'' refers to a manufacturing process using metal forming technology to produce a smooth basin with seamless, smooth, and rounded corners. SS sinks are available in various shapes and configurations and may be described in a number of ways including flush mount, top mount, or undermount (to indicate the attachment relative to the countertop). SS sinks with multiple drawn bowls that are joined through a welding operation to form one unit are covered by the scope of the investigation. SS sinks are covered by the scope of the investigation whether or not they are sold in conjunction with non-subject accessories such as faucets (whether attached or unattached), strainers, strainer sets, rinsing baskets, bottom grids, or other accessories.

Excluded from the scope of the investigation are SS sinks with fabricated bowls. Fabricated bowls do not have seamless corners, but rather are made by notching and bending the stainless steel, and then welding and finishing the vertical corners to form the bowls. SS sinks with fabricated bowls

[1] *See Drawn Stainless Steel Sinks from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 77 FR 46717 (August 6, 2012) (''*Preliminary Determination*'').

[2] *See* Memorandum from Jennifer Meek to Susan Kuhbach, ''Drawn Stainless Steel Sinks from the People's Republic of China Countervailing Duty Investigation: Initiation of New Subsidy Allegation,'' dated August 7, 2012.

[3] *See Drawn Stainless Steel Sinks From the People's Republic of China: Countervailing Duty Investigation,* 77 FR 58355 (September 20, 2012).

[4] *See* Memoranda from Susan Kuhbach through Christian Marsh to Paul Piquado, ''Countervailing Duty Investigation of Drawn Stainless Steel Sinks from the People's Republic of China: Post-Preliminary Analysis Memorandum for Zhongshan Superte Kitchenware Co., Ltd (''Superte'') and Foshan Zhaoshun Trade Co., Ltd. (''Zhaoshun''),'' and ''Countervailing Duty Investigation of Drawn Stainless Steel Sinks from the People's Republic of China: Post-Preliminary Analysis Memorandum for Guangdong Yingao Kitchen Utensils Co., Ltd. (''Yingao'') and Foshan Magang Kitchen Utensils Co., Ltd. (''Magang''),'' dated January 8, 2013.

[5] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

[6] *See Drawn Stainless Steel Sinks From the People's Republic of China: Initiation of Countervailing Duty Investigation,* 77 FR 18211 (March 27, 2012) (''*Initiation Notice*'').

[7] *See Drawn Stainless Steel Sinks From the People's Republic of China: Antidumping Duty Investigation,* 77 FR 60673 (October 4, 2012) (''*AD Preliminary Determination*'') and accompanying Preliminary Determination Decision Memorandum at 3.

[8] Mounting clips, fasteners, seals, and sound deadening pads are not covered by the scope of this investigation if they are not included within the sales price of the SS sinks, regardless of whether they are shipped with or entered with SS sinks.

may sometimes be referred to as ''zero radius'' or ''near zero radius'' sinks.

The products covered by this investigation are currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under statistical reporting number 7324.10.0000 and 7324.10.0010. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the products under investigation is dispositive of its inclusion as subject merchandise.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and all issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, titled ''Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Drawn Stainless Steel Sinks from the People's Republic of China'' (February 19, 2013) (hereafter, ''Decision Memorandum''), which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues that parties have raised and to which we have responded in the Decision Memorandum. The Decision Memorandum is a public document and is on file electronically *via* Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/.* The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Tariff Act of 1930, as amended (''Act''), we have calculated an individual countervailable subsidy rate for each respondent. Section 705(c)(5)(A)(i) of the Act states that for companies not individually investigated, we will determine an all others rate equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates based entirely on adverse facts available under section 776 of the Act. Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the ''all others'' rate by weight averaging the rates of Yingao and Superte, because doing so risks disclosure of proprietary information. Therefore, for the all others rate, we have calculated a simple average of Yingao's and Superte's rates.

We determine the total estimated net countervailable subsidy rates to be:

Producer/Exporter	Net subsidy rate (percent)
Guangdong Yingao Kitchen Utensils Co., Ltd., and Foshan Magang Kitchen Utensils Co., Ltd.	4.80
Zhongshan Superte Kitchenware Co., Ltd.	12.21
Foshan Zhaoshun Trade Co., Ltd.	12.26
All Others	8.51

As a result of our *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of subject merchandise from the PRC that were entered, or withdrawn from warehouse, for consumption on or after August 6, 2012, the date of the publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after December 4, 2012, but to continue the suspension of liquidation of all entries from August 6, 2012, through December 3, 2012.

If the International Trade Commission (''ITC'') issues a final affirmative injury determination, we will issue a CVD order and reinstate the suspension of liquidation under section 706(a) of the Act, and we will require a cash deposit of estimated CVDs for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (''APO''), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: February 19, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

General Issues

Comment 1 Application of the CVD Law to the People's Republic of China
Comment 2 Double Counting/Overlapping Remedies

Policy Lending to the Stainless Steel Sinks Industry

Comment 3 National and Regional Policy Lending Programs
Comment 4 Specificity to Drawn Stainless Steel Sink Producers

Preferential Export Financing

Comment 5 Timing of Department's Determination
Comment 6 Contingency of Loans on Exports
Comment 7 Countervailability of One of Yingao's Loans

Provision of Stainless Steel Coil for LTAR

Comment 8 Specificity Under Section 771(5A)(D)(III)(i) of the Act
Comment 9 Benchmark Analysis
Comment 10 Government Authority Analysis
Comment 11 Superte's Additional Stainless Steel Coil Producer Information

Comment 12 Stainless Steel Quality Differences Between Benchmark and Superte's Purchases

Provision of Electricity for LTAR

Comment 13 Application of AFA and Benchmark Analysis

Provision of Land for LTAR

Comment 14 Policies and Incentives, Marketing of Industrial Zones, and Pricing

[FR Doc. 2013–04280 Filed 2–25–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–983]

Drawn Stainless Steel Sinks From the People's Republic of China: Investigation, Final Determination

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

DATES: *Effective Date:* February 26, 2013.

SUMMARY: On October 4, 2012, the Department of Commerce (''Department'') published its preliminary determination of sales at less than fair value (''LTFV'') and postponement of final determination in the antidumping (''AD'') investigation of drawn stainless steel sinks (''drawn sinks'') from the People's Republic of China (''PRC'').[1] We invited interested parties to comment on our preliminary determination of sales at LTFV. Based on our analysis of the comments we received, we have made changes to our margin calculations for the mandatory respondents. We determine that drawn sinks from the PRC are being, or are likely to be, sold in the United States at LTFV, as provided in section 735 of the Tariff Act of 1930, as amended (''the Act''). The final dumping margins for this investigation are listed in the ''Final Determination Margins'' section below.

FOR FURTHER INFORMATION CONTACT: Frances Veith or Eve Wang, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4295 or (202) 482–6231, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The Department published its *Preliminary Determination* on October 4, 2012. On October 10, 2012, the Department issued post-*Preliminary Determination* supplemental questionnaires in which we requested new factual information regarding double remedies from Dongyuan and Superte/Zhaoshun [2] and received responses to these supplemental questionnaires on October 17, 2012. From October 22, through November 1, 2012, the Department conducted verifications of Dongyuan and Superte/Zhaoshun and released its verification reports for these companies on November 28, and 29, 2012, respectively.[3] Timely requests for a public hearing were filed on October 25, 2012, by Shenzen Kehuaxing Industrial Ltd. (''Kehuaxing'') and on November 5, 2012, by both Elkay Manufacturing Company (''Petitioner'') and Dongyuan.

On November 15, 2012, in response to a request filed by Dongyuan, the Department extended the deadline for submission of publicly available information to November 26, 2012, and the due date for rebuttal information to December 6, 2012. On November 26, 2012, Petitioner and Dongyuan submitted surrogate value (''SV'') information for the record, and Petitioner, Dongyuan, and Superte submitted rebuttal comments to this information on December 6, 2012. On November 28, 2012, the Department extended the deadline for submission of case briefs to December 10, 2012, and the due date for rebuttals briefs to December 17, 2012. On December 7, 2012, in response to a request filed by Dongyuan, the Department again extended the deadline for submission of case briefs to December 13, 2012, and the due date for rebuttals briefs to December 18, 2012. On December 13, 2012, case briefs were filed by Petitioner, Dongyuan, Superte/Zhaoshun, and Kehuaxing.

On December 18, 2012, Petitioner, Dongyuan, Superte/Zhaoshun and the Government of China (''GOC''), each filed their rebuttal briefs, and on December 19, 2012, in its request to replace its case brief, the GOC submitted a corrected version of its case brief. On December 20, 2012, the Department rejected the GOC's original case brief and granted the GOC's request to correct and replace their case brief filed as an attachment to its December 19, 2012, request. We did not receive briefs or rebuttal briefs from any other interested party to the investigation. On January 30, 2013, the Department held a public hearing limited to issues raised in case and rebuttal briefs.

Tolling of Administrative Deadlines

The Department postponed the deadline for the final determination to not later than 135 days after publication of the *Preliminary Determination* (*i.e.,* February 16, 2013).[4] However, as explained in the memorandum from the Assistant Secretary for Import Administration, the Department exercised its discretion to toll deadlines for two calendar days. Thus, all existing deadlines associated with this investigation were postponed by two days.[5] However, since February 18, 2013, falls on a Federal Holiday, a non-business day, the revised deadline for this final determination is now February 19, 2013.[6]

Period of Investigation

The period of investigation (''POI'') is July 1, 2011, through December 31, 2011. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was March 2012.[7]

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Dongyuan and Superte/Zhaoshun for use in our final determination.[8] For all verified

[1] *See Drawn Stainless Steel Sinks From the People's Republic of China: Antidumping Duty Investigation,* 77 FR 60673 (October 4, 2012) (''*Preliminary Determination*'').

[2] Mandatory respondents are Guangdong Dongyuan Kitchenware Industrial Co., Ltd. (''Dongyuan'') and Zhongshan Superte Kitchenware Co., Ltd. (''Superte'') and its invoicing company Foshan Zhaoshun Trade Co., Ltd. (''Zhaoshun'') (also collectively referred to as ''Superte/Zhaoshun'').

[3] *See* the ''Verification'' section below for additional information.

[4] *See Preliminary Determination,* 77 FR at 60675.

[5] *See* Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, regarding ''Tolling of Administrative Deadlines as a Result of the Government Closure During Hurricane Sandy,'' dated October 31, 2012. Accordingly, the revised deadline for this final determination is February 18, 2013.

[6] *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[7] *See* 19 CFR 351.204(b)(1).

[8] *See* The Department's verification reports titled, ''Verification of the Sales and Factors Responses of Zhongshan Superte Kitchenware Co. Ltd./Foshan Zhaoshun Trade Co., Ltd. in the Investigation of Drawn Stainless Steel Sinks from the People's Republic of China,'' (November 28, 2012) (''Superte/Zhaoshun's Verification Report''); and ''Verification of the Sales and Factors Responses of Guangdong Dongyuan Kitchenware Industrial Co., Ltd. in the Antidumping Investigation of Drawn Stainless Steel Sinks from the People's Republic of China,'' (November 27, 2012) (''Dongyuan's Verification Report'') on the record of this investigation on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit (''CRU''), room 7046 of the main

Continued

companies, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by respondents.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the ''Investigation of Drawn Stainless Steel Sinks from the People's Republic of China: Issues and Decision Memorandum,'' dated concurrently with this notice and hereby adopted by this notice (''Issues and Decision Memorandum''). A list of the issues which parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document on file in the CRU and accessible on the Web at *ia.ita.doc.gov/frn.* The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Determination

Changes Applicable to Multiple Companies

- Updated the SV used to value sound deadening pads.[9]
- Valued the labor SV using Thailand 2007 National Statistics Office (''NSO'') data.[10]
- Revised the treatment of labor in the financial ratios calculations to accord with the costs captured in the Thailand 2007 NSO data.[11]
- Revised the SV calculation for stainless steel.[12]

Changes Specific to Superte/Zhaoshun

- Adjusted Superte/Zhaoshun's electricity consumption to reflect usage during the POI.[13]
- Adjusted Superte/Zhaoshun's consumption of wooden boxes and polystyrene based on verification findings.[14]

Changes Specific to Dongyuan

- Revised the SV used to value Dongyuan's paint input.[15]

For detailed information concerning all of the changes made, including those listed above, *see* the company-specific analysis and SV memoranda.

Scope of the Investigation

The products covered by the scope of this investigation are drawn stainless steel sinks with single or multiple drawn bowls, with or without drain boards, whether finished or unfinished, regardless of type of finish, gauge, or grade of stainless steel. Mounting clips, fasteners, seals, and sound-deadening pads are also covered by the scope of this investigation if they are included within the sales price of the drawn stainless steel sinks.[16] For purposes of this scope definition, the term ''drawn'' refers to a manufacturing process using metal forming technology to produce a smooth basin with seamless, smooth, and rounded corners. Drawn stainless steel sinks are available in various shapes and configurations and may be described in a number of ways including flush mount, top mount, or undermount (to indicate the attachment relative to the countertop). Stainless steel sinks with multiple drawn bowls that are joined through a welding operation to form one unit are covered by the scope of the investigations. Drawn stainless steel sinks are covered by the scope of the investigation whether or not they are sold in conjunction with non-subject accessories such as faucets (whether attached or unattached), strainers, strainer sets, rinsing baskets, bottom grids, or other accessories.

Excluded from the scope of the investigation are stainless steel sinks with fabricated bowls. Fabricated bowls do not have seamless corners, but rather are made by notching and bending the stainless steel, and then welding and finishing the vertical corners to form the bowls. Stainless steel sinks with fabricated bowls may sometimes be referred to as ''zero radius'' or ''near zero radius'' sinks.

The products covered by this investigation are currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under statistical reporting number 7324.10.0000 and 7324.10.00.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Nonmarket Economy Country

The Department considers the PRC to be a nonmarket economy (''NME'') country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. The Department continues to treat the PRC as an NME for purposes of this final determination.

Surrogate Country

In the *Preliminary Determination,* we stated that we had selected Thailand as the appropriate surrogate country to use in this investigation for the following reasons: (1) It is a significant producer of comparable merchandise; (2) it is at a level of economic development comparable to that of the PRC, pursuant to section 773(c)(4) of the Act; and (3) we have reliable data from Thailand that we can use to value the factors of production (''FOPs'').[17] For the final determination, we received no comments on surrogate country selection and made no changes to our findings with respect to the selection of a surrogate country.

Separate Rate Companies

In proceedings involving NME countries, the Department holds a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of the subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

In the *Preliminary Determination,* we found 19 companies and the mandatory respondents (''Separate Rate Applicants'') demonstrated their eligibility for separate rate status.[18] Additionally, the Department did not grant a separate rate to Jiangmen Liantai Kitchen Equipment Co., Ltd.'s (''Liantai''), Xinhe Stainless Steel Products Co., Ltd.'s (''Xinhe''), Kele Kitchenware Co., Ltd.'s (''Kele Kitchenware''), Capstone International Development Corporation (''Capstone''), FoShan Fancome Trading Co., Ltd. (''Fancome'') and Kehuaxing. Kehuaxing submitted comments in its case brief regarding its separate rate status. After considering Kehuaxing's comments, the Department has not changed its position

Department of Commerce, with respect to these entities.

[9] *See* Issues and Decision Memorandum, at Comment 7.

[10] *See id.,* at Comment 3.

[11] *See id.,* at Comment 4.

[12] *See id.,* at Comment 2.

[13] *See id.,* at Comment 10.

[14] *See id.,* at Comment 11.

[15] *See id.,* at Comment 13.

[16] Mounting clips, fasteners, seals, and sound-deadening pads are not covered by the scope of these investigations if they are not included within the sales price of the drawn stainless steel sinks, regardless of whether they are shipped with or entered with drawn stainless steel sinks.

[17] *See Preliminary Determination,* and accompanying Decision Memorandum at Surrogate Country 5–7.

[18] *See id.,* at Separate Rates 8–12.

from the *Preliminary Determination* with respect to Kehuaxing's separate rate status. For a complete discussion of the issue, *see* the Issues and Decision Memorandum at Comment 14.

The Department continues to find that the evidence placed on the record of this investigation by the Separate Rate Applicants that were granted separate rate status in the *Preliminary Determination* demonstrates both *de jure* and *de facto* absence of government control with respect to each company's respective exports of the merchandise under investigation. Further, the Department has continued to deny Liantai, Xinhe, Kele Kitchenware, Capstone, Fancome, and Kehuaxing separate rate status as was the case in the *Preliminary Determination.*

The separate rate is normally determined based on the weighted-average of the estimated AD margins established for exporters and producers individually investigated, excluding zero and *de minimis* margins or margins based entirely on adverse facts available (''AFA'').[19] In this investigation, both Dongyuan and Superte/Zhaoshun have estimated weighted-average AD margins which are above *de minimis* and which are not based on total AFA. Because there are only two relevant weighted-average AD margins for this final determination, using a weighted-average of these two margins risks disclosure of business proprietary information (''BPI'') data. Therefore, the Department has calculated a simple average of the two final AD margins calculated for the mandatory respondents.

The statute does not preclude adopting a uniform application of the average-to-transaction method (''A-to-T'') under the following circumstances: (1) There is a pattern of export prices that differ significantly among purchasers, regions, or periods of time; and (2) the Department explains why such differences cannot be taken into account using the average-to-average (''A-to-A'') method or transaction-to-transaction (''T-to-T'') method.[20]

In the *Preliminary Determination,* in accordance with section 777A(d)(1)(B)(i) of the Act and our practice, as discussed in *Steel Nails*[21] and as modified in *Wood Flooring*,[22] we determined that for Superte there is a pattern of prices for U.S. sales of comparable merchandise that differ significantly among certain purchasers, but not by regions or time periods, and for Dongyuan, a pattern of prices for U.S. sales of comparable merchandise that differ significantly among certain purchasers and regions, but not by time periods. However, we determined that the criteria established in 777A(d)(1)(B)(ii) of the Act had not been met, because the A-to-A method does not mask differences in the patterns of prices between the targeted and non-targeted groups and the alternative A-to-T method yields a difference in the margin that is not meaningful relative to the size of the resulting margin.[23]

For the final determination, for Superte, we have found that there is a pattern of prices for U.S. sales of comparable merchandise that differ significantly among purchasers, regions, and time periods. With respect to Dongyuan, we find that a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or time periods does not exist. As in the *Preliminary Determination,* however, for both respondents, the criteria established in 777A(d)(1)(B)(ii) of the Act have not been met, thus, we continue to apply the A-to-A method for both Dongyuan and Superte in the final determination of this investigation.[24]

Adjustment Under Section 777A(f) of the Act

In our *Preliminary Determination,* the Department made adjustments to the AD cash deposit rate found for the respondents in this investigation, pursuant to section 777A(f) of the Act.[25] To make these adjustments, we used information for individually examined respondents in the countervailing duty (''CVD'') investigation to derive program-specific rates for subsidized inputs for each respondent in the AD investigation.[26] In making these adjustments, the Department stated that it had not concluded that concurrent application of NME ADs and CVDs necessarily and automatically results in overlapping remedies.[27] Rather, a finding that there is an overlap in remedies, and any resulting adjustment, is based on a case-by-case analysis of the totality of facts on the administrative record in the relevant segment of the proceeding, as required by the statute.[28] We also stated that because of the timelines in an LTFV investigation, and the fact that this is only the second time that the Department applied section 777A(f) of the Act,[29] it may be necessary to continue to refine our practice, based on record evidence, in applying this statutory provision.[30]

After verifying Dongyuan's and Superte's sales and costs, we continue to find that electricity and stainless steel coil subsidies impacted both Superte's and Dongyuan's cost of manufacturing (''COM''), and that the other subsidy programs under investigation (*e.g.,* grant programs, tax programs, policy lending, *etc.*) did not.[31] We also confirmed that Superte and Dongyuan only adjust prices in response to certain changes in stainless steel coil cost, but not to changes in other subsidized costs that impact COM.[32] Additionally, at Dongyuan's verification, we confirmed that Dongyuan's cost-to-price linkage was applicable to all of its POI sales to the United States.[33] However, Superte explicitly stated at verification that it did not change price in response to reductions in stainless steel costs, only increases, and only on a limited number of sales.[34] Therefore, we find that Dongyuan demonstrated the cost-to-price linkage for its products, but that Superte did not. Accordingly, we find that both respondents provided sufficient information to demonstrate the first link between certain subsidies and COM, but that only one company, Dongyuan, demonstrated the second link—changes in cost that were linked to changes in prices. As such, we have determined that an estimated domestic subsidy pass-through adjustment is

[19] *See* section 735(c)(5)(A) of the Act.

[20] *See* section 777A(d)(1)(B) of the Act.

[21] *See Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value,* 73 FR 33985 (June 16, 2008) (''*Steel Nails*'').

[22] *See Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 76 FR 64318 (October 18, 2011) (''*Wood Flooring*''), and accompanying Issues and Decision Memorandum at Comment 4.

[23] *See also* Memorandum to Paul Piquado from Christian Marsh, entitled, ''Decision Memorandum for Preliminary Determination for the Antidumping Duty Investigation of Drawn Stainless Steel Sinks from the People's Republic of China,'' dated September 27, 2011.

[24] *See* Issues and Decision Memorandum, at Comment 8.

[25] *See Preliminary Determination,* and accompanying Decision Memorandum at 21–23.

[26] The mandatory respondents in the CVD investigation are Superte and Guangdong Yingao Kitchen Utensils Co., Ltd. *See Drawn Stainless Steel Sinks From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 77 FR 46717 (August 6, 2012).

[27] *See Preliminary Determination,* and accompanying Decision Memorandum at 21–23.

[28] *See id.*

[29] *See Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube From the People's Republic of China,* 77 FR 52683, 52686 (August 30, 2012).

[30] *See Preliminary Determination,* and accompanying Decision Memorandum at 21.

[31] *See* Superte/Zhaoshun's Verification Report and Dongyuan's Verification Report.

[32] *See id.*

[33] *See* Dongyuan's Verification Report.

[34] *See* Superte/Zhaoshun's Verification Report.

warranted for Dongyuan but not for Superte.

The Department has determined that record evidence does not support the calculation of a company-specific pass-through rate for Dongyuan. Although Dongyuan's calculation of an estimated pass-through rate provides probative evidence that some pass-through occurred, the estimate is based only on certain sales [35] and is not consistent across the sales the Department verified. Therefore, the Department has determined to continue to apply a documented ratio of cost-price changes for the Chinese manufacturing sector as a whole, 61.01 percent [36] as the estimate of the extent of subsidy pass-through for Dongyuan.

By-Product Offset

The Department has determined to continue to grant Dongyuan's and Superte's claimed scrap offset in the final determination. It is the Department's practice to allow respondents an offset to the reported FOPs for scrap generated during the production of the merchandise under consideration if evidence is provided that such scrap has commercial value.[37] In its questionnaire responses and at verification, however, Superte explained that it does not track scrap generation in its books and records and, therefore, based its scrap offset on the ratio of the total weight of stainless steel grades 304 and 201 scrap sold during the POI divided by the total POI consumption of stainless steel grades 304 and 201.[38] We determined, in the instant case, the record evidence supports that Superte's claimed scrap offsets were related to the production of the merchandise under consideration (*i.e.,* the quantity claimed was reasonably tied to the production of stainless steel sinks during the POI) and that the scrap claimed as an offset has commercial value. However, in the event we issue a final antidumping duty order, in future proceedings we would expect Superte to modify its accounting and recordkeeping system in order to accurately record scrap materials generated during production of the subject merchandise.

Use of Facts Available and Adverse Facts Available

Section 776(a) of the Act provides that the Department shall apply facts available (''FA'') if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying FA when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

PRC-Wide Entity

In the *Preliminary Determination,* the Department determined that, during the POI, in addition to Capstone, Fancome, and Kehuaxing, there are other PRC exporters and/or producers of the merchandise under consideration that failed to timely respond to the Department's requests for information and did not establish that they were separate from the PRC-wide entity. Thus, the Department has found that these PRC exporters and/or producers are part of the PRC-wide entity and the PRC-wide entity has not responded to our requests for information. Because the PRC-wide entity did not provide the Department with requested information, pursuant to section 776(a)(2)(A) of the Act, the Department continues to find it appropriate to base the PRC-wide rate on FA.

The Department determines that, because the PRC-wide entity did not respond to our request for information, the PRC-wide entity has failed to cooperate to the best of its ability. Therefore, pursuant to section 776(b) of the Act, the Department finds that, in selecting from among the FA, an adverse inference is appropriate for the PRC-wide entity. Because the Department begins with the presumption that all companies within an NME country are subject to government control, and because only the mandatory respondents and certain Separate Rate Applicants have overcome that presumption, the Department is applying a single AD rate to all other exporters of subject merchandise from the PRC. Such companies have not demonstrated entitlement to a separate rate.[39]

Selection of the Adverse Facts Available Rate for the PRC-Wide Entity

In determining a rate for AFA, the Department's practice is to select a rate that is sufficiently adverse ''as to effectuate the purpose of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' [40] Further, it is the Department's practice to select a rate that ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' [41] Thus, the Department's practice is to select, as an AFA rate, the higher of: (1) the highest AD margin alleged in the petition, or (2) the highest calculated AD margin of any respondent in the investigation.[42] In this investigation, the highest petition AD margin is 76.53 percent.[43] This rate is higher than any of the weighted-average AD margins calculated for the companies individually examined.

[35] *See* Dongyuan's submission regarding: Drawn Stainless Steel Sinks from the People's Republic of China: Double Remedies Questionnaire Response, dated October 17, 2012, at 6–9; *see also* Dongyuan's submission regarding: Drawn Stainless Steel Sinks from the People's Republic of China: Double Remedies Questionnaire Response, dated September 17, 2012, at 2.

[36] *See* Final Determination Analysis Memorandum for Zhongshan Superte Kitchenware Co., Ltd.; *see also* Final Determination Analysis Memorandum for Guangdong Dongyuan Kitchenware Industrial Co.

[37] *See, e.g., Wood Flooring/China,* and accompanying Issues and Decision Memorandum at Comment 23; *see also Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 41808 (July 19, 2010), and accompanying Issues and Decision Memorandum at Comment 2; *see also Frontseating Service Valves From the People's Republic of China; 2010–2011 Antidumping Duty Administrative Review; Final Results,* 77 FR 67334 (November 9, 2012), and accompanying Issues and Decision Memorandum at Comment 7.

[38] *See* Superte/Zhaoshun's submission regarding: Drawn Stainless Steel Sinks from China: First Supplemental Section D Questionnaire Response, dated August 20, 2012 (''Superte/Zhaoshun's SDQR''), at 24 and Exhibit SQ1–9.

[39] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Market Value: Synthetic Indigo From the People's Republic of China,* 65 FR 25706, 25707 (May 2, 2000).

[40] *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8932 (February 23, 1998).

[41] *See Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review,* 70 FR 69937, 69939 (November 18, 2005) (quoting the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (''SAA''), H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994)).

[42] *See Certain Stilbenic Optical Brightening Agents From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 77 FR 17436, 17438 (March 26, 2012).

[43] *See Drawn Stainless Steel Sinks from the People's Republic of China: Initiation of Antidumping Duty Investigation,* 77 FR 18207, 18210 (March 27, 2012) (''*Initiation Notice*'').

Corroboration of Information

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.''[44]

The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value.[45] The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[46] To corroborate secondary information, the Department will, to the extent practicable, determine whether the information used has probative value by examining the reliability and relevance of the information.

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this preliminary determination, we compared the petition margins to the margins we calculated for the individually examined respondents. We determined that the petition margin of 76.53 percent is reliable and relevant because it is within the range of the control number specific margins on the record for one of the individually examined exporters of subject merchandise.[47] Thus, the highest petition margin has probative value. Accordingly, we have corroborated the petition margin to the extent practicable within the meaning of section 776(c) of the Act.[48]

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation. This practice is described in Policy Bulletin 05.1, available at *http://www.trade.gov/ia/.*

Final Determination Margins

The Department determines that the following weighted-average dumping margins exist for the period July 1, 2011, through December 31, 2011.

Exporter	Producer	Percent margin
Zhongshan Superte Kitchenware Co., Ltd./Zhongshan Superte Kitchenware Co., Ltd. invoiced as Foshan Zhaoshun Trade Co., Ltd.	Zhongshan Superte Kitchenware Co., Ltd	39.87
Guangdong Dongyuan Kitchenware Industrial Co., Ltd	Guangdong Dongyuan Kitchenware Industrial Co., Ltd	27.14
B&R Industries Limited	Xinhe Stainless Steel Products Co., Ltd. and Jiamen XHHL Stainless Steel Manufacturing Co., Ltd	33.51
Elkay (China) Kitchen Solutions, Co., Ltd	Elkay (China) Kitchen Solutions, Co., Ltd	33.51
Feidong Import and Export Co., Ltd	Jiangmen Liantai Kitchen Equipment Co Jiangmen Xinhe Stainless Steel Product Co., Ltd	33.51
Foshan Shunde MingHao Kitchen Utensils Co., Ltd	Foshan Shunde MingHao Kitchen Utensils Co., Ltd	33.51
Franke Asia Sourcing Ltd	Guangdong YingAo Kitchen Utensils Co., Ltd.; Franke (China) Kitchen System Co., Ltd	33.51
Grand Hill Work Company	Zhongshan Xintian Hardware Co., Ltd	33.51
Guangdong G-Top Import and Export Co., Ltd	Jiangmen Jin Ke Ying Stainless Steel Wares Co., Ltd	33.51
Guangdong Yingao Kitchen Utensils Co., Ltd	Guangdong Yingao Kitchen Utensils Co., Ltd	33.51
Hangzhou Heng's Industries Co., Ltd	Hangzhou Heng's Industries Co., Ltd	33.51
J&C Industries Enterprise Limited	Zhongshan Superte Kitchenware Co., Ltd	33.51
Jiangmen Hongmao Trading Co., Ltd	Xinhe Stainless Steel Products Co., Ltd	33.51
Jiangmen New Star Hi-Tech Enterprise Ltd	Jiangmen New Star Hi-Tech Enterprise Ltd	33.51
Jiangmen Pioneer Import & Export Co., Ltd	Jiangmen Ouert Kitchen Appliance Manufacturing Co., Ltd Jiangmen XHHL Stainless Steel Manufacturing Co., Ltd	33.51
Jiangxi Zoje Kitchen & Bath Industry Co., Ltd	Jiangxi Offidun Industry Co. Ltd	33.51
Ningbo Oulin Kitchen Utensils Co., Ltd	Ningbo Oulin Kitchen Utensils Co., Ltd	33.51
Primy Cooperation Limited	Primy Cooperation Limited	33.51
Shunde Foodstuffs Import & Export Company Limited of Guangdong.	Bonke Kitchen & Sanitary Industrial Co., Ltd	33.51
Zhongshan Newecan Enterprise Development Corporation	Zhongshan Xintian Hardware Co., Ltd	33.51
Zhuhai Kohler Kitchen & Bathroom Products Co., Ltd	Zhuhai Kohler Kitchen & Bathroom Products Co., Ltd	33.51
PRC-Wide Rate *		76.53

* This rate also applies to Jiangmen Liantai Kitchen Equipment Co., Jiangmen Xinhe Stainless Steel Product Co., Ltd., Kele Kitchenware Co., Ltd., Capstone International Development Corporation, FoShan Fancome Trading Co., Ltd., and Shenzen Kehuaxing Industrial Ltd.

Disclosure

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

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection (''CBP'') to continue to suspend liquidation of all appropriate entries of drawn sinks from the PRC as described in the ''Scope of the Investigation'' section, entered, or withdrawn from warehouse, for consumption on or after October 4,

[44] *See* SAA, H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994).

[45] *See id.*

[46] *See id.*

[47] *See* the Department's Memorandum titled, ''LTFV Investigation of Drawn Stainless Steel Sinks from the People's Republic of China: Superte/Zhaoshun's Preliminary Analysis Memorandum,'' (September 27, 2012) at Attachment 1, SAS Margin Output.

[48] *See* section 776(c) of the Act and 19 CFR 351.308(c) and (d); *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China,* 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 1.

2012, the date of publication of the *Preliminary Determination* in the **Federal Register**. Further, the Department will instruct CBP to require a cash deposit equal to the weighted-average amount by which the normal value exceeds U.S. price, adjusted where appropriate for export subsidies and estimated domestic subsidy pass-through,[49] as follows: (1) The separate rate margin for the exporter/producer combinations listed in the table above will be the rate the Department has determined in this final determination; (2) for all combinations of PRC exporters/producers of merchandise under consideration which have not received their own separate rate AD margin above, the cash-deposit rate will be the cash-deposit rate established for the PRC-wide entity; and (3) for all non-PRC exporters of merchandise under consideration which have not received their own separate rate above, the cash-deposit rate will be the cash-deposit rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of the final affirmative determination of sales at LTFV. As the Department's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of subject merchandise, or sales (or the likelihood of sales) for importation, of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of BPI disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: February 19, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix—Issues for Final Determination

Issue 1: Adjustment Under Section 777A(f) of the Act
Issue 2: Valuation of Stainless Steel
Issue 3: Surrogate Value for Labor
Issue 4: Whether the Department Applied the Correct Treatment to Labor Line items in Its Financial Ratio Calculations
Issue 5: Valuation of Brokerage and Handling
Issue 6: Financial Statements
Issue 7: Surrogate Value for Sound Deadening Pad Input
Issue 8: Whether the Department Correctly Applied Targeted Dumping Methodology
Issue 9: Whether Superte/Zhaoshun's Scrap Offset Should be Rejected
Issue 10: Whether Superte/Zhaoshun Reported Accurate Electricity Consumption
Issue 11: Whether Superte/Zhaoshun Reported Accurate Consumption for Wooden Boxes and Polystyrene Foam
Issue 12: Whether an Invoicing Company Fees Superte Paid to Zhaoshun is an Adjustment to its U.S. Price
Issue 13: Whether Dongyuan's Reported Paint Input is Soluble in Water
Issue 14: Whether the Department Properly Rejected Kehuaxing's Quantity and Value Questionnaire and Separate Rate Application

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[49] *See* sections 772(c)(1)(C) and 777A(f) of the Act, respectively. Unlike in administrative reviews, the Department calculates the adjustment for export subsidies and estimated domestic subsidy pass-through in investigations not in the margin calculation program, but in the cash deposit instructions issued to CBP. *See* the *Preliminary Determination,* and accompanying Decision Memorandum, for treatment of estimated domestic subsidy pass-through; *see Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India,* 71 FR 45012 (August 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1 for discussion of our treatment of export subsidies in investigations.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number 130208119–3119–01]

Developing a Framework To Improve Critical Infrastructure Cybersecurity

AGENCY: National Institute of Standards and Technology, U.S. Department of Commerce.

ACTION: Notice; Request for Information (RFI).

SUMMARY: The National Institute of Standards and Technology (NIST) is conducting a comprehensive review to develop a framework to reduce cyber risks to critical infrastructure [1] (the ''Cybersecurity Framework'' or ''Framework''). The Framework will consist of standards, methodologies, procedures, and processes that align policy, business, and technological approaches to address cyber risks.

This RFI requests information to help identify, refine, and guide the many interrelated considerations, challenges, and efforts needed to develop the Framework. In developing the Cybersecurity Framework, NIST will consult with the Secretary of Homeland Security, the National Security Agency, Sector-Specific Agencies and other interested agencies including the Office of Management and Budget, owners and operators of critical infrastructure, and other stakeholders including other relevant agencies, independent regulatory agencies, State, local, territorial and tribal governments. The Framework will be developed through an open public review and comment process that will include workshops and other opportunities to provide input.

DATES: Comments must be received by 5:00 p.m. Eastern time on Monday, April 8, 2013.

ADDRESSES: Written comments may be submitted by mail to Diane Honeycutt, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899. Submissions may be in any of the following formats: HTML, ASCII, Word, RTF, or PDF. Online submissions in electronic form may be sent to *cyberframework@nist.gov.* Please submit comments only and include your name, company name (if any), and cite

[1] For the purposes of this RFI the term ''critical infrastructure'' has the meaning given the term in 42 U.S.C. 5195c(e), ''systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.''

''Developing a Framework to Improve Critical Infrastructure Cybersecurity'' in all correspondence. All comments received by the deadline will be posted at *http://csrc.nist.gov* without change or redaction, so commenters should not include information they do not wish to be posted (e.g., personal or confidential business information).

FOR FURTHER INFORMATION CONTACT: For questions about this RFI contact: Adam Sedgewick, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, telephone (202) 482–0788, email *Adam.Sedgewick@nist.gov.* Please direct media inquiries to NIST's Office of Public Affairs at (301) 975–NIST.

SUPPLEMENTARY INFORMATION: The national and economic security of the United States depends on the reliable functioning of critical infrastructure, which has become increasingly dependent on information technology. Recent trends demonstrate the need for improved capabilities for defending against malicious cyber activity. Such activity is increasing and its consequences can range from theft through disruption to destruction. Steps must be taken to enhance existing efforts to increase the protection and resilience of this infrastructure, while maintaining a cyber environment that encourages efficiency, innovation, and economic prosperity, while protecting privacy and civil liberties.

Under Executive Order 13636 [2] (''Executive Order''), the Secretary of Commerce is tasked to direct the Director of NIST to develop a framework for reducing cyber risks to critical infrastructure (the ''Cybersecurity Framework'' or ''Framework''). The Framework will consist of standards, methodologies, procedures and processes that align policy, business, and technological approaches to address cyber risks. The Department of Homeland Security, in coordination with sector-specific agencies, will then establish a voluntary program to support the adoption of the Cybersecurity Framework by owners and operators of critical infrastructure and any other interested entities.

Given the diversity of sectors in critical infrastructure, the Framework development process is designed to initially identify cross-sector security standards and guidelines that are immediately applicable or likely to be applicable to critical infrastructure, to increase visibility and adoption of those standards and guidelines, and to find potential gaps (i.e., where standards/guidelines are nonexistent or where existing standards/guidelines are inadequate) that need to be addressed through collaboration with industry and industry-led standards bodies. The Framework will incorporate voluntary consensus standards and industry best practices to the fullest extent possible and will be consistent with voluntary international consensus-based standards when such international standards will advance the objectives of the Executive Order. The Framework would be designed to be compatible with existing regulatory authorities and regulations.

The Cybersecurity Framework will provide a prioritized, flexible, repeatable, performance-based, and cost-effective approach, including information security measures and controls to help owners and operators of critical infrastructure and other interested entities to identify, assess, and manage cybersecurity-related risk while protecting business confidentiality, individual privacy and civil liberties. To enable technical innovation and account for organizational differences, the Cybersecurity Framework will not prescribe particular technological solutions or specifications. It will include guidance for measuring the performance of an entity in implementing the Cybersecurity Framework and will include methodologies to identify and mitigate impacts of the Framework and associated information security measures and controls on business confidentiality and to protect individual privacy and civil liberties.

As a non-regulatory Federal agency, NIST will develop the Framework in a manner that is consistent with its mission to promote U.S. innovation and industrial competitiveness through the development of standards and guidelines in consultation with stakeholders in both government and industry. While the focus will be on the Nation's critical infrastructure, the Framework will be developed in a manner to promote wide adoption of practices to increase cybersecurity across all sectors and industry types. In its first year, the emphasis will be on finding commonality within and across the affected sectors. It will seek to provide owners and operators the ability to implement security practices in the most effective manner while allowing organizations to express requirements to multiple authorities and regulators. Issues relating to harmonization of existing relevant standards and integration with existing frameworks will also be considered in this initial stage.

In accordance with the Executive Order, the Secretary of Commerce has directed the Director of the National Institute of Standards and Technology (the Director) to coordinate the development of a Framework to reduce the cyber risks to critical infrastructure. The Cybersecurity Framework will incorporate existing consensus-based standards to the fullest extent possible, consistent with requirements of the National Technology Transfer and Advancement Act of 1995,[3] and guidance provided by Office of Management and Budget Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities.'' [4] Principles articulated in the Executive Office of the President memorandum M–12–08 ''Principles for Federal Engagement in Standards Activities to Address National Priorities'' [5] will be followed. The Framework should also be consistent with, and support the broad policy goals of, the Administration's 2010 ''National Security Strategy,'' 2011 ''Cyberspace Policy Review,'' ''International Strategy for Cyberspace'' of May 2010 and HSPD–7 ''Critical Infrastructure Identification, Prioritization, and Protection.''

The goals of the Framework development process will be: (i) To identify existing cybersecurity standards, guidelines, frameworks, and best practices that are applicable to increase the security of critical infrastructure sectors and other interested entities; (ii) to specify high-priority gaps for which new or revised standards are needed; and (iii) to collaboratively develop action plans by which these gaps can be addressed. It is contemplated that the development process will have requisite stages to allow for continuing engagement with the owners and operators of critical infrastructure, and other industry, academic, and government stakeholders.

In December 2011, the United States Government Accountability Office (GAO) issued a report titled ''CRITICAL INFRASTRUCTURE PROTECTION: Cybersecurity Guidance Is Available, but More Can Be Done to Promote Its Use.'' [6] In its report, GAO found similarities in cybersecurity guidance across sectors, and recommended

[2] ''Executive Order 13636—Improving Critical Infrastructure Cybersecurity'' 78 FR 11739 (February 19, 2013).

[3] Public Law 104–113 (1996), codified in relevant part at 15 U.S.C. 272(b).

[4] *http://standards.gov/a119.cfm.*

[5] *http://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-08_1.pdf.*

[6] *http://www.gao.gov/assets/590/587529.pdf.*

promoting existing guidance to assist individual entities within a sector in ''identifying the guidance that is most applicable and effective in improving their security posture.'' [7]

NIST believes the diversity of business and mission needs notwithstanding, there are core cybersecurity practices that can be identified and that will be applicable to a diversity of sectors and a spectrum of quickly evolving threats. Identifying such core practices will be a focus of the Framework development process.

In order to be effective in protecting the information and information systems that are a part of the U.S. critical infrastructure, NIST believes the Framework should have a number of general properties or characteristics. The Framework should include flexible, extensible, scalable, and technology-independent standards, guidelines, and best practices, that provide:

- A consultative process to assess the cybersecurity-related risks to organizational missions and business functions;
- A menu of management, operational, and technical security controls, including policies and processes, available to address a range of threats and protect privacy and civil liberties;
- A consultative process to identify the security controls that would adequately address risks [8] that have been assessed and to protect data and information being processed, stored, and transmitted by organizational information systems;
- Metrics, methods, and procedures that can be used to assess and monitor, on an ongoing or continuous basis, the effectiveness of security controls that are selected and deployed in organizational information systems and environments in which those systems operate and available processes that can be used to facilitate continuous improvement in such controls; [9]
- A comprehensive risk management approach that provides the ability to assess, respond to, and monitor information security-related risks and provide senior leaders/executives with the kinds of necessary information sets that help them to make ongoing risk-based decisions;
- A menu of privacy controls necessary to protect privacy and civil liberties.

Within eight months, the Executive Order requires NIST to publish for additional comment a draft Framework that clearly outlines areas of focus and provides preliminary lists of standards, guidelines and best practices that fall within that outline. The draft will also include initial conclusions for additional public comment. The draft Framework will build on NIST's ongoing work with cybersecurity standards and guidelines for the Smart Grid, Identity Management, Federal Information Security Management Act (FISMA) implementation, the Electricity Subsector Cybersecurity Capability Maturity Model, and related projects.

NIST intends to engage with critical infrastructure stakeholders, through a voluntary consensus-based process, to develop the standards, guidelines and best practices that will comprise the Framework. This will include interactive workshops with industry and academia, along with other forms of outreach. NIST believes that the Framework cannot be static, but must be a living document that allows for ongoing consultation in order to address constantly evolving risks to critical infrastructure cybersecurity. A voluntary consensus standards-based approach will facilitate the ability of critical infrastructure owners and operators to manage such risks, and to implement alternate solutions from the bottom up with interoperability, scalability, and reliability as key attributes.

A standards-based Framework will also help provide some of the measures necessary to understand the effectiveness of critical infrastructure protection, and track changes over time. DHS and Sector Specific Agencies will provide input in this area based on their engagement with sector stakeholders. This standards-based approach is necessary in order to be able to provide and analyze data from different sources that can directly support risk-based decision-making. A Framework without sufficient standards and associated conformity assessment programs could impede future innovation in security efforts for critical infrastructure by potentially creating a false sense of security.

The use of widely-accepted standards is also necessary to enable economies of scale and scope to help create competitive markets in which competition is driven by market need and products that meet that market need through combinations of price, quality, performance, and value to consumers. Market competition then promotes faster diffusion of these technologies and realization of many benefits throughout these sectors.

It is anticipated that the Framework will: (i) Include consideration of sustainable approaches for assessing conformity to identified standards and guidelines; (ii) assist in the selection and development of an optimal conformity assessment approach; and (iii) facilitate the implementation of selected approach(es) that could cover technology varying in scope from individual devices or components to large-scale organizational operations. The decisions on the type, independence and technical rigor of these conformity assessment approaches should be risk-based. The need for confidence in conformity must be balanced with cost to the public and private sectors, including their international operations and legal obligations. Successful conformity assessment programs provide the needed level of confidence, are efficient and have a sustainable and scalable business case.

This RFI is looking for current adoption rates and related information for particular standards, guidelines, best practices, and frameworks to determine applicability throughout the critical infrastructure sectors. The RFI asks for stakeholders to submit ideas, based on their experience and mission/business needs, to assist in prioritizing the work of the Framework, as well as highlighting relevant performance needs of their respective sectors.

For the purposes of this notice and the Framework, the term ''standards'' and the phrase ''standards setting'' are used in a generic manner to include both standards development and conformity assessment development. In addition to critical infrastructure owners and operators, NIST invites Federal agencies, state, local, territorial and tribal governments, standard-setting organizations,[10] other members of industry, consumers, solution providers, and other stakeholders to respond.

Request for Comment

The following questions cover the major areas about which NIST seeks comment. The questions are not intended to limit the topics that may be addressed. Responses may include any topic believed to have implications for the development of the Framework

[7] *Id.,* at page 46.

[8] Organizational risk responses can include, for example, risk acceptance, risk rejection, risk mitigation, risk sharing, or risk transfer.

[9] Assessments determine whether the security controls selected by an organization are implemented correctly, operating as intended, and producing the desired results in order to enforce organizational security policies.

[10] As used herein, ''standard-setting organizations'' refers to the wide cross section of organizations that are involved in the development of standards and specifications, both domestically and abroad.

regardless of whether the topic is included in this document.

While the Framework will be focused on critical infrastructure, given the broad diversity of sectors that may include parts of critical infrastructure, the evolving nature of the classification of critical infrastructure based on risk, and the intention to involve a broad set of stakeholders in development of the Framework, the RFI will generally use the broader term ''organizations'' when seeking information.

Comments containing references, studies, research, and other empirical data that are not widely published should include copies of the referenced materials. Do not include in comments or otherwise submit proprietary or confidential information, as all comments received by the deadline will be made available publically at *http://csrc.nist.gov/*.

Current Risk Management Practices

NIST solicits information about how organizations assess risk; how cybersecurity factors into that risk assessment; the current usage of existing cybersecurity frameworks, standards, and guidelines; and other management practices related to cybersecurity. In addition, NIST is interested in understanding whether particular frameworks, standards, guidelines, and/or best practices are mandated by legal or regulatory requirements and the challenges organizations perceive in meeting such requirements. This will assist in NIST's goal of developing a Framework that includes and identifies common practices across sectors.

1. What do organizations see as the greatest challenges in improving cybersecurity practices across critical infrastructure?

2. What do organizations see as the greatest challenges in developing a cross-sector standards-based Framework for critical infrastructure?

3. Describe your organization's policies and procedures governing risk generally and cybersecurity risk specifically. How does senior management communicate and oversee these policies and procedures?

4. Where do organizations locate their cybersecurity risk management program/office?

5. How do organizations define and assess risk generally and cybersecurity risk specifically?

6. To what extent is cybersecurity risk incorporated into organizations' overarching enterprise risk management?

7. What standards, guidelines, best practices, and tools are organizations using to understand, measure, and manage risk at the management, operational, and technical levels?

8. What are the current regulatory and regulatory reporting requirements in the United States (e.g. local, state, national, and other) for organizations relating to cybersecurity?

9. What organizational critical assets are interdependent upon other critical physical and information infrastructures, including telecommunications, energy, financial services, water, and transportation sectors?

10. What performance goals do organizations adopt to ensure their ability to provide essential services while managing cybersecurity risk?

11. If your organization is required to report to more than one regulatory body, what information does your organization report and what has been your organization's reporting experience?

12. What role(s) do or should national/international standards and organizations that develop national/international standards play in critical infrastructure cybersecurity conformity assessment?

Use of Frameworks, Standards, Guidelines, and Best Practices

As set forth in the Executive Order, the Framework will consist of standards, guidelines, and/or best practices that promote the protection of information and information systems supporting organizational missions and business functions.

NIST seeks comments on the applicability of existing publications to address cybersecurity needs, including, but not limited to the documents developed by: international standards organizations; U.S. Government Agencies and organizations; State regulators or Public Utility Commissions; Industry and industry associations; other Governments, and non-profits and other non-government organizations.

NIST is seeking information on the current usage of these existing approaches throughout industry, the robustness and applicability of these frameworks and standards, and what would encourage their increased usage. Please provide information related to the following:

1. What additional approaches already exist?

2. Which of these approaches apply across sectors?

3. Which organizations use these approaches?

4. What, if any, are the limitations of using such approaches?

5. What, if any, modifications could make these approaches more useful?

6. How do these approaches take into account sector-specific needs?

7. When using an existing framework, should there be a related sector-specific standards development process or voluntary program?

8. What can the role of sector-specific agencies and related sector coordinating councils be in developing and promoting the use of these approaches?

9. What other outreach efforts would be helpful?

Specific Industry Practices

In addition to the approaches above, NIST is interested in identifying core practices that are broadly applicable across sectors and throughout industry.

NIST is interested in information on the adoption of the following practices as they pertain to critical infrastructure components:

- Separation of business from operational systems;
- Use of encryption and key management;
- Identification and authorization of users accessing systems;
- Asset identification and management;
- Monitoring and incident detection tools and capabilities;
- Incident handling policies and procedures;
- Mission/system resiliency practices;
- Security engineering practices;
- Privacy and civil liberties protection.

1. Are these practices widely used throughout critical infrastructure and industry?

2. How do these practices relate to existing international standards and practices?

3. Which of these practices do commenters see as being the most critical for the secure operation of critical infrastructure?

4. Are some of these practices not applicable for business or mission needs within particular sectors?

5. Which of these practices pose the most significant implementation challenge?

6. How are standards or guidelines utilized by organizations in the implementation of these practices?

7. Do organizations have a methodology in place for the proper allocation of business resources to invest in, create, and maintain IT standards?

8. Do organizations have a formal escalation process to address cybersecurity risks that suddenly increase in severity?

9. What risks to privacy and civil liberties do commenters perceive in the application of these practices?

10. What are the international implications of this Framework on your global business or in policymaking in other countries?

11. How should any risks to privacy and civil liberties be managed?

12. In addition to the practices noted above, are there other core practices that should be considered for inclusion in the Framework?

Dated: February 21, 2013.

Patrick Gallagher,

Under Secretary of Commerce for Standards and Technology.

[FR Doc. 2013–04413 Filed 2–25–13; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC460

Whaling Provisions; Aboriginal Subsistence Whaling Quotas

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

ACTION: Notice; notification of quota for bowhead whales.

SUMMARY: NMFS notifies the public of the aboriginal subsistence whaling quota for bowhead whales that it has assigned to the Alaska Eskimo Whaling Commission (AEWC), and of limitations on the use of the quota deriving from regulations of the International Whaling Commission (IWC). For 2013, the quota is 75 bowhead whales struck. This quota and other applicable limitations govern the harvest of bowhead whales by members of the AEWC.

DATES: Effective February 26, 2013.

ADDRESSES: Office of International Affairs, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Melissa Andersen, (301) 427–8385.

SUPPLEMENTARY INFORMATION: Aboriginal subsistence whaling in the United States is governed by the Whaling Convention Act (WCA) (16 U.S.C. 916 *et seq.*). Regulations that implement the Act, found at 50 CFR 230.6, require the Secretary of Commerce (Secretary) to publish, at least annually, aboriginal subsistence whaling quotas and any other limitations on aboriginal subsistence whaling deriving from regulations of the IWC.

At the 64th Annual Meeting of the IWC, the Commission set catch limits for aboriginal subsistence use of bowhead whales from the Bering-Chukchi-Beaufort Seas stock. The bowhead catch limits were based on a joint request by the United States and the Russian Federation, accompanied by documentation concerning the needs of two Native groups: Alaska Eskimos and Chukotka Natives in the Russian Far East.

The IWC set a 6-year block catch limit of 336 bowhead whales landed. For each of the years 2013 through 2018, the number of bowhead whales struck may not exceed 67, except that any unused portion of a strike quota from any prior year, including 15 unused strikes from the 2008 through 2012 quota, may be carried forward. No more than 15 strikes may be added to the strike quota for any one year. At the end of the 2012 harvest, there were 15 unused strikes available for carry-forward, so the combined strike quota set by the IWC for 2013 is 82 (67 + 15).

An arrangement between the United States and the Russian Federation ensures that the total quota of bowhead whales landed and struck in 2013 will not exceed the limits set by the IWC. Under this arrangement, the Russian natives may use no more than seven strikes, and the Alaska Eskimos may use no more than 75 strikes.

Through its cooperative agreement with the AEWC, NOAA has assigned 75 strikes to the Alaska Eskimos. The AEWC will in turn allocate these strikes among the 11 villages whose cultural and subsistence needs have been documented, and will ensure that its hunters use no more than 75 strikes.

Other Limitations

The IWC regulations, as well as the NOAA regulation at 50 CFR 230.4(c), forbid the taking of calves or any whale accompanied by a calf.

NOAA regulations (at 50 CFR 230.4) contain a number of other prohibitions relating to aboriginal subsistence whaling, some of which are summarized here:

- Only licensed whaling captains or crew under the control of those captains may engage in whaling.
- Captains and crew must follow the provisions of the relevant cooperative agreement between NOAA and a Native American whaling organization.
- The aboriginal hunters must have adequate crew, supplies, and equipment to engage in an efficient operation.
- Crew may not receive money for participating in the hunt.
- No person may sell or offer for sale whale products from whales taken in the hunt, except for authentic articles of Native American handicrafts.
- Captains may not continue to whale after the relevant quota is taken, after the season has been closed, or if their licenses have been suspended. They may not engage in whaling in a wasteful manner.

Dated: February 21, 2013.

Jean-Pierre Ple,

Deputy Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. 2013–04408 Filed 2–25–13; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Friday, March 15, 2013.

PLACE : 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of this or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov*.

CONTACT PERSON FOR MORE INFORMATION: Melissa D. Jurgens, 202–418–5516.

Natise Stowe,

Executive Assistant.

[FR Doc. 2013–04566 Filed 2–22–13; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Friday, March 1, 2013.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of this or any future meetings change, an announcement of the change, along with the new time and place of the meeting

will be posted on the Commission's Web site at *http://www.cftc.gov*.

CONTACT PERSON FOR MORE INFORMATION: Melissa D. Jurgens, 202–418–5516.

Natise Stowe,

Executive Assistant.

[FR Doc. 2013–04563 Filed 2–22–13; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Friday, March 22, 2013.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of this or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Melissa D. Jurgens, 202–418–5516.

Natise Stowe,

Executive Assistant.

[FR Doc. 2013–04567 Filed 2–22–13; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Friday, March 8, 2013.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of this or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov*.

CONTACT PERSON FOR MORE INFORMATION: Melissa D. Jurgens, 202–418–5516.

Natise Stowe,

Executive Assistant.

[FR Doc. 2013–04565 Filed 2–22–13; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Friday, March 29, 2013.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of this or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov*.

CONTACT PERSON FOR MORE INFORMATION: Melissa D. Jurgens, 202–418–5516.

Natise Stowe,

Executive Assistant.

[FR Doc. 2013–04568 Filed 2–22–13; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to introduce and swear in six new members to the Committee. Also, the Committee will receive briefings from the Services on representation of women at the Service Academies, and receive an update from the Joint Staff on the Women in Service Review. Additionally, the Navy will provide a briefing on the Sexual Assault Prevention Program at Naval Station Great Lakes, and the Sexual Assault and Prevention Office will brief on the Annual Report on Sexual Harassment and Violence at the Military Service Academies. The meeting is open to the public, subject to the availability of space.

DATES: March 14, 2013, from 8:00 a.m. to 2:30 p.m.; March 15, 2013, from 8:00 a.m. to 11:30 a.m.

ADDRESSES: Embassy Suites Hotel, 1300 Jefferson Davis Hwy, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Bowling or DACOWITS Staff at 4000 Defense Pentagon, Room 5A734, Washington, DC 20301–4000. *Robert.bowling@osd.mil* Telephone (703) 697–2122. Fax (703) 614–6233.

SUPPLEMENTARY INFORMATION: Interested persons may submit a written statement for consideration by the Defense Advisory Committee on Women in the Services. Individuals submitting a written statement must submit their statement to the Point of Contact listed at the address detailed in **FOR FURTHER INFORMATION CONTACT** no later than 5:00 p.m., Tuesday, March 12, 2013. If a written statement is not received by Tuesday, March 12, 2013, prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Advisory Committee on Women in the Services until its next open meeting. The Designated Federal Officer will review all timely submissions with the Defense Advisory Committee on Women in the Services Chairperson and ensure they are provided to the members of the Defense Advisory Committee on Women in the Services. If members of the public are interested in making an oral statement, a written statement should be submitted as above. After reviewing the written comments, the Chairperson and the Designated Federal Officer will determine who of the requesting persons will be able to make an oral presentation of their issue during an open portion of this meeting or at a future meeting. Determination of who will be making an oral presentation is at the sole discretion of the Committee Chair and the Designated Federal Officer and will depend on time available and if the topics are relevant to the Committee's activities. Two minutes will be allotted to persons desiring to make an oral presentation. Oral presentations by members of the public will be permitted only on Friday, March 15, 2013 from 11:00 a.m. to 11:30 a.m. in front of the full Committee. Number of oral presentations to be made will depend on the number of requests received from members of the public.

Meeting Agenda

Thursday, March 14, 2013, 8:00 a.m.–2:30 p.m.

—Welcome, Introductions, Announcements, Swearing In
—Briefing—Request for Information Update
—Briefing—Representation of Women at the Service Academies Briefings from Services
—Briefing—Women in the Services Review Update

Friday, March 15, 2013, 8:00 a.m.–11:30 a.m.

—Announcements
—Briefing—Sexual Assault Prevention Program at Naval Station Great Lakes
—Briefing—Annual Report on Sexual Harassment and Violence at the Military Service Academies
—Public Comment Period

Dated: February 21, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–04388 Filed 2–25–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA)

AGENCY: Department of the Army, DoD.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting will take place:

1. *Name of Committee:* United States Military Academy Board of Visitors.

2. *Date:* Wednesday, March 20, 2013.

3. *Time:* 2:00 p.m.–3:30 p.m. Members of the public wishing to attend the meeting will need to show photo identification in order to gain access to the meeting location. All participants are subject to security screening.

4. *Location:* Room 340, Cannon House Office Building, New Jersey and Independence Avenues SE., Washington, DC.

5. *Purpose of the Meeting:* This is the 2013 Organizational Meeting of the USMA Board of Visitors (BoV). Members of the Board will be provided updates on Academy issues.

6. *Agenda:* The Academy leadership will provide the Board updates on the following: Election of 2013 Chair and Vice Chair, 2012 Annual Report Update, Federal Advisory Committee Act Final Rule, and updates on USMA from the USMA Superintendent and USMA Chief of Staff.

7. *Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165 and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

8. *Committee's Designated Federal Officer or Point of Contact:* Ms. Deadra Ghostlaw, (845) 938–4200, *Deadra.Ghostlaw@us.army.mil.*

SUPPLEMENTARY INFORMATION: Any member of the public is permitted to file a written statement with the USMA Board of Visitors. Written statements should be sent to the Designated Federal Officer (DFO) at: United States Military Academy, Office of the Secretary of the General Staff (MASG), 646 Swift Road, West Point, NY 10996–1905 or faxed to the Designated Federal Officer (DFO) at (845) 938–3214. Written statements must be received no later than five working days prior to the next meeting in order to provide time for member consideration. By rule, no member of the public attending open meetings will be allowed to present questions from the floor or speak to any issue under consideration by the Board.

FOR FURTHER INFORMATION CONTACT: The Committee's Designated Federal Officer or Point of Contact is Ms. Deadra Ghostlaw, (845) 938–4200, *Deadra.Ghostlaw@us.army.mil.*

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2013–04301 Filed 2–25–13; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Board on Coastal Engineering Research

AGENCY: Department of the Army, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Board on Coastal Engineering Research.

Date of Meeting: March 18–19, 2013.

Place: Conference Room, Coastal and Hydraulics Laboratory Field Research Facility, 1261 Duck Road, Kitty Hawk, NC 27949.

Time:
8:30 a.m. to 4:30 p.m. (March 18, 2013).
8:30 a.m. to 11:30 a.m. (March 19, 2013).

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be addressed to COL Kevin J. Wilson, Executive Secretary, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199.

SUPPLEMENTARY INFORMATION: The Board provides broad policy guidance and review of plans and fund requirements for the conduct of research and development of research projects in consonance with the needs of the coastal engineering field and the objectives of the Chief of Engineers.

Proposed Agenda: On Monday, March 18, the Executive Session is devoted to the history of the Coastal and Hydraulics Laboratory (CHL) Field Research Facility (FRF), the science and engineering impact of the FRF, FRF future plans, and tour of the facility. The Board will also address Hurricane Sandy status, including studies, reports, and activities.

On Tuesday morning, March 19, the Board will discuss coastal engineering in the United States, including industry and the CHL goals and plans. The Board will also hear and discuss the CHL Numerical Model strategy, comments from the civilian members on their site visit to CHL, pending action items, and the next annual meeting.

The meeting is open to the public, but since seating capacity of the meeting room is limited and the meeting is located on a government facility, advance notice of intent to attend is required.

William D. Martin,

Director, Coastal and Hydraulics Laboratory, Alternate Designated Federal Officer.

[FR Doc. 2013–04308 Filed 2–25–13; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Native American Career and Technical Education Program (NACTEP)

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice.

Overview Information:

Native American Career and Technical Education Program (NACTEP).

Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.101A.

Dates:

Applications Available: February 26, 2013.

Deadline for Transmittal of Applications: March 28, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Native American Career and Technical Education Program (NACTEP) provides grants to improve career and technical education programs that are consistent with the purposes of the Carl D. Perkins Career and Technical Education Act of 2006 (the Act) and that benefit Native Americans and Alaska Natives.

Priorities: On December 15, 2010, following public comment rulemaking, the Department published in the **Federal Register** a notice of final supplemental priorities and definitions for discretionary grant programs (75 FR 78486), and corrected the notice on May 12, 2011 (76 FR 27637) (supplemental priorities). Under this competition we are using the Secretary's STEM and Technology priorities from the supplemental priorities, since both of these are key Administration priorities in education. The use of technology within CTE programs funded under the Act, including NACTEP, can help improve the quality of instruction and the connections that students have to universities, colleges, employers, and industries that are far from campus. Career and technical education in the STEM fields is important in providing students with education that can lead to employment in high growth, in-demand industry sectors. If we are to prepare Native American and Alaska Native students for the jobs of the future, we believe it is important for STEM to be a focus of the CTE programs available to them.

Under this competition we are particularly interested in applications that address the following priorities.

Invitational Priorities: For FY 2013, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets one or both of these invitational priorities a competitive or absolute preference over other applications.

Priority 1—Technology.

Under this priority, we invite applications that propose projects that are designed to improve student achievement (as defined in this notice) or teacher effectiveness through the use of high-quality digital tools or materials, which may include preparing teachers to use the technology to improve instruction, as well as developing, implementing, or evaluating digital tools or materials.

Priority 2—Promoting Science, Technology, Engineering, and Mathematics (STEM) Education.

Under this priority, we invite applications that propose projects that are designed to address one or more of the following priority areas:

(a) Providing students with increased access to rigorous and engaging coursework in STEM.

(b) Increasing the number and proportion of students prepared for postsecondary or graduate study and careers in STEM.

(c) Increasing the opportunities for high-quality preparation of, or professional development for, teachers or other educators of STEM subjects.

Definitions: These definitions are from statute or from the notice of final requirements, definitions, and selection criteria for this program, published elsewhere in this issue of the **Federal Register**. The source of each definition is noted after the definition.

Act of April 16, 1934 means the Federal law commonly known as the ''Johnson-O'Malley Act'' that authorizes the Secretary of the Interior to enter into contracts for the education of Indians and other purposes. (25 U.S.C. 455–457)

Acute economic need means an income that is at or below the national poverty level according to the latest available data from the U.S. Department of Commerce or the U.S. Department of Health and Human Services Poverty Guidelines. See the notice of final requirements, definitions, and selection criteria for this program, published elsewhere in this issue of the **Federal Register**.

Alaska Native or Native means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlakta Indian Community) Eskimo, or Aleut blood, or a combination thereof. The term includes—

(a) Any Native, as so defined, either or both of whose adoptive parents are not Natives; and

(b) In the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he or she claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group. Any decision of the Secretary of the Interior regarding eligibility for enrollment will be final. (20 U.S.C. 2326(a)(1); 43 U.S.C. 1602(b))

Alaska Native entity means an entity such as an Alaska Native village, group, or regional or village corporation. (43 U.S.C. 1600 *et seq.*) (43 USCS 1601 *et seq.*)

Alaska Native group means any tribe, band, clan, village, community, or village association of Natives in Alaska composed of less than twenty-five Natives, who comprise a majority of the residents of the locality. (43 U.S.C. 1602(d))

Alaska Native village means any tribe, band, clan, group, village, community, or association in Alaska—

(a) Listed in sections 1610 and 1615 of the Alaska Native Claims Settlement Act; or

(b) That meets the requirements of chapter 33 of the Alaska Native Claims Settlement Act; and

(c) That the Secretary of the Interior determines was, on the 1970 census enumeration date (as shown by the census or other evidence satisfactory to the Secretary of the Interior, who shall make findings of fact in each instance), composed of twenty-five or more Natives. (43 U.S.C. 1602(c))

Alaska regional corporation means an Alaska Native regional corporation established under the laws of the State of Alaska in accordance with the provisions of chapter 33 of the Alaska Native Claims Settlement Act. (43 U.S.C. 1602(g))

Alaska village corporation means an Alaska Native village corporation organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of an Alaska Native village, in accordance with the terms of chapter 33 of the Alaska Native Claims Settlement Act. (43 U.S.C. 1602(j))

Bureau means the Bureau of Indian Affairs of the U.S. Department of the Interior. (25 U.S.C. 2021(2))

Bureau-funded school means—

(a) A Bureau-operated elementary or secondary day or boarding school or Bureau-operated dormitory for students attending a school other than a Bureau school. (25 U.S.C. 2021(3) and (4));

(b) An elementary school, secondary school, or dormitory, that receives financial assistance for its operation under a contract, grant, or agreement with the Bureau under section 102, 103(a), or 208 of ISDEA (25 U.S.C. 450f, 450h(a), or 458d) or under the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2504 *et seq.*). (25 U.S.C. 2021(3) and (5)); or

(c) A school for which assistance is provided under the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 *et seq.*). (25 U.S.C. 2021)

Career and technical education means organized educational activities that—

(a) Offer a sequence of courses that—

(1) Provides individuals with coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions;

(2) Provides technical skills proficiency, an industry-recognized credential, a certificate, or an associate degree; and

(3) May include prerequisite courses (other than remedial courses) that meet the requirements of this definition; and

(b) Include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills, and knowledge of all aspects of an industry, including entrepreneurship, of the individual. (20 U.S.C. 2302(5))

Coherent sequence of courses means a series of courses in which career and academic education is integrated, and that directly relates to, and leads to, both academic and occupational competencies. The term includes competency-based education and academic education, and adult training or retraining, including sequential units encompassed within a single adult retraining course, that otherwise meet the requirements of this definition. (57 FR 36726)

Direct assistance to students means tuition, dependent care, transportation, books, and supplies that are necessary for a student to participate in a project funded under this program. See the notice of final requirements, definitions, and selection criteria for this program, published elsewhere in this issue of the **Federal Register**.

High-need children and high-need students means children and students at risk of educational failure, such as children and students who are living in poverty, who are English learners, who are far below grade level or who are not on track to becoming college- or career-ready by graduation, who have left school or college before receiving, respectively, a regular high school diploma or a college degree or certificate, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who are pregnant or parenting teenagers, who have been incarcerated, who are new immigrants, who are migrant, or who have disabilities. See the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).(76 FR 27640).

Indian means a person who is a member of an Indian tribe. (20 U.S.C. 2326(a)(3); 25 U.S.C. 450b(d))

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. (20 U.S.C. 2326(a)(3); 25 U.S.C. 450b(e))

Institution of higher education means—

(a) An educational institution in any State that—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association or, if not so accredited, is an institution that has been granted pre-accreditation status by such an agency or association that has been recognized by the Secretary of the Education for the granting of pre-accreditation status, and the Secretary of Education has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

(b) The term also includes—

(1) Any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provisions of paragraphs (a)(1), (2), (4), and (5) of this definition.

(2) A public or nonprofit private educational institution in any State that, in lieu of the requirement in paragraph (a)(1) of this definition, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located. (20 U.S.C. 1001 and 2302(18))

Special populations means—

(a) Individuals with disabilities;

(b) Individuals from economically disadvantaged families, including foster children;

(c) Individuals preparing for nontraditional training fields;

(d) Single parents, including single pregnant women;

(e) Displaced homemakers; and

(f) Individuals with limited English proficiency. (20 U.S.C. 2302(29))

Stipend means a subsistence allowance for a student that is necessary for the student to participate in a project funded under this program. See the notice of final requirements, definitions, and selection criteria for this program, published elsewhere in this issue of the **Federal Register**.

Student achievement means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under the Elementary and Secondary Education Act, as amended. (20 U.S.C. 6301 et seq.) (ESEA); and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools.

(b) For non-tested grades and subjects: alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course texts; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

See the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Support services means services related to curriculum modification, equipment modification, classroom modification, supportive personnel, and instructional aids and devices. (20 U.S.C. 2302(31))

Tribal organization means the recognized governing body of any Indian tribe; any legally established organization of Indians that is controlled, sanctioned, or chartered by such governing body or that is democratically elected by the adult members of the Indian community to be served by the organization and that includes the maximum participation of Indians in all phases of its activities, provided that, in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe,

the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant. (20 U.S.C. 2326(a)(3); 25 U.S.C. 450b(l))

Tribally Controlled College or University means an institution of higher education that is formally controlled, or has been formally sanctioned or chartered, by the governing body of an Indian tribe or tribes, except that no more than one such institution will be recognized with respect to any such tribe. (20 U.S.C. 2302(33) and 25 U.S.C. 1801(a)(4))

Requirements: These requirements are from the notice of final requirements, definitions, and selection criteria for this program, published elsewhere in this issue of the **Federal Register**, unless a specific statutory citation for the requirement is provided.

Authorized Programs, Services, and Activities

(a) *Authorized programs.* Section 116(e) of the Act requires the Secretary to ensure that activities funded under NACTEP ''will improve career and technical education programs'' (20 U.S.C. 2326(e)). This requirement continues to align NACTEP with other programs authorized under the Act that require recipients of funds under the Act to provide coherent and rigorous content aligned with challenging academic standards and improve career and technical education.

Therefore, under NACTEP the Assistant Secretary will award grants to carry out projects that—

(1) Propose organized educational activities offering a sequence of courses that—

(i) Provide individuals with coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions;

(ii) Provide technical skill proficiency, an industry-recognized credential, a certificate, or an associate degree; and

(iii) Include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills, and knowledge of all aspects of an industry, including entrepreneurship, of an individual. Projects may include prerequisite courses (other than remedial courses) that meet the definitional requirements of section 3(5) of the Act. (20 U.S.C. 2302(5)) In addition, at the secondary level, coherent and rigorous academic curriculum must be aligned with challenging academic content standards and student academic achievement standards in reading or language arts and in mathematics that the State in which the applicant is located has established under the ESEA. Contacts for State ESEA programs may be found on the Internet at: *www.ed.gov/about/contacts/state/index.html*.

(2) Develop new programs, services, or activities or improve or expand existing programs, services, or activities that are consistent with the purposes of the Act. In other words, the Department will support ''expansions'' or ''improvements'' that include, but are not limited to, the expansion of effective programs or practices; upgrading of activities, equipment, or materials; increasing staff capacity; adoption of new technology; modification of curriculum; or implementation of new policies to improve program effectiveness and outcomes.

(3) Fund a career and technical education program, service, or activity that—

(i) Is a new program, service, or activity that was not provided by the applicant during the instructional term (a defined period, such as a semester, trimester, or quarter, within the academic year) that preceded the request for funding under NACTEP;

(ii) Will improve or expand an existing career and technical education program; or

(iii) Inherently improves career and technical education.

Note: A program, service, or activity ''inherently improves career and technical education'' if it—

(a) Develops new career and technical education programs of study that will be approved by the appropriate accreditation agency;

(b) Strengthens the rigor of the academic and career and technical components of funded programs;

(c) Uses curriculum that is aligned with industry-recognized standards and will result in students attaining industry-recognized credentials, certificates, or degrees;

(d) Integrates academics (other than remedial courses) with career and technical education programs through a coherent sequence of courses to ensure learning in the core academic and career and technical subjects;

(e) Links career and technical education at the secondary level with career and technical education at the postsecondary level and facilitates students' pursuit of a baccalaureate degree;

(f) Expands the scope, depth, and relevance of curriculum, especially content that provides students with a comprehensive understanding of all aspects of an industry and a variety of hands-on, job-specific experiences; and

(g) Offers—

(1) Work-related experience, internships, cooperative education, school-based enterprises, entrepreneurship, community service learning, and job shadowing that are related to career and technical education programs;

(2) Coaching/mentoring, support services, and extra help for students after school, on weekends, and/or during the summers, so they can meet higher standards;

(3) Career guidance and academic counseling for students participating in career and technical education programs;

(4) Placement services for students who have successfully completed career and technical education programs and attained a technical skill proficiency that is aligned with industry-recognized standards;

(5) Professional development programs for teachers, counselors, and administrators;

(6) Strong partnerships among grantees and local educational agencies, postsecondary institutions, community leaders, adult education providers, and, as appropriate, other entities, such as employers, labor organizations, parents, and local partnerships, to enable students to achieve State academic standards and career and technical skills;

(7) The use of student assessment and evaluation data to improve continually instruction and staff development with the goal of increasing student achievement in career and technical education programs; or

(8) Research, development, demonstration, dissemination, evaluation and assessment, capacity-building, and technical assistance, related to career and technical education programs.

(b) Assistance to Bureau-funded secondary schools. An Indian tribe, a tribal organization, or an Alaska Native entity, that receives funds through a NACTEP grant or contract may use the funds to provide assistance to a secondary school operated or supported by the U.S. Department of the Interior to enable such school to carry out career and technical education programs.

(c) Student stipends. In accordance with section 116(c)(2) of the Act, a portion of an award under this program may be used to provide stipends (as defined in the Definitions section of this notice) to one or more students to help meet the students' costs of participation in a NACTEP project. A grantee must apply the following procedures for determining student eligibility for stipends and appropriate amounts to be awarded as stipends:

(1) To be eligible for a stipend a student must—

(i) Be enrolled in a career and technical education project funded under this program;

(ii) Be in regular attendance in a NACTEP project and meet the training institution's attendance requirement;

(iii) Maintain satisfactory progress in his or her program of study according to the training institution's published standards for satisfactory progress; and

(iv) Have an acute economic need that—

(A) Prevents participation in a project funded under this program without a stipend; and

(B) Cannot be met through a work-study program.

(2) The amount of a stipend is the greater of either the minimum hourly wage prescribed by State or local law or the minimum hourly wage established under the Fair Labor Standards Act.

(3) A grantee may only award a stipend if the stipend combined with other resources the student receives does not exceed the student's financial need. A student's financial need is the difference between the student's cost of attendance and the financial aid or other resources available to defray the student's cost of participating in a NACTEP project.

(4) To calculate the amount of a student's stipend, a grantee would multiply the number of hours a student actually attends career and technical education instruction by the amount of the minimum hourly wage that is prescribed by State or local law, or by the minimum hourly wage that is established under the Fair Labor Standards Act.

Example: If a grantee uses the Fair Labor Standards Act minimum hourly wage of $7.25 and a student attends classes for 20 hours a week, the student's stipend would be $145 for the week during which the student attends classes ($7.25 × 20 = $145.00).

Note: In accordance with applicable Department statutory requirements and administrative regulations, grantees must maintain records that fully support their decisions to award stipends and the amounts that are paid, such as proof of a student's enrollment in a NACTEP project, stipend applications, timesheets showing the number of attendance hours confirmed in writing by an instructor, student financial status information, and evidence that a student would not be able to participate in the NACTEP project without a stipend. (20 U.S.C. 1232f; 34 CFR 75.700–75.702; 75.730; and 75.731)

(5) An eligible student may receive a stipend when taking a course for the first time. However, generally a stipend may not be provided to a student who has already taken, completed, and had the opportunity to benefit from a course and is merely repeating the course.

(6) An applicant must include in its application the procedure it intends to use to determine student eligibility for stipends and stipend amounts, and its oversight procedures for the awarding and payment of stipends.

(d) Direct assistance to students. A grantee may provide direct assistance to students if the following conditions are met:

(1) The recipient of the direct assistance is an individual who is a member of a special population and who is participating in the grantee's NACTEP project.

(2) The direct assistance is needed to address barriers to the individual's successful participation in that project.

(3) The direct assistance is part of a broader, more generally focused program or activity to address the needs of an individual who is a member of a special population.

Note: Direct assistance to individuals who are members of special populations is not, by itself, a ''program or activity for special populations.''

(4) The grant funds used for direct assistance must be expended to supplement, and not supplant, assistance that is otherwise available from non-Federal sources. (20 U.S.C. 2391(a)) For example, generally, a postsecondary educational institution could not use NACTEP funds to provide child care for single parents if non-Federal funds previously were made available for this purpose, or if non-Federal funds are used to provide child care services for single parents participating in non-career and technical education programs and these services otherwise would have been available to career and technical education students in the absence of NACTEP funds.

(5) In determining how much of the NACTEP grant funds it will use for direct assistance to an eligible student, a grantee must consider whether the specific services to be provided are a reasonable and necessary cost of providing career and technical education programs for special populations. However, the Assistant Secretary does not envision a circumstance in which it would be a reasonable and necessary expenditure of NACTEP project funds for a grantee to use a majority of a project's budget to pay direct assistance to students, in lieu of providing the students served by the project with career and technical education.

Additional Program Requirements

(a) Appeal process. Any applicant denied funding under this NACTEP competition may request a hearing to review the Secretary's decision not to make the award. The Secretary will implement the appeal process in accordance with the procedures set forth in 34 CFR 401.23. In accordance with those procedures, any applicant denied funding will have 30 calendar days to make a written request to the Secretary for a hearing to review the Secretary's decision.

(b) Career and technical education agreement. Any applicant that is not proposing to provide career and technical education directly to its students and proposes instead to use NACTEP funds to pay one or more qualified educational entities to provide education to its students must include with its application a written career and technical education agreement between the applicant and that entity. The written agreement must describe the commitment between the applicant and each educational entity and must include, at a minimum, a statement of the responsibilities of the applicant and the entity. The agreement must be signed by the appropriate individuals on behalf of each party, such as the authorizing official or president of a tribe or tribal organization, a college president, or a college dean.

(c) Limitation on services. Section 315 of the Act prohibits the use of funds received under the Act to provide career and technical education programs to students prior to the seventh grade.

(d) Supplement-Not-Supplant. In accordance with section 311(a) of the Act, funds under this program may not be used to supplant non-Federal funds used to carry out career and technical education activities and tech-prep activities. Further, the prohibition against supplanting also means that grantees are required to use their negotiated restricted indirect cost rates under this program. (34 CFR 75.563)

The Secretary cautions applicants not to plan to use funds under NACTEP to replace otherwise available non-Federal funding for direct assistance to students and family assistance programs. For example, NACTEP funds must not be used to supplant tribal and other non-Federal funds with Federal funds in order to pay the costs of students' tuition, dependent care, transportation, books, supplies, and other costs associated with participation in a career and technical education program.

Further, the Secretary is concerned that funds under NACTEP may be used to replace Federal student financial aid. The Secretary wishes to highlight that the Act does not authorize the Secretary to fund projects that serve primarily as entities through which students may apply for and receive tuition and other financial assistance.

Integration of Services

(a) A tribe, tribal organization, or Alaska Native entity receiving financial assistance under this program may integrate those funds with assistance received from related programs in

accordance with the provisions of Public Law 102–477, the Indian Employment, Training and Related Services Demonstration Act of 1992 (25 U.S.C. 3401 *et seq.*).

(b) A tribe, tribal organization, or Alaska Native entity wishing to integrate funds must have a plan that meets the requirements of the Indian Employment, Training and Related Services Demonstration Act and is acceptable to the Secretary of the Interior and the Secretary of Education.

For further information on the integration of grant funds under this and related programs contact Jack Stevens the Division of Workforce Development, Office of Indian Energy and Economic Development, U.S. Department of the Interior, 1951 Constitution Avenue NW., Mailstop 20 SIB, Washington, DC 20245. Telephone: (202) 208–6764. Email address: *jack.stevens@bia.gov*. Fax: (202) 208–4564.

Indian Self-Determination Contracts

Section 116(b)(2) of the Act provides that grants or contracts awarded under section 116 of the Act are subject to the terms and conditions of section 102 of the ISDEA (25 U.S.C. 450f) and must be conducted in accordance with the provisions of sections 4, 5, and 6 of the Act of April 16, 1934 (25 U.S.C. 455–457), that are relevant to the programs administered under section 116(b) of the Act. Section 102 of the ISDEA authorizes Indian tribes to request self-determination contracts. Accordingly, an Indian tribe or tribal organization that has applied to the Secretary for financial assistance under NACTEP and has been notified of its selection to be a recipient of financial assistance may submit a request to operate its NACTEP project through a section 102 Indian self-determination contract.

In accordance with section 102(a) of the ISDEA, any Indian tribe or tribal organization requesting to operate its project under an Indian self-determination contract must do so by tribal resolution. After successful applicants are selected under this NACTEP competition, the Secretary will review any requests to operate a project under an Indian self-determination contract pursuant to the ISDEA. If a request for an Indian self-determination contract is approved, the Indian tribe or tribal organization submitting the request will be required, to the extent possible, to operate its project in accordance with the ISDEA, the Act, and the non-statutory program requirements established in the notice of final requirements, definitions, and selection criteria for this program, published elsewhere in this issue of the **Federal Register**.

The career and technical education programs, services, and activities provided through an Indian self-determination contract would have to be essentially the same as were proposed in the initial application and approved by the Department. Any Indian tribe or tribal organization that is selected to receive funding under this competition, but whose request for an Indian self-determination contract is denied, may appeal the denial to the Secretary. If you have questions about ISDEA self-determination contracts, please contact the persons listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Program Authority: 20 U.S.C. 2301, *et seq.*, particularly 2326(a)–(g)).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 86, 97, 98, and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637). (d) The notice of final requirements, definitions, and selection criteria for this program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $14,023,000 for the first 12 months or the project period. Funding for year two is subject to the availability of funds and to a grantee meeting the requirements of 34 CFR 75.253. FY 2013 funds will be used for new awards under this competition.

Estimated Range of Awards: $300,000 to $600,000.

Estimated Average Size of Awards: $450,000.

Estimated Number of Awards: 30.

Note: The Department is not bound by any estimates in this notice.

Project Period. Up to 24 months.

III. Eligibility Information

1. *Eligible Applicants:* (a) The following entities are eligible for an award under NACTEP:

(1) A federally recognized Indian tribe.

(2) A tribal organization.

(3) An Alaska Native entity.

(4) A Bureau-funded school, except for a Bureau-funded school proposing to use its award to support secondary school career and technical education programs.

(b) Any tribe, tribal organization, Alaska Native entity, or eligible Bureau-funded school may apply individually or as part of a consortium with one or more eligible tribes, tribal organizations, Alaska Native entities, or eligible Bureau-funded schools. (Eligible applicants seeking to apply for funds as a consortium must meet the requirements in 34 CFR 75.127–75.129, which apply to group applications.)

2. *Demonstration of Eligibility:* The following requirements are from the notice of final requirements, definitions, and selection criteria for this program, published elsewhere in this issue of the **Federal Register**.

(a) An eligible applicant (as determined by the Act) must include documentation in its application showing that it and, if appropriate, its consortium members are eligible to apply.

(b) As defined in the Indian Self-Determination and Education Assistance Act (ISDEA) (25 U.S.C. 450b(l)), the term ''tribal organization'' means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, that in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant. In accordance with this statutory definition, any tribal organization proposing to provide NACTEP services for the benefit of more than one Indian tribe must first obtain the approval of each Indian tribe it proposes to serve and must submit documentation of such approval with its NACTEP application and that documentation of tribal approval is a prerequisite to the awarding of a NACTEP grant to any tribal organization proposing to serve more than one Indian tribe.

3. (a) *Cost Sharing or Matching:* This program does not require cost sharing or matching.

(b) *Supplement-Not-Supplant:* This program involves supplement-not-

supplant funding requirements. (34 CFR 75.563)

4. *Other:*

(a) Background Information

This notice invites applications for a NACTEP competition that implements section 116 of the Act, enacted August 12, 2006. Section 116 of the Act continues to authorize the Secretary to award grants, cooperative agreements, or enter into contracts with Indian tribes, tribal organizations, and Alaska Native entities to operate career and technical education projects that improve career and technical education for Native American and Alaska Native students.

Under section 116 of the Act, Bureau-funded schools proposing to fund secondary programs are not eligible to receive an award directly from the Secretary. However, an Indian tribe, tribal organization, Alaska Native entity, or Bureau-funded school may use its award to assist a secondary school operated or supported by the U.S. Department of the Interior to carry out career and technical education programs. A Bureau-funded school that is not proposing a secondary program is eligible for assistance under NACTEP.

(b) Under the statutory definition of ''career and technical education'', the sequence of courses provided as part of a career and technical education program must provide students with coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions. (20 U.S.C. 2302(5)(A)(i))

(c) Special Populations. Paragraph (F) of the definition of ''Special Populations'' in section 3(29) of the Act uses the phrase ''individuals with limited English proficiency''. Under section 324 of the Act, NACTEP students with other barriers to educational achievement may receive assistance such as tuition and fees, dependent care, transportation, books, and supplies, that are necessary for a student to participate in a project funded under this program. (20 U.S.C. 2414(b))

Note: Refer to the Direct assistance to students and Student Stipends sections of this notice for guidance on providing financial assistance for tuition, dependent care, transportation, books, supplies, and stipends.

IV. Application and Submission Information

1. *Address To Request Application Package:* Gwen Washington, U.S. Department of Education, 400 Maryland Avenue SW., room 11076, PCP, Washington, DC 20202–7241. Telephone: (202) 245–7790. Fax: (202) 245–7170 or by email: *gwen.washington@ed.gov*. Or Linda Mayo, U.S. Department of Education, 400 Maryland Avenue SW., room 11075, PCP, Washington, DC 20202–7241. Telephone: (202) 245–7790. Fax: (202) 245–7170 or by email: *linda.mayo@ed.gov*.

You may also obtain an application package via the Internet from the following address: *www.ed.gov/GrantApps/*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contact persons listed in this section.

2. *Content and Form of Application Submission:*

Requirements concerning the content of the application, together with the forms you must submit, are in the application package for this program.

3. *Submission Dates and Times:*

Applications Available: February 26, 2013.

Deadline for Transmittal of Applications: April 12, 2013.

Applications for grants under this program may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 7. *Other Submission Requirements* or this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the persons listed under *For Further Information Contact* in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, Central Contractor Registry, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR)—and, after July 24, 2012, with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR and SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR or SAM registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days to complete. Information about SAM is available at SAM.gov.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp*.

7. *Other Submission Requirements:*

Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We are participating as a partner in the Governmentwide Grants.gov Apply

site. NACTEP, CFDA Number 84.101A, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

You may access the electronic grant application for NACTEP at *www.Grants.gov*. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.101, not 84.101A).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov*.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- If you submit your application electronically, you must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award Number (an ED-specified identifying number unique to your application.)
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the persons listed under *For Further Information Contact* in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service of a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.101A), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.101A) 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from the notice of final requirements, definitions, and selection criteria for this program, published elsewhere in this issue of the **Federal Register** and are as follows. The maximum score for each criterion is indicated in parentheses.

(a) *Need for project.* (5 points total) In determining the need for the proposed project, we consider the extent of the need for the services to be provided or the activities to be carried out by the proposed project, as evidenced by data on such phenomena as local labor market demand or occupational trends, or from surveys, recommendations from accrediting agencies, or tribal economic development plans.

(b) *Significance.* (15 points total) In determining the significance of the proposed project, we consider the following factors:

(1) The potential contribution of the proposed project toward increasing the understanding of educational needs, issues, or strategies for providing career and technical education to American Indians and Alaska Natives. (5 points)

(2) The likelihood that the proposed project will result in system change or improvement in the applicant's educational program as evidenced by the types of training and activities identified in the project application. (5 points)

(3) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the career and technical needs of the target population. (5 points)

(c) *Quality of the project design.* (25 points total) In determining the quality of the design of the proposed project, we consider the following factors:

(1) The extent to which goals, objectives, and outcomes are clearly specified and measurable (e.g., identification of the requirements for each course of study to be provided under the project, the technical skill proficiencies to be taught and the industry-recognized standards or competency assessments to be used, including related training areas and a description of the industry certifications, credentials, certificates, or degrees that students may earn; expected enrollments, completions, and student placements in jobs, military specialties, and continuing education/training opportunities in each career training area; the number of teachers, counselors, and administrators to be trained). (10 points)

(2) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs, as evidenced by the applicant's description of programs and activities that align with the target population's needs. (5 points)

(3) The extent to which the design for implementing and evaluating the proposed project plans for and is likely to result in the development of information that will guide possible dissemination of information on project practices, activities, or strategies, including information about the effectiveness of the approach or strategies employed by the project, planned dissemination activities, the kind of practices, activities, or strategies to be disseminated, the target audience for the dissemination of such practices, activities, or strategies, and the proposed uses for such disseminated practices, activities, or strategies. (5 points)

(4) The extent to which the proposed project will establish linkages with or will be coordinated with similar or related efforts, and with community, State, or Federal resources, where such opportunities and resources exist. (5 points)

(d) *Quality of project services.* (20 points total) In determining the quality of the services to be provided by the proposed project, we consider the following factors:

(1) The extent to which the training or professional development services to be provided by the proposed project would be of sufficient quality, intensity, and duration to lead to improvements in practice among the project staff and instructors, including the extent to which the proposed training and professional development plans address ways in which learning gaps will be addressed and how continuous review of performance will be conducted to identify training needs. (5 points)

(2) The extent to which the services to be provided by the proposed project will create opportunities for students to receive an industry-recognized credential; become employed in high-skill, high-wage, and high-demand occupations; or both. (5 points)

(3) The extent to which the services proposed in the project will create opportunities for students to acquire technical skill proficiencies, industry certifications, or the skills identified by State or industry-recognized career and technical education programs or professions. In describing the services, there must be a clear link between the services and the skill proficiencies, industry certifications, credentials, certificates, or degrees that students may earn. (10 points)

(e) *Quality of project personnel.* (15 points total) In determining the quality of project personnel, we consider the following factors:

(1) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (5 points)

(2) The qualifications, including relevant training, expertise, and experience, of the project director, key personnel, and project consultants. (5 points)

(3) The extent to which the project will use instructors who are certified to teach in the field in which they will provide instruction. (5 points)

(f) *Adequacy of resources.* (20 points total) In determining the adequacy of resources for the proposed project, we consider the following factors:

(1) The adequacy of support, including facilities, equipment, supplies, and other resources, from the

applicant organization(s) and the tribal entity or entities to be served. (5 points)

(2) The extent to which the budget is adequate and costs are reasonable in relation to the objectives of the proposed project. (5 points)

(3) The relevance and demonstrated commitment (e.g., through written career and technical education agreements, memoranda of understanding, letters of support and commitment, or commitments to employ project participants, as appropriate) of the applicant, members of the consortium, local employers, or tribal entities to be served by the project. (5 points)

(4) The potential for continued support of the project after Federal funding ends. (5 points)

(g) *Quality of the management plan.* (15 points total) In determining the quality of the management plan for the proposed project, we consider the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and the milestones and performance standards for accomplishing project tasks. (5 points)

(2) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project. (5 points)

(3) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project. (5 points)

(h) *Quality of the project evaluation.* (25 points total) In determining the quality of the evaluation, we consider the following factors:

(1) The extent to which the methods of evaluation proposed by the grantee are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (5 points)

(2) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and the Government Performance and Results Act of 1993 (GPRA) performance measures, and will produce quantitative and qualitative data, to the extent possible. (5 points)

(3) The extent to which the methods of the evaluation include processes that consider the validity and integrity of data collection and analysis; accessibility of appropriate and timely data; accurate descriptions of performance; collection processes that yield unbiased, unprejudiced, and impartial data results; and the extent to which representation of the data clearly communicates an accurate picture of performance. (5 points)

(4) The extent to which the methods of evaluation will provide performance feedback and continuous improvement toward achieving intended outcomes. (5 points)

(5) The quality of the evaluation to be conducted by an external evaluator with the necessary background and technical expertise to carry out the evaluation. (5 points)

2. *Additional Selection Factors:* In accordance with the requirement in section 116(e) of the Act, we have included the following additional selection factors and will award additional points to any application addressing the following factors, as indicated. These additional factors are from the notice of final requirements, definitions, and selection criteria for this program, published elsewhere in this issue of the **Federal Register** and are as follows. We will award—

(a) Up to 10 additional points to applications that propose exemplary approaches that involve, coordinate with, or encourage tribal economic development plans; and

(b) Five points to applications from tribally controlled colleges or universities that—

(1) Are accredited or are candidates for accreditation by a nationally recognized accreditation organization as an institution of postsecondary career and technical education; or

(2) Operate career and technical education programs that are accredited or are candidates for accreditation by a nationally recognized accreditation organization and issue certificates for completion of career and technical education programs (20 U.S.C. 2326(e)).

3. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

4. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the Applicable Regulations section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measures:* Under GPRA, Federal departments and agencies must clearly describe the goals and objectives of their programs,

identify resources and actions needed to accomplish these goals and objectives, develop a means of measuring progress made, and regularly report on their achievement. One important source of program information on successes and lessons learned is the project evaluation conducted under individual grants. The Department has developed the following core factors and measures for evaluating the overall effectiveness of NACTEP projects:

(a) At the secondary level: An increase in the percentage of career and technical education students who—

(1) Attain academic proficiency, as demonstrated by meeting academic content standards and student academic achievement standards that meet challenging State defined academic standards for reading/language arts and mathematics;

(2) Attain career and technical skill proficiencies, including student achievement on technical assessments that are aligned with industry-recognized standards;

(3) Attain a secondary school diploma;

(4) If a credential, certificate, or degree is offered by the State in which the project operates, in conjunction with a secondary school diploma, attain a proficiency credential, certificate, or degree in conjunction with a secondary school diploma; and

(5) Are placed in—

(i) Postsecondary education or advanced training;

(ii) Military service; or

(iii) Employment.

(b) At the postsecondary level: An increase in the percentage of career and technical education students who—

(1) Attain challenging career and technical skill proficiencies, including student achievement on technical assessments that are aligned with industry-recognized standards;

(2) Attain an industry-recognized credential, a certificate, or a degree;

(3) Are retained in postsecondary education or transfer to a baccalaureate degree program;

(4) Are placed in—

(i) Military service; or

(ii) Apprenticeship programs; and

(5) Are placed or have been retained in employment, including in high-skill, high-wage, or high-demand occupations or professions.

(c) At the adult education level: An increase in the percentage of participating adult career and technical education students who—

(1) Enroll in a postsecondary education or training program;

(2) Attain career and technical education skill proficiencies aligned with industry-recognized standards;

(3) Receive industry-recognized credentials or certificates; and

(4) Are placed in a job, upgraded in a job, or retain employment.

Note: All grantees will be expected to submit an annual performance report addressing these performance measures, to the extent feasible and to the extent that they apply to each grantee's NACTEP project.

5. *Evaluation Requirements:* To help ensure the high quality of NACTEP projects and the achievement of the goals and purposes of section 116 of the Act, each grantee must budget for and conduct an ongoing evaluation of the effectiveness of its NACTEP project. An independent evaluator must conduct the evaluation. As provided in the notice of final requirements, definitions, and selection criteria for this program, published elsewhere in this issue of the **Federal Register**, the evaluation must—

(a) Be appropriate for the project and be both formative and summative in nature;

(b) Include—

(1) Applicable performance measures for NACTEP;

(2) Qualitative and quantitative data with respect to—

(i) Academic and career and technical competencies demonstrated by the participants and the number and kinds of academic and work credentials acquired by individuals, including participation in programs providing skill proficiency assessments, industry certifications, or training at the associate degree level that is articulated with an advanced degree option;

(ii) Enrollment, completion, and placement of participants by gender for each occupation for which training was provided;

(iii) Job or work skill attainment or enhancement, including participation in apprenticeship and work-based learning programs, and student progress in achieving technical skill proficiencies necessary to obtain employment in the field for which the student has been prepared, including attainment or enhancement of technical skills in the industry the student is preparing to enter;

(iv) Activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for disseminating information on project activities and results;

(v) The number and percentage of students who obtained industry-recognized credentials, certificates, or degrees;

(vi) If available, the outcomes of students' technical assessments, by type and scores; and

(vii) The rates of attainment of a proficiency credential or certificate, in conjunction with a secondary school diploma;

(c) Measure the effectiveness of the project, including—

(1) A comparison between the intended and observed results; and

(2) A demonstration of a clear link between the observed results and the specific treatment given to project participants;

(d) Measure the extent to which information about or resulting from the project was disseminated at other sites, such as through the grantee's development and use of guides or manuals that provide step-by-step directions for practitioners to follow when initiating similar efforts; and

(e) Measure the long-term impact of the project, such as, follow-up data on students' employment, sustained employment, promotions, and further/continuing education or training, or the impact the project had on tribal economic development or career and technical education activities offered by tribes.

6. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8 and 110.23).

VII. Agency Contacts

For Further Information Contact: Gwen Washington, U.S. Department of Education, 400 Maryland Avenue SW., room 11076, PCP, Washington, DC 20202–7241. Telephone: (202) 245–7790. Fax: (202) 245–7170 or by email: *gwen.washington@ed.gov.* Or Linda Mayo, U.S. Department of Education, 400 Maryland Avenue SW., Room 11075, PCP, Washington, DC 20202–7241. Telephone: (202) 245–7790. Fax: (202) 245–7170 or by email: *linda.mayo@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact persons listed under *For Further Information Contact* in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: February 21, 2013.

Brenda Dann-Messier,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 2013–04434 Filed 2–25–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Carol M. White Physical Education Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

Overview Information:

Carol M. White Physical Education Program.

Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215F.

DATES:

Applications Available: February 26, 2013.

Deadline for Transmittal of Applications: April 12, 2013.

Deadline for Intergovernmental Review: June 10, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Carol M. White Physical Education Program (PEP) provides grants to local educational agencies (LEAs) and community-based organizations (CBOs) to initiate, expand, and improve physical education for students in grades K–12. Grant recipients must implement programs that help students make progress toward meeting State physical education standards.

Priorities: This competition has five priorities—one absolute priority, two competitive preference priorities, and two invitational priorities. The absolute priority and Competitive Preference Priority 2 are from the notice of final priorities, requirements, and definitions published in the **Federal Register** on June 18, 2010 (75 FR 34892). Competitive Preference Priority 1 is from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637) (the ''Supplemental Priorities''). Applicants may address more than one of the competitive preference priorities.

Absolute Priority: For FY 2013 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

The priority is:

Programs Designed To Create Quality Physical Education Programs.

Under this priority, an applicant is required to develop, expand, or improve its physical education program and address its State's physical education standards by undertaking the following activities: (1) Instruction in healthy eating habits and good nutrition and (2) physical fitness activities that must include at least one of the following: (a) Fitness education and assessment to help students understand, improve, or maintain their physical well-being; (b) instruction in a variety of motor skills and physical activities designed to enhance the physical, mental, and social or emotional development of every student; (c) development of, and instruction in, cognitive concepts about motor skills and physical fitness that support a lifelong healthy lifestyle; (d) opportunities to develop positive social and cooperative skills through physical activity participation; or (e) opportunities for professional development for teachers of physical education to stay abreast of the latest research, issues, and trends in the field of physical education.

Competitive Preference Priorities: For FY 2013 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we will award an additional three points to an application that meets Competitive Preference Priority 1 and an additional two points to an application that meets Competitive Preference Priority 2.

These priorities are:

Competitive Preference Priority 1: Turning Around Persistently Lowest-Achieving Schools.

Under this priority we give competitive preference to projects that are designed to address the following priority area:

(a) Providing services to students enrolled in persistently lowest-achieving schools (as defined in this notice).

Note: For the purposes of this priority, the Department considers schools that are identified as Tier I or Tier II schools under the School Improvement Grants Program (see 75 FR 66363) as part of a State's approved FY 2009, FY 2010, or FY 2011 application to be persistently lowest-achieving schools. A list of these Tier I and Tier II schools can be found on the Department's Web site at *http://www2.ed.gov/programs/sif/index.html.*

Competitive Preference Priority 2: Partnerships Between Applicants and Supporting Community Entities.

We will give a competitive preference priority to an applicant that includes in its application an agreement that details the participation of required partners, as defined in this notice. The agreement must include a description of: (1) Each partner's roles and responsibilities in the project; (2) how each partner will contribute to the project, including any contribution to the local match; (3) an assurance that the application was developed after timely and meaningful consultation between the required parties, as defined in this notice; and (4) a commitment to work together to reach the desired goals and outcomes of the project. The partner agreement must be signed by the Authorized Representative of each of the required partners and by other partners as appropriate.

For an LEA applicant, this partnership agreement must include: (1) The LEA; (2) at least one CBO; (3) a local public health entity, as defined in this notice; (4) the LEA's food service or child nutrition director; and (5) the head of the local government, as defined in this notice.

For a CBO applicant, the partnership agreement must include: (1) The CBO; (2) a local public health entity, as defined in this notice; (3) a local organization supporting nutrition or healthy eating, as defined in this notice; (4) the head of the local government, as defined in this notice; and (5) the LEA from which the largest number of students expected to participate in the CBO's project attend. If the CBO applicant is a school, such as a parochial or other private school, the applicant must describe its school as part of the partnership agreement but is not required to provide an additional signature from an LEA or another school. A CBO applicant that is a school and serves its own population of students is required to include another CBO as part of its partnership and include the head of that CBO as a signatory on the partnership agreement.

Although partnerships with other parties are required for this priority, the eligible applicant must retain the administrative and fiscal control of the project.

Invitational Priorities: For FY 2013 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1: Design Filters for Physical Activity Programs.

Background. In September 2012, as part of its Let's Move! initiative, the White House promoted the use of seven ''design filters'' to serve as guidelines for both public and private sectors in creating physical activity programs. These are evidence-based program practices developed by experts from the public, private, and philanthropic sectors.

We believe that the seven design filters complement the priorities and requirements in this notice. Additional information about the seven design filters is available at: *http://ahealthieramerica.org/sites/all/themes/pha/files/PHA_Policy_Brief_and_Design_Filters.pdf*

This priority is:

Projects that propose to align their programs with the following design filters. Programs should:

1. Strive for universal access;
2. Include a range of age appropriate activities;
3. Aim to reach the recommended guidelines on dosage and duration;
4. Be engaging and fun for kids;
5. Be led by well-trained coaches and mentors;
6. Track progress, both individually and for the group; and
7. Provide consistent motivation and incentives.

Invitational Priority 2: Turning Around Priority Schools.

Background. Competitive Preference Priority 1 provides additional points to applications that include plans to provide services to students enrolled in persistently lowest-achieving schools. In addition to persistently lowest-achieving schools, 34 States and the District of Columbia have identified a new category of low-performing schools—priority schools—as part of their implementation of new systems of differentiated recognition, accountability, and support under ESEA flexibility.

In general, priority schools represent the lowest-achieving five percent of a State's Title I schools and also may include Title I-participating or Title I-eligible high schools with graduation rates below 60 percent. A State's priority schools list typically includes at least some persistently lowest-achieving schools in which LEAs are implementing comprehensive interventions under the School Improvement Grants program, but most States' lists include additional schools as well. Some priority schools, then, are not persistently lowest-achieving schools.

Consequently, for most States that have received waivers under ESEA flexibility, the list of priority schools represents a more complete and up-to-date list of its lowest-performing schools than its list of persistently lowest-achieving schools. In addition, States that have received ESEA flexibility are required to begin, over the next three years, implementation of comprehensive interventions that are designed to turn around the performance of each of their priority schools.

For these reasons, we encourage applicants from States approved for ESEA flexibility to include in their project design an emphasis on providing services to students enrolled in priority schools, both those that are and those that are not persistently lowest-achieving schools. An applicant may address this priority and Competitive Preference Priority 1 by serving priority schools that are also persistently lowest-achieving schools.

This priority is:

Projects that provide services to students enrolled in priority schools (as defined in this notice).

Requirements

The following requirements, which are from the notice of final priorities, requirements, and definitions published in the **Federal Register** on June 18, 2010 (75 FR 34892), apply to this competition:

Requirement 1—Align Project Goals With Identified Needs Using the School Health Index (SHI).

Applicants must complete the physical activity and nutrition questions in Modules 1–4 of the Center for Disease Control's (CDC's) SHI self-assessment tool and develop project goals and plans that address the identified needs. Modules 1–4 are School Health and Safety Policies and Environment, Health Education, Physical Activity and Other Physical Activity Programs, and Nutrition Services. LEA applicants must use the SHI self-assessment to develop a School Health Improvement Plan focused on improving these issues, and design an initiative that addresses their identified gaps and weaknesses. Applicants must include their Overall Score Card for the questions answered in Modules 1–4 in their application, and correlate their School Health Improvement Plan to their project design. Grantees must also complete the same modules of the SHI at the end of the project period and submit the Overall Score Card from the second assessment in their final reports to demonstrate SHI completion and program improvement as a result of PEP funding.

If a CBO applicant (unless the CBO is a school) is in a partner agreement with an LEA or school, it must collaborate with its partner or partners to complete Modules 1–4 of the SHI.

Alternatively, if the CBO has not identified a school or LEA partner, the CBO is not required to do Modules 1–4 of the SHI but must use an alternative needs assessment tool to assess the nutrition and physical activity environment in the community for children. CBO applicants are required to include their overall findings from the community needs assessment and correlate their findings with their project design. Grantees will be required to complete the same needs assessment at the end of their project and submit their findings in their final reports to demonstrate the completion of the assessment and program involvement as a result of PEP funding.

Requirement 2—Nutrition- and Physical Activity-Related Policies

Grantees must develop, update, or enhance physical activity policies and

food- and nutrition-related policies that promote healthy eating and physical activity throughout students' everyday lives, as part of their PEP projects. Applicants must describe in their application their current policy framework, areas of focus, and the planned process for policy development, implementation, review, and monitoring. Grantees will be required to detail at the end of their project period in their final reports the physical activity and nutrition policies selected and how the policies improved through the course of the project.

Applicants must sign a Program-Specific Assurance that commits them to developing, updating, or enhancing these policies during the project period. Applicants that do not submit such a Program-Specific Assurance signed by the applicant's Authorized Representative are ineligible for the competition.

Requirement 3—Linkage With Local Wellness Policies

Applicants that are participating in a program authorized by the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966 [1] must describe in their applications their school district's established local wellness policy and how the proposed PEP project will align with, support, complement, and enhance the implementation of the applicant's local wellness policy. The LEA's local wellness policy should address all requirements in the Child Nutrition Act of 1966. CBO applicants must describe in their applications how their proposed projects would enhance or support the intent of the local wellness policies of their LEA partner(s), if they are working in a partnership group.

If an applicant or a member of its partnership group does not participate in a program authorized by the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966, it will not necessarily have a local wellness policy and, thus, is not required to meet this requirement or adopt a local wellness policy. However, we encourage those applicants to develop and adopt a local wellness policy, consistent with the provisions in the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966 in conjunction with its PEP project.

Applicants must sign a Program-Specific Assurance that commits them to align their PEP project with the district's Local Wellness Policy, if applicable. Applicants to whom this requirement applies that do not submit a Program-Specific Assurance signed by the applicant's Authorized Representative are ineligible for the competition.

Requirement 4—Linkages With Federal, State, and Local Initiatives

If an applicant is implementing the CDC's Coordinated School Health program, it must coordinate project activities with that initiative and describe in its application how the proposed PEP project would be coordinated and integrated with the program.

If an applicant receives funding under the United States Department of Agriculture's (USDA's) Team Nutrition initiative (Team Nutrition Training Grants), the applicant must describe in its application how the proposed PEP project supports the efforts of this initiative.

An applicant for a PEP project in a community that receives a grant under the Recovery Act Communities Putting Prevention to Work—Community Initiative must agree to coordinate its PEP project efforts with those under the Recovery Act Communities Putting Prevention to Work-Community Initiative.

Applicants and PEP-funded projects must complement, rather than duplicate, existing, ongoing or new efforts whose goals and objectives are to promote physical activity and healthy eating or help students meet their State standards for physical education.

Applicants must sign a Program-Specific Assurance that commits them to align their PEP project with the Coordinated School Health program, Team Nutrition Training Grant, Recovery Act Communities Putting Prevention to Work—Community Initiative, or any other similar Federal, State, or local initiatives. Applicants that do not submit a Program-Specific Assurance signed by the applicant's Authorized Representative are ineligible for the competition.

Requirement 5—Updates to Physical Education and Nutrition Instruction Curricula

Applicants that plan to use grant-related funds, including Federal and non-Federal matching funds, to create, update, or enhance their physical education or nutrition education curricula are required to use the Physical Education Curriculum Analysis Tool (PECAT) and submit their overall PECAT scorecard, and the curriculum improvement plan from PECAT. Also, those applicants that plan to use grant-related funds, including Federal and non-Federal matching funds to create, update, or enhance their nutrition instruction in health education must complete the healthy eating module of the Health Education Curriculum Analysis Tool (HECAT). Applicants must use the curriculum improvement plan from the HECAT to identify curricular changes to be addressed during the funding period. Applicants must also describe how the HECAT assessment would be used to guide nutrition instruction curricular changes. If an applicant is not proposing to use grant-related funds for physical education or nutrition instruction curricula, it would not need to use these tools.

Requirement 6—Equipment Purchases

Purchases of equipment with PEP funds or with funds used to meet the program's matching requirement must be aligned with the curricular components of the proposed physical education and nutrition program. Applicants must commit to aligning the students' use of the equipment with PEP elements applicable to their projects, identified in the absolute priority in this notice, and any applicable curricula by signing a Program-Specific Assurance. Applicants that do not submit a Program-Specific Assurance signed by the applicant's Authorized Representative are ineligible for the competition.

Requirement 7—Increasing Transparency and Accountability

Grantees must create or use existing reporting mechanisms to provide information on students' progress, in the aggregate, on the key program indicators, as described in this notice and required under the Government Performance and Results Act, as well as on any unique project-level measures proposed in the application. Grantees that are educational agencies or institutions are subject to applicable Federal, State, and local privacy provisions, including the Family Educational Rights and Privacy Act—a law that generally prohibits the non-consensual disclosure of personally identifiable information in a student's education record. All grantees must comply with applicable Federal, State, and local privacy provisions. The aggregate-level information should be easily accessible by the public, such as posted on the grantee's or a partner's Web site. Applicants must describe in

[1] The requirement to have a local school wellness policy, previously set out in section 204 of the Child Nutrition and WIC Reauthorization Act of 2004, was repealed and replaced by section 9A of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1758b, as added by section 204(a) of Public Law 111–296, the Healthy, Hunger-Free Kids Act of 2010, enacted on December 13, 2010.

their application the planned method for reporting.

Applicants must commit to reporting information to the public by signing a Program-Specific Assurance. Applicants that do not submit a Program-Specific Assurance signed by the applicant's Authorized Representative are ineligible for the competition.

Definitions: Some of the definitions in this notice are from the Supplemental Priorities published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637). Other selected definitions, which are from the Elementary and Secondary Education Act of 1965, as amended (ESEA), are included for the convenience of the reader. The definition of ''priority school'' comes from the Department's document ''ESEA Flexibility,'' available at *www.ed.gov/esea/flexibility*. The remaining definitions are from the notice of final priorities, requirements, and definitions published in the **Federal Register** on June 18, 2010 (75 FR 34892). After each definition, we identify its source.

Community-based organization means a public or private nonprofit organization of demonstrated effectiveness that—

(a) Is representative of a community or significant segments of a community; and

(b) Provides educational or related services to individuals in the community. (ESEA section 9101(6)).

Head of local government means the head of, or an appropriate designee of, the party responsible for the civic functioning of the county, city, town, or municipality would be considered the head of local government. This includes, but is not limited to, the mayor, city manager, or county executive. (75 FR 34892, 34909).

Local educational agency (LEA) means:

(1) A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(2) The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(3) The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this Act with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

(4) The term includes educational service agencies and consortia of those agencies.

(5) The term includes the State educational agency in a State in which the State educational agency is the sole educational agency for all public schools. (ESEA section 9101(26)).

Local public health entity means an administrative or service unit of local or State government concerned with health and carrying some responsibility for the health of a jurisdiction smaller than the State (except for Rhode Island and Hawaii, because these States' health departments operate on behalf of local public health and have no sub-State unit). The definition applies to the State health department or the State public health entity in the event that the local public health entity does not govern health and nutrition issues for the local area. (75 FR 34892, 34909).

Organization supporting nutrition or healthy eating means a local public or private non-profit school, health-related professional organization, local public health entity, or local business that has demonstrated interest and efforts in promoting student health or nutrition. This term includes, but is not limited to LEAs (particularly an LEA's school food or child nutrition director), grocery stores, supermarkets, restaurants, corner stores, farmers' markets, farms, other private businesses, hospitals, institutions of higher education, Cooperative Extension Service and 4H Clubs, and community gardening organizations, when such entities have demonstrated a clear intent to promote student health and nutrition or have made tangible efforts to do so. This definition does not include representatives from trade associations or representatives from any organization representing any producers or marketers of food or beverage product(s). (75 FR 34892, 34909).

Persistently lowest-achieving schools means, as determined by the State: (i) Any Title I school in improvement, corrective action, or restructuring that (a) is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (ii) any secondary school that is eligible for, but does not receive, Title I funds that: (a) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

To identify the persistently lowest achieving schools, a State must take into account both: (i) The academic achievement of the ''all students'' group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and (ii) the school's lack of progress on those assessments over a number of years in the ''all students'' group. (76 FR 27637, 27640).

Note: For the purposes of Competitive Preference Priority 1 in this notice, the Department considers schools that are identified as Tier I or Tier II schools under the School Improvement Grants Program (see 75 FR 66363) as part of a State's approved FY 2009, FY 2010, or FY 2011 application to be persistently lowest-achieving schools. A list of these Tier I and Tier II schools can be found on the Department's Web site at *http://www2.ed.gov/programs/sif/index.html*.

Priority school means a school that is on a State's list of priority schools under its approved ESEA flexibility request and that, based on the most recent data available, has been identified as among the lowest-performing schools in the State, consistent with one of the following criteria: (1) A school among the lowest five percent of Title I schools in the State based on the achievement of the ''all students'' group in terms of proficiency on the statewide assessments that are part of the SEA's differentiated recognition, accountability, and support system, combined, and has demonstrated a lack of progress on those assessments over a number of years in the ''all students'' group; (2) a Title I-participating or Title I-eligible high school with a graduation rate less than 60 percent over a number of years; or (3) a Tier I or Tier II school

under the SIG program that is using SIG funds to implement a school intervention model.

Note: A list of priority schools in each State approved for ESEA flexibility may be found on the SEA's Web site. The following States have been approved for ESEA flexibility: Arkansas, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, and Wisconsin. In addition, the District of Columbia has been approved for ESEA flexibility.

Program Authority: 20 U.S.C. 7261–7261f.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 86, 97, 98, and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations in 34 CFR part 299. (d) The notice of final eligibility requirements for the Office of Safe and Drug-Free Schools discretionary grant programs published in the **Federal Register** on December 4, 2006 (71 FR 70369). (e) The notice of final priorities, requirements, and definitions published in the **Federal Register** on June 18, 2010 (75 FR 34892). (f) The Supplemental Priorities published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration's budget request for FY 2013 does not include funds for this program. In place of this and several other, sometimes narrowly targeted, programs that address students' safety, health, and drug-prevention, the Administration has proposed to create, through the reauthorization of the Elementary and Secondary Education Act of 1965, a broader Successful, Safe, and Healthy Students program that would increase the capacity of States, districts, and their partners to provide the resources and supports for safe, healthy, and successful students. However, we are inviting applications for PEP to allow enough time to complete the grant process before the end of the current fiscal year, if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards later in FY 2013 and in subsequent years from the list of unfunded applicants from this competition.

Estimated Range of Awards: $100,000–$750,000.

Estimated Average Size of Awards: $375,000.

Estimated Number of Awards: 95.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* (a) LEAs, including charter schools that are considered LEAs under State law, and CBOs, including faith-based organizations provided that they meet the applicable statutory and regulatory requirements.

(b) The Secretary limits eligibility under this discretionary grant competition to LEAs or CBOs that do not currently have an active grant under PEP. For the purpose of this eligibility requirement, a grant is considered active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

2. (a) *Cost Sharing or Matching:* In accordance with section 5506 of the ESEA, the Federal share of the project costs may not exceed (i) 90 percent of the total cost of a program for the first year for which the program receives assistance; and (ii) 75 percent of such cost for the second and each subsequent year.

(b) *Supplement-Not-Supplant:* This competition involves supplement-not-supplant funding requirements. Funds made available under this program must be used to supplement, and not supplant, any other Federal, State, or local funds available for physical education activities in accordance with section 5507 of the ESEA.

3. *Other:* An application for funds under this program may provide for the participation, in the activities funded, of (a) students enrolled in private nonprofit elementary schools or secondary schools, and their parents and teachers; or (b) home-schooled students, and their parents and teachers.

IV. Application and Submission Information

1. *Address to Request Application Package:* Carlette KyserPegram, U.S. Department of Education, 400 Maryland Avenue SW, room 10007, PCP, Washington, DC 20202–6450. Telephone: (202) 245–7871. You can also obtain an application package via the Internet. To obtain a copy via Internet, use the following address: *www.ed.gov/programs/whitephysed/applicant.html*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to no more than 25 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section.

Our reviewers will not read any pages of your application that exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: February 26, 2013.

Deadline for Transmittal of Applications: April 12, 2013.

Applications for grants under this program must be submitted electronically using the Grants.gov

Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: June 10, 2013.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* Funds may not be used for construction activities or for extracurricular activities, such as team sports and Reserve Officers' Training Corps program activities (See section 5503(c) of the ESEA).

In accordance with section 5505(b) of the ESEA, not more than five percent of grant funds provided under this program to an LEA or CBO for any fiscal year may be used for administrative expenses.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice. Information about prohibited activities and use of funds also is included in the application package for this competition.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, Central Contractor Registry, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR))—and, after July 24, 2012, with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR or SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR or SAM registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days to complete. Information about SAM is available at *SAM.gov*.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp*.

7. *Other Submission Requirements:*

Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Carol M. White Physical Education Program, CFDA number 84.215F, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Carol M. White Physical Education Program at *www.Grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (i.e., search for 84.215, not 84.215F).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov*.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in Section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Carlette KyserPegram, U.S. Department of Education, 400 Maryland Avenue SW., room 10007, PCP, Washington, DC 20202–6450. FAX: (202)245–7166.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.215F),
LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.215F),
550 12th Street SW., Room 7041,
Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time,

except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

An additional factor we consider in selecting applications for an award is equitable distribution of awards among LEAs and CBOs serving urban and rural areas. (See 20 U.S.C. 7261e(b).)

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) There are reporting requirements under this program, including under section 5505(a) of the ESEA and 34 CFR 75.118 and 75.720. In accordance with section 5505(a) of the ESEA, grantees under this program are required to submit an annual report that—

(1) Describes the activities conducted during the preceding year; and

(2) Demonstrates that progress has been made toward meeting State standards for physical education.

This annual report must also address progress toward meeting the performance and efficiency measures established by the Secretary for this program and described in the next section of this notice.

(c) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Secretary has established the following key performance measures for collecting data to use in assessing the effectiveness of PEP:

(a) The percentage of students served by the grant who engage in 60 minutes of daily physical activity measured by using pedometers for students in grades K–12 and an additional 3-Day Physical Activity Recall (3DPAR) instrument to collect data on students in grades 5–12.

(b) The percentage of students served by the grant who meet the standard of a healthy fitness zone as established by the assessment for the Presidential Youth Fitness Program (PYFP) in at least five of the six fitness areas of that assessment.

(c) The percentage of students served by the grant who consume fruit two or more times per day and vegetables three or more times per day as measured in programs serving high school students using the nutrition-related questions from the Youth Risk Behavior Survey and in programs serving elementary and middle school students using an appropriate assessment tool for their populations.

For each measure, grantees should collect and aggregate data from two discrete data collection periods throughout each year. During the first year, grantees have an additional data collection period prior to program implementation to collect baseline data.

(d) The cost (based on the amount of the grant award) per student who achieves the level of physical activity required to meet the physical activity measure above (i.e., 60 minutes of daily physical activity).

These measures constitute the Department's measures of success for this program. Consequently, applicants for a grant under this program are advised to give careful consideration to these measures in conceptualizing the approach and evaluation of their proposed project. If funded, applicants will be asked to collect and report data in their performance and final reports about progress toward these measures.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers

whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Carlette KyserPegram, U.S. Department of Education, 550 12th Street SW., room 10007, PCP, Washington, DC 20202–6450. Telephone: 202–245–7871 or by email: *Carlette.KyserPegram@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: February 21, 2013.

Deborah S. Delisle,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2013–04414 Filed 2–25–13; 8:45 am]

BILLING CODE 4000–01–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: ER10–3069–003; ER10–3070–003.

Applicants: Alcoa Power Generating Inc., Alcoa Power Marketing LLC.

Description: Alcoa Power Generating Inc., et al. submit response to January 25, 2013 request for additional information.

Filed Date: 2/14/13.

Accession Number: 20130214–5182.

Comments Due: 5 p.m. ET 3/7/13.

Docket Numbers: ER13–639–000; ER13–640–000; ER13–641–000; ER13–642–000; ER13–643–000; ER13–644–000; ER13–653–000; ER13–646–000; ER13–647–000; ER13–648–000; ER13–649–000 ER13–650–000; ER13–651–000; ER13–652–000; ER10–2362–002; ER10–2363–002; ER10–2364–002; ER10–2365–002 ER10–2366–002; ER10–2367–002; ER11–4351–002.

Applicants: Broken Bow Wind, LLC, Coalinga Cogeneration Company, Kern River Cogeneration Company, Mid-Set Cogeneration Company, Salinas River Cogeneration Company, Sargent Canyon Cogeneration Company, Sycamore Cogeneration Company, Pinnacle Wind, LLC, Crofton Bluffs Wind, LLC, Elkhorn Ridge Wind, LLC, Laredo Ridge Wind, LLC, Taloga Wind, LLC, San Juan Mesa Wind Project, LLC, Wildorado Wind, LLC, Sleeping Bear, LLC, CL Power Sales Eight, L.L.C., CP Power Sales Nineteen, L.L.C., CP Power Sales Seventeen, L.L.C., CP Power Sales Twenty, L.L.C., Edison Mission Marketing & Trading, Inc., Edison Mission Solutions, L.L.C.

Description: Edison Mission Group Inc. entities Supplement to December 28, 2012 Triennial Market Power Analysis for the SPP Region.

Filed Date: 2/14/13.

Accession Number: 20130214–5113.

Comments Due: 5 p.m. ET 3/7/13.

Docket Numbers: ER13–938–000.

Applicants: Southwest Power Pool, Inc.

Description: Revisions to Attachment H Addendum 2–A Part 2—OG&E to be effective 8/2/2012.

Filed Date: 2/14/13.

Accession Number: 20130214–5159.

Comments Due: 5 p.m. ET 3/7/13.

Docket Numbers: ER13–939–000.

Applicants: North Carolina Electric Membership Corporation.

Description: Petition by North Carolina Electric Membership Corporation for Limited Waiver of certain PJM Interconnection, L.L.C. Open Access Transmission Tariff provisions.

Filed Date: 2/14/13.

Accession Number: 20130214–5190.

Comments Due: 5 p.m. ET 3/7/13.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES13–17–000

Applicants: Northern Maine Independent System Administrator, Inc.

Description: Amendment to Application of Northern Maine Independent System Administrator, Inc.

Filed Date: 2/14/13.

Accession Number: 20130214–5187

Comments Due: 5 p.m. ET 2/25/13.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA12–3–000

Applicants: Bluegrass Generation Company, L.L.C., Blythe Energy, LLC, Calhoun Power Company, LLC, Cherokee County Cogeneration Partners, LLC, DeSoto County Generating Company, LLC, Doswell Limited Partnership, Las Vegas Power Company, LLC, LS Power Marketing, LLC, LSP Safe Harbor Holdings, LLC, LSP University Park, LLC, Renaissance Power, L.L.C., Riverside Generating Company, L.L.C., Rocky Road Power, LLC, Tilton Energy LLC, University Park Energy, LLC, Wallingford Energy LLC.

Description: Supplement to October 13, 2012 Quarterly Land Acquisition Report of the LS Power Development, LLC MBR Sellers.

Filed Date: 2/14/13.

Accession Number: 20130214–5026.

Comments Due: 5 p.m. ET 3/7/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 15, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–04316 Filed 2–25–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1410–006.
Applicants: Kern River Gas Transmission Company.
Description: to be effective 12/1/2010.
Filed Date: 2/19/13.
Accession Number: 20130219–5076.
Comments Due: 5 p.m. ET 3/4/13.

Docket Numbers: RP13–573–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 02/19/13 Negotiated Rates—Occidental Energy Mrktg—(RTS)—6060–08 & 09 to be effective 3/1/2013.
Filed Date: 2/19/13.
Accession Number: 20130219–5066.
Comments Due: 5 p.m. ET 3/4/13.

Docket Numbers: RP13–574–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: to be effective 3/21/2013.
Filed Date: 2/19/13.
Accession Number: 20130219–5179.
Comments Due: 5 p.m. ET 3/4/13.

Docket Numbers: RP13–575–000.
Applicants: Natural Gas Pipeline Company of America.
Description: EOG Resources Negotiated Rate to be effective 4/1/2013.
Filed Date: 2/20/13.
Accession Number: 20130220–5065.
Comments Due: 5 p.m. ET 3/4/13.

Docket Numbers: RP13–576–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Nicor Gas Neg Rate to be effective 4/1/2013.
Filed Date: 2/20/13.
Accession Number: 20130220–5069.
Comments Due: 5 p.m. ET 3/4/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Dated: February 20, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–04322 Filed 2–25–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–565–000.
Applicants: CenterPoint Energy Gas Transmission Comp.
Description: CEGT LLC–2013 Negotiated Rate Filing—February to be effective 2/15/2013.
Filed Date: 2/14/13.
Accession Number: 20130214–5024.
Comments Due: 5 p.m. ET 2/26/13.

Docket Numbers: RP13–566–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Tenaska Amended Negotiated Filing to be effective 2/14/2013.
Filed Date: 2/14/13.
Accession Number: 20130214–5028.
Comments Due: 5 p.m. ET 2/26/13.

Docket Numbers: RP13–567–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Tenaska Amendment to be effective 2/14/2013.
Filed Date: 2/14/13.
Accession Number: 20130214–5029.
Comments Due: 5 p.m. ET 2/26/13.

Docket Numbers: RP13–568–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Devon 34694–45 Amendment to Neg Rate Agmt filing to be effective 2/14/2013
Filed Date: 02/14/2013.
Accession Number: 20130214–5030.
Comments Due: 5 p.m. ET 2/26/13.

Docket Numbers: RP13–569–000.
Applicants: Texas Gas Transmission, LLC.
Description: NextEra 32738 Negotiated Rate Agmt filing to be effective 2/15/2013.
Filed Date: 2/15/13.
Accession Number: 20130215–5155.
Comments Due: 5 p.m. ET 2/27/13.

Docket Numbers: RP13–570–000.
Applicants: Columbia Gulf Transmission Company.
Description: Non-Conforming Remediation 2.15.13 to be effective 3/18/2013.
Filed Date: 2/15/13.
Accession Number: 20130215–5158.
Comments Due: 5 p.m. ET 2/27/13.

Docket Numbers: RP13–571–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Non-Conforming Agreements to be effective 3/15/2013.
Filed Date: 2/15/13.
Accession Number: 20130215–5161.
Comments Due: 5 p.m. ET 2/27/13.

Docket Numbers: RP13–572–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 02/18/13 Negotiated Rates—BP Energy Company (HUB)—1410–89 to be effective 2/17/2013.
Filed Date: 2/19/13.
Accession Number: 20130219–5005.
Comments Due: 5 p.m. ET 3/4/13.

Docket Numbers: RP13–573–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 02/19/13 Negotiated Rates—Occidental Energy Mrktg—(RTS)—6060–08 & 09 to be effective 3/1/2013.
Filed Date: 2/19/13.
Accession Number: 20130219–5066.
Comments Due: 5 p.m. ET 3/4/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP13–106–002.
Applicants: Young Gas Storage Company, Ltd.
Description: Young NAESB Compliance Amendment Filing to be effective 12/1/2012.
Filed Date: 2/13/13.
Accession Number: 20130213–5128.
Comments Due: 5 p.m. ET 2/25/13.

Docket Numbers: RP13–116–002.
Applicants: MIGC LLC.
Description: 2nd Revised NAESB v2.0 Compliance Filing to be effective 12/1/2012.
Filed Date: 2/13/13.
Accession Number: 20130213–5000.
Comments Due: 5 p.m. ET 2/25/13.

Docket Numbers: RP13–423–001.
Applicants: Rockies Express Pipeline LLC.
Description: Reservation Charge Credit Compliance to be effective 2/1/2013.
Filed Date: 2/15/13.
Accession Number: 20130215–5160.
Comments Due: 5 p.m. ET 2/27/13.

Any person desiring to protest in any the above proceedings must file in

accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 19, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–04315 Filed 2–25–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0693; FRL–9528–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Taconite Iron Ore Processing (Renewal), EPA ICR Number 2050.05

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 March 28, 2013.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2012–0693, 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 October 17, 2012 (77 *FR* 63813), 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–2012–0693, which is available for either 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: NESHAP for Taconite Iron Ore Processing (Renewal).

ICR Numbers: EPA ICR Number 2050.05, OMB Control Number 2060–0538.

ICR Status: This ICR is scheduled to expire on March 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 NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subpart RRRRR.

Owners or operators of the affected facilities must submit initial notification report, performance tests, and periodic reports and results. Owners or operators are also required to 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, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 24 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 or operators of taconite iron ore processing plants.

Estimated Number of Respondents: 8.

Frequency of Response: Occasionally and semiannually.

Estimated Total Annual Hour Burden: 614.

Estimated Total Annual Cost: $650,107, which includes $392,507 in labor costs, no capital/startup costs, and $257,600 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is a decrease in both respondent and Agency burdens from the most-recently approved ICR. This is not due to any program changes. This decrease is due to discrepancies that were identified in the burden calculations of the previous ICR, which have been addressed in this

ICR. Specifically, the previous ICR overestimated the frequency of burden activity associated with site-specific test plans and startup, shutdown, and malfunction plan reviews. The previous ICR also double-counted total labor costs associated with respondent reporting activities. These discrepancies resulted in the overestimation of respondent and Agency labor burdens. The revisions in this ICR address those discrepancies, and contribute directly to the observed decrease in respondent and Agency labor burdens and costs.

There is an increase in labor rates for both the respondents and the Agency from the most- recently approved ICR. This ICR uses updated labor rates from the Bureau of Labor Statistics to calculate burden costs for respondents, and uses updated labor rates from OPM to calculate burden costs for the Agency.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–04403 Filed 2–25–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0653; FRL–9528–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Steel Plants: Electric Arc Furnaces and Argon Oxygen Decarburization Vessels (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 March 28, 2013.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2012–0653, 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 October 17, 2012 (77 FR 63813), 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–2012–0653, which is available for either 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 Steel Plants: Electric Arc Furnaces and Argon Oxygen Decarburization Vessels (Renewal).

ICR Numbers: EPA ICR Number 1060.16, OMB Control Number 2060–0038.

ICR Status: This ICR is scheduled to expire on March 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, subparts AA and AAa.

Owners or operators of the affected facilities must submit initial notification report, performance tests, and periodic reports and results. Owners or operators are also required to 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, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 308 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 or operator of electric arc furnaces and argon oxygen decarburization vessels.

Estimated Number of Respondents: 98.7.

Frequency of Response: Initially and semiannually.

Estimated Total Annual Hour Burden: 61,310.

Estimated Total Annual Cost: $6,137,827, which includes $5,936,587 in labor costs, $5,490 in capital/startup costs, and $195,750 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is an increase in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens. This increase is not due to any program changes. The increases in burden, including labor hours, labor costs, and O&M costs reflect an increase in the number of respondents. The new number of respondents accounts for the one new source that is subject to the rule since the last ICR period. In addition, this ICR uses updated labor rates to calculate burden costs, which results in an increase in labor costs for both the respondents and the Agency.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–04405 Filed 2–25–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–1184; FRL 9527–6]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Information Requirements for Locomotives and Locomotive Engines (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Information Requirements for Locomotives and Locomotive Engines (Renewal)'' (EPA ICR No. 1800.07, OMB Control No. 2060–0392) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through February 28, 2013. Public comments were previously requested via the **Federal Register** (77 FR 69450) on November 19, 2012 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before March 28, 2013.

ADDRESSES: Submit your comments, referencing Docket ID Number Docket ID No. EPA–HQ–OAR–2007–1184, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Nydia Yanira Reyes-Morales, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Mail Code 6403J, Washington, DC 20460; telephone number: 202–343–9264; fax number: 202–343–2804; email address: *reyes-morales.nydia@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: Title II of the Clean Air Act (42 U.S.C. 7521 et seq.) (CAA) charges the Environmental Protection Agency (EPA) with issuing certificates of conformity for those engines that comply with applicable emission standards. Such a certificate must be issued before engines may be legally introduced into commerce. Under this ICR, EPA collects information necessary to (1) issue certificates of compliance with emission statements, and (2) verify compliance with various programs and regulatory provisions pertaining to locomotives, locomotive engines, and locomotive remanufacturing kits (collectively referred to here as ''engines'' for simplicity). To apply for a certificate of conformity, manufacturers are required to submit descriptions of their planned production engines, including detailed descriptions of emission control systems and test data. This information is organized by ''engine family'' groups expected to have similar emission characteristics. There are also recordkeeping requirements. Those manufacturers electing to participate in the Averaging, Banking and Trading (AB&T) Program are also required to submit information regarding the calculation, actual generation and usage of credits in an initial report, end-of-the-year report and final report. These reports are used for certification and enforcement purposes. Manufacturers must maintain records for eight years on the engine families included in the AB&T Program.

The CAA also mandates EPA to verify that manufacturers have successfully translated their certified prototypes into mass produced engines, and that these engines comply with emission standards throughout their useful lives. Under the Production Line Testing (PLT) Program, manufacturers are required to test a sample of engines as they leave the assembly line. This self-audit program allows manufacturers to monitor compliance with statistical certainty and minimize the cost of correcting errors through early detection. A similar audit program exists for the installation of locomotive remanufacturing kits. In-use testing allows manufacturers and EPA to verify compliance with emission standards throughout the locomotive's useful life. Through Selected Enforcement Audits (SEAs), EPA verifies that test data submitted by engine manufacturers is reliable and testing is performed according to EPA regulations.

The information requested is collected by the Diesel Engine Compliance Center (DECC), Compliance Division (CD), Office of Transportation and Air Quality, Office of Air and Radiation, EPA. Besides DECC and CD, this information could be used by the Office of Enforcement and Compliance Assurance and the Department of Justice for enforcement purposes. Non-confidential business information submitted by respondents to this information collection may be disclosed over the Internet. That information is used by trade associations, environmental groups, and the public. Under this ICR, most of the information is collected in electronic format and stored in CD's databases.

Confidential business information (CBI) is kept confidential in accordance with the Freedom of Information Act, EPA regulations at 40 CFR Part 2, and class determinations issued by EPA's Office of General Counsel. Non-proprietary information submitted by manufacturers is held as confidential until the specific locomotive or locomotive engine to which it pertains is available for purchase.

Form Numbers: 5900–274 (ABT Report); 5900–135 (PLT Report), 5900–273 (Installation Audit Report), 5900–90 (Annual Production Report)

Respondents/affected entities: Respondents are manufacturers of nonroad equipment and engines

Respondent's obligation to respond: Manufacturers must respond to this collection if they wish to sell their locomotives, locomotive engines and locomotive remanufacturing kits in the US, as prescribed by Section 206(a) of the CAA (42 U.S.C. 7521) and 40 CFR Part 1033. Certification reporting is mandatory (Section 206(a) of CAA (42 U.S.C. 7521) and 40 CFR Part 1033, Subpart C). PLT/Installation Audit reporting is mandatory (Section 206(b)(1) of CAA and 40 CFR Part 1033, Subpart D). Participation in ABT is voluntary, but once a manufacturer has elected to participate, it must submit the required information (40 CFR Part 1033, Subpart H). In-Use reporting is mandatory (40 CFR Part 1033, Subpart F).

Estimated number of respondents: 16 (total).

Frequency of response: Quarterly, Annually, On Occasion, depending on the program.

Total estimated burden: 21,543 hours (per year). Burden is defined at 5 CFR 1320.03(b)

T*otal estimated cost:* $2,862,117 (per year), which includes $1,558,881 in O&M costs.

Changes in the Estimates: There is an increase of 414 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to an adjustment to the estimates (an increase on the number of respondents).

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–04411 Filed 2–25–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9785–1]

Announcement of the Board of Directors for the National Environmental Education Foundation

AGENCY: Office of External Affairs and Environmental Education, Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The National Environmental Education Foundation (NEEF) was created by Section 10 of Public Law #101–619, the National Environmental Education Act of 1990. It is a private 501 (c)(3) non-profit organization established to promote and support education and training as necessary tools to further environmental protection and sustainable, environmentally sound development. It provides the common ground upon which leaders from business and industry, all levels of government, public interest groups, and others can work cooperatively to expand the reach of environmental education and training programs beyond the traditional classroom. The Foundation supports a grant program that promotes innovative environmental education and training programs; it also develops partnerships with government and other organizations to administer projects that promote the development of an environmentally literal public. The Administrator of the U.S. Environmental Protection Agency, as required by the terms of the Act, announces the following appointment to the National Environmental Education Foundation Board of Trustees. The appointee is Megan Reilly Cayten, Co-Founder and Chief Executive Officer of Catrinka, LLC.

FOR FURTHER INFORMATION CONTACT: For information regarding this Notice of Appointment, please contact Mrs. Stephanie Owens, Deputy Associate Administrator, Office of External Affairs and Environmental Education (1701A) U.S. EPA 1200 Pennsylvania Ave., NW., Washington, DC 20460. General information concerning NEEF can be found on their Web site at: *http://www.neefusa.org.*

SUPPLEMENTARY INFORMATION:

Additional Considerations: Great care has been taken to assure that this new appointee not only has the highest degree of expertise and commitment, but also brings to the Board diverse points of view relating to environmental education. This appointment is a four-year term which may be renewed once for an additional four years pending successful re-election by the NEEF nominating committee.

This appointee will join the current Board members which include:

- JL Armstrong (NEEF Vice Chair), National Manger, Toyota Motor Sales, USA, Inc.
- Raymond Ban, Executive Vice President, The Weather Channel
- Holly Cannon, Principal, Beveridge and Diamond, P.C.
- Phillipe Cousteau, Co-Founder and CEO, EarthEcho International
- Manuel Alberto Diaz, Partner, Lydecker Diaz, L.L.P.
- Arthur Gibson (NEEF Chair), Vice President, Environment, Health and Safety, Baxter Healthcare Corporation
- Trish Silber, President, Aliniad Consulting Partners, Inc.
- Bradley Smith, Dean, Huxley College of the Environment, Western Washington University
- Kenneth Strassner (NEEF Treasurer), Vice President, Global Environment, Safety, Regulatory and Scientific Affairs, Kimberly-Clark Corporation
- Diane Wood (NEEF Secretary), President, National Environmental Education Foundation
- Decker Anstrom, Former CEO, The Weather Channel Companies
- Wonya Lucas, Former CEO, TV One

Background: Section 10(a) of the National Environmental Education Act of 1990 mandates a National Environmental Education Foundation. The Foundation is established in order to extend the contribution of environmental education and training to meeting critical environmental protection needs, both in this country and internationally; to facilitate the cooperation, coordination, and contribution of public and private resources to create an environmentally advanced educational system; and to foster an open and effective partnership among Federal, State, and local government, business, industry, academic institutions, community based environmental groups, and international organizations.

The Foundation is a charitable and nonprofit corporation whose income is exempt from tax, and donations to which are tax deductible to the same extent as those organizations listed pursuant to section 501(c) of the Internal Revenue Code of 1986. The Foundation is not an agency or establishment of the United States. The purposes of the Foundation are—

(A) Subject to the limitation contained in the final sentence of subsection (d) herein, to encourage, accept, leverage, and administer private gifts for the benefit of, or in connection with, the environmental education and training activities and services of the United States Environmental Protection Agency;

(B) To conduct such other environmental education activities as will further the development of an environmentally conscious and responsible public, a well-trained and environmentally literate workforce, and an environmentally advanced educational system;

(C) To participate with foreign entities and individuals in the conduct and coordination of activities that will further opportunities for environmental education and training to address environmental issues and problems involving the United States and Canada or Mexico.

The Foundation develops, supports, and/or operates programs and projects to educate and train educational and environmental professionals, and to assist them in the development and delivery of environmental education and training programs and studies.

The Foundation has a governing Board of Directors (hereafter referred to in this section as 'the Board'), which consists of 13 directors, each of whom shall be knowledgeable or experienced in the environment, education and/or training. The Board oversees the activities of the Foundation and assures that the activities of the Foundation are consistent with the environmental and education goals and policies of the Environmental Protection Agency and with the intents and purposes of the Act. The membership of the Board, to the extent practicable, represents diverse points of view relating to environmental education and training. Members of the Board are appointed by the Administrator of the Environmental Protection Agency.

Within 90 days of the date of the enactment of the National Environmental Education Act, and as appropriate thereafter, the Administrator will publish in the **Federal Register** an announcement of appointments of Directors of the Board. Such appointments become final and effective 90 days after publication in the **Federal Register**. The directors are appointed for terms of 4 years. The Administrator shall appoint an individual to serve as a director in the event of a vacancy on the Board within 60 days of said vacancy in the manner in which the original appointment was made. No individual may serve more than 2 consecutive terms as a director.

Dated: February 14, 2013.

Lisa P. Jackson,

Administrator.

Megan Reilly Cayten

Ms. Cayten has been Co-Founder and Chief Executive Officer of CATRINKA, LLC since 2012.

Ms. Cayten was Vice President of Alinda Capital Partners since 2011, Consultant of Global Water Challenge since 2008, Vice President of Citigroup since 2007, Associate of Endesa Internacional since 2003, Vice President of AES Honduras since 2002, Development Manager of AES Corporation since 2000, Policy Director and Assistant to the Chairwoman of Citizens Party since 1998 and Legislative Aide to Margaret Ng Ngoi-yee since 1997.

Moderator, Clinton Global Initiative. She is a passionate believer in the power of public-private partnerships to effect change. She serves as a term member of the Council on Foreign Relations.

Ms. Cayten earned a master's degree in business administration from Harvard Business School and a bachelor's degree in History from Yale University. She speaks Spanish, French and Mandarin Chinese.

Lives with husband, Christopher, in New York City and mother of two young children.

[FR Doc. 2013–04398 Filed 2–25–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9784–7]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Luminant Generation Company—Sandow 5 Generating Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to Clean Air Act (CAA or Act) operating permit.

SUMMARY: This document announces that the EPA Administrator has responded to a citizen petition asking EPA to object to an operating permit (Permit Number O3025) issued by the Texas Commission on Environmental Quality (TCEQ). Specifically, the Administrator has denied the October 5, 2011 petition, submitted by the Environmental Integrity Project (EIP), Sierra Club, Public Citizen, Texas Campaign for the Environment, Environment Texas, and the SEED Coalition (Petitioners), to object to the operating permit issued on August 18, 2011, to Luminant Generation Company, for the operation of the Sandow 5 Generating Plant located near Rockdale, Milam County, Texas. Sections 307(b) and 505(b)(2) of the Act provide that a petitioner may ask for judicial review of those portions of the petition which EPA denies in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final Order, the petition, and other supporting information at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view copies of the final Order, petition, and other supporting information. You may view the hard copies Monday through Friday, from 9:00 a.m. to 3:00 p.m., excluding Federal holidays. If you wish to examine these documents, you should make an appointment at least 24 hours before the visiting day. Additionally, the final Order for Luminant Generation Company, for the operation of the Sandow 5 Generating Plant is available electronically at: *http://www.epa.gov/region07/air/title5/petitiondb/petitions/sandow_response2011.pdf.*

FOR FURTHER INFORMATION CONTACT: Dinesh Senghani at (214) 665–7221, email address: *senghani.dinesh@epa.gov* or the above EPA, Region 6 address.

SUPPLEMENTARY INFORMATION: The CAA affords EPA a 45-day period to review, and object to as appropriate, a title V operating permit proposed by State permitting authorities. Section 505(b)(2) of the CAA authorizes any person to petition the EPA Administrator, within 60 days after the expiration of this review period, to object to a title V operating permit if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issue arose after this period.

EPA received a petition from the Petitioners dated October 4, 2011, requesting that EPA object to the issuance of the title V operating permit to Luminant Generation Company—Sandow 5 Generating Plant located near Rockdale, Milam County, Texas based on the following contentions: (1) The Sandow 5 title V permit impermissibly incorporates by reference emission limitations established in a major New Source Review permit, (2) the Sandow 5 title V permit impermissibly incorporates by reference the EPA-disapproved Pollution Control Project Standard Permit, (3) the permit impermissibly incorporates permit by rules (this claim is divided into 7 sub-claims), and (4) the permit lacks a Maximum Achievable Control Technology determination as required by CAA section 112(g).

On January 15, 2013, the Administrator issued an Order denying the petition. The Order explains the reasons behind EPA's conclusion to deny the petition.

Dated: February 12, 2013.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2013–04296 Filed 2–25–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9784–9]

Office of Environmental Information; Announcement of Availability and Comment Period for the Draft Quality Standard for Environmental Data Collection, Production, and Use by Non-EPA (External) Organizations and Two Associated QA Handbooks; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: The Environmental Protection Agency published a document in the **Federal Register** of December 26, 2012, concerning request for comments for the Draft Quality Standard for Environmental Data Collection, Production, and Use by Non-EPA (External) Organizations and two associated QA Handbooks. The notice of availability is being extended to a 90 day review and comment period to provide more time for external reviewers to provide comments. This document extends the comment period for 28 days, from February 28, 2013, to March 29, 2013.

DATES: Comments must be submitted on or before March 29, 2013.

FOR FURTHER INFORMATION CONTACT: John Warren, Environmental Protection Agency; 1200 Pennsylvania Avenue, MC 2811R; Washington, DC 20460; Phone: 202–564–6876; email address: *quality@epa.gov.*

Dated: February 20, 2013.

Monica D. Jones,

Director, Quality Staff.

[FR Doc. 2013–04395 Filed 2–25–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9784–5]

Proposed CERCLA Administrative Cost Recovery Settlement; in re: Factory H Superfund Site, Meriden, Connecticut

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

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of response costs under CERCLA Section 122(h)(1) concerning the Factory H Superfund Site in Meriden, Connecticut (''Site'') with the following settling party: MidState Medical Center, Inc. The settlement requires the settling party to pay $100,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), relating to the Site. The settlement has been approved by the Environment and Natural Resources Division of the United States Department of Justice. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 5 Post Office Square, Boston, Massachusetts 02109–3912.

DATES: Comments must be submitted on or before March 28, 2013.

ADDRESSES: Comments should be addressed to Hugh W. Martinez, Senior Enforcement Counsel, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100 (OES 04–3), Boston, MA 02109–3912 (telephone (617) 918–1867) and should refer to the Factory H Superfund Site, U.S. EPA Docket No. CERCLA–01–2012–0112.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed settlement may be obtained from Hugh W. Martinez, Senior Enforcement Counsel, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100 (OES 04–3), Boston, MA 02109–3912 (telephone no. (617) 918–1867; email *Martinez.hugh@epa.gov*).

Dated: December 19, 2012.

Nancy Barmakian,

Acting Director, Office of Site Remediation and Restoration.

[FR Doc. 2013–04292 Filed 2–25–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (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 burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before April 29, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via email to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0937.

Title: Establishment of a Class A Television Service, MM Docket No. 00–10.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement; On occasion and quarterly reporting requirements.

Number of Respondents and Responses: 430 respondents; 10,850 responses.

Estimated time per response: 0.017 hours—52 hours.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i), 307, 308, 309 and 319 of the Communications Act of 1934, as amended.

Total Annual Burden: 202,133 hours.

Total Annual Cost: $1,911,000.

Privacy Impact Assessment: No impact (s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: On November 29, 1999, the Community Broadcasters Protection Act of 1999 (CBPA), Public Law 106–113, 113 Stat. Appendix I at pp. 1501A–594—1501A–598 (1999), codified at 47 U.S.C. Section 336(f), was enacted. That legislation provided that a low power television (LPTV) licensee should be permitted to convert the secondary status of its station to the new Class A status, provided it can satisfy certain statutorily-established criteria. The CBPA directs that Class A licensees be subject to the same license terms and renewal standards as full-power television licenses and that Class A licensees be accorded primary status as television broadcasters as long as they continue to meet the requirements set forth in the statute for a qualifying low power station. The CBPA sets out certain certification and application procedures for LPTV licensees seeking Class A designation, prescribes the criteria LPTV licensees must meet to be eligible for Class A licenses, and outlines the interference protection Class A applicants must provide to analog, digital, LPTV and TV translator stations.

The CBPA directs that Class A stations must comply with the operating requirements for full-service television broadcast stations. Therefore, beginning on the date of its application for a Class A license and thereafter, a station must be ''in compliance'' with the Commission's operating rules for full-service television stations, contained in 47 CFR part 73.

OMB Control Number: 3060–0700.

Title: Open Video Systems Provisions, FCC Form 1275.

Form Number: FCC Form 1275.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; and State, Local or Tribal Government.

Number of Respondents and Responses: 280 respondents; 4,672 respondents.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement; On occasion reporting requirement.

Estimated Time per Response: 0.25 to 20 hours.

Total Annual Burden: 9,855 hours.

Total Annual Costs: None.

Privacy Impact Assessment: No impact(s).

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 302 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: Section 302 of the 1996 Telecommunications Act provides for specific entry options for telephone companies wishing to enter the video programming marketplace, one option being to provide cable service over an ''open video system'' (''OVS''). The rule sections that are covered by this collection relate to OVS.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–04303 Filed 2–25–13; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0285; Docket 2012–0001; Sequence 17]

Agency Information Collection Activities; Information Collection; IT Dashboard Feedback Mechanism

AGENCY: Office of Innovative Technology Services and Solutions, Office of Citizen Services and Innovative Technologies, U.S. General Services Administration (GSA).

ACTION: Notice of request for public comments regarding an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a previously approved information collection requirement regarding IT Dashboard Feedback Mechanism.

DATES: Submit comments on or before April 29, 2013.

ADDRESSES: Submit comments identified by Information Collection 3090–0285, IT Dashboard Feedback Mechanism, by any of the following methods:

- Regulations.gov: *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0285, IT Dashboard Feedback Mechanism''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0285, IT Dashboard Feedback Mechanism'' on your attached document.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 3090–0285, USA Spending/IT Dashboard Feedback Mechanism.

Instructions: Please submit comments only and cite Information Collection 3090–0285, IT Dashboard Feedback Mechanism, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Lalit Bajaj, Program Manager, Office of Innovative Technology Services and Solutions, Office of Citizen Services and Innovative Technologies, 1275 First Street NE., Washington, DC 20002, telephone number 202–208–7887, or email at *Lalit.Bajaj@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The IT Dashboard Web site (*itdashboard.gov*) provides agencies and the public access to view details of Federal information technology investments online and to track their progress over time. The IT Dashboard displays IT budget data received from agencies through their Exhibit 53 and 300 submissions, including general information of over 7,000 federal IT investments and nearly 800 investments classified as major by the agencies.

B. Annual Reporting Burden

Number of Respondents: *1,000.*

Responses per Respondent: *1.*

Total Annual Responses: *1,000.*
Average hours per response: *0.02.*
Total Burden Hours: *20.*

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control Number 3090–0285, IT Dashboard Feedback Mechanism, in all correspondence.

Dated: February 14, 2013.

Casey Coleman,

Chief Information Officer.

[FR Doc. 2013–04372 Filed 2–25–13; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10451, CMS–1450 (UB–04), CMS–R–131 and CMS–10280]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Evaluation and Development of Outcome Measures for Quality Assessment in Medicare Advantage and Special Needs Plans; *Use:* Quality improvement is a major initiative for the Centers for Medicare and Medicaid Services (CMS). With the passing of the Patient Protection and Affordable Care Act in March 2010, there is a focused interest in providing quality and value-based healthcare for Medicare beneficiaries. In addition, it is critical to develop criteria not only for quality improvement but also as a means for beneficiaries to compare healthcare plans to make the choice that is right for them.

It is critical to the CMS mission to expand its quality improvement efforts from collection of structure and process measures to include outcome measures. However, the development of outcome measures appropriate for the programs serving older and/or disabled patients has been somewhat limited. The development and subsequent implementation of outcome measures as part of the overall quality improvement program for CMS is crucial to ensuring that beneficiaries obtain high quality healthcare. In addition, process of care measures are needed that focus on the care needs of Medicare beneficiaries, such as factors affecting continuity of care and transitions.

This request is for data collection to test the use of new tools available to CMS to measure care pertinent to vulnerable beneficiaries where quality of care provided by Medicare Advantage Organizations (MAOs) should be closely monitored. The measures to be evaluated and developed upon approval of this request relate to (1) Continuity of information and care from hospital discharge to the outpatient setting, (2) continuity between mental health provider and primary care provider (PCP), and (3) items that may be added to the Consumer Assessment of Healthcare Providers and Systems (CAHPS) survey addressing language-centered care, cultural competence, physical activity, healthy eating, and caregiver strain.

Since the publication of the 60-day notice (77 FR 65391), the information collection request has been revised. The order of questions has been changed in some locations of the instrument. In addition, we have revised items to collect documentation about refusal to permit communication between the mental health provider and the primary care provider. *Form Number:* CMS–10451 (OCN: 0938-New); *Frequency:* Yearly, occasionally; *Affected Public:* Individuals or Households, Private sector—Business or other for-profits ; *Number of Respondents:* 2,012; *Total Annual Responses:* 2,360; *Total Annual Hours:* 4,630. (For policy questions regarding this collection contact Susan Radke at 410–786–4450. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Uniform Institutional Provider Bill and Supporting Regulations in 42 CFR 424.5; *Use:* Section 42 CFR 424.5(a)(5) requires providers of services to submit a claim for payment prior to any Medicare reimbursement. Charges billed are coded by revenue codes. The bill specifies diagnoses according to the International Classification of Diseases, Ninth Edition (ICD–9–CM) code. Inpatient procedures are identified by ICD–9–CM codes, and outpatient procedures are described using the CMS Common Procedure Coding System (HCPCS). These are standard systems of identification for all major health insurance claims payers. Submission of information on the CMS–1450 permits Medicare intermediaries to receive consistent data for proper payment. *Form Numbers:* CMS–1450 (UB–04) (OCN: 0938–0997); *Frequency:* Reporting—On occasion; *Affected Public:* Not-for-profit institutions, Business or other for-profit; *Number of Respondents:* 53,111; *Total Annual Responses:* 181,909,654; *Total Annual Hours:* 1,567,455. (For policy questions regarding this collection contact Matt Klischer at 410–786–7488. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Advance Beneficiary Notice of Noncoverage (ABN); *Use:* The use of written notices to inform beneficiaries of their liability under specific conditions has been available since Title XVIII of the Social Security Act (the Act), section 1879, Limitation On Liability, was enacted in 1972 (Pub. L. 92–603). Similar required notification and liability protections are available under other sections of the Act: section 1834(a)(18) refund requirements for certain items when unsolicited telephone contacts are made, section 1834(j)(4) for the same types of items when there is neither a required advance coverage determination nor required supplier number; section 1834(a)(15) also for advance determinations for these items and section 1842(l) applicable to physicians not accepting assignment. Implementing regulations are found at 42 CFR 411.404(b) and (c), and 411.408(d)(2) and (f), on written notice requirements. These statutory requirements apply only to Original Medicare, not Medicare Advantage plans.

Under section 1879 of the Act, Medicare beneficiaries may be held financially responsible for items or services usually covered under

Medicare, but denied in an individual case under specific statutory exclusions, if the beneficiary is informed prior to furnishing the issues or services that Medicare is likely to deny payment.

When required, the ABN is delivered by Part B paid physicians, providers (including institutional providers like outpatient hospitals) practitioners (such as chiropractors), and suppliers, as well as hospice providers and Religious Non-medical Health Care Institutions paid under Part A. Other Medicare institutional providers paid under Part A use other approved notice for this purpose.

The revised ABN in this information collection request incorporates expanded use by Home Health Agencies (HHAs). There have been no substantive changes to the form. There are no changes that will affect existing ABN users. *Form Number:* CMS–R–131 (OMB#: 0938–0566); *Frequency:* Reporting—Occasionally; *Affected Public:* Private Sector—Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 1,288,837; *Total Annual Responses:* 52,967,771; *Total Annual Hours:* 6,177,101. (For policy questions regarding this collection contact Evelyn Blaemire at 410–786–1803. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* New collection; *Title:* Home Health Change of Care Notice (HHCCN); *Use:* Home health agencies (HHAs) are required to provide written notice to original Medicare beneficiaries under various circumstances involving the initiation, reduction, or termination of services. The notice used in these situations has been the Home Health Advance Beneficiary Notice (HHABN), CMS–R–296.

The HHABN, originally a liability notice specifically for HHA issuance, was first approved for use and implementation in 2000 with the home health prospective payment system transition. In 2006, the notice underwent significant modifications subsequent to the decision of the U.S. Court of Appeals (2nd Circuit) in *Lutwin* v. *Thompson.* HHABN content and formatting were revised so that it could be used to provide beneficiaries with change of care notification consistent with HHA Conditions of Participation (COPs) in addition to its liability notice function. Three interchangeable option boxes were introduced to the HHABN to support the added notification purposes. Option Box 1 addressed liability, Option Box 2 addressed change of care for agency reasons, and Option Box 3 addressed change of care due to provider orders. HHABN Collection 0938–0781 last received PRA approval in 2009 following minor notice changes such as accessibility reformatting for compliance with Section 508 of the Rehabilitation Act of 1973, as amended in 1998, and removal of the beneficiary's health insurance claim number (HICN).

In an effort to streamline, reduce, and simplify notices issued to Medicare beneficiaries, HHABN Option Box 1, the liability notice portion, will be replaced by the existing Advanced Beneficiary Notice of Noncoverage (ABN) which is approved by OMB (0938–0566), for conveying information on beneficiary liability. Written notices to inform beneficiaries of their liability under specific conditions have been available since the ''limitation on liability'' provisions in section 1879 of the Social Security Act were enacted in 1972 (Pub. L. 92–603). The ABN (CMS–R–131) is presently used by providers and suppliers other than HHAs to inform fee for service (FFS) Medicare beneficiaries of potential liability for certain items/services that might be billed to Medicare. The HHABN was developed specifically as the liability notice for HHA issuance. Since 2006, the HHABN has evolved to serve both liability and change of care notification purposes. Pursuant to a separate PRA package revising the use of the ABN, HHAs will now use the ABN for liability notification, and the HHCCN will be introduced as a separate, distinct document to give change of care notice in compliance with HHA conditions of participation. The HHCCN will replace both Option Box 2 and Option Box 3 formats of the HHABN. The single page format of the HHCCN is designed to specify whether the change of care is due to agency reasons or provider orders. *Form Number:* CMS–10280 (OCN: 0938-New); *Frequency:* Occasionally; *Affected Public:* Private Sector—Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 10,914; *Total Annual Responses:* 14,126,428; *Total Annual Hours:* 941,385. (For policy questions regarding this collection contact Evelyn Blaemire at 410–786–1803. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on March 28, 2013.

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, Email: *OIRA_submission@omb.eop.gov.*

Dated: February 20, 2013.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2013–04313 Filed 2–25–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3283–N]

Medicare Program; Meeting of the Medicare Evidence Development and Coverage Advisory Committee—May 1, 2013

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

ACTION: Notice of meeting.

SUMMARY: This notice announces that a public meeting of the Medicare Evidence Development & Coverage Advisory Committee (MEDCAC) (''Committee'') will be held on Wednesday, May 1, 2013. The Committee generally provides advice and recommendations concerning the adequacy of scientific evidence needed to determine whether certain medical items and services can be covered under the Medicare statute. This meeting will focus on selected genetic tests for cancer diagnosis (for cancers of unknown primary site and for cervical cytology findings of uncertain clinical significance). This meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)).

DATES: *Meeting Date:* The public meeting will be held on Wednesday, May 1, 2013 from 7:30 a.m. until 4:30 p.m., Eastern Daylight Time (EDT).

Deadline for Submission of Written Comments: Written comments must be received at the address specified in the **ADDRESSES** section of this notice by 5 p.m., EDT, Monday, March 25, 2013. Once submitted, all comments are final.

Deadlines for Speaker Registration and Presentation Materials: The

deadline to register to be a speaker and to submit PowerPoint presentation materials and writings that will be used in support of an oral presentation is 5:00 p.m., EDT on Monday, April 1, 2013. Speakers may register by phone or via email by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Presentation materials must be received at the address specified in the **ADDRESSES** section of this notice.

Deadline for All Other Attendees Registration: Individuals may register online at *http://www.cms.gov/apps/events/upcomingevents.asp?strOrderBy=1&type=3* or by phone by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by 5 p.m. EDT, Wednesday, April 24, 2013.

We will be broadcasting the meeting live via Webcast at *http://www.cms.gov/live/.*

Deadline for Submitting a Request for Special Accommodations: Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to contact the Executive Secretary as specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than 5:00 p.m., EDT Friday, April 12, 2013.

ADDRESSES: *Meeting Location:* The meeting will be held in the main auditorium of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244.

Submission of Presentations and Comments: Presentation materials and written comments that will be presented at the meeting must be submitted via email to *MedCACpresentations@cms.hhs.gov* or by regular mail to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Maria Ellis, Executive Secretary for MEDCAC, Centers for Medicare & Medicaid Services, Center for Clinical Standards and Quality, Coverage and Analysis Group, S3–02–01, 7500 Security Boulevard, Baltimore, MD 21244 or contact Ms. Ellis by phone (410–786–0309) or via email at *Maria.Ellis@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

MEDCAC, formerly known as the Medicare Coverage Advisory Committee (MCAC), provides advice and recommendations to CMS regarding clinical issues. (For more information on MCAC, see the December 14, 1998 **Federal Register** (63 FR 68780). This notice announces the Wednesday, May 1, 2013, public meeting of the Committee. During this meeting, the Committee will discuss selected genetic tests for cancer diagnosis (for cancers of unknown primary site and for cervical cytology findings of uncertain clinical significance).

Background information about this topic, including panel materials, is available at *http://www.cms.gov/medicare-coverage-database/indexes/medcac-meetings-index.aspx?bc=BAAAAAAAAAAA&.* We will no longer be providing paper copies of the handouts for the meeting. Electronic copies of all the meeting materials will be on the CMS Web site no later than 2 business days before the meeting. We encourage the participation of appropriate organizations with expertise in selected genetic tests for cancer diagnosis.

II. Meeting Format

This meeting is open to the public. The Committee will hear oral presentations from the public for approximately 45 minutes. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, we may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 1, 2013. Your comments should focus on issues specific to the list of topics that we have proposed to the Committee. The list of research topics to be discussed at the meeting will be available on the following Web site prior to the meeting: *http://www.cms.gov/medicare-coverage-database/indexes/medcac-meetings-index.aspx?bc=BAAAAAAAAAAA&.* We require that you declare at the meeting whether you have any financial involvement with manufacturers (or their competitors) of any items or services being discussed. Speakers presenting at the MEDCAC meeting must include a full disclosure slide as their second slide in their presentation for financial interests (for example, type of financial association—consultant, research support, advisory board, and an indication of level, such as minor association < $10,000 or major association > $10,000) as well as intellectual conflicts of interest (for example, involvement in a federal or nonfederal advisory committee that has discussed the issue) that may pertain in any way to the subject of this meeting. If you are representing an organization, we require that you also disclose conflict of interest information for that organization. If you do not have a powerpoint presentation, you will need to present the full disclosure information requested previously at the beginning of your statement to the Committee.

The Committee will deliberate openly on the topics under consideration. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. The Committee will also allow a 15-minute unscheduled open public session for any attendee to address issues specific to the topics under consideration. At the conclusion of the day, the members will vote and the Committee will make its recommendation(s) to CMS.

III. Registration Instructions

CMS' Coverage and Analysis Group is coordinating meeting registration. While there is no registration fee, individuals must register to attend. You may register online at *http://www.cms.gov/apps/events/upcomingevents.asp?strOrderBy=1&type=3* or by phone by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the deadline listed in the **DATES** section of this notice. Please provide your full name (as it appears on your state-issued driver's license), address, organization, telephone, fax number(s), and email address. You will receive a registration confirmation with instructions for your arrival at the CMS complex or you will be notified that the seating capacity has been reached.

IV. Security, Building, and Parking Guidelines

This meeting will be held in a federal government building; therefore, federal security measures are applicable. We recommend that confirmed registrants arrive reasonably early, but no earlier than 45 minutes prior to the start of the meeting, to allow additional time to clear security. Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Inspection of vehicle's interior and exterior (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.

• Inspection, via metal detector or other applicable means, of all persons entering the building. We note that all items brought into CMS, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 45 minutes prior to the convening of the meeting. All visitors must be escorted in areas other than the lower and first floor levels in the Central Building.

Authority: 5 U.S.C. App. 2, section 10(a).

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

Dated: February 13, 2013.

Patrick Conway,

CMS Chief Medical Officer and Director, Center for Clinical Standards and Quality, Centers for Medicare & Medicaid Services.

[FR Doc. 2013–04288 Filed 2–25–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Plan for States/Territories for FFY 2014–2015 (ACF–118).

OMB No.: 0970–0114.

Description: The Child Care and Development Fund (CCDF) Plan (the Plan) for States and Territories is required from each CCDF Lead agency in accordance with Section 658E of the Child Care and Development Block Grant Act of 1990, as amended (Pub. L. 101–508, Pub. L. 104–193, and 42 U.S.C. 9858). The implementing regulations for the statutorily required Plan are set forth at 45 CFR 98.10 through 98.18. The Plan, submitted on the ACF–118, is required biennially, and remains in effect for two years. The Plan provides ACF and the public with a description of, and assurance about, the States' and Territories' child care programs. The ACF–118 is currently approved through December 31, 2013, making it available to States and Territories needing to submit Plan Amendments through the end of the FY 2013 Plan Period. However, on July 1, 2013, States and Territories will be required to submit their FY 2014–2015 Plans for approval by September 30, 2013. Consistent with the statute and regulations, ACF requests revision of the ACF–118 with minor corrections and modifications.

The Office of Child Care (OCC) has given thoughtful consideration to the comments received from the 1st Public Notice. OCC has revised the document to reflect some of the changes made to minimize the burden of the collection of information on respondents. The revised document contains revisions to improve the accuracy and clarity of questions in order to improve the quality of information that is collected. This second Public Comment Period provides an opportunity for the public to submit comments to the Office of Management and Budget (OMB). The Tribal Plan (ACF–118a) will be addressed under a separate notice.

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

Respondents: State and Territory CCDF Lead Agencies (56).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–118	56	0.50	162.50	4,550

Estimated Total Annual Burden Hours: 4,550.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2013–04284 Filed 2–25–13; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Tribal Plan Preprint—ACF–118–A.

OMB No.: 0970–0198.

Description: The Child Care and Development Fund (CCDF) Plan (the Plan) for Tribes (Indian Tribes, Tribal consortia and Tribal organizations) is required from each CCDF Lead agency in accordance with Section 658E of the Child Care and Development Block Grant Act of 1990, as amended (Pub. L. 101–508, Pub. L. 104–193, and 42 U.S.C. 9858). The implementing regulations for

the statutorily required Plan are set forth at 45 CFR 98.10 through 98.18. The Plan, submitted on the ACF 118–A, is required biennially, and remains in effect for two years. The Plan provides ACF and the public with a description of, and assurance about, the Tribal child care program. The ACF 118–A is currently approved through May 31, 2014, making it available to Tribes needing to submit Plan Amendments through the end of the FY 2013 Plan Period. However, on July 1, 2013, Tribes will be required to submit their FY 2014–2015 Plans for approval by September 30, 2013. Consistent with the statute and regulations, ACF requests revision of the ACF 118–A with minor corrections and modifications.

The Office of Child Care (OCC) has given thoughtful consideration to the comments received from the 1st Public Notice. OCC has revised the document to reflect some of the changes made to minimize the burden of the collection of information on respondents. The revised document contains revisions to improve the accuracy and clarity of questions in order to improve the quality of information that is collected. This second Public Comment Period provides an opportunity for the public to submit comments to the Office of Management and Budget (OMB).

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

Respondents: Tribal CCDF programs (257 total).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
CCDF Tribal Plan	257	0.50	120	15,420

Estimated Total Annual Burden Hours: 15,420.

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV.* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2013–04421 Filed 3–25–13; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA numbers 93.581, 93.587, 93.612]

Request for Public Comment on the Proposed Adoption of Administration for Native Americans Program Policies and Procedures

AGENCY: Administration for Native Americans, ACF, HHS.

ACTION: Notice for public comment.

SUMMARY: Pursuant to Section 814 of the Native American Programs Act of 1974 (NAPA), as amended, the Administration for Native Americans (ANA) is required to provide members of the public an opportunity to comment on proposed changes in interpretive rules, general statements of policy, and rules of agency procedure or practice, and to give notice of the final adoption of such changes at least 30 days before the changes become effective. In accordance with notice requirements of NAPA, ANA herein describes its proposed interpretive rules, general statements of policy, and rules of agency procedure or practice as they relate to the Fiscal Year (FY) 2013 Funding Opportunity Announcements (FOA) for the following programs: (1) Social and Economic Development Strategies (hereinafter referred to as SEDS); (2) Native Asset Building Initiative (hereinafter referred to as NABI); (3) Sustainable Employment and Economic Development Strategies (hereinafter referred to as SEEDS); (4) Native Language Preservation and Maintenance (hereinafter referred to as Language Preservation); (5) Native Language Preservation and Maintenance—Esther Martinez Initiative (hereinafter referred to as Language—EMI); and 6) Environmental Regulatory Enhancement (hereinafter referred to as ERE). This notice of public comment also provides additional information about ANA's plan for administering the programs.

DATES: The deadline for receipt of comments is 30 days from the date of publication in the **Federal Register**.

ADDRESSES: Comments in response to this notice should be addressed to Lillian A. Sparks, Commissioner, Administration for Native Americans, 370 L'Enfant Promenade SW., Mail Stop: Aerospace 2—West, Washington, DC 20447. Delays may occur in mail delivery to federal offices; therefore, a copy of comments should be faxed to (202) 690–7441. Comments will be available for inspection by members of the public at the Administration for Native Americans, 901 D Street SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Carmelia Strickland, Director, Division of Program Operations, ANA (877) 922–9262.

SUPPLEMENTARY INFORMATION: Section 814 of NAPA, as amended, requires ANA to provide notice of its proposed interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice. The proposed clarifications, modifications, and new text will appear in the six FY 2013 FOAs: SEDS, NABI, SEEDS, Language

Preservation, Language—EMI, and ERE. This notice serves to fulfill this requirement.

A. Funding Opportunity Announcements: For information on the types of projects funded by ANA, please refer to ANA's Web site for information on our program areas and funding opportunity announcements: *http://www.acf.hhs.gov/programs/ana.*

The following changes will be made to ANA's FOAs this year:

1. In FY 2013, ANA proposes discontinuing the practice of publishing a separate SEDS—Tribal Governance FOA (HHS–2012–ACF–ANA–NG–0278) and, instead, incorporating the Tribal Governance program areas of interest into the annual SEDS FOA. Also, ANA proposes adding responsible fatherhood as a program area of interest under the annual SEDS FOA.

Additionally, ANA proposes adding two new program areas of interest to the annual SEDS FOA focused on suicide prevention and on human trafficking. Based on information gathered during tribal consultation sessions and at other meetings, the ANA Commissioner has been asked to address the issues related to suicide with which many Native communities are grappling, as well as with issues related to human trafficking that can occur on remote, isolated lands, and among vulnerable populations.

Under SEDS, ANA proposes to move the following four sub-program areas of interest out of Economic Development: (1) Emergency preparedness, (2) economic competitiveness, (3) agriculture, and (4) commercial trade. Emergency preparedness will be included under the governance program area of interest under the SEDS FOA. Economic competitiveness, agriculture and commercial trade will move to a proposed new FOA that is to be known as Sustainable Employment and Economic Development Strategies (SEEDS) (HHS–2013–ACF–ANA–NE–0588), which is part of the SEDS program (see proposal #2 in this section). For additional information on this proposed FOA, you may also refer to the concept paper located at the following link: *http://www.acf.hhs.gov/programs/ana/resource/proposed-seeds-foa-concept-paper.* (Legal authority: Section 803(a) of NAPA, as amended).

2. In FY 2013, ANA will introduce the SEEDS FOA that will focus on developing employment opportunities and business creation in Native communities. These types of projects were formerly funded under the SEDS FOA. ANA will expand funding for new, community-based projects that will foster economic development through the creation of small businesses and sustainable job growth, which will be funded under the same Catalog of Federal Domestic Assistance (CFDA) number as SEDS. The current economic climate has increased ANA's focus on developing employment opportunities and business creation in native communities, resulting in this special funding initiative to promote SEEDS. In an effort to reduce unemployment and stimulate local economies, ANA will make $5,000,000 available for SEEDS funding in FY 2013 for new, community-based projects that will foster economic development through the creation of small businesses and sustainable job growth. Applicants eligible for the SEEDS FOA are the same as those identified as eligible for SEDS though current SEDS grantees with grants that will go beyond the start date of the possible new award are not eligible for funding under SEEDS.

Four priorities that ANA will promote through the SEEDS initiative are: (1) Creation of sustainable employment opportunities; (2) professional training and skill development that increases participants' employability and earning potential; (3) creation and development of small businesses and entrepreneurial activities, and; (4) demonstrated strategy and commitment to keeping the jobs and revenues generated by project activities within the native communities being served. Improving access to employment opportunities and supporting small businesses will enhance local economies, enable more tribal members to acquire and maintain gainful employment, and improve the long-term financial health of tribal members and their families.

ANA has identified the following program areas of interest for the SEEDS FOA, however funding is not restricted to those listed below:

(a) *Agriculture:* Creating, developing, or enhancing agricultural enterprise and sustainable farming projects with a focus on distribution at local and commercial markets.

(b) *Career Pathways:* Using multi-sector partnerships with entities such as Tribal Colleges, workforce development agencies, social service providers, and employers to develop workforce training programs that respond to local employers' hiring needs.

(c) *Commercial Trade:* Strengthening local economies by increasing the demand for locally produced goods and services.

(d) *Economic Competitiveness:* Creating, expanding, and retaining businesses to reflect distinct economies operating in rural and urban areas, in both mature and emergent sectors.

(e) *Economic Infrastructure:* Addressing economic infrastructure needs that will strengthen business development and job creation in native communities.

(f) *Entrepreneurship and Microbusiness:* Promoting entrepreneurial development through business incubators and other activities that support businesses and market the availability of local products or services. (Microbusiness loans will not be available under such projects.)

(g) *Local Sourcing and Technology:* Using new technologies to enhance distribution channels for locally produced goods and services.

(h) *Professional Development:* Providing professional training, skill development (including soft skills, basic skills, or technical skills) or certification that will enhance participants' employment and earning prospects.

(i) *Interoperability/Integration (partnering with ACF programs and clients):* Helping ACF clients such as youth aging out of foster care, TANF or TANF eligible individuals, or noncustodial parents with child support agreements to obtain employment.

(j) *Place-based Strategies:* Using a tribe or community's local or regional assets and resources and collaborating with multiple stakeholders to address economic development barriers.

3. The program areas of interest will remain the same for the following ANA FOAs: Native American Language Preservation and Maintenance (HHS–2011–ACF–ANA–NL–0139); Native American Language Preservation and Maintenance—Esther Martinez Initiative (HHS–2011–ACF–ANA–NL–0140); Environmental Regulatory Enhancement (HHS–2011–ACF–ANA–NR–0142), and Native Asset Building Initiative (HHS–2013–ACF–ANA–NO–0587).

B. Administrative Policies: ANA proposes revising all funding opportunity announcements to include three new administrative policies, remove one administrative policy used in prior years, and will clarify another administrative policy, as follows:

1. Proposal: All applicants must submit documentation, such as a resolution, demonstrating that the governing body of the organization approves the application's submission to ANA for the current grant competition period. In addition, if the applicant is a tribally-authorized component or division, the applicant must also include a resolution demonstrating that the governing body of the tribe approves the application's submission to ANA for the current competition period. All resolutions must be signed by an official of the

governing body and dated. In lieu of a resolution, meeting minutes from the governing body and/or a letter from the current tribal leader may be acceptable forms of documentation if that is more appropriate to that tribal government structure. The documentation should be included with the application's submission to ANA. Project funds will not be awarded without ANA's receipt of signed and dated documentation prior to the start of the project period.

Rationale: The NAPA requires that a governing body ''has not disapproved'' the project ''within 30 days of its submission'' to the governing body (42 U.S.C. 299f(1)). Therefore, ANA's administrative policy is included to ensure that funded applications are supported by the governing body of the tribe or organization. In previous FOAs, lack of such resolutions as part of the application submission has been a disqualification factor that resulted in the elimination of many applications from the competitive review process. The requirement for evidence that the governing body has either affirmatively approved or not disapproved the project remains the same; however, it is no longer required by the due date of the FOA in which an application was submitted. In lieu of a resolution, meeting minutes from the governing body and/or a letter from the current tribal leader may be acceptable forms of documentation if that is more appropriate to that tribal government structure. It is important that the tribal leadership is aware of its fiscal responsibility and potential for financial liabilities in administering the ANA program. The change of administrative policy is recommended in order to increase the number of applications that are eligible for the competitive review process. If an application is ranked within funding range but does not include a governing body's resolution, ANA staff will require this documentation in advance of making a grant award.

2. Proposal: Grantees will be required to attend Post Award Training during the first year of their ANA award, and to attend an annual ANA Grantee Meeting during each year of their ANA award. Therefore, applicants will be required to include an appropriate amount for travel costs to attend Post Award Training in the first year of the proposed project budget, and travel costs to attend the annual ANA Grantee meeting for each year of the proposed project's budget. Also, participation and attendance at Post Award Training and the ANA Grantee Meeting should be included activities within each year of the project's Objective Work Plan (OWP). See *Section IV.2. Content and Form of Application Submission, Project Budget and Budget Description,* for specific travel costs that should be included to attend Post Award Training, to be held in the grantee's region, and the ANA Grantee Meeting, which is usually held in Washington, DC.

Rationale: This policy is added to ensure that applicants understand the mandatory training meeting and budgetary requirements for an ANA grant. By including this under the administrative policies instead of evaluation criteria, ANA believes confusion by panel reviewers will be eliminated thus ensuring panel reviewers do not score an application based on the inclusion or omission of these trainings in their budget and OWP.

3. Proposal: Under the standard terms and conditions for discretionary HHS awards (Grants Policy Statement, page II–7 at *https://www.acf.hhs.gov/grants/terms-and-conditions*), grant recipients are required to establish safeguards to prevent employees, consultants, members of governing bodies, and others who may be involved in grant-supported activities from using their positions for purposes that are, or give the appearance of being, motivated by a desire for private financial gain for themselves or others, such as those with whom they have family, business, or other ties. Therefore, staff employed through an ANA-funded project cannot also serve as a member of the governing body for the applicant organization. During the award negotiation phase, ANA will ask the prospective recipient to modify project personnel if a proposed staff member is also a member of the applicant organization's governing body. In addition, there should be a separation of duties from staff and the governing bodies within an organization to ensure the integrity of internal controls and to minimize disruptions in the continuity of operations.

Rationale: This policy has been added to remind applicants of the requirement to establish safeguards that prohibit employees from using their positions for a purpose that presents a conflict of interest or the appearance of a conflict of interest. An applicant organization must also have auditable internal controls in place to ensure the integrity of the management of federal funds. In recent years, ANA has seen challenges arise with grantees in which individuals are dually serving as paid staff and also as a member of the recipient organization's Board of Directors.

Additionally, ANA proposes to eliminate the administrative policy previously stated in *Section I, Funding Opportunity Description, Administrative Policies,* which requires the submission of a business plan. However, submission of a business plan will remain a requirement for the submission of certain economic development projects as stated in *Section IV.2, The Project Description.*

C. Disqualification Factors: ANA proposes revising the disqualification factors that are specific to applications submitted for ANA funding. ANA will remove a previously identified disqualification factor, clarify an existing factor, and add a new disqualification factor. (Legal authority: Section 803(a) and 814 of NAPA, as amended).

1. Board Resolution

All applicants must submit a resolution demonstrating that the applicant's official governing body approves the application submission to ANA for the current grant competition period. In addition, if the applicant is a tribally authorized component or division, the application must also include a resolution demonstrating that the governing body of the Tribe approves the application submission to ANA for the current competition period. Applicants that do not include this documentation will be considered non-responsive, and the application will not be considered for competition.

ANA proposes removing the disqualification factor associated with the submission of an approved board resolution. ANA will still require that this documentation be submitted but it will now be designated as an administrative policy (see administrative policies above for additional clarification). All applicants must submit documentation, such as a resolution, demonstrating that the governing body of the organization approves the application's submission to ANA for the current grant competition period. In addition, if the applicant is a tribally-authorized component or division, the applicant must also include a resolution demonstrating that the governing body of the tribe approves the application's submission to ANA for the current competition period. All resolutions must be signed by an official of the governing body and dated. Project funds will not be awarded without the submission of signed and dated documentation prior to the start of the project period. Applications received without the required governing body's resolution will no longer be disqualified from competitive review.

2. Governing Body Documentation

This disqualification factor applies only to applicants that are not Tribes or Native Alaska villages. Organizations applying for funding must show that a majority of board members approving the project proposal are representative of the community to be served. The applicant should submit documentation that identifies each board member by name and indicate their affiliation or relationship to at least one of the four categories of representation listed in the factor. ANA revised the categories of representatives of the community to be served to include: (1) members of Federally or State recognized Tribes; (2) persons eligible to be a participant or beneficiary to the project to be funded; (3) persons who are recognized by the eligible community to be served as having a cultural relationship with the community to be served; or (4) persons considered to be Native American as defined in 45 CFR 1336.10 and Native American Pacific Islanders as defined in the Native American Programs Act. Applicants that do not include this documentation will be considered non-responsive, and the application will not be considered for competition.

This disqualification factor will remain in effect but is clarified. ANA proposes to add clarification to this disqualification factor to indicate that the documentation that must be submitted identifies each board member by name and indicates their relationship to at least one of the four categories of representation listed in the factor. Applications that are submitted without this documentation will be considered non-responsive to the FOA and will not be considered for competition. (Legal authority: Section 803(a) and 814 of NAPA, as amended.)

3. Only One Active Award per CFDA

This disqualification factor applies to all types of eligible applicants. Organizations can have no more than one active award per CFDA number for an ANA program at any given time. Therefore, organizations that have a current ANA grant that is eligible for a Non Competing Continuation (NCC) award which: A) will go beyond the start date of the possible new award, and B) was awarded under the same CFDA number as this FOA, will not have their applications considered for the competition. This disqualification factor is based on the administrative policy that prohibits grantees from having more than one active grant per CFDA number. This disqualification factor does not apply to organizations eligible for an NCC award for the continuation of an ANA grant made under a different CFDA number (funding opportunity announcement).

Under the Administrative Policies, ''Grantees can have only one active grant award per Catalog of Federal Domestic Assistance (CFDA) number.'' ANA is proposing that this policy should also become a disqualification factor that will apply to all applicants. The limit of one active award per CFDA number has been a long-standing ANA policy that was implemented to ensure a wider distribution of ANA's federal funding. ANA strongly believes in maximizing the beneficial use of its limited funding for the greatest number of people in the targeted communities. By including this administrative policy as a disqualification factor, ANA will screen-out from competition those applications submitted by an applicant that would be ineligible for funding because the organization has an ongoing ANA award funded by the same CFDA number that will continue past the start date of the new award.

Previously, ANA has had to expend its limited resources to review all grant applications, even if the applicant was likely not to receive an award based on the administrative policy. If the application was found to be within the funding range, the application was ultimately not funded. Under the disqualification factor, applications from existing grantees with an award that has the same CFDA number will be screened out of competition and the application will not be reviewed. Therefore, applicants should be cautioned to not apply for a new grant that has the same CFDA number if they have a concurrent ANA award. For example, applicants with a current ANA grant that is eligible for a Non-Competing Continuation (NCC) award that will extend beyond the start date of the new award offered under the FOA, and was awarded under the same CFDA number as that of the current FOA, will be disqualified from the competitive review. This disqualification factor is based on the administrative policy that prohibits grantees from having more than one active grant per CFDA number. See *Section I. Funding Opportunity Description, Administrative Policies.*

D. Definitions: ANA is adding a definition for ''impact indicator'' in all FY 2013 FOAs. (Legal authority: Section 803(b) and 814 of NAPA, as amended and 42 U.S.C. § 2991b–3(b)(7)(C).

1. *Impact Indicator:* A quantitative measure used to monitor a project's progress in achieving its intended outcomes and impact. An impact indicator should identify the extent to which a project's overall desired outcome was achieved and should describe how the conditions discussed in the Need for Assistance were changed as a result of the project. For example, a project focused on healthy relationships would likely use the community's divorce rate as an impact indicator.

E. Do Not Fund: ANA will add the following five project types that it will not fund to *Section V.2. Review and Selection Process.* These projects will not be disqualified from competitive review but ANA reserves the right not to fund them regardless of the outcome of panel review.

1. Projects that do not demonstrate that the proposed staff or organization has the required expertise, or organizational capacity, to fulfill the project approach or to achieve the stated objectives or outcomes of the application.

ANA applicants should provide evidence that the applicant organization, and any partnering organizations, have relevant experience and expertise with administration, development, implementation, and management of programs similar to that proposed in order to fulfill the project's approach. ANA has received some applications that scored within the funding range but did not demonstrate that the organization had sufficient capacity or staffing expertise to implement the proposed project, nor had the applicant identified partnerships that would assist them in achieving the project's objectives. Funding these types of applications would not be the best use of ANA's limited resources or taxpayer dollars.

2. Projects with the potential to cause unintended harm or that could negatively impact the safety, or privacy, of individuals.

This ''Do Not Fund'' is added to ensure that projects funded by ANA will not cause harm or impact the safety, or privacy, of individuals. ANA has received several applications proposing activities that could cause harm, including the use of inaccurate medical information in health counseling, purchasing surveillance equipment to monitor tribal citizens, or proposing potentially dangerous activities involving youth. One of ANA's goals is to safeguard the health and well-being of Native children and families; therefore, ANA reserves the right to not award federal funds for activities that may adversely impact the safety or well-being of Native people in their communities.

3. Applications for proposed projects that are not written specifically in response to an ANA FOA. These applications may have been submitted to another funding agency and are not tailored to ANA's goals as specified in an ANA FOA.

This ''Do Not Fund'' will be added to ensure that proposed projects are specific to ANA's funding goals and that they are strongly supported by the community. ANA has previously received applications that include

letters of support that were written to other funding agencies and are not specific to the project proposed for ANA funding. This does not demonstrate a strong commitment towards fulfilling the purpose of ANA's goals and is not specific to the requirements of ANA's FOAs.

4. Projects that do not demonstrate a current need or recent community support for the proposed project.

This ''Do Not Fund'' area is to ensure that the applicant has worked with its community within the last three years (or sooner) to identify the need for the project and to obtain their input or involvement in the planning for the proposed project. Based on internal reviews of grantees' impact evaluations, ANA has discerned that strong community support for projects in advance of funding, and throughout the project's implementation, is integral to the success of an ANA-funded project. For example, if an applicant proposes to address a need that was identified as part of a tribe's 10-year strategic plan, which was completed 7 years ago, the applicant should demonstrate that the need still remains and that more recent interactions and input from the community have been part of the project's planned approach.

5. Projects that may be used for the purpose of providing loan capital. Federal funds awarded under this FOA may not be used for the purpose of providing loan capital. This is not related to loan capital authorized under Sec. 803A of NAPA [42 U.S.C. 2991b–1(a)(1)] for the purpose of the Hawaiian Revolving Loan fund.

This ''Do Not Fund'' will be added to clarify ANA's interpretation of the NAPA on the use of ANA funding for loan capital purposes. ANA will not fund projects which propose activities that include the use of grant funds as loans.

F. Page Limits: In *Section IV.2. Content and Form of Application Submission, Formatting ACF Applications,* ANA will implement a maximum page limit for all applications for FY 2013.

1. Total application: ANA will implement a total page limit of 150 pages for applications submitted in response to the FOA for SEDS, Language Preservation, Language—EMI, and ERE programs, and a 200 page limit for applications submitted in response to the NABI and SEEDS programs. Additional pages will be allowed for NABI applications due to a required five-year project period and the submission of two budgets and two budget justifications. Additional pages will be allowed for SEEDS applications due to project periods lasting up to five years. The page limitation excludes a Business Plan (if applicable) or mandatory grant forms (Standard Forms and ANA's Objective Work Plan form). Applications that exceed the page limits will have excess pages removed prior to the application's panel review.

G. Project Description: ANA will make modifications to the project description narrative.

1. Letters of Support: ANA has added Letters of Support as a requirement. Applicants should provide statements from community, public, and commercial leaders that support the project proposed for funding. All submissions must be included in the application package.

2. Third-party agreements: ANA has added third-party agreements as a requirement. Third-party agreements include Memoranda of Understanding (MOU) aka Letters of Commitment. General letters of support are not considered to be third-party agreements. Third-party agreements must clearly describe the project activities and support to which the third party is committing. Third-party agreements must be signed by the person in the third-party organization with the authority to make such commitments on behalf of their organization. Applicants should provide written and signed agreements between grantees and subgrantees, or subcontractors, or other cooperating entities. These agreements must detail the scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

3. Budget and Budget Justification:

Travel: Text will be added requiring applicants to include costs in their budget for mandatory post-award travel for training and the ANA Grantee Meeting. Additional information will be provided within the FOA on estimated costs based on applicant's regional location.

H. ANA Application Evaluation Criteria: ANA will revise the evaluation criteria for the SEDS, Language Preservation, Language—EMI, and ERE FOAs to allow greater flexibility in applicants' proposals. The evaluation criteria will be revised to include clearer explanations of how ANA will assess the information provided in the applications. (Legal authority: Section 803(c) of NAPA, as amended.) The evaluation criteria for NABI will not be changed.

1. Titles and Assigned Weight: In FY 2013, ANA will increase the number of evaluation criteria from four to five and adjust the weighted scores to focus on those elements that are important to project success and project monitoring. Weighted sub-criteria scores are identified for the ''Project Approach'' criterion only.

For SEDS, Language Preservation, Language—EMI, and ERE FOAs published in FY 2013, the criteria will be weighted as follows:

Project Integration—10 points;
Objectives and Need for Assistance—10 points;
Project Approach—50 points;
Sub criterion—Project Strategy—30 points
Sub criterion—Objective Work Plan—20 points
Outcomes Expected—20 points
Budget and Budget Justification—10 points

2. ANA Evaluation Criteria: Included here is a summary of the changes made to the criteria.

(a) Project Integration: ANA will add a new criterion entitled, ''Project Integration,'' that will score how well the application ties together the proposed project through the other four criteria. The overall point value for this section will be 10 points. To score the Project Integration criterion, reviewers will consider the extent to which all the application criteria elements are aligned, i.e., how effectively the Objectives and Need for Assistance, Project Approach, Budget, and Outcomes Expected complement one another into a cohesive and carefully planned project. For example, if the application's proposed project description was a jigsaw puzzle, how well do the puzzle pieces fit together? This criterion does not measure any element of the application in isolation and does not respond to a specific information request concerning project integration.

(b) Objectives and Need for Assistance: The overall point value has been decreased to 10 points due to the addition of the project integration criterion.

(c) Outcomes Expected: The overall point value for this section has been increased to 20 points to emphasize the importance of applicants connecting their proposed project's goal, objectives, and activities to the intended results, benefits, and impacts produced by the project.

(d) Budget and Budget Justification: The overall point value for this section has decreased to 10 points due to the addition of the project integration criterion.

The changes to the content of evaluation criteria, and the complementary changes to the project

description section of the FOA, will more effectively guide applicants and panel reviewers on what ANA believes are critical components of a project's application. (*Legal authority:* Section 803(c) of NAPA, as amended.)

I. Objective Review and Results: ANA's FOA currently states ''Results of the competitive objective review are taken into consideration by ACF in the selection of projects for funding; however, objective review scores and rankings are not binding. They are one element in the decision-making process.'' ANA will clarify the scoring process in this section by stating that ANA will have the discretion to Use either the actual ''raw'' score or a normalized score in order to determine the ranking of applications after the panel review has been completed. The raw score is the average of the actual scores given by the three panelists that served as peer reviewers for the application. A normalized score is a statistical method that accounts for the variability and relative nature of individual reviewers' scoring tendencies. Normalized scores are used to counteract any possible predisposition or scoring biases of individual reviewers and panels in order to make the outcome fairer for all applications. The use of a normalized score is allowable and authorized by HHS grants administration policy.

Lillian A. Sparks,

Commissioner, Administration for Native American.

[FR Doc. 2013–04383 Filed 2–25–13; 8:45 am]

BILLING CODE 4184–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0172]

Agency Information Collection Activities: Proposed Collection; Comment Request; Foreign Clinical Studies Not Conducted Under an Investigational New Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection contained in FDA's regulations on foreign clinical studies not conducted under an investigational new drug application (IND).

DATES: Submit either electronic or written comments on the collection of information by April 29, 2013.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane., Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., P150–400B, Rockville, MD 20850, 301–796–7726, *Ila.mizrachi@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Foreign Clinical Studies Not Conducted Under an IND—(OMB Control Number 0910–0622)—Reinstatement

Under 312.120 (21 CFR 312.120), FDA accepts foreign clinical studies not conducted under an IND as support for an IND or application for marketing approval for a drug or biological product if the studies are conducted in accordance with good clinical practices (GCP), including review and approval by an independent ethics committee (IEC).

Under § 312.120(a), FDA accepts as support for an IND or application for marketing approval a well-designed and well-conducted foreign clinical study not conducted under an IND if the study is conducted in accordance with GCP, and we are able to validate the data from the study through an onsite inspection if necessary. GCP includes review and approval by an IEC before initiating a study, continuing review of an ongoing study by an IEC, and obtaining and documenting the freely given informed consent of the subject before initiating a study.

Under § 312.120(b), a sponsor of a non-IND foreign study who wants to rely on that study as support for an IND or application for marketing approval must provide the following information to FDA: (1) The investigator's qualifications; (2) a description of the research facilities; (3) a detailed summary of the protocol and results of the study and, should FDA request, case records maintained by the investigator or additional background data such as hospital or other institutional records; (4) a description of the drug substance and drug product used in the study, including a description of the components, formulation, specifications, and, if available, bioavailability of the specific drug product used in the clinical study; (5) if the study is intended to support the effectiveness of a drug product, information showing that the study is adequate and well controlled under § 314.126; (6) the name and address of the IEC that reviewed the study and a statement that the IEC meets the definition in § 312.3; (7) a summary of the IEC's decision to approve or modify and approve the study, or to provide a favorable opinion; (8) a description of how informed consent was obtained; (9) a description of what incentives, if any,

were provided to subjects to participate in the study; (10) a description of how the sponsor(s) monitored the study and ensured that the study was carried out consistently with the study protocol; and (11) a description of how investigators were trained to comply with GCP and to conduct the study in accordance with the study protocol, and a statement on whether written commitments by investigators to comply with GCP and the protocol were obtained.

Section 312.120(c) specifies how sponsors or applicants can request a waiver for any of the requirements under § 312.120(a)(1) and (b). Under § 312.120(c)(1), a waiver request must contain at least one of the following: (1) An explanation why the sponsor's or applicant's compliance with the requirement is unnecessary or cannot be achieved, (2) a description of an alternative submission or course of action that satisfies the purpose of the requirement, or (3) other information justifying a waiver. A waiver request may be submitted in an IND or in an information amendment to an IND, or in an application or in an amendment or supplement to an application submitted under 21 CFR part 314 or 601. Section 312.10 sets forth requirements for sponsors who request waivers from FDA for compliance with any of the provisions in part 312, and § 314.90 sets forth requirements for applicants who request waivers from FDA for compliance with §§ 314.50 through 314.81.

FDA has approval for the submission of these waiver requests under OMB control numbers 0910–0014 for part 312 and 0910–0001 for part 314. In addition to the reporting requirements set forth in table 1 of this document, there is also a recordkeeping provision in § 312.120(d) stating how long sponsors and applicants must retain records required by § 312.120. In addition, § 312.120(b) states that any signed written commitments by investigators must be maintained by the sponsor or applicant and made available for Agency review upon request, and also specifies sponsor recordkeeping of IEC-related information. Under § 312.120(d), if a study is submitted in support of an application for marketing approval, records must be retained for 2 years after an Agency decision on that application; if a study is submitted in support of an IND but not an application for marketing approval, records must be retained for 2 years after the submission of the IND. The retention requirements in § 312.57(c) for records and reports required under part 312 apply to these provisions, and are approved under OMB control number 0910–0014.

We estimate that 237 companies will submit a total of approximately 1,185 non-IND foreign clinical studies in support of an IND or application for marketing approval for a drug or biological product. Hour burden estimates vary due to differences in size, complexity, and duration across studies, and we estimate that complying with § 312.120 would take sponsors between 18 and 32 hours annually for each non-IND foreign clinical trial, totaling 37,920 hours (32 × 1,185).

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
312.120	237	5	1,185	32	37,920

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 21, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–04422 Filed 2–25–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0714]

Richard Stowell: Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The U.S. Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Richard Stowell for a period of 3 years from importing articles of food or offering such articles for importation into the United States. FDA bases this order on a finding that Mr. Stowell was convicted, as defined in section 306(*l*)(1)(B) of the FD&C Act (21 U.S.C. 335a(*l*)(1)(B)), of three felony counts under Federal law for conduct relating to the importation into the United States of an article of food. Mr. Stowell was given notice of the proposed debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. As of December 14, 2012, Mr. Stowell had not responded. Mr. Stowell's failure to respond constitutes a waiver of his right to a hearing concerning this action.

DATES: This order is effective February 26, 2013.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kenny Shade, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 301–796–4640.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1)(C) of the FD&C Act (21 U.S.C. 335a(b)(1)(C)) permits FDA to debar an individual from importing an article of food or offering such an article for import into the United States if FDA finds, as required by section 306(b)(3)(A) of the FD&C Act (21 U.S.C. 335a(b)(3)(A)), that the individual has been convicted of a felony for conduct relating to the importation into the United States of any food.

On July 27, 2011, Mr. Stowell was convicted, as defined in section 306(*l*)(1)(B) of the FD&C Act, when the U.S. District Court for the Southern District of Florida accepted his plea of guilty and entered judgment against him for the following offenses: One count of conspiracy to falsely label and misbrand seafood, in violation of 18 U.S.C. 371; one count of false labeling of seafood under the Lacey Act, in violation of 16 U.S.C. 3372(d)(2) and 3373(d)(3)(A)(ii); and one count of misbranding food, in violation of 21 U.S.C. 331(a), 343(a)(1), and 333(a)(2).

FDA's finding that debarment is appropriate is based on the felony

convictions referenced herein for conduct relating to the importation into the United States of any food. The factual basis for these convictions is as follows: Mr. Stowell was the president and sole shareholder of United Seafood Imports, Inc. (United), a Florida based seafood wholesaler engaged in various aspects of purchasing, importing, processing, packing, selling, and exporting seafood products, including shrimp.

Beginning in or around January 25, 2007, and continuing through on or about August 7, 2009, Mr. Stowell did knowingly and with the intent to further the object of a conspiracy combine, conspire, confederate, and agree with others to commit an offense against the United States. Specifically, Mr. Stowell's company United purchased approximately one million pounds of shrimp in boxes labeled ''Shrimp, Product of Thailand,'' ''Shrimp, Product of Malaysia,'' and ''Shrimp, Product of Indonesia.'' Mr. Stowell then sent the shrimp to another company, Shifco, and instructed them to repackage and relabel the shrimp as ''Shrimp, Product of Panama,'' ''Shrimp, Product of Ecuador,'' and ''Shrimp, Product of Honduras.'' United, and employees under Mr. Stowell's direction and control, managed and directed the labeling operations of Shifco by providing instructions and other directives to them. Mr. Stowell's company then sold the shrimp that was relabeled to a company who in turn subsequently sold the shrimp to a supermarket chain. This was in violation of 18 U.S.C. 371.

On or about January 26, 2007, Mr. Stowell purchased 180 cases of shrimp valued at approximately $24,912 and knowingly created and caused to be created individual labels, preprinted bags, and other documents falsely identifying the shrimp as being ''Shrimp, Product of Ecuador,'' when in truth and in fact he knew the shrimp was a product of Malaysia. This was in violation of 16 U.S.C. 3372(d)(2) and 3373(d)(3)(A)(ii).

On or about July 2, 2009, Mr. Stowell knowingly engaged in an offense that involved the introduction and delivery for introduction into interstate commerce of a food that was misbranded, that is, approximately 52 cases of shrimp, with the intent to defraud or mislead, in that Mr. Stowell created and caused to be created individual labels, preprinted bags, and other documents falsely identifying the shrimp as being a product of Panama when in truth and in fact, he knew the shrimp was a product of Indonesia. This was in violation of 21 U.S.C. 331(a), 333(a)(2), and 343(a)(1).

As a result of his conviction, on September 24, 2012, FDA sent Mr. Stowell a notice by certified mail proposing to debar him for a period of 3 years from importing articles of food or offering such articles for import into the United States. The proposal was based on a finding under section 306(b)(1)(C) of the FD&C Act that Mr. Stowell was convicted of three felony counts under Federal law for conduct relating to the importation into the United States of an article of food because he: Conspired to falsely label and misbrand seafood, falsely labeled seafood under the Lacey Act, and misbranded food.

The proposal was also based on a determination, after consideration of the factors set forth in section 306(c)(3) of the FD&C Act (21 U.S.C. 335a(c)(3)) that Mr. Stowell should be subject to a 3-year period of debarment. The proposal also offered Mr. Stowell an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Stowell failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Associate Commissioner for Regulatory Affairs, Office of Regulatory Affairs, under section 306(b)(1)(C) of the FD&C Act, and under authority delegated to the Associate Commissioner (Staff Manual Guide 1410.21), finds that Mr. Richard Stowell has been convicted of three felony counts under Federal law for conduct relating to the importation of an article of food into the United States and that he is subject to a 3-year period of debarment.

As a result of the foregoing finding, Mr. Stowell is debarred for a period of 3 years from importing articles of food or offering such articles for import into the United States, effective (see **DATES**). Pursuant to section 301(cc) of the FD&C Act (21 U.S.C. 331(cc)), the importing or offering for import into the United States of an article of food by, with the assistance of, or at the direction of Mr. Stowell is a prohibited act.

Any application by Mr. Stowell for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA–2012–N–0714 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 8, 2013.

Melinda K. Plaisier,

Acting Associate Commissioner for Regulatory Affairs, Office of Regulatory Affairs.

[FR Doc. 2013–04389 Filed 2–25–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2003–D–0128] (formerly 2003D–0236)

Draft Guidance for Industry: Recommendations for Screening, Testing, and, Management of Blood Donors and Blood and Blood Components Based on Screening Tests for Syphilis; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Guidance for Industry: Recommendations for Screening, Testing, and Management of Blood Donors and Blood and Blood Components Based on Screening Tests for Syphilis,'' dated March 2013. The draft guidance document provides revised recommendations for screening and testing of donors and management of donations based on screening tests for syphilis. The draft guidance is intended for blood establishments that collect Whole Blood or blood components, including Source Plasma. The guidance announced in this notice replaces the draft guidance entitled, ''Guidance for Industry: Revised Recommendations for Donor and Product Management Based on Screening Tests for Syphilis,'' dated June 2003. In addition, the draft guidance, when finalized, is intended to supersede the FDA memorandum to registered blood establishments dated December 12, 1991, entitled, ''Clarification of FDA Recommendations for Donor Deferral and Product Distribution Based on the Results of Syphilis Testing.''

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by May 28, 2013.

ADDRESSES: Submit written requests for single copies of the draft guidance to the 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 the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft 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.

FOR FURTHER INFORMATION CONTACT: Paul E. Levine, Jr., 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 draft document entitled, ''Guidance for Industry: Recommendations for Screening, Testing, and Management of Blood Donors and Blood and Blood Components Based on Screening Tests for Syphilis,'' dated March 2013. The draft guidance document provides revised recommendations for screening and testing of donors and management of donations based on screening tests for syphilis. The recommendations described in the document are for blood establishments that use either non-treponemal or treponemal screening assays to test donors for serological evidence of syphilis infection.

In the **Federal Register** of June 26, 2003 (68 FR 38083), FDA announced the availability of the draft guidance entitled, ''Guidance for Industry: Revised Recommendations for Donor and Product Management Based on Screening Tests for Syphilis,'' dated June 2003. The draft guidance announced in this notice replaces the 2003 draft guidance and when finalized, is intended to supersede the FDA memorandum to all registered blood establishments dated December 12, 1991, entitled, ''Clarification of FDA Recommendations for Donor Deferral and Product Distribution Based on the Results of Syphilis Testing.''

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on this topic. 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 requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft 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 630.6 and 606.160 have been approved under OMB control number 0910–0116.

III. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: February 20, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–04281 Filed 2–25–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–1999–D–0742] (formerly 1999D–4396)

Guidance for Clinical Investigators, Industry, and Food and Drug Administration Staff: Financial Disclosure by Clinical Investigators; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Guidance for Clinical Investigators, Industry, and FDA Staff: Financial Disclosure by Clinical Investigators.'' This guidance is intended to assist clinical investigators, industry, and FDA staff in interpreting and complying with the regulations governing financial disclosure by clinical investigators. This guidance provides FDA's responses to the most frequently asked questions regarding financial disclosure by clinical investigators. The guidance announced in this notice finalizes the draft guidance of the same title dated May 2011 and replaces the guidance entitled, ''Guidance for Industry: Financial Disclosure by Clinical Investigators,'' dated March 2001.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002 (1–888–463–6332 or 301–796–3400), or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448 (1–800–835–4709 or 301–827–1800); or 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 (1–800–638–2041 or 301–796–7100). Send one self-addressed adhesive label to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

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.

FOR FURTHER INFORMATION CONTACT: Marsha Melvin, Office of Good Clinical Practice, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5170, Silver Spring, MD 20993–0002, 301–796–8345.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled, ''Guidance for Clinical Investigators, Industry, and FDA Staff: Financial Disclosure by Clinical Investigators.'' This guidance is intended to assist clinical investigators, industry, and FDA staff in interpreting and complying with the regulations governing financial disclosure by clinical investigators. This guidance provides FDA's responses to the most frequently asked questions regarding financial disclosure by clinical investigators.

This guidance also responds to recommendations made by the Office of the Inspector General (OIG), Department of Health and Human Services, in their report entitled ''The Food and Drug Administration's Oversight of Clinical Investigators' Financial Information.'' [1] The OIG's recommendations were intended to strengthen FDA's oversight and review of clinical investigators' financial disclosures. Specifically, the guidance describes: (1) The sponsor's responsibility to collect the financial disclosure information prior to an investigator participating in a study and ensure that all required forms and attachments are submitted in marketing applications, (2) what is meant by ''due diligence'' in obtaining financial disclosures from investigators, and (3) how FDA will review financial disclosure information. FDA also reiterates its policy on public release of individual clinical investigator financial disclosure information and states its intention to provide summary information about clinical investigator financial interests/arrangements in the new product reviews FDA posts for an approval decision.

In the **Federal Register** of May 24, 2011 (76 FR 30175), FDA announced the availability of the draft guidance of the same title dated May 2011. FDA received several comments on the draft guidance, and those comments were considered in preparing the final guidance. Changes include: Clarifications related to the terms ''due diligence,'' ''covered clinical study,'' and ''material support;'' identification of a dependent child for purposes of part 54; and explanation of FDA's review of clinical investigator financial disclosure information. In addition, editorial changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance dated May 2011 and replaces the guidance entitled, ''Guidance for Industry: Financial Disclosure by Clinical Investigators,'' dated March 2001.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents FDA's current thinking on this topic. 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 statutes and regulations.

II. 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 parts 54, 312, and 812 have been approved under OMB control numbers 0910–0396, 0910–0014, and 0910–0078.

III. Comments

Interested persons may submit either electronic regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/ScienceResearch/SpecialTopics/RunningClinicalTrials/GuidancesInformationSheetsandNotices/ucm219433.htm* or *http://www.regulations.gov.*

Dated: February 21, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–04386 Filed 2–25–13; 8:45 am]

BILLING CODE 4160–01–P

[1] OIG report OEI–05–07–00730 available at *https://oig.hhs.gov/oei/reports/oei-05-07-00730.pdf.* (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register.**)

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0487]

Guidance for Industry: Implementation of an Acceptable Full-Length and Abbreviated Donor History Questionnaires and Accompanying Materials for Use in Screening Donors of Source Plasma; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry: Implementation of an Acceptable Full-Length and Abbreviated Donor History Questionnaires and Accompanying Materials for Use in Screening Donors of Source Plasma'' dated February 2013. The guidance document recognizes the standardized full-length and abbreviated donor history questionnaires and accompanying materials, version 1.2 dated September 2012, as an acceptable mechanism that is consistent with FDA's requirements and recommendations for collecting Source Plasma donor history information. The Plasma Protein Therapeutics Association (PPTA) Source Plasma donor history questionnaires and accompanying materials (SPDHQ documents) will provide blood establishments that collect Source Plasma with a specific process for administering questions to Source Plasma donors to determine their eligibility to donate. The guidance announced in this notice finalizes the draft guidance of the same title dated July 2011.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the 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 the office in processing your requests.

The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

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.

FOR FURTHER INFORMATION CONTACT: Tami Belouin, 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 document entitled ''Guidance for Industry: Implementation of an Acceptable Full-Length and Abbreviated Donor History Questionnaires and Accompanying Materials for Use in Screening Donors of Source Plasma'' dated February 2013. The guidance document recognizes the standardized full-length and abbreviated donor history questionnaires and accompanying materials, version 1.2 dated September 2012, prepared by the PPTA, as an acceptable mechanism that is consistent with FDA's requirements and recommendations for collecting Source Plasma donor history information. The SPDHQ documents will provide blood establishments that collect Source Plasma with a specific process for administering questions to Source Plasma donors to determine their eligibility to donate. The guidance also advises Source Plasma manufacturers who choose to implement the acceptable SPDHQ documents on how to report the manufacturing change consisting of the implementation of the SPDHQ under 21 CFR 601.12.

In the **Federal Register** of July 22, 2011 (76 FR 44013), FDA announced the availability of the draft guidance of the same title dated July 2011. FDA received no comments on the draft guidance. A summary of changes includes: Referencing the most current version of the acceptable SPDHQ documents, clarifying that the full-length and abbreviated questionnaires are designed to be implemented together, and making a few editorial changes to improve clarity. The guidance announced in this notice finalizes the draft guidance dated July 2011.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents FDA's current thinking on this topic. 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 statutes and regulations.

II. 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 601.12 have been approved under OMB control number 0910–0338 and the collections of information in 21 CFR 640.63 have been approved under OMB control number 0910–0116.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see ADDRESSES). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: February 21, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–04384 Filed 2–25–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

Seventh Annual Drug Information Association/Food and Drug Administration Statistics Forum—2013; Public Conference

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public conference.

SUMMARY: The Food and Drug Administration (FDA), in cosponsorship with the Drug Information Association (DIA), is announcing a public conference entitled ''Seventh Annual DIA/FDA Statistics Forum—2013.'' The purpose of the conference is to discuss relevant statistical issues associated with the development and review of therapeutic drugs and biologics. This meeting is intended to be an open forum for the timely discussion of topics of mutual theoretical and practical interest to statisticians and clinical investigators who are involved in the development of new drugs and biologics. A primary focus for this meeting will be to establish an ongoing dialogue regarding FDA's ''Critical Path'' initiative—emphasizing the regulatory and statistical challenges associated with innovative approaches to the design and analysis of clinical trials data and measuring the progress being made in designing and implementing innovative solutions.

DATES: The public conference will be held on April 28, 2013, to May 1, 2013, from 8:30 a.m. to 5 p.m.

ADDRESSES: The public conference will be held at the Marriott Bethesda North Hotel and Conference Center, 5701 Marinelli Rd., Bethesda, MD 20852, 1–301–822–9200.

FOR FURTHER INFORMATION CONTACT:

Constance Burnett, Drug Information Association, 800 Enterprise Rd., Horsham, PA 19044, 1–215–293–5800, email: *Constance.Burnett@diahome.org;* or

Stephen Wilson, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–0579, email: *Stephen.Wilson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

This annual FDA/DIA statistics forum will establish a unique, open, international forum for statisticians and clinicians from industry, academia, contract research organizations, and

Government Agencies. Meeting participants will learn, discuss, and collaborate on the current and emerging statistical methodologies and quantitative approaches used by sponsors to provide evidence for the approval of new therapies.

The goals of the program are to:

- Explore and implement innovative statistical solutions to issues associated with the regulatory review of therapeutic drugs and biologics.
- Describe the application of statistical methodologies and thinking to the development of new therapeutic biologics and drugs.
- Assess the impact of regulations and guidance on statistical practice.
- Discuss ideas for improving the communication between industry statisticians and FDA reviewers.

A description of the planned activities of the working groups can be found at *http://www.diahome.org/en/Meetings-and-Training/Find-Meetings-and-Training/Meeting-Details.aspx?ProductID=30457&EventType=Meeting.*

II. Registration and Accommodations

A. Registration

To register, please submit the registration form online at *http://www.diahome.org/en/Meetings-and-Training/Find-Meetings-and-Training/Meeting-Details.aspx?ProductID=30457&EventType=Meeting* (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.) Registration fees cover the cost of facilities, materials, and food functions. Seats are limited, and conference space will be filled in the order in which registrations are received. Onsite registration will be available to the extent that space is available on the day of the conference. The costs of registration for different categories of attendee are as follows:

Category	Cost
Industry Representatives	$1,400
Charitable Nonprofit/Academic (Full time)	700
Government (Full time)	420
Tutorial Fees	405

Government and nonprofit attendees and exhibitors will need an invitation code to register at the discounted rate. An invitation code can be obtained by sending an email to: *Constance.Burnett@diahome.org.* All registrants will pay a fee with the exception of a limited number of speakers/organizers who will have a complimentary registration.

B. Accommodations

Attendees are responsible for their own accommodations. Attendees making reservations at the Marriott Bethesda North Hotel and Conference Center, Bethesda, MD, are eligible for a reduced conference rate of $209, not including applicable taxes. Those making reservations online should use the group code ''13008'' to receive the special rate. If you need special accommodations because of disability, please contact *Constance.Burnett@diahome.org* at least 7 days before the meeting.

Dated: February 21, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–04331 Filed 2–25–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2012–1049]

Interim Guidance for Revised Implementation of the International Convention for the Prevention of Pollution From Ships (MARPOL), Annex V

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of CG–CVC Policy Letter 13–01, ''Interim Guidance for Revised MARPOL Annex V Implementation.'' On July 15, 2011, the International Maritime Organization's (IMO) Marine Environment Protection Committee (MEPC) formally adopted Resolution MEPC.201(62), which amends the International Convention for the Prevention of Pollution from Ships (MARPOL) Annex V, by establishing a general prohibition on discharges of garbage into the sea. The amendments in Resolution MEPC.201(62) entered into force on January 1, 2013. CG–CVC Policy Letter 13–01 provides interim guidance to assist U.S. flagged and foreign flagged oceangoing ships regarding compliance with the amendments in Resolution MEPC.201(62) until the Coast Guard updates the applicable regulations in 33 CFR part 151.

DATES: The effective date for the amendments in Resolution MEPC.201(62) was January 1, 2013. CG–CVC Policy Letter 13–01 is effective as of February 26, 2013.

ADDRESSES: This notice and the documents referenced within are available in the docket and can be viewed by going to *www.regulations.gov* and using ''USCG–2012–1049'' as your search term. CG–CVC Policy Letter 13–01 can also be viewed on the Coast Guard's Web site at *http://homeport.uscg.mil* by referring to the left side menu and following the links to ''Domestic Vessels,'' ''Domestic Vessel Policy,'' and ''Office of Commercial Vessel Compliance (CG–CVC) Policy Letters.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice or CG–CVC Policy Letter 13–01, call or email LT John Peterson, U.S. Coast Guard, Office of Commercial Vessel Compliance (CG–CVC–1), telephone (202) 372–1226, or email *CG-CVC-1@uscg.mil.* If you have questions on viewing material in the docket, call Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The United States implements MARPOL Annex V through the Act to Prevent Pollution from Ships (33 U.S.C. 1901, *et. seq.*). On July 15, 2011, the IMO's MEPC formally adopted Resolution MEPC.201(62), which amends MARPOL Annex V by establishing a general prohibition on discharges of garbage into the sea. Under prescribed conditions, exceptions are provided for food wastes, cargo residues, cleaning agents or additives contained in cargo hold, deck, and external surface wash waters, and animal carcasses. The amendments in Resolution MEPC.201(62) entered into force on January 1, 2013.

The Coast Guard intends to revise its regulations in 33 CFR part 151 to conform with the amendments in Resolution MEPC.201(62). These conforming regulatory provisions were not finalized prior to January 1, 2013. The lack of updated regulations does not exempt ships from meeting the requirements of the amended MARPOL Annex V. CG–CVC Policy Letter 13–01 provides interim guidance to assist U.S. flagged and foreign flagged oceangoing ships regarding compliance with the amendments in Resolution MEPC.201(62) until the Coast Guard updates the applicable regulations.

As of January 1, 2013, all U.S. flagged ships and fixed or floating platforms are expected to meet the requirements of the amended MARPOL Annex V. This is particularly important for U.S. flagged ships (including recreational and uninspected ships) on international voyages that want to avoid Port State control actions. For U.S. ships operating

strictly on domestic routes, Coast Guard Marine Inspectors should verify compliance with amended MARPOL Annex V during normally scheduled inspections, but inspectors are encouraged to use an educational outreach and awareness approach. Additionally, current enforcement options remain in place for willful and egregious violators or repeat offenders.

Additionally, all foreign flagged ships operating in the navigable waters of the U.S. or the Exclusive Economic Zone [1] of the U.S. are expected to meet the requirements of amended MARPOL Annex V.[2] Coast Guard Port State Control Officers should verify a foreign flag ships' compliance with MARPOL Annex V during normally scheduled Port State Control examinations.

The guidance in CG–CVC Policy Letter 13–01 is neither a substitute for applicable legal requirements, nor a rule. It is not intended nor does it impose legally-binding requirements on any party. It represents the Coast Guard's current policy on this topic and may assist industry, mariners, the general public, and the Coast Guard, as well as other Federal and state regulators, in applying statutory and regulatory requirements. An alternative approach may be used for complying with these requirements if the approach satisfies the requirements of the applicable statutes and regulations. If you want to discuss an alternative approach, you may contact the Coast Guard Office of Commercial Vessel Compliance (CG–CVC–1) using the methods provided in the **FOR FURTHER INFORMATION CONTACT** section above.

Authority: This notice is issued under authority of 5 U.S.C. 552(a) and 33 U.S.C. 1901 *et seq.*

Dated: February 19, 2013.

P.F. Thomas,

Captain, U.S. Coast Guard, Director, Inspections and Compliance.

[FR Doc. 2013–04319 Filed 2–25–13; 8:45 am]

BILLING CODE 9110–04–P

[1] With respect to the United States (including the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the United States Virgin Islands, and any other territory or possession over which the United States exercises sovereignty), *exclusive economic zone* means the zone seaward of and adjacent to the territorial sea, including the contiguous zone, and extending 200 nautical miles from the territorial sea baseline (except where otherwise limited by treaty or other agreement recognized by the United States) in which the United States has the sovereign rights and jurisdiction and all nations have the high seas freedoms mentioned in Presidential Proclamation 5030 of March 10, 1983 (33 CFR 2.30(a)).

[2] *See* 33 U.S.C. 1902(a)(3).

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3361–EM; Docket ID FEMA–2013–0001]

Connecticut; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Connecticut (FEMA–3361–EM), dated February 10, 2013, and related determinations.

DATES: *Effective Date:* February 10, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 10, 2013, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of Connecticut resulting from a severe winter storm beginning on February 8, 2013, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Connecticut.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program. This emergency assistance will be provided for a period of 48 hours.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Albert Lewis, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Connecticut have been designated as adversely affected by this declared emergency:

All eight counties in the State of Connecticut for emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program at 75 percent federal funding.

This emergency assistance will be provided for a period of 48 hours for all eight counties and the Tribal Nations of Mashantucket Pequot and Mohegan in the State of Connecticut.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–04324 Filed 2–25–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4099–DR; Docket ID FEMA–2013–0001]

Pennsylvania; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania

(FEMA–4099–DR), dated January 10, 2013, and related determinations.

DATES: *Effective Date:* February 13, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Pennsylvania is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of January 10, 2013.

Philadelphia County for Public Assistance, including direct federal assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–04325 Filed 2–25–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4101–DR; Docket ID FEMA–2013–0001]

Mississippi; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–4101–DR), dated February 13, 2013, and related determinations.

DATES: *Effective Date:* February 15, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 13, 2013.

Marion and Wayne Counties for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–04323 Filed 2–25–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information: Pipeline Corporate Security Review Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently-approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0056, abstracted below that we will submit to OMB for renewal in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection will assess the current security practices in the pipeline industry by way of TSA's Pipeline Corporate Security Review (CSR) program, which encompasses site visits and interviews, and is part of the larger domain awareness, prevention, and protection program supporting TSA's and the Department of Homeland Security's missions.

DATES: Send your comments by April 29, 2013.

ADDRESSES: Comments may be emailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Susan L. Perkins at the above address, or by telephone (571) 227–3398.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with 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 valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

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

(2) Evaluate the accuracy of the agency's estimate of the burden;

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

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

The TSA Pipeline Security Branch is responsible for conducting Pipeline Corporate Security Reviews (PCSRs). Focusing on the security of pipelines and the hazardous materials moving through the system infrastructure, the PCSR program:

- Meets with senior corporate officers and security managers;
- Develops knowledge of security planning at critical pipeline infrastructure sites;
- Establishes and maintains a working relationship with key security staff that operate critical pipeline infrastructure;

• Identifies industry smart practices and lessons learned; and

• Maintains a dynamic modal network through effective communications with the pipeline industry and government stakeholders.

Under the Aviation and Transportation Security Act (ATSA) [1] and delegated authority from the Secretary of Homeland Security, TSA has broad responsibility and authority for ''security in all modes of transportation * * * including security responsibilities * * * over modes of transportation that are exercised by the Department of Transportation.'' [2] TSA is specifically empowered to develop policies, strategies, and plans for dealing with threats to transportation,[3] oversee the implementation and adequacy of security measures at transportation facilities,[4] and carry out other appropriate duties relating to transportation security.[5]

Purpose and Description of Data Collection

The purpose of the PCSR program is to develop first-hand knowledge of a pipeline operator's corporate security policies and procedures, establish and maintain working relationships with key pipeline security personnel, and identify and share smart security practices observed at individual facilities to help enhance and improve the security of the pipeline industry.

To this end, the PCSR Program provides TSA with a method to discuss security-related matters with pipeline operators. The PCSR encompasses site visits and interviews and is one piece of a much larger domain awareness, prevention, and protection program in support of TSA's and the Department of Homeland Security's (DHS) missions.

In carrying out PCSRs, subject matter experts from TSA's Pipeline Security Branch visit pipeline operators throughout the nation that elected to adopt security plans. These are voluntary face-to-face visits, usually at the headquarters facility of the pipeline owners/operator. Typically, TSA sends one to three employees to conduct a three-to-four hour interview with representatives from the owner/operator. The TSA representatives analyze the owner's/operator's security plan and determine if the mitigation measures included in the plan are being properly implemented. TSA then visits one or two of the owners/operators assets to further assess the implementation of the owner's/operator's security plan.

TSA conducts this collection of information on security measures to identify security gaps. The discussions also provide TSA with a method to encourage the pipeline owners/operators to be diligent in implementing and maintaining security-related improvements.

TSA has developed a question set to aid in the conducting of PCSRs. The PCSR Question Set drives the TSA-operator discussion and is the central data source for all security information collected. The PCSR Question Set was developed based on government and industry guidance to obtain information from a pipeline operator about its security plan and processes. The questions are designed to examine the company's current state of security as well as to address measures that are applied if there is a change in the National Terrorism Advisory System.

In application, topics such as security program management, vulnerability assessments, components of the security plan, security training, and emergency communications enable the PCSR Teams to assess the operator's security plan by evaluating a broad range of security issues such as physical security, cyber security, communication, and training. The PCSR Question Set also includes sections for facility site visits and operator contact information. The questions and subsequent answers help provide TSA with a snapshot of a company's security posture and is instrumental in developing smart practices and security measures.

Use of Results

This PCSR collection provides TSA with real-time information on current security practices within the pipeline mode of the surface transportation sector. This information allows TSA to adapt programs to the changing security threat, while incorporating an understanding of the improvements owners/operators make in their security measures. Without this information, the ability of TSA to perform its security mission would be severely hindered.

Additionally, the relationships these face-to-face contacts foster are critical to the Federal government's ability to reach out to the pipeline stakeholders affected by the PCSRs. TSA assures respondents that the portion of their responses that is deemed Sensitive Security Information (SSI) will be protected in accordance with procedures meeting the transmission, handling, and storage requirements of SSI set forth in 49 CFR parts 15 and 1520.

The annual hour burden for this information collection is estimated to be 120 hours. While TSA estimates there to be a total universe of 2200 potential respondents, the estimate is based on TSA conducting 15 PCSR visits per year, each visit lasting a total of 8 hours. There is no cost burden to respondents.

Issued in Arlington, Virginia, on February 20, 2013.

Susan L. Perkins,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2013–04426 Filed 2–25–13; 8:45 am]

BILLING CODE 9110–05–P

[1] Public Law 107–71, 115 Stat. 597 (November 19, 2001), codified at 49 U.S.C. 114.

[2] *See* 49 U.S.C. 114(d). The TSA Administrator's current authorities under ATSA have been delegated to him by the Secretary of Homeland Security. Section 403(2) of the Homeland Security Act (HSA) of 2002, Public Law 107–296, 116 Stat. 2315 (2002), transferred all functions of TSA, including those of the Secretary of Transportation and the Under Secretary of Transportation of Security related to TSA, to the Secretary of Homeland Security. Pursuant to DHS Delegation Number 7060.2, the Secretary delegated to the Administrator of TSA, subject to the Secretary's guidance and control, the authority vested in the Secretary with respect to TSA, including that in section 403(2) of the HSA.

[3] 49 U.S.C. 114(f)(3).

[4] 49 U.S.C. 114(f)(11).

[5] 49 U.S.C. 114(f)(15).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–14]

Notice of Submission of Proposed Information Collection to OMB; Border Community Capital Initiative

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The purpose of this submission is for the application for the Border Community Capital Initiative grant process. Information is required to rate and rank competitive applications and to ensure eligibility of applicants for funding. Semi-annual reporting is required to monitor grant management.

DATES: *Comments Due Date:* March 28, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–New) and should be sent to: HUD Desk Officer,

Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov*, fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov*. or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information

Title of Proposal: Border Community Capital Initiative.

OMB Approval Number: 2506–New.

Form Numbers: SF 424; SF424 Supplement; HUD–424CB; HUD–424–CBW; SF–LLL; HUD–2880; HUD–2990; HUD–2991; HUD–2993; HUD–2994A; HUD–96010; HUD–27061; HUD–27300; and HUD–96011, SF–269a.

Description of the need for the information and proposed use: The purpose of this submission is for the application for the Border community Capital Initiative grant process. Information is required to rate and rank competitive applications and to ensure eligibility of applicants for funding. Semi-annual reporting is required to monitor grant management.

	Number of respondents	Annual responses	×	Hours per response	Burden hours
Reporting Burden	50	1		56.02	2,801

Total Estimated Burden Hours: 2,801.

Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 19, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–04311 Filed 2–25–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5690–N–03]

Notice of Proposed Information Collection for Public Comment; Section 901 Implementation

AGENCY: Office of the Assistant Secretary for Public and Indian Housing (PIH), HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Eligible public housing agencies (PHAs) in areas most heavily impacted by Hurricanes Katrina and Rita will submit a Notice of Intent and Section 901 Fungibility Plan to inform HUD they will exercise funding flexibility and describe how program funds will be used. PHAs will submit quarterly and annual reports on funds utilization.

DATES: *Comments Due Date:* April 29, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this revised information collection. Comments should refer to the revised information collection by name/or OMB Control number and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4160, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email Ms. Pollard at *Colette_Pollard@hud.gov*. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). Division B of the Department of Defense Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico and Pandemic Influenza Act, 2006 (Section 901 of Public Law No. 109–148, enacted on December 30, 2005), among other provisions, makes emergency supplemental appropriations to address the hurricane devastation in the Gulf of Mexico. Section 901 of this appropriations act authorized PHAs in federally declared disaster areas as a result of Hurricanes Katrina and Rita to combine their Capital Funds (section 9(d) of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act)), Operating Funds (section 9(e) of the 1937 Act), and Housing Choice Voucher Funds (section 8(o) of the 1937 Act) to assist families who were displaced by Hurricane Katrina or Rita. HUD determined that this provision permitted PHAs to use these funds interchangeably. In practice, most PHAs used Housing Choice Voucher (HCV) funds for the public housing Capital Fund Program (CFP) purposes, and had up to five years to expend the HCV funds for those uses.

HUD implemented Section 901 through publication in the **Federal Register** on July 28, 2006, of FR–5067–N–01 (Volume 71, Page 42996) entitled *Implementation Guidance for Section*

901 of the Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (''the Section 901 implementation guidance''). This notice provided guidance on how eligible PHAs should implement Section 901 funding flexibility and report the planned activities, accomplishments, and funds utilization from using this flexibility. HUD subsequently published notice FR–5067–N–04 on December 17, 2008 (Volume 73, page 76673) extending to the PHAs most heavily affected by Hurricanes Katrina and Rita the flexibility to combine funds through calendar year (CY) 2008 and 2009. Additionally, HUD published FR–5067–N–02 on October 30, 2006, (Volume 71, Page 63340) to extend the deadline for submitting fungibility plans to November 21, 2006, and permit combined funds to be used for eligible purposes under the Housing Choice Voucher program.

Section 4803 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28 enacted May 25, 2007) extended authority for this flexibility to CY 2006 and 2007.

Section 11003 of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–329) extended authority for fungibility to CY 2008 and 2009.

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public and Indian Housing, Section 901 Notice of Intent and Fungibility Plan, Quarterly Reports, and Final Report.

OMB Control Number: 2577–0245.

Description of the need for the information and proposed use: The Notice of Intent is necessary for HUD to be informed about which eligible PHAs elect to invoke the funding flexibility authorized by section 901 of the Emergency Supplemental Appropriations (Pub. L. 109–148). The Fungibility Plan and Reports are necessary for HUD to know how eligible PHAs plan to reallocate and spend these funds, the rate such funds are obligated and expended, and the results in using this funding flexibility. Fungibility Plans proposing to use Section 901 flexibility and funding to develop new housing units under Capital Fund mixed-finance uses or for development of HCV project-based units were required to include new development proposals following the format required by 24 CFR 941.606 or mixed-finance rules as appropriate. Fungibility Plans proposing to use Section 901 flexibility to pay for public housing renovations were required to submit CFP Annual Statements identifying work items and costs. These collections are approved under separate OMB numbers. Under Section 901, funds from one of the programs identified above could be used for another program's purposes, but were required to follow the rules of the program in which the funds would be used. HUD has not received any new Section 901 Fungibility Plans since 2009, which was the last year Congress extended this funding flexibility to address the impacts of Hurricanes Rita and Katrina. Some PHAs have used the fungibility plan format to submit revisions to their originally approved plans.

Agency form numbers, if applicable: None.

Members of affected public: Eligible Public Housing Agencies in the areas most heavily impacted by Hurricanes Katrina and Rita.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Notification of Intent and Fungibility Plan. This is a one-time submission estimated to take 40 hours for each of up to twelve eligible PHAs that submitted plans from 2006 through 2009. PHAs may also use this format to request HUD approval for subsequent plan revisions. The original burden estimate for this information collection was 6,624 hours assuming all ninety-six PHAs in the areas impacted by Hurricanes Katrina and Rita would opt to use it. A later burden estimate of 1,248 hours was submitted, when in 2006, only eight out of ninety-six eligible PHAs submitted plans to use Section 901 flexibility. In 2007, seven out of the eight 2006 PHAs and one new PHA submitted plans to use Section 901 flexibility. In 2008, seven out of the nine 2006 and 2007 PHAs and three new PHAs submitted plans to use Section 901 flexibility. Ten or fewer respondents have submitted plans to use Section 901 flexibility each year. One PHA submitted a plan in 2009, the last year in which Section 901 funding flexibility was available. As a result, the estimate of burden hours for new fungibility plans has been removed. A total of ten different PHAs have been approved to use and must report the results of Section 901 flexibility. A new estimate of burden for Section 901 Notifications of Intent and Fungibility Plans or revisions, and subsequent periodic reporting is 1,680 hours based on requirements for 10 PHAs to prepare and submit these documents.

Quarterly Progress Reports of Obligations and Expenditures for Section 901 Designated Funds and Activities. In order to permit HUD to adequately monitor PHA progress in carrying out Section 901 approved activities and obligating and expending Section 901 approved funds in a timely manner, PHAs will report the amount of Section 901 funds obligated and expended for each approved activity for the quarterly reporting period, and the outstanding balance of unexpended Section 901 funds. Response time per quarterly report, including the time to research records containing documentation needed to prepare the quarterly reports is estimated to average sixteen hours for each of the PHAs with approved Section 901 plans. The actual amount of time depends on the level of funding used for other purposes and the complexity of the activities involved, such as development of new construction housing or repairs made to housing units damaged as a result of the hurricanes. Reports will be submitted by each PHA four times per year for five consecutive years for each calendar year of funding. Section 901 PHAs have five years to expend funds designated for Section 901 flexibility for a given calendar year (2006, 2007, 2008, and/or 2009). Total annual reporting burden for ten PHAs to submit quarterly reports of their progress in carrying out Section 901 approved activities and rates of obligations and expenditures for CY 2006, 2007, 2008, and 2009 funding is estimated at 640 hours.

Annual Report. Annual reports will address: (1) PHA progress and results in carrying out Section 901 activities, (2) the amount of program funds approved under Section 901 flexibility for other program uses, (3) the amount of funds obligated during the year and cumulatively for Section 901 approved activities, and (4) the amount of funds

expended annually and cumulatively for Section 901 approved activities. These reports are expected to address progress-to-date during the five year expenditure period for initiating and getting Section 901 activities underway, and reporting on challenges or unforeseen obstacles.

Final Report. This is a one-time submission estimated to take forty hours for each of up ten PHAs, including the Housing Authority of New Orleans, for a total reporting burden of 400 hours. The final report is expected to address all programmatic and financial matters pertinent to Section 901 implementation, including the PHA's performance in carrying out all approved Section 901 activities, including but not limited to public housing redevelopment and capital improvements, public housing mixed-finance development, affordable housing development coupled with use of project-based vouchers, homeownership development and incentives, property acquisitions, and re-occupancy programs; in addition to accounting for the final obligation and expenditure of Section 901 designated funds and remaining balances.

Status of the proposed information collection: Extension of a previously approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 14, 2013.

Merrie Nichols-Dixon,

Deputy Director for Policy, Programs, and Legislative Initiatives.

[FR Doc. 2013–04310 Filed 2–25–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES003420.L14300000.EU0000; MIES–056498]

Notice of Realty Action: Modified Competitive Sale of Public Land in Marquette County, Michigan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM), Northeastern States Field Office, proposes to offer for sale a 0.82-acre parcel of public land in Marquette County, Michigan. The sale will be subject to the Federal Land Policy and Management Act of 1976 (FLPMA), and BLM land sale regulations. The BLM proposes to conduct the sale using sealed bid modified competitive procedures pursuant to BLM regulations.

DATES: Interested parties may submit written comments regarding the proposed sale to the BLM (See **ADDRESSES** below) on or before April 12, 2013. The BLM will accept sealed bids for the offered land from qualified bidders no later than 3 p.m. local time on April 29, 2013. Sealed bids will be opened the following day, which will be the date of the sale.

ADDRESSES: Written comments concerning the proposed sale should be addressed to the Field Manager, BLM, Northeastern States Field Office, 626 East Wisconsin Avenue, Suite 200, Milwaukee, Wisconsin 53202–4617. Sealed bids must also be submitted to this address.

FOR FURTHER INFORMATION CONTACT: Carol Grundman, Realty Specialist, BLM, Northeastern States Field Office, (See **ADDRESSES** above), 414–297–4447, *cgrundma@blm.gov.* More detailed information regarding the sale can be found at the BLM Eastern States Web site at: *http://www.blm.gov/es/st/en.html.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The following parcel of public land has been examined and found suitable for modified competitive sale to adjacent landowners in accordance with Section 203 of FLPMA, as amended (43 U.S.C. 1713), and implementing regulations at 43 CFR 2711.3–2, at no less than the appraised fair market value of the land.

Michigan Meridian

T. 42 N., R. 24 W.,
Sec. 21, lot 7.

The area described contains 0.82 acres in Marquette County, Michigan, and is proposed for sale to either of the adjacent landowners, Royal Moning and Jim Kozar.

The Federal land is not needed for any Federal purpose and was identified for disposal in the Michigan Resource Management Plan Amendment dated September 7, 2012. The purpose of the sale is to dispose of land which is difficult and uneconomic to manage as part of the public lands because of its isolated location and lack of legal access. The BLM is proposing a modified competitive sale to allow adjacent landowners who control access to the public land an equal opportunity to successfully bid on the property.

Bidding under modified competitive sale procedures is only open to the identified adjacent landowners who must submit sealed bids to the BLM, Northeastern States Field Office (See **ADDRESSES** above), no later than 3 p.m. local time, on April 29, 2013. If the adjacent landowners fail to exercise the preference consideration offered by the modified competitive sale and no successful bid is received, then the parcel will remain available for sale on a continuing basis in accordance with competitive sale procedures found at 43 CFR 2711.3–1 without further legal notice. Bids submitted to the BLM under competitive sale procedures will be opened on a monthly basis on the first Friday of each month at 10 a.m. local time, at the BLM, Northeastern States Field Office, until a successful bid is received or the sale is cancelled.

Sealed bid envelopes must be clearly marked on the front lower left-hand corner with ''SEALED BID BLM LAND SALE, MIES–056498.'' The bid envelope must contain a signed statement showing the total amount of the bid and the name, mailing address, and phone number of the entity making the bid. Bids must be equal to or greater than the federally appraised fair market value of the land. The appraised fair market value will be made available 30 days prior to the sealed bid closing date at the BLM, Northeastern States Field Office, and on the Web site (See **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above). Each sealed bid must be accompanied by a certified check, money order, bank draft, or cashier's check made payable to the BLM for an amount not less than 20 percent of the total amount of the bid. Personal checks will not be accepted.

Sealed bids will be opened to determine the high bid at 10 a.m. local time the day after the bids are due, at the BLM, Northeastern States Field Office (See **ADDRESSES** above). The highest qualifying bid will be declared the high bid and the high bidder will receive written notice. Bidders submitting matching high bid amounts will be provided an opportunity to submit a supplemental sealed bid. Bid deposits submitted by unsuccessful bidders will be returned by U.S. mail.

The successful bidder will be allowed 180 days from the date of sale to submit the remainder of the full bid price in the form of a certified check, money order, bank draft, or cashier's check made payable to the BLM. Personal checks will not be accepted. Failure to submit the remainder of the full bid price prior to but not including the 180th day

following the day of the sale, will result in the forfeiture of the bid deposit to the BLM, and the parcel will be offered to the second highest qualifying bidder at their original bid.

Federal law requires that bidders must be: (1) United States citizens 18 years of age or older; (2) A corporation subject to the laws of any State or of the United States; (3) An entity legally capable of acquiring and owning real property, or interests therein, under the laws of the State of Michigan; or (4) A State, State instrumentality, or political subdivision authorized to hold real property. Certifications and evidence to this effect will be required of the purchaser prior to issuance of a patent.

Publication of this Notice in the **Federal Register** segregates the subject land from appropriation under the pubic land laws, except sale under the provisions of FLPMA. The segregation will terminate upon issuance of a patent for the land, upon publication in the **Federal Register** of a termination of the segregation, or on February 26, 2015, unless extended by the BLM State Director, Eastern States, in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

Any conveyance document issued would be subject to the following terms, conditions, and reservations:

1. The conveyance will be subject to all valid existing rights of record;

2. All minerals, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe shall be reserved to the United States;

3. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or operations on the patented land; and

4. Additional terms and conditions that the authorized officer deems appropriate to ensure proper land use and protection of the public interest.

No warranty of any kind, expressed or implied, is given by the United States as to the title, physical condition or potential uses of the land proposed for sale, and conveyance will not be on a contingency basis. To the extent required by law, the parcel is subject to the requirements of Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9620(h)) (CERCLA), as amended. It is the buyer's responsibility to be aware of all applicable local government policies and regulations that may affect the subject land or its future uses. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer. Detailed information concerning the proposed land sale, including the appraisal, planning and environmental documents is available for review at the BLM Northeastern States Field Office (See **ADDRESSES** above).

Interested parties and the general public may submit written comments concerning the parcel being considered for sale, including notification of any encumbrances or other claims relating to the identified land, to the Field Manager, BLM, Northeastern States Field Office (See **ADDRESSES** above) on or before April 12, 2013. Comments will be available for public review at the BLM's Northeastern States Field Office during regular business hours, except holidays. 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. The BLM will make available for public review, in their entirety, all comments submitted by businesses or organizations, including comments by an individual in their capacity as an official or representative of a business or organization.

Any adverse comments will be reviewed by the BLM State Director, Eastern States, who may sustain, vacate, or modify this realty action. In the absence of adverse comments, this realty action will become the final determination of the Department of the Interior.

Authority: 43 CFR 2711.1–2.

Mark Storzer,

Field Manager.

[FR Doc. 2013–04351 Filed 2–25–13; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK930000.L16100000.LXSINPRA0000.DT0000]

Notice of Availability of Record of Decision for the National Petroleum Reserve-Alaska Final Integrated Activity Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the National Petroleum Reserve in Alaska (NPR–A) Final Integrated Activity Plan (IAP). The Secretary of the Interior, Ken Salazar, signed the ROD on February 21, 2013. The ROD constitutes the final decision of the Department on the plan and is effective immediately.

ADDRESSES: The ROD is available on the BLM-Alaska Web site at *www.blm.gov/ak.* Hard copies of the ROD are available upon request from Serena Sweet 907–271–4543 and at the BLM Public Room at 222 West 7th Avenue #13, Anchorage, AK 99513–7504. The NPR–A Final Integrated Activity Plan/Environmental Impact Statement (IAP/EIS), which provides the analysis upon which the decision is based, is also available at the above Web site address, the Anchorage BLM Public Room, and by telephoning Serena Sweet.

FOR FURTHER INFORMATION CONTACT: For further information contact Serena Sweet, telephone 907–271–4543 or by email at *ssweet@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The NPR–A IAP/EIS planning process began with the publication of the Notice of Intent in the **Federal Register** on July 28, 2010, which began the formal scoping period. Formal scoping ended October 1, 2010. After the scoping period, the BLM, in consultation with the cooperating agencies and tribes and with additional input from the public, researched information on the resources and uses of the area, developed a range of reasonable future management alternatives, and analyzed the impacts

of those alternatives. These analyses underwent review within the BLM and among the cooperating agencies, resulting in the Draft IAP/EIS released on March 30, 2012. The comment period was originally scheduled to end on June 1, 2012, but in response to public requests, the BLM extended the comment period to June 15, 2012. The public and agencies commented on the Draft IAP/EIS. Based on these comments and additional analysis, the BLM developed the preferred alternative and revised the Draft to issue a Final IAP/EIS on December 19, 2012.

The ROD provides opportunities for oil and gas leasing and development as required by the Naval Petroleum Reserves Production Act, as amended, and for application for onshore infrastructure in support of offshore development, while protecting surface values, most notably subsistence resources and access and a wide range of important wildlife and wildlife habitat. This decision reflects the Preferred Alternative B–2 in the NPR–A Final IAP/EIS issued in December 2012, with minor modifications to clarify intent, provide greater assurance of the consistency of the plan with onshore infrastructure to support offshore development, and to establish an NPR–A working group as a means for future ongoing dialogue regarding BLM management of the NPR–A.

Authority: 40 CFR 1506.6.

Ted A. Murphy,

Acting State Director.

[FR Doc. 2013–04406 Filed 2–25–13; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SERO–EVER–12017; PPSESEROC3, PMP00UP05.YP0000]

Draft Environmental Impact Statement for General Management Plan, Everglades National Park, Florida

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability.

SUMMARY: Pursuant to Section 102(a)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of the Draft Environmental Impact Statement (DEIS) for the General Management Plan (GMP) and East Everglades Wilderness Study (EEWS) for Everglades National Park (park). After it is finalized, the GMP/EEWS will guide the management of the park over the next 20+ years.

The last comprehensive planning effort for the Park was completed in 1979. Patterns and types of visitor use have changed, the Comprehensive Everglades Restoration Plan was approved, and in 1989 the East Everglades Addition of approximately 109,600 acres was added to the park to protect and restore the Northeast Shark River Slough. Recent studies have enhanced the understanding of resources, resource threats, and visitor use in the Park. The GMP will provide updated management direction for the entire park. The EEWS provides a forum for evaluating lands within the East Everglades Addition for possible recommendation to Congress for inclusion in the National Wilderness Preservation System.

DATES: The NPS will accept comments from the public on the DEIS for 60 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**. The date, time, and location of public meetings will be announced through the NPS Planning, Environment, and Public Comment (PEPC) Web site *http://parkplanning.nps.gov,* the Everglades National Park Web site, and in media outlets in winter 2013.

ADDRESSES: The DEIS will be available for public review and comment online at *http://parkplanning.nps.gov.* CDs and a limited number of printed copies will be made available at Everglades National Park headquarters and various local libraries. You may request a copy by contacting Everglades National Park, 40001 State Road 93363, Homestead, FL 33034; 305–242–7700.

If you wish to comment, you may do so by any one of several methods. The preferred method is commenting via the Internet at *http://parkplanning.nps.gov.* An electronic public comment form is provided through this Web site. You may also mail comments to Superintendent, Everglades National Park, 40001 State Road 9336, Homestead, FL 33034–6733. Comments may also be hand-delivered to the Everglades National Park address provided above. 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.

SUPPLEMENTARY INFORMATION: Public scoping for the GMP was initiated in 2003. The EEWS was added to the scope of the project in 2006. Public meetings, five newsletters, and internet updates have kept the public informed and involved throughout the planning process. The GMP EEWS will provide a framework for management, use, and development of the Everglades National Park for the next 20 or more years. The DEIS presents and analyzes four alternative ways of managing the Park—alternative 1 (no action/continue current management); the NPS preferred alternative; alternative 2; and alternative 4. (Alternative 3 was dismissed from detailed analysis).

Alternative 1 (no action/continue current management) provides a baseline for evaluating changes and impacts of the three action alternatives. No wilderness is proposed for the East Everglades Addition in alternative 1.

The NPS preferred alternative would support restoration of natural systems and enhanced protection of cultural resources, while providing improved opportunities for quality visitor experiences. It proposes about 80,100 acres for designation as wilderness within the East Everglades Addition, as well as about 9,900 acres for designation as potential wilderness.

Alternative 2 would strive to maintain and enhance visitor opportunities and protect natural systems while preserving many traditional routes and ways of visitor access. It proposes 39,500 acres for designation as wilderness within the East Everglades Addition. No potential wilderness is proposed under this alternative.

As noted above, alternative 3 was dismissed from detailed analysis.

Alternative 4 would provide a high level of support for protecting natural systems while improving opportunities for certain types of visitor activities. Alternative 4 would eliminate commercial airboat tours within the park. It proposes 42,700 acres for designation as wilderness within the East Everglades Addition and 59,400 acres for designation as potential wilderness.

All four alternatives would enhance Flamingo concessions services and facilities. The NPS preferred alternative, alternative 2, and alternative 4 would build the ''Marjory Stoneman Douglas Visitor Center'' at Everglades City, and each of these three alternatives would provide new and different visitor opportunities. The four alternatives are described in detail in chapter 2 of the DEIS and summarized in table 5 of that chapter. The key aspects of the four alternatives and the impacts of

implementing them are described in the plan's summary, detailed in chapter 5, and summarized in table 6 (chapter 2).

FOR FURTHER INFORMATION CONTACT: Everglades National Park Supervisory Park Planner Fred Herling at the address and telephone number shown above, or via email at *Fred_Herling@nps.gov.*

The responsible official for this DEIS/GMP is the Regional Director, NPS Southeast Region, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: February 14, 2013.

Gordon Wissinger,

Acting Regional Director, Southeast Region.

[FR Doc. 2013–04342 Filed 2–25–13; 8:45 am]

BILLING CODE 4310–JD–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Draft Environmental Impact Report/Environmental Impact Statement/Environmental Impact Statement, Upper Truckee River and Marsh Restoration Project, El Dorado County, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability and notice of public hearings.

SUMMARY: The Bureau of Reclamation has made available for public review and comment the draft Environmental Impact Report/Environmental Impact Statement/Environmental Impact Statement (EIR/EIS/EIS) for the Upper Truckee River Restoration and Marsh Restoration Project (Project). The California Tahoe Conservancy and the Tahoe Regional Planning Agency, the other lead agencies for the Project, made the EIR/EIS/EIS available to the public on February 8, 2013.

DATES: Submit written comments on the draft EIR/EIS/EIS on or before April 29, 2013.

Two public hearings will be held at 9:30 a.m. on Wednesday, March 13, 2013 and Wednesday, March 27, 2013 in Stateline, Nevada, to receive oral and written comments regarding the Project's environmental effects.

ADDRESSES: Send written comments on the draft EIR/EIS/EIS to Scott Carroll, Environmental Planner, State of California, California Tahoe Conservancy, 1061 Third Street, South Lake Tahoe, CA 96150; by fax to 530–542–5567; or by email to *scarroll@tahoe.ca.gov.* Emailed comments are preferred. See **SUPPLEMENTARY INFORMATION** section for directions on how to prepare email comments for the Project.

The public hearings will be held at 128 Market Street, Stateline, Nevada.

The draft EIR/EIS/EIS is accessible at the following Web sites: *http://tahoe.ca.gov/upper-truckee-marsh-69.aspx. http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=2937.*

Compact disks are also available upon request from the California Tahoe Conservancy at *scarroll@tahoe.ca.gov.*

See **SUPPLEMENTARY INFORMATION** Section for location where copies of the draft EIR/EIS/EIS are available for public review.

FOR FURTHER INFORMATION CONTACT: Scott Carroll, California Tahoe Conservancy, at 530–543–6062; or Adam Lewandowski, Tahoe Regional Planning Agency; and Myrnie Mayville, Bureau of Reclamation, both at 775–588–4547.

SUPPLEMENTARY INFORMATION: The purpose of the Project is to restore natural geomorphic processes and ecological functions in this lowest reach of the Upper Truckee River and the surrounding marsh to improve ecological values of the restoration area and help reduce the river's discharge of nutrients and sediment that diminish Lake Tahoe's clarity.

The approximately 592-acre study area is along the most downstream reaches of the Upper Truckee River and Trout Creek, including their mouths at Lake Tahoe in the City of South Lake Tahoe, within El Dorado County, California. It includes 1.8-miles of the Upper Truckee River as well as the marsh and meadows surrounding the lowest reaches of Trout Creek. The majority of the study area is owned by the California Tahoe Conservancy though the study area does include small areas owned by other public agencies and private landowners.

Four action alternatives (Alternatives 1–4), and the No-Project/No-Action Alternative (Alternative 5), are analyzed in the draft EIR/EIS/EIS. Alternative 1 would involve restoration of the Upper Truckee River by increasing channel length and decreasing channel capacity. Alternative 2 would involve river restoration by directly raising the streambed elevation, increasing the channel length, and decreasing channel capacity. A key element of this restoration would be the excavation of a new river channel that has less capacity than the existing channel. Alternative 3 would promote the development, through natural processes, of a new main channel and/or distributary channels in the central portion of the study area. A ''pilot'' channel would be constructed from the existing river channel to historical channels in the center of the study area, but no construction would occur in the central or northern portions of the study area. Rather, natural processes would be allowed to dictate the flow path(s), bed and bank elevations, and capacities of the channel(s) through the central and northern portions of the study area. Alternative 4 would restore the river channel and its connection to the floodplain by lowering bank heights by excavating an inset floodplain along much of the river channel, and by localized cut and fill to create meanders in the existing straightened reach. Alternative 5 would not provide any actions to restore the river channel and its connection to the floodplain in the study area. This alternative would allow, but not facilitate the long-term, passive recovery of the river system via natural processes. This alternative represents a projection of reasonably foreseeable future conditions that could occur if no project actions were implemented.

Significant or Adverse Environmental Effects Anticipated

Alternative 1 would involve restoration of the Upper Truckee River by increasing channel length and decreasing channel capacity. Implementation of Alternative 1 would result in short-term project and cumulative construction impacts to sensitive communities (jurisdictional wetlands, riparian vegetation, and Stream Environment Zone); disruption of wildlife habitat use and loss of wildlife; and potential risk of surface water degradation during construction and the interim adjustment period thereafter.

Implementing Alternative 1 would provide the maximum recreation elements, but in turn would result in additional significant and unavoidable project-related impacts including damage to or mortality of special-status plants resulting from recreational activities; conflicts with regional conservation strategies for Tahoe yellow cress; operation and expansion of recreation facilities having an adverse physical effect on the environment; and degradation of the scenic quality of shoreline and mapped scenic resources related to the Upper Truckee River bridge.

Implementing Alternative 2 would involve river restoration by directly raising the streambed elevation, increasing the channel length, and decreasing channel capacity by excavation of a new river channel that has less capacity than the existing

channel. This alternative would result in the same significant and unavoidable project-related and cumulative impacts discussed above for Alternative 1.

Alternative 3 would allow natural processes to dictate the flow path(s), bed and bank elevations, and capacities of the channel(s) through portions of the study area and would result in the same significant and unavoidable project-related and cumulative impacts discussed above for Alternative 1, as well as potentially resulting in long-term disruption of fish passage and migration patterns as the channel adjusts.

Implementing Alternative 4 would require excavating an inset floodplain along much of the river channel. This alternative would result in the same significant and unavoidable project-related and cumulative impacts discussed above for Alternative 1. Alternative 5 (No-Project/No-Action) would allow, but not facilitate the long-term, passive recovery of the river system by natural processes; therefore, this alternative would not result in any significant and unavoidable impacts.

Beneficial Effects

Implementing Alternative 1 would result in long-term enhancement and creation of jurisdictional wetlands, riparian vegetation, and Stream Environment Zone habitats resulting from restoration and enhancement elements. Alternative 1 would have beneficial project related and cumulative effects on hydrologic/hydraulic processes from reconfiguration of stream channels and lagoon surface water features. Project and cumulative beneficial effects would include decreased erosion along the Upper Truckee River, increased overbank flooding for small streamflow events and associated retention of fine sediment and nutrients, and groundwater level improvements within the study area.

Alternative 2 would result in the same project-related and cumulative beneficial effects as discussed above for Alternative 1. In addition, implementing Alternative 2 would result in long-term beneficial effects on common or special-status wildlife resources and a decrease in recreational conflicts in the core habitat area. Alternative 1 would also have these benefits, however to a lesser extent than other action alternatives.

Implementation of Alternative 3 would result in the same project-related and cumulative beneficial effects as discussed above for Alternative 2.

Alternative 4 would result in the same project-related and cumulative beneficial effects as discussed above for Alternative 2.

Alternative 5 (No-Project/No-Action) would allow, but not facilitate the long-term, passive recovery of the river system by natural processes; therefore, this alternative would not directly result in any beneficial effects.

A preferred or proposed alternative has not yet been defined. Following receipt and evaluation of public comments on the draft EIR/EIS/EIS, the lead agencies will determine which alternative or combinations of features from multiple alternatives will become the proposed action. A discussion of the decision will be included in the final EIR/EIS/EIS. A summary description of the alternatives is presented below. The detailed description of each alternative is presented in Chapter 2 of the draft EIR/EIS/EIS.

The draft EIR/EIS/EIS is being distributed to interested agencies, stakeholder organizations, and individuals. This distribution ensures that interested parties have an opportunity to express their views regarding the environmental effects of the Project, and to ensure that information pertinent to permits and approvals is provided to decision makers for the lead agencies.

For comments provided via email, please utilize the following format:

Email to: *scarroll@tahoe.ca.gov*

Subject Line: Upper Truckee River and Marsh Restoration Project draft EIR/EIS/EIS directions:

(1) Attach comments in an MS Word document.

(2) Include commenter's U.S. Postal Service mailing address in MS Word.

All comments will be distributed by the California Tahoe Conservancy to the Tahoe Regional Planning Agency and the Bureau of Reclamation.

Hearing Process and Distribution Information

The California Tahoe Conservancy, Bureau of Reclamation, and Tahoe Regional Planning Agency will conduct a public hearing on the draft EIR/EIS/EIS. It is not necessary to provide testimony during the public hearing; comments on the draft EIR/EIS/EIS will be accepted throughout the meeting and will be recorded at the public comment table. Comments may also be submitted throughout the comment period as described above. Once all comments have been assembled and reviewed, responses will be prepared to address significant environmental issues that have been raised in the comments.

Copies of the draft EIR/EIS/EIS are available for public review at the following locations:

- State of California, California Tahoe Conservancy, 1061 Third Street, South Lake Tahoe, CA 96150
- Tahoe Regional Planning Agency front desk, 128 Market Street, Stateline, NV 89449.
- Mid-Pacific Regional Library, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825.
- Natural Resources Library, Department of the Interior, 1849 C Street NW., Main Interior Building, Washington, DC 20240–0001.

Special Assistance for the Public Hearing

If special assistance is required to participate in the public hearing, please contact Marja Ambler at 775–589–5287, or via email at *mambler@trpa.org.* Please notify Marja Ambler as far in advance as possible to enable the Bureau of Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified. A telephone device for the hearing impaired (TDD) is available at 916–978–5608.

Public Disclosure

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 may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: February 12, 2013.

Pablo R. Arroyave,

Deputy Regional Director, Mid-Pacific Region.

[FR Doc. 2013–04334 Filed 2–25–13; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Docket No. 2940]

Products Having Laminated Packaging, Laminated Packaging, and Components Thereof; Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Products Having Laminated*

Packaging, Laminated Packaging, and Components Thereof, DN 2940; 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 Lamina Packaging Innovations LLC on February 20, 2013. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of products having laminated packaging, laminated packaging, and components thereof. The complaint names as respondents Remy Cointreau USA Inc. of New York, NY; Pernod Ricard USA LLC of New York, NY; John Jameson Import Company of Purchase, NY; Moet Hennessy USA of New York, NY; Champagne Louis Roederer of France; Maisons Marques & Domaines USA Inc. of Oakland, CA; Freixenet USA of Sonoma, CA; L'Oreal USA of New York, NY; Hasbro, Inc. of Pawtucket, RI; Cognac Ferrand USA, Inc. of New York, NY; WJ Deutsch & Son of White Plains, NY; Diageo North America Inc. of Norwalk, CT; Sidney Frank Importing Co., Inc. of New Rochelle, NY; Beats Electronics LLC of Santa Monica, CA and Camus Wines & Spirits Group of France.

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. 2940'') 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: February 21, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–04314 Filed 2–25–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On February 20, 2013, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Western District of Louisiana in the lawsuit entitled *United States* v. *Westlake Petrochemicals LLC,* Civil Action No. 2:13–cv–00364.

This is a civil action against Westlake Petrochemicals LLC, WPT LLC, and Westlake Polymers LLC (collectively ''Defendants'') for civil penalties and injunctive relief as a result of alleged violations of the Clean Air Act (''CAA''), as amended, 42 U.S.C. 7401 et seq., and its implementing regulations including the National Emission Standards for Hazardous Air Pollutants (''NESHAPs'') (40 CFR Part 63). This action is based on violations that occurred at petrochemical production units, known as Petro I and Petro II, owned and operated by one or more Defendants and their predecessors-in-interest and located in Sulfur, Louisiana (the ''Facilities''). The proposed Consent Decree would resolve the civil claims alleged in the Complaint through March 22, 2007. The proposed Consent Decree includes a certification by Defendants that since March 22, 2007 they have

complied at the Facilities with certain specified requirements of the NESHAPs regulations set forth in 40 CFR Part 63, Subpart UU. (§§ 63.1019 to 63.1039). The proposed Consent Decree also requires Defendants to pay a civil penalty in the amount of $500,000.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Westlake Petrochemicals LLC,* D.J. Ref. No. 90–5–2–1–09377. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General U.S. DOJ—ENRD P.O. Box 7611 Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.*

We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $8.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Maureen M. Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–04282 Filed 2–25–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0050]

Proposed Collection, Comments Requested: FBI National Academy Level 1 Evaluation: Student Course Questionnaire and FBI National Academy: General Remarks Questionnaire

ACTION: 60-day notice.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Training Division's Curriculum Management Section (CMS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until April 29, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments (especially on the estimated public burden or associated response time), suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Laleatha B. Goode, Management and Program Analyst, Federal Bureau of Investigation, Training Division, Evaluation and Accreditation Unit, FBI Academy, Quantico, Virginia 22135 or facsimile at (703) 632–3111.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following three points:

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

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

1. *Type of Information Collection:* Approval of reinstated collection.

2. *Title of the Forms:*

FBI National Academy Level 1 Evaluation: Student Course Questionnaire

FBI National Academy: General Remarks Questionnaire.

3. *Agency Form Number, if any, and the applicable component of the department sponsoring the collection:*

Form Number: OMB Number 1110–0050.

Sponsor: Training Division of the Federal Bureau of Investigation (FBI), Department of Justice (DOJ).

4. *Affected Public who will be asked or required to respond, as well as a brief abstract:*

Primary: FBI National Academy students that represent state and local police and sheriffs' departments, military police organizations, and federal law enforcement agencies from the United States and over 150 foreign nations.

Brief Abstract: This collection is requested by FBI National Academy. These surveys have been developed to measure the effectiveness of services that the FBI National Academy provides. We will utilize the students' comments to improve upon the current curriculum.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

Approximately 1,040 FBI National Academy students per year will respond to two types of questionnaires. (1) FBI National Academy Level 1 Evaluation: Student Course Questionnaire and (2) FBI National Academy: General Remarks Questionnaire. It is predicted that we will receive a 75% response rate for both surveys.

Each student will respond to approximately six to seven Student Course Questionnaires—one for each class they have completed. The average time for reading the directions to each questionnaire is estimated to be 2 minutes; the time to complete each questionnaire is estimated to be approximately 20 minutes. Thus the total time to complete the Student Course Questionnaire is 22 minutes. For the FBI National Academy: General Remarks Questionnaire, student will respond to one questionnaire. The average time for reading the directions to this questionnaire is estimated to be 2 minutes; the time to complete each questionnaire is estimated to be approximately 10 minutes. Thus the total time to complete the General Remarks Questionnaire is 12 minutes. The total hour burden for both surveys is 2,080 hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* The average hour burden for completing all the surveys combined is 2,080 hours.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Two Constitution

Square, 145 N Street NE., Room 3W–1407, Washington, DC 20530.

Dated: February 20, 2013.

Jerri Murray,

Department Clearance Officer for PRA, United States Department of Justice.

[FR Doc. 2013–04283 Filed 2–25–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Unemployment Insurance Data Validation Program

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) revision titled, ''Unemployment Insurance Data Validation Program,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before March 28, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: The Unemployment Insurance Data Validation Program requires States to operate a system for ascertaining the validity (i.e., adherence to Federal reporting requirements) of specified unemployment insurance data submitted to the ETA on certain reports they are required to submit monthly or quarterly. Some of these data are used to assess performance, including for the Government Performance and Results Act, or to determine States grants for administration of the Unemployment Insurance Program.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0431. The current approval is scheduled to expire on July 31, 2013; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. The new information collection requirements would take effect upon OMB approval. For additional information, see the related notice published in the **Federal Register** on July 31, 2012 (77 FR 41452).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0431. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Unemployment Insurance Data Validation Program.

OMB Control Number: 1205–0431.

Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 53.

Total Estimated Annual Burden Hours: 34,550.

Total Estimated Annual Other Costs Burden: $0.

Dated: February 20, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–04374 Filed 2–25–13; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Job Clubs Study

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that required data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed ICR can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the addressee section below on or before March 28, 2013.

ADDRESSES: You may submit comments by either one of the following methods:

Email: CFBNP@dol.gov; Mail or Courier: Center for Faith-Based and Neighborhood Partnerships, U.S. Department of Labor, Room S–2521, 200 Constitution Avenue NW., Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Ben Seigel by telephone at 202–693–6032 (this is not a toll-free number) or by email at *CFBNP@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Over the past several decades, job search support groups, commonly referred to as ''job clubs'' have evolved into one of several important activities used by the public workforce system and community-based organizations to enhance worker readiness and employability, as well as to provide ongoing support to unemployed and underemployed individuals as they search for jobs. While many job clubs are formally run through the public workforce system—including at Department of Labor funded American Job Centers—they have especially expanded in recent years through faith-based organizations, such as church ministries; volunteer-run networking groups that meet at coffee shops or public libraries; and online networking sites such as LinkedIn.

There have been past evaluations of the effects of job clubs sponsored by the public sector on job placement, but there has been little assessment and/or empirical study of volunteer-run job clubs and job search support groups sponsored by faith-based and community-based organizations. For example, during the 1980s, there was a great deal of interest in job clubs to help a wide variety of unemployed workers, including older workers, welfare recipients, and formerly incarcerated individuals. A number of evaluations found that job clubs had a large and significant impact on speeding up participants' return to work. While it would seem likely that volunteer-run job clubs and those offered through faith-based and community-based organizations could have similar effects in terms of speeding the return to work for unemployed individuals, there have been few (if any) rigorous empirical research studies completed on this subject. There have, however, been some qualitative studies completed on the role of community-based and faith-based organizations in providing employment and training services. For example, a 2001 study for the Department of Labor documented and assessed the role of faith-based organizations in providing employment and training services, based in part on interviews conducted by telephone with faith-based organizations. This study broadly assessed the role of these organizations in delivering such services, with a focus on the role of faith-based organizations in providing job readiness workshops, job clubs, and other types of assistance to help unemployed individuals find jobs.

Site visits to six organizations sponsoring job clubs is the focus of this ICR aimed at: (1) Systematically describing the key characteristics of the volunteer-run groups and other new types of job clubs being offered across a range of communities; (2) documenting how they differ from and are similar to the job clubs operated by publicly-funded workforce agencies (such as the American Job Centers); and (3) identifying promising practices that might warrant more rigorous formal evaluation of individual impacts and effectiveness. The proposed data collection effort is necessary to fill a gap in existing knowledge about the extent, characteristics, and effectiveness of volunteer-led and faith-based and community-based organizations' sponsorship of job clubs for unemployed and underemployed workers.

The period of performance of this effort is 12 months, ending September 13, 2013. The overall budget is $299,784.44. The contractor is Capital Research Corporation with a subcontract to George Washington University.

II. Desired Focus of Comments

Currently, the Department of Labor is soliciting comments concerning the above data collection for the Job Clubs Study. Comments are requested to:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the information collection 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, e.g., permitting electronic submissions of responses.

II. Current Actions

At this time, the Department of Labor is requesting clearance for Job Clubs site visits.

Type of review: New information collection request.

OMB Number: None.

Affected Public: Employees, volunteers, and/or members associated with six job clubs and their partner organizations.

Cite/Reference/Form/etc.: The Center for Faith-Based and Neighborhood Partnerships and its activities are guided by Executive Order 13279 (December 12, 2002), ''Equal Protection of the Laws for Faith-Based and Community Organizations'' and Executive Order 13559 (November 17, 2010), ''Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations.''

For the Job Clubs site visits:

Frequency: Once.

Total Responses: 48.

Average Time per Response: 3 hours.

Estimated Total Burden Hours: 144 hours.

Total Burden Cost: $3,355(144 hours at $23.30* per hour).

Note that, due to rounding, the numbers for the totals may differ from the sum of the component numbers.

*U.S. Department of Labor, Bureau of Labor Statistics, Table B–3. Average hourly and weekly earnings of all employees on private nonfarm payrolls by industry sector, seasonally adjusted (accessed from the following Web site as of September 2012: *http://www.bls.gov/webapps/legacy/cesbtab3.htm*))

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval; they will also become a matter of public record.

Signed at Washington, DC, this 21st day of February 2013.

Irasema Garza,

Acting Assistant Secretary for Policy, U.S. Department of Labor.

[FR Doc. 2013–04391 Filed 2–25–13; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

National Advisory Committee for Labor Provisions of U.S. Free Trade Agreements; Notice of Open Meeting

AGENCY: Bureau of International Labor Affairs, U.S. Department of Labor.

ACTION: Notice of Open Meeting, March 19, 2013.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2, the Office of Trade and Labor Affairs (OTLA) gives notice of a meeting of the National Advisory Committee for Labor Provisions of U.S. Free Trade Agreements (''Committee'' or ''NAC''), which was established by the Secretary of Labor.

The purpose of the meeting is to discuss the implementation of the labor provisions of Free Trade Agreements, as well as a Subcommittee's report on ILAB's research priorities.

DATES: The Committee will meet on Tuesday, March 19, 2013 from 1:00 p.m. to 5:00 p.m.

ADDRESSES: The Committee will meet at the U.S. Department of Labor, 200 Constitution Avenue NW., Deputy Undersecretary's Conference Room, Washington, DC 20210. Mail comments, views, or statements in response to this notice to Paula Church Albertson, Office of Trade and Labor Affairs, ILAB, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–5004, Washington, DC 20210; phone (202) 693–4789; fax (202) 693–4784 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Paula Church Albertson, Designated Federal Official, Office of Trade and Labor Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–5004, Washington, DC 20210; phone (202) 693–4789.

Individuals with disabilities wishing to attend the meeting should contact Ms. Albertson no later than March 12, 2013, to obtain appropriate accommodations.

SUPPLEMENTARY INFORMATION: NAC meetings are open to the public on a first-come, first-served basis, as seating is limited. Attendees must present valid identification and will be subject to security screening to access the Department of Labor for the meeting.

Agenda: Agenda items will include an update and discussion on the implementation of the labor provisions of Free Trade Agreements, and a review and discussion by the full Committee of a Sub-Committee report on ILAB's research priorities.

Public Participation: Written data, views, or comments for consideration by the NAC on the agenda listed above should be submitted to Paula Church Albertson at the address listed above. Submissions received by March 12, 2013 will be provided to Committee members and will be included in the record of the meeting. The Committee may take comments or questions from members of the public which were not submitted in writing by March 12 if time permits.

Signed at Washington, DC, the 20th day of February 2013.

Carol Pier,

Acting Deputy Undersecretary, International Affairs.

[FR Doc. 2013–04385 Filed 2–25–13; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Access to Multiemployer Plan Information

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Access to Multiemployer Plan Information,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before March 28, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR is to extend, without change, existing disclosures that provide certain actuarial and financial information to multiemployer defined benefit pension plan participants and beneficiaries, employee representatives, and any employer that has an obligation to contribute to such a plan.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0131. The current approval is scheduled to expire on February 28, 2013; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on November 27, 2013 (77 FR 70828).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0131. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–EBSA.

Title of Collection: Access to Multiemployer Plan Information.

OMB Control Number: 1210–0131.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 2,826.

Total Estimated Number of Responses: 445,000.

Total Estimated Annual Burden Hours: 32,800.

Total Estimated Annual Other Costs Burden: $526,000.

Dated: February 20, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–04333 Filed 2–25–13; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before March 28, 2013.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202–693–9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: George F. Triebsch, Director, Office of Standards, Regulations and Variances. Persons delivering documents are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

(1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

(2) That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket No: M–2013–005–C.

Petitioner: Peabody Midwest Mining, LLC, Three Gateway Center, Suite 1500, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Francisco Mine Underground Pit, MSHA I.D. No. 12–02295, located in Gibson County, Indiana.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment may be used. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane

is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2013–006–C.

Petitioner: Peabody Midwest Mining, LLC, Three Gateway Center, Suite 1500, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Francisco Mine Underground Pit, MSHA I.D. No. 12–02295, located in Gibson County, Indiana.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining, by its nature and size and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment may be used. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in return airways will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air out of the return.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2013–007–C.

Petitioner: Peabody Midwest Mining, LLC, Three Gateway Center, Suite 1500, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Francisco Mine Underground Pit, MSHA I.D. No. 12–02295, located in Gibson County, Indiana.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines, it is necessary to determine the exact location and extent of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment may be used. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating

condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket No: M–2013–008–C.

Petitioner: Peabody Midwest Mining, LLC, Three Gateway Center, Suite 1500, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Gateway Mine, MSHA I.D. No. 11–02408, located in Randolph County, Illinois.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining, by its nature and size and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment may be used. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2013–009–C.

Petitioner: Peabody Midwest Mining, LLC, Three Gateway Center, Suite 1500, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Gateway Mine, MSHA I.D. No. 11–02408, located in Randolph County, Illinois.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining, by its nature and size and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment may be used. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in return airways will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

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(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air out of the return.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2013–010–C.

Petitioner: Peabody Midwest Mining, LLC, Three Gateway Center, Suite 1500, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Gateway Mine, MSHA I.D. No. 11–02408, located in Randolph County, Illinois.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines, it is necessary to determine the exact location and extent of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining, by its nature and size and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

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(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket No: M–2013–011–C.

Petitioner: Peabody Midwest Mining, LLC, Three Gateway Center, Suite 1500, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Wildcat Hills Underground Mine, MSHA I.D. No. 11–03156, located in Saline County, Illinois.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining, by its nature and size and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment may be used. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

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(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2013–012–C.

Petitioner: Peabody Midwest Mining, LLC, Three Gateway Center, Suite 1500, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Wildcat Hills Underground Mine, MSHA I.D. No. 11–03156, located in Saline County, Illinois.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining, by its nature and size and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

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(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air out of the return.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2013–013–C.

Petitioner: Peabody Midwest Mining, LLC, Three Gateway Center, Suite 1500, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Wildcat Hills Underground Mine, MSHA I.D. No. 11–03156, located in Saline County, Illinois.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines, it is necessary to determine the exact location and extent of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining, by its nature and size and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment may be used. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Dated: February 21, 2013.

George F. Triebsch,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2013–04370 Filed 2–25–13; 8:45 am]

BILLING CODE 4510–43–P

LIBRARY OF CONGRESS

United States Copyright Office

[Docket No. 2011–10]

Remedies for Small Copyright Claims: Third Request for Comments

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The United States Copyright Office is requesting public comment for the third time on the topic of adjudicating small copyright claims. The Office is studying whether and, if so, how the current legal system hinders or prevents copyright owners from pursuing copyright claims that have a relatively small economic value and will discuss, with appropriate recommendations, potential changes in administrative, regulatory, and statutory authority. At this time, the Office seeks additional comments on possible alternatives to the current system to improve the adjudication of such claims.

DATES: Comments are due April 12, 2013.

ADDRESSES: All comments are to be submitted electronically. A comment page containing a comment form is posted on the Office Web site at *http://www.copyright.gov/docs/smallclaims.* The Web site interface requires commenting parties to complete a form specifying name and organization, as applicable, and to upload comments as an attachment via a browser button. To meet accessibility standards, commenting parties must upload comments in a single file not to exceed six megabytes (MB) in one of the following formats: The Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The form and face of the comments must include both the name of the submitter and organization. The Office will post the comments publicly on the Office's Web site exactly as they

are received, along with names and organizations. If electronic submission of comments is not feasible, please contact the Office at 202–707–8350 for special instructions.

FOR FURTHER INFORMATION CONTACT: Jacqueline Charlesworth, Senior Counsel, Office of the Register, by email at *jcharlesworth@loc.gov* or by telephone at 202–707–8350; or Catherine Rowland, Senior Counsel, Office of Policy and International Affairs, by email at *crowland@loc.gov* or by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

At the request of Congress, the Copyright Office is conducting a study to assess whether and, if so, how the current legal system hinders or prevents copyright owners from pursuing copyright infringement claims that have a relatively small economic value (''small copyright claims'' or ''small claims''), and to recommend potential changes in administrative, regulatory, and statutory authority to improve the adjudication of such claims. To aid with this study, the Office has published two prior Notices of Inquiry seeking public comment, and the Office also has held public hearings on small copyright claims issues. The Office's first general Notice of Inquiry, published in the fall of 2011, generated numerous comments regarding the current environment in which small copyright claims are (or are not) pursued, and possible alternatives to address concerns about the current system. *See* the original Notice of Inquiry, 76 FR 66758 (Oct. 27, 2011), and comments received in response thereto, which are posted on the Copyright Office Web site, at *http://www.copyright.gov/docs/smallclaims/comments/*. The Copyright Office published a second Notice of Inquiry in the summer of 2012 that announced public hearings and set forth a list of specific topics relating to the small copyright claims process, which resulted in additional public comments. *See* the second Notice of Inquiry, 77 FR 51068 (Aug. 23, 2012), and comments received in response thereto, posted on the Copyright Office Web site, at *http://www.copyright.gov/docs/smallclaims/comments/noi_10112012/index.html*. Finally, in November 2012, the Office held two two-day public hearings on small copyright claims in New York City and Los Angeles, during which participants provided their views on the adjudication of small copyright claims.

At this time, the Copyright Office seeks additional comments regarding how a small copyright claims system might be structured and function, including from parties who have not previously addressed these issues, or those who wish to amplify or clarify their earlier comments, or respond to the comments of others. The Office is interested in additional comments about the potential benefits and risks of creating a new procedure for adjudicating small copyright claims, as well as how such a system might be implemented—for example, as a new adjudicative body, as part of the existing federal court system, by extending the jurisdiction of state courts, or as some form of arbitration or mediation system. Based on its review of previously submitted comments and statements at the public hearings, the Office in particular seeks further commentary on the specific subjects set forth below, as the Office believes they warrant further analysis.

While commenting parties may address any matter pertinent to the adjudication of small copyright claims, they should be aware that the Office has studied and will take into consideration the comments already received, so there is no need to restate previously submitted material. A party choosing to respond to this Notice of Inquiry need not address every topic below, but the Office requests that responding parties clearly identify and separately address those subjects for which a response is submitted.

II. Subjects of Inquiry

1. *Voluntary versus mandatory participation.* Stakeholders voiced opinions in their comments and at the Office's two public hearings regarding the benefits and risks of voluntary versus mandatory small copyright claim resolution systems. Specifically, members of the public expressed conflicting views concerning the efficacy of incentives for participation in a voluntary system and the constitutional implications of a mandatory system. The Office is interested in learning more about the feasibility and constraints of voluntary and mandatory systems, and how these alternatives might be implemented. Among other questions, the Office is interested in whether a voluntary system could be implemented on an ''opt out'' basis—that is, whether a properly served defendant might be deemed to consent to participate in the voluntary process unless he or she affirmatively opts out within a certain time frame. Some stakeholders suggested that such a framework might be helpful to address the problem of alleged infringers who fail to respond to notices of infringement and thus might also be unlikely to respond to notice of a lawsuit.

2. *Eligible works.* The previous round of comments and public hearings explored the issue of what types of works should be covered by a small copyright claims process; that is, whether the procedure should cover only certain types of copyrighted works, such as photographs, illustrations, and textual works, or should cover all types of works. For example, certain music organizations proposed that musical works and sound recordings be excluded from the process (at least for the time being) as, in their view, music publishers, performing rights societies, and record companies already adequately address small copyright claims on behalf of the songwriters and recording artists they represent. At the same time, others pointed out that some songwriters and recording artists—for example, those who are self-represented—may not have access to such resources and, even if they are represented through a larger organization, may not be successful in convincing that organization to take legal action. The Office invites further comment on whether musical works, sound recordings, or any other type of copyrighted work should be excluded from the small claims process and, if so, how it might impact individual and small copyright owners of that type of work.

3. *Permissible claims.* Some of the comments and public hearing participants analyzed what types of claims should be eligible for the small copyright claims process. These comments and discussions raised questions regarding how to define what claims might or might not be amenable to the small copyright claims procedure. While it seems clear that a copyright small claims tribunal would address infringement matters, some infringement claims are intertwined with other issues, such as contractual or ownership disputes, thus suggesting a need for any such tribunal to address these additional types of claims and defenses as well. Some commenters indicated that plaintiffs should be limited to asserting infringement claims, with contractual or ownership issues to be adjudicated only when raised as defenses. Others suggested that certain types of issues, such as ownership disputes, should be excluded from the small claims process altogether. The Office is interested in further thoughts on the types of claims that should be included in a small copyright claims process and how the system might address situations where an allegedly

infringing act implicates an additional cause of action or defense, such as breach of contract, an ownership issue, a trademark violation, or some other claim.

4. *Injunctive relief.* In the comments and during the public hearings, some stakeholders argued strongly that any small claims system should include the possibility of injunctive relief to end infringing behavior, including in situations where the infringing conduct exploits the work in a manner that the copyright owner would not license, or violates an exclusive arrangement between the copyright owner and a third party. However, others noted that injunctive relief could be a complicated undertaking in a small claims context, partly if the unauthorized use is but one part of a larger work such as a film, book, or sound recording. It was suggested that in such a case, a plaintiff's monetary damages might be small but the economic consequences of an injunction may be considerably larger, perhaps exceeding in value any damages cap adopted for the small claims process. Stakeholders expressed differing views as to whether injunctive relief should be available through a small claims system and, if so, how the nature or scope of such relief might be tailored to the small claims context. Particular concerns raised in the comments and at the hearings included: whether preliminary injunctive relief is compatible with a small claims process; the procedural safeguards that would adequately protect parties against whom injunctive relief was sought; whether injunctive relief awarded through the small claims process should be reviewable by an Article III court; and whether Article III review would be a practical alternative for parties of limited means. A related consideration is how the question of injunctive relief might be affected by whether the small claims process is voluntary or mandatory. The Office welcomes additional thoughts on these issues.

5. *Secondary liability.* Although much of the public commentary and discussion of small copyright claims has focused on direct infringement, it has also touched upon issues of secondary liability, including the relationship of a small claims procedure to the notice and takedown requirements of Section 512 of the Copyright Act, 17 U.S.C. 512. The Office is interested in further views concerning the intersection of a small claims process with Section 512 and, more generally, any recommended approaches to claims of contributory and vicarious infringement within the small claims context.

6. *Role of attorneys.* Written comments and discussion at the two hearings revealed a range of opinions as to the role of attorneys in a small copyright claims system. Some believe attorneys should be excluded from the proceedings as the ability to retain counsel would tend to favor defendants with greater resources over small copyright owner plaintiffs who are compelled to proceed *pro se.* Other commenters believe that access to legal representation would be important to both sides—especially in cases with a degree of legal complexity—and the system should be designed to encourage attorneys to take lower-value cases by offering fee awards. It was further suggested that such fee awards might be capped to reflect the streamlined procedures and lower recoveries of a small claims process. The Office welcomes further consideration of these issues.

7. *Guiding law.* If the small claims tribunal was to be centrally located (or even if it were in multiple locations), what decisional law should it follow? In addition to the United States Supreme Court, should it look primarily to copyright decisions of any particular circuit—for example, based upon its location, the location of the infringing conduct, or the location of the parties? Should its own decisions have any precedential effect, at least with respect to future decisions of the small claims tribunal? In this regard, some expressed the concern that if small claims decisions had effect beyond the immediate dispute, defendants might be inclined to opt out of a voluntary system. The Office invites further thoughts on the decisional law that should guide the small claims tribunal.

8. *Willful and innocent infringement.* At the hearings, it was suggested by some that a small claims process should not include a potential finding of willfulness, in part because it could be more difficult to establish the appropriate evidentiary record to support such a finding under a streamlined procedure. In addition, a damages cap for small copyright claims appreciably below the existing $150,000 maximum in statutory damages for willful infringement—for example, a ceiling of $30,000, as has been suggested by some—would limit the economic significance of a willfulness finding. *See* 17 U.S.C. 504(c)(2). If the willfulness element were to be eliminated in the small claims context, a question also arises as to whether the ''innocent infringer'' distinction—which permits a court to reduce statutory damages to as low as $200 for a defendant who was not aware and had no reason to believe his or her actions were infringing—should remain. *See id.* Should the small claims procedure eliminate distinctions as to the nature of the infringement, along with their potential impact on damages awards?

9. *Service of process.* At the hearings, participants shared views on how potential small claims defendants might be notified of the action. A particular concern is that copyright owners of limited means may have difficulty effectuating traditional service on distant or elusive defendants. It was suggested that Federal Rule of Civil Procedure 4, including the provision that permits a defendant to be notified of an action by mail or other means via a waiver of formal service of process, could be appropriate for the small claims system. *See* Fed. R. Civ. P. 4. It was also suggested that a Web site might properly be served by sending electronic notice to an agent designated to receive notifications of infringement pursuant to Section 512 of the Copyright Act. *See* 17 U.S.C. 512(c)(2). In addition, it was observed that the small claims tribunal might handle service of defendants, as is sometimes the case in other contexts (including in some state courts). The Office seeks further comments on potential procedures to notify defendants that an action has been filed.

10. *Offers of judgment.* Some commenters have suggested that a process such as that contemplated by Federal Rule of Civil Procedure 68—which allows a defendant to make an offer of judgment and recover certain costs if the plaintiff rejects the offer and fails to obtain a more favorable outcome—could play a useful role in the small claims setting. *See* Fed. R. Civ. P. 68. Others feel that once a plaintiff has filed an action, pretrial settlement procedures would merely delay the process in most cases. The Office is interested in additional comments as to whether and how a mechanism akin to Rule 68 might be useful in the small claims context.

11. *Default judgments.* Current federal district court procedures allow a plaintiff to seek default judgments if a lawfully served defendant fails to appear. The Office is interested in whether such a procedure should be available in a small copyright claim proceeding. If plaintiffs are able to seek default judgments, what are the procedural safeguards that should apply, what type of remedies should be available, and what type of showing should be required to justify relief?

12. *Enforceability of judgments.* A primary concern of commenters and participants at the small claims hearings is that a small claims judgment—in

particular one rendered through a voluntary system—should be enforceable. In addition to monetary damages, such a judgment might include some form of injunctive relief. Participants offered a range of suggestions on the matter of enforcement. Some indicated that the Federal Arbitration Act, 9 U.S.C. 1 *et seq.,* might to some degree serve as a model for obtaining an enforceable federal court judgment following adjudication by the small claims tribunal. Participants also commented on the practical aspects of collecting on judgments. Noting that the challenges of enforcing a judgment, once obtained, are not unique to the copyright context, some suggested that successful small claims plaintiffs could avail themselves of existing federal and state court procedures. The Office welcomes further discussion of existing or potential mechanisms that successful plaintiffs might employ to enforce small claims judgments without incurring prohibitive costs.

13. *Unknown defendants.* Some hearing participants observed that in many instances—especially in the case of internet-based infringement—the infringer's identity may not be known and/or the infringer may be difficult to locate. Web sites may lack usable contact data and/or may be registered anonymously. Should the small claims procedure permit parties to pursue claims against ''John Doe'' defendants, including, when appropriate, the means to subpoena an internet service provider to learn the identity and location of such a defendant? The Office invites comments on how such a process might work, with reference to existing practices in other courts as appropriate.

14. *Multiple tracks or proceedings.* During the hearings, some participants discussed the possibility of having more than one type of small copyright claims proceeding—a highly simplified process for straightforward claims with perhaps only a few hundred or few thousand dollars at stake, and a more robust process for matters of greater complexity or economic consequence that are still too small to be practically pursued in federal district court. Stakeholders considered whether, even within the small claims context, there should be a greater amount of discovery and procedure in certain types of cases, for example, when an injunction is sought. The Office seeks further comment on whether a tiered system would be desirable, or whether a single, unified approach to small claims is the better alternative, perhaps with the possibility of developing additional ''tracks'' over time if warranted.

15. *Constitutional issues.* The Office continues to be interested in learning more about the constitutional impact of any small copyright claims procedure. Thus, the Office requests additional comments on whether a small copyright claims system might implicate any one or more of the following constitutional concerns—or any other constitutional issue—and, if so, how the particular concern might be addressed:

a. Separation of powers questions arising from the creation of specialized tribunals outside of the Article III framework, including how a right of review by an Article III court might impact the analysis;

b. The Seventh Amendment right to have a copyright infringement case tried by a jury, as confirmed in *Feltner* v. *Columbia Pictures Television, Inc.,* 523 U.S. 340 (1998);

c. Constitutional requirements for a court's assertion of personal jurisdiction, in particular when adjudicating claims of a defendant located in another state; and/or

d. Due process considerations arising from abbreviated procedures that impose limitations on briefing, discovery, testimony, evidence, appellate review, etc.

16. *International issues.* At the public hearings, some participants sought to ensure that the small claims procedure would be available to foreign plaintiffs seeking redress for infringing activity in the United States, as well as to U.S. plaintiffs seeking to take action against foreign defendants, as is permitted under the existing federal system. The operation of a small copyright claims system could have implications for the United States' rights and responsibilities under the Berne Convention, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and other instruments. The Office welcomes additional comments on the international implications of a small claims system, including how the voluntary or mandatory nature of such a system might affect the analysis.

17. *Empirical data.* Previous comments provided helpful empirical data relevant to the adjudication of small copyright claims, including surveys by the American Bar Association Section on Intellectual Property Law and the Graphic Artists Guild. The Office welcomes additional surveys and empirical studies bearing upon:

a. Whether copyright owners are or are not pursuing small infringement claims through the existing federal court process, and the factors that influence copyright owners' decisions in that regard, including the value of claims pursued or forgone;

b. The overall cost to a plaintiff and/or a defendant to litigate a copyright infringement action to conclusion in federal court, including costs and attorneys' fees, discovery expenditures, expert witness fees and other expenses (with reference to the stage of proceedings at which the matter was concluded);

c. The frequency with which courts award costs and/or attorneys' fees to prevailing parties pursuant to 17 U.S.C. 505, and the amount of such awards in relation to the underlying claim or recovery; and/or

d. The frequency with which litigants decline to accept an outcome in state small copyright claims court and seek *de novo* review (with or without a jury trial) or file an appeal in a different court.

Parties considering the submission of additional survey or empirical data may wish to review the studies mentioned above, which are available at *http://www.copyright.gov/docs/smallclaims/.*

18. *Other issues.* Please comment on any other issues the Copyright Office should consider in conducting its small copyright claims study.

Dated: February 20, 2013.

Maria A. Pallante,

Register of Copyrights.

[FR Doc. 2013–04466 Filed 2–25–13; 8:45 am]

BILLING CODE 1410–30–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0038]

Electric Power Research Institute; Seismic Evaluation Guidance

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Endorsement letter; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an endorsement letter with clarifications of Electric Power Research Institute (EPRI)-1025287, ''Seismic Evaluation Guidance: Screening, Prioritization and Implementation Details (SPID) for the Resolution of Fukushima Near-Term Task Force Recommendation 2.1: Seismic,'' Revision 0, hereafter referred to as the SPID report. This SPID report provides guidance and clarification of an acceptable approach to assist nuclear power reactor licensees when responding to the NRC staff's request for information dated March 12, 2012, Enclosure 1, ''Recommendation 2.1: Seismic.'' The NRC staff's endorsement

letter includes additional clarifications on the: (1) Use of the Individual Plant Examination of External Events (IPEEE) submittals for screening purposes; (2) development of foundation input response spectra (FIRS) consistent with the site response used in the development of the site-specific ground motion response spectrum (GMRS); (3) updating the seismic source models; and (4) development of the site response.

ADDRESSES: You may access information related to this document, which the NRC possesses and is publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2013–0038.

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0038. 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 NRC staff's endorsement letter is available under ADAMS Accession No. ML12319A074. The NRC staff's request for information dated March 12, 2012, Enclosure 1, ''Recommendation 2.1: Seismic'' is available under ADAMS Accession No. ML12053A340.
- *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, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mrs. Lisa M. Regner, Japan Lessons-Learned Project Directorate, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1906; email: *Lisa.Regner@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background Information

The endorsement letter for the SPID report is being issued to the public to describe guidance that is acceptable for responding to the request to reevaluate seismic hazards at operating reactor sites, as discussed in Enclosure 1 ''Recommendation 2.1: Seismic,'' of the NRC staff's request for information (RFI), ''Request for Information Pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50.54(f) Regarding Recommendations 2.1, 2.3, and 9.3, of the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident,'' dated March 12, 2012.

The NRC issued the RFI following the NRC staff's evaluation of the earthquake and tsunami, and resulting nuclear accident, at the Fukushima Dai-ichi nuclear power plant in March 2011. Enclosure 1 to the RFI requests licensees and holders of construction permits under 10 CFR Part 50, to reevaluate the seismic hazards at their sites using present-day NRC requirements and guidance, and identify actions taken or planned to address plant-specific vulnerabilities associated with the updated seismic hazards. Based on this information, the NRC staff will determine whether additional regulatory actions are necessary to protect against the updated hazards. The principal purpose of the SPID report is to provide guidance for responding to the RFI by describing strategies for screening, prioritization, and potential interim actions, as well as implementation guidance for the risk evaluation that are acceptable to the NRC staff.

Basis for Endorsement

The NRC staff interacted with the stakeholders on development of the SPID report with a focus on screening, prioritization, and implementation details as they relate to performing a seismic reevaluation. The SPID report is the product of significant interaction between the NRC, Nuclear Energy Institute, EPRI, and other stakeholders at over fifteen public meetings [1] over a 9-month period. These interactions and the insights gained from the meetings allowed for the development of this document in a very short time frame. The meetings helped develop the expectations for how licensees would perform plant evaluations after having updated their seismic hazard information. At each meeting, the NRC staff provided its comments on the current version of the SPID report and discussed with stakeholders subsequent proposed revisions to the document. This iterative process, over several months, resulted in the final version of the document. The NRC staff's endorsement of the SPID report, subject to the additional guidance noted below, is based on this cumulative development process resulting from the extensive interactions between stakeholders and the NRC staff.

The NRC staff has reviewed the SPID report and confirmed that it would provide licensees with the guidance necessary to perform seismic reevaluations and report the results to the NRC in a manner that will address the Requested Information items (1) through (9) in Enclosure 1 of the 50.54(f) letter. The SPID report is intended to provide sufficient guidance for all sites, however, each site is unique and requirements for analysis can vary. In cases where the SPID report may not account for the unique characteristics of a site, prudent and sound engineering judgment should be employed to assure all issues bearing on the hazard and risk evaluations are adequately addressed. Instances when unique site characteristics require such engineering judgment, or require analysis that is not included in the SPID report, should be clearly identified, along with the measures taken to assure the unique site characteristics are appropriately addressed. Although the NRC staff finds that the performance and reporting of the seismic reevaluation in accordance with this document would be responsive to the 50.54(f) letter, there are four further issues described below for which the staff provides additional guidance. These issues are: (1) The use of the IPEEE submittals for screening purposes; (2) development of FIRS consistent with the site response used in the development of the site-specific GMRS; (3) updating the seismic source models; and (4) development of the site response.

Use of IPEEE for Screening

Section 3.3 of the EPRI guidance document provides the criteria used to determine if the licensee's previous IPEEE submittal is adequate to use for screening purposes. A seismic assessment performed as part of the IPEEE program that demonstrates a plant capacity that is higher than the new GMRS can be used to screen out plants, provided they meet certain adequacy criteria.

Each licensee has the option of demonstrating the adequacy of its previous IPEEE submittal for screening purposes as part of its response to the 50.54(f) letter. The NRC staff will review each submittal and determine whether the provided information demonstrates the adequacy of the IPEEE analysis and risk insights. The licensee's description of each of the adequacy criteria, described in Section 3.3 of the SPID report, will be reviewed by the NRC staff in its integrated totality, rather than using a pass/fail approach. As such,

[1] Public meetings were held on March 1–2, April 2–3, May 15–16, June 14, July 24–25, August 16 and 30, September 11 and 21, October 9 and 18, November 5, 9, 14, 20, and 26, 2012.

even if one or more of the criteria are not deemed to be adequate, the NRC staff may still decide that the overall IPEEE analysis is adequate to support its use for screening purposes. The NRC staff may conduct site visits to view IPEEE documentation referenced in support of the IPEEE adequacy submittal.

Development of FIRS

The SPID report does not discuss the development of FIRS used for performing soil-structure interaction analyses. Consistent with guidance described in DC/COL–ISG–017, ''Ensuring Hazard-Consistent Seismic Input for Site Response and Soil Structure Interaction Analyses,'' the FIRS should be derived in a manner consistent with the site response used in the development of the site-specific GMRS. As such, the FIRS should be derived as performance-based site-specific response spectra at the foundation level in the free field. The starting point for development of the FIRS should be the same hard rock elevation used as the starting point for developing the GMRS. As the engineering properties of soil are strain-dependent and can be highly non-linear, the characterization of soil layers and their associated properties used in the GMRS analysis should also be used for the derivation of the site-specific FIRS at the foundation elevation. The performance-based FIRS can be developed using either a full-column outcrop motion that includes the effect of the soil above, or as a geologic outcrop motion for which the soil layers above the foundation elevation have been removed.

Updating the Central and Eastern United States (CEUS)-Seismic Source Characterization (SSC) Model

Section 2.2 of the SPID report provides an overview of the CEUS–SSC model and explains why it is appropriate to use without update for the seismic reevaluations. Specifically, Section 2.2 states ''for site-specific licensing applications or site-specific safety decisions, these seismic sources would be reviewed on a site-specific basis to determine if they need to be updated. Such evaluations would be appropriate in a licensing application, where focus could be made on site-specific applications. However, for a screening-level study of multiple plants for the purpose of setting priorities, the use of these seismic sources as published is appropriate.''

The NRC staff agrees that the CEUS–SSC model does not need to be updated for the seismic reevaluations, but the staff's rationale is different than that presented in the SPID report. Specifically, the staff has determined that the CEUS–SSC model does not need to be updated because the model is up-to-date and is sufficiently refined to allow a site-specific source model to be developed. To adequately respond to the 50.54(f) letter, a site-specific GMRS should be calculated for each plant so that an informed decision can be made regarding which plants will be required to complete a risk evaluation. Further, the site-specific GMRS will also be used in the risk evaluations.

Prior to issuing the CEUS–SSC model, the Technical Integration Team considered potentially significant events (such as the 2011 Mineral, VA earthquake) that had occurred after the model was developed, and determined that those events did not change their interpretations of seismic sources or earthquake recurrence rates. If a significant earthquake in the CEUS were to occur or new information were to emerge during the reevaluation period that could require an update of the CEUS–SSC model, the staff expects licensees to evaluate the significance of the new information to determine if the CEUS–SSC model needs to be updated in order to appropriately respond to the 50.54(f) request.

Site Response

Section 2.4.1 and Appendix B of the SPID report provides guidance on how to develop the site response in cases where limited site response data exists. As stated in Appendix B, the NRC staff expects licensees to use available geologic, geotechnical, and geophysical data collected during the initial licensing or subsequent activities at the site to the extent practicable. Where limited site response data exists, information from core borings and data collected from site and regional evaluations should be used to develop the site response amplification. Section 4 of the SPID report states that licensees should provide the basis for the site responses used in the reevaluations. The NRC staff expects site-specific geology, geotechnical, and geophysical information to be a significant part of the basis.

Non-Concurrence

An NRC staff member did not agree with some content of the SPID report and submitted a non-concurrence on the SPID endorsement letter. In accordance with the NRC's non-concurrence process, NRC management and staff worked to address the staff member's concerns, and documentation of the non-concurrence can be found in ADAMS at Accession No. ML12324A195.

60-Day Response

In accordance with the 50.54(f) letter, each licensee is to submit to the NRC its intention to follow the NRC-endorsed seismic reevaluation guidance, or an alternative approach, 60 days after the issuance of the NRC-endorsed guidance. For the purpose of meeting this deadline, the 60-day response period commences on the date the endorsement letter is published in the **Federal Register**.

Backfitting and Issue Finality

This endorsement letter does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' of 10 CFR. This endorsement letter provides guidance on an acceptable method for implementing the March 12, 2012, RFI. Applicants and licensees may voluntarily use the guidance in the SPID report, as clarified by the NRC staff in the endorsement letter, to comply with the RFI. Methods, analyses, or solutions that differ from those described in the SPID report may be deemed acceptable if they provide sufficient basis and information for the NRC staff to verify that the proposed alternative is acceptable.

Congressional Review Act

This endorsement letter is a rule as designated in the Congressional Review Act (5 U.S.C. 801–808). The Office of Management and Budget has found that this is a major rule in accordance with the Congressional Review Act.

Dated at Rockville, Maryland, this 15th day of February 2013.

For the Nuclear Regulatory Commission.

David L. Skeen,

Director, Japan Lessons-Learned Project Directorate, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–04396 Filed 2–25–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission, [NRC–2013–0001].

DATES: Weeks of February 25, March 4, 11, 18, 25, April 1, 2013.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of February 25, 2013

There are no meetings scheduled for the week of February 25, 2013.

Week of March 4, 2013—Tentative

There are no meetings scheduled for the week of March 4, 2013.

Week of March 11, 2013—Tentative

There are no meetings scheduled for the week of March 11, 2013.

Week of March 18, 2013—Tentative

There are no meetings scheduled for the week of March 18, 2013.

Week of March 25, 2013—Tentative

There are no meetings scheduled for the week of March 25, 2013.

Week of April 1, 2013—Tentative

Tuesday April 2, 2013

9:30 a.m. Meeting With Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: Cindy Flannery, 301–415–0223)

This meeting will be Webcast live at the Web address—*www.nrc.gov.*

* * * * *

* 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: February 20, 2013.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2013–04511 Filed 2–22–13; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Project No. 753; NRC–2012–0280]

Models for Plant-Specific Adoption of Technical Specifications Task Force Traveler TSTF–535, Revision 0, ''Revise Shutdown Margin Definition To Address Advanced Fuel Designs,'' Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the availability of Technical Specifications (TSs) Task Force (TSTF) Traveler TSTF–535, Revision 0, ''Revise Shutdown Margin Definition to Address Advanced Fuel Designs,'' for plant-specific adoption using the Consolidated Line Item Improvement Process (CLIIP). Additionally, the NRC staff finds the proposed TS (Volume 1) and TS Bases (Volume 2) changes in Traveler TSTF–535 acceptable for inclusion in the following Standard Technical Specifications (STS): NUREG–1433, ''Standard Technical Specifications General Electric Plants BWR/4,'' and NUREG–1434, ''Standard Technical Specifications General Electric Plants, BWR/6.''

ADDRESSES: Please refer to Docket ID NRC–2012–0280 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 are publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0280. 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. TSTF–535, Revision 0, includes a model application and is available in ADAMS under Accession No. ML112200436. The model safety evaluation (SE) of TSTF–535, Revision 0, is available under ADAMS Accession No. ML12355A772. No public comments were received from the Notice of Opportunity for Public Comment announced in the **Federal Register** on November 19, 2012; 77 FR 69507.
- *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: Ms. Michelle C. Honcharik, Senior Project Manager, telephone: 301–415–1774 or email at *Michelle.Honcharik@nrc.gov;* or Mr. Ravinder Grover, Reactor Systems Engineer, telephone: 301–415–2166 or email at *Ravinder.Grover@nrc.gov*. Both of the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001.

Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the OMB Office of Information and Regulatory Affairs.

SUPPLEMENTARY INFORMATION: TSTF–535, Revision 0, is applicable to all boiling water reactor (BWR) power plants. The change revises the STS, NUREG–1433, ''Standard Technical Specifications General Electric Plants BWR/4,'' and NUREG–1434, ''Standard Technical Specifications General Electric Plants, BWR/6.'' Specifically, the change revises the STS definition of shutdown margin (SDM) to require calculation of SDM at the reactor moderator temperature corresponding to the most reactive state throughout the operating cycle (68 °F or higher). The purpose is to address newer BWR fuel designs, which may be more reactive at shutdown temperatures above 68 °F. This STS improvement is part of the CLIIP.

The NRC staff has reviewed the model application for TSTF–535 and has found

it acceptable for use by licensees. Licensees opting to apply for this TS change are responsible for reviewing the NRC's staff SE and the applicable technical bases, providing any necessary plant-specific information, and assessing the completeness and accuracy of their license amendment request (LAR). The NRC will process each amendment application responding to the Notice of Availability according to applicable NRC rules and procedures.

The change does not prevent licensees from requesting an alternate approach or proposing changes other than those proposed in TSTF–535, Revision 0. However, significant deviations from the approach recommended in this notice or the inclusion of additional changes to the license will require additional NRC staff review. This may increase the time and resources needed for the review or result in NRC staff rejection of the LAR. Licensees desiring significant deviations or additional changes should instead submit an LAR that does not claim to adopt TSTF–535, Revision 0.

Dated at Rockville, Maryland, this 14th day of February 2013.

For the Nuclear Regulatory Commission.

Anthony J. Mendiola,

Chief, Licensing Processes Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–04397 Filed 2–25–13; 8:45 am]

BILLING CODE 7590–01–P

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

[Notice-PCLOB–2013–01; Docket No. 2013–0004; Sequence No. 1]

No FEAR Act Notice; Notice of Rights and Protections Available Under Federal Antidiscrimination and Whistleblower Protection Laws

AGENCY: Privacy and Civil Liberties Oversight Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, the Privacy and Civil Liberties Oversight Board is providing notice to its employees, former employees, and applicants for Board employment about the rights and remedies available to them under the federal anti-discrimination, whistleblower protection, and retaliation laws.

FOR FURTHER INFORMATION CONTACT: Claire McKenna, Legal Counsel, at 202–366–0365 or *claire.mckenna.pclob@dot.gov*.

SUPPLEMENTARY INFORMATION: On May 15, 2002, Congress enacted the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, Public Law 107–174, also known as the No FEAR Act. The Act requires that federal agencies provide notice to their employees, former employees, and applicants for employment to inform them of the rights and protections available under federal anti-discrimination, whistleblower protection, and retaliation laws.

Anti-Discrimination Laws

A federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions, or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status, or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 2 U.S.C. 791, and 42 U.S.C. 2000e-16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin, or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. This timeline may be extended by the Board under the circumstances described in 29 CFR 1614.105(a)(2). If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through the Board's administrative or negotiated grievance procedures, if such procedures apply and are available.

Whistleblower Protection Laws

A federal employee with authority to take, direct others to take, recommend, or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule, or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosures of such information is specifically prohibited by law and such information is specifically required by executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC–11) with the U.S. Office of Special Counsel at 1730 M Street NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site, *http://www.osc.gov*.

Retaliation for Engaging in Protected Activity

A federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim or retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws section or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under existing laws, each agency retains the right, where appropriate, to discipline a federal employee for conduct that is inconsistent with the Federal Antidiscrimination and Whistleblower Protection Laws up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, agencies must seek approval from OSC to discipline employees for, among other activities, engaging in prohibited retaliation, 5 U.S.C. 1214(f). Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a federal employee or to

violate the procedural rights of a federal employee who has been accused of discrimination.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR 724, as well as the appropriate Board offices. Additional information regarding federal antidiscrimination laws can be found at the EEOC Web site, *http://www.eeoc.gov*, and the OSC Web site, *http://www.osc.gov*.

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the No FEAR Act nor this notice creates, expands, or reduces any rights otherwise available to any employee, former employee, or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Dated: February 21, 2013.

Claire McKenna,

Legal Counsel, Privacy and Civil Liberties Oversight Board.

[FR Doc. 2013–04467 Filed 2–25–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Appendix F to Rule 15c3–1; SEC File No. 270–440, OMB Control No. 3235–0496.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Appendix F to Rule 15c3–1 (''Appendix F'' or ''Rule 15c3–1f'') (17 CFR 240.15c3–1f) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Appendix F requires a broker-dealer choosing to register, upon Commission approval, as an OTC derivatives dealer to develop and maintain an internal risk management system based on Value-at-Risk (''VaR'') models. It is anticipated that a total of four (4) broker-dealers registering as OTC derivatives dealers will spend 1,000 hours on a one-time basis complying with the system development requirements of Rule 15c3–1f, for an estimated one-time initial startup burden of approximately 4,000 hours. Appendix F also requires the OTC derivatives dealer to maintain its system model according to certain prescribed standards. It is anticipated that a total of eight (8) broker-dealers will spend 1,000 hours per year maintaining the system model required by Rule 15c3–1f, for an estimated recurring annual burden of approximately 8,000 hours. Thus, the total industry-wide burden is estimated to be approximately 12,000 hours (4,000 hours + 8,000 hours) for the first year and 8,000 hours for each subsequent year.[1]

The records required to be kept pursuant to Appendix F and results of periodic reviews conducted pursuant to Rule 15c3–4 generally must be preserved under Rule 17a–4 of the Exchange Act (17 CFR 240.17a–4) for a period of not less than three years, the first two years in an easily accessible place. The Commission will not generally publish or make available to any person notices or reports received pursuant to the Rule. The statutory basis for the Commission's refusal to disclose such information to the public is the exemption contained in Section (b)(4) of the Freedom of Information Act (5 U.S.C. 552), which essentially provides that the requirement of public dissemination does not apply to commercial or financial information which is privileged or confidential.

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 PRA that does not display a valid OMB control number.

The public may view background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, 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*. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 20, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–04367 Filed 2–25–13; 8:45 am]

BILLING CODE 8011–01–P

[1] The Commission estimates that a total of eight entities will be registered as OTC derivatives dealers at the end of the next three years, consisting of the four current OTC derivatives dealers and four anticipated registrants. This is in contrast with the prior estimate of five OTC derivatives dealers, consisting of four current OTC derivatives dealers and one anticipated registrant.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 17g–4; SEC File No. 270–566, OMB Control No. 3235–0627.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17g–4 (17 CFR 240.17g–4) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

The Credit Rating Agency Reform Act of 2006 added a new section 15E, ''Registration of Nationally Recognized Statistical Rating Organizations,''[1] to the Exchange Act. Pursuant to the authority granted under section 15E of the Exchange Act, the Commission adopted Rule 17g–4, which requires that a nationally recognized statistical rating organization (''NRSRO'') establish, maintain, and enforce written policies and procedures to prevent the misuse of material nonpublic information, including policies and procedures reasonably designed to prevent: (a) The inappropriate dissemination of material nonpublic information obtained in connection with the performance of credit rating services; (b) a person within the NRSRO from trading on material nonpublic information; and (c) the inappropriate dissemination of a pending credit rating action.[2]

[1] 15 U.S.C. 78o–7.

[2] *See* 17 CFR 240.17g–4; Release No. 34–55231 (Feb. 2, 2007), 72 FR 6378 (Feb. 9, 2007); Release No. 34–55857 (June 5, 2007), 72 FR 33564 (June 18, 2007).

There are 10 credit rating agencies registered with the Commission as NRSROs under section 15E of the Exchange Act, which have already established the policies and procedures required by Rule 17g–4. Based on staff experience, an NRSRO is estimated to spend an average of approximately 10 hours per year reviewing its policies and procedures regarding material nonpublic information and updating them (if necessary), resulting in an average industry-wide annual hour burden of approximately 100 hours.[3]

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 PRA that does not display a valid OMB control number.

Background documentation for this information collection may be viewed at the following Web site: *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, 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*. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 20, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–04366 Filed 2–25–13; 8:45 am]

BILLING CODE 8011–01–P

[3] 10 currently registered NRSROs × 10 hours = 100 hours.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68959; File No. SR–NYSEArca–2013–17]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending Its Rules To Reflect the Merger of NYSE Arca Holdings, Inc., an Intermediate Holding Company, Into and With NYSE Group, Inc., Thereby Eliminating NYSE Arca Holdings, Inc. From the Ownership Structure of the Exchange

February 20, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 7, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to reflect the merger of NYSE Arca Holdings, Inc. (''NYSE Arca Holdings''), an intermediate holding company, into and with NYSE Group, Inc. (''NYSE Group''), thereby eliminating NYSE Arca Holdings from the ownership structure of the Exchange. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules to reflect the merger of NYSE Arca Holdings, an intermediate holding company, into and with NYSE Group, thereby eliminating NYSE Arca Holdings from the ownership structure of the Exchange.

Currently, NYSE Arca Holdings owns 100% of the equity interest of the Exchange. NYSE Group owns 100% of the equity interest of NYSE Arca Holdings, as well as 100% of the equity interest of NYSE Arca's affiliates, New York Stock Exchange LLC (''NYSE'') and NYSE MKT, LLC (''NYSE MKT''). NYSE Euronext owns 100% of the equity interest of NYSE Group.

NYSE Euronext intends to merge NYSE Arca Holdings with and into NYSE Group, effective following approval of this proposed rule change. The reason for the merger is to eliminate an unnecessary intermediate holding company. Following the merger, the Exchange would be 100% owned by NYSE Group (as its two affiliate exchanges, NYSE and NYSE MKT, are), and NYSE Group would continue to be 100% owned by NYSE Euronext.

Article 9 of the Second Amended and Restated Certificate of Incorporation of NYSE Arca Holdings, Inc. (''NYSE Arca Holdings Certificate'') imposes certain ownership and voting restrictions on the shares of NYSE Arca Holdings for so long as it directly or indirectly controls the Exchange. In addition, Section 3.15 of the Amended and Restated NYSE Arca Holdings, Inc. Bylaws (''NYSE Arca Holdings Bylaws'') provides that for so long as NYSE Arca Holdings controls the Exchange, the Board of Directors, officers, employees and agents of NYSE Arca Holdings shall give due regard to the preservation of the independence of the self-regulatory function of the Exchange and all books and records of the Exchange reflecting confidential information pertaining to the self-regulatory function of the Exchange shall be retained in confidence and not be used for any non-regulatory purposes. Pursuant to Section 7.04 of the NYSE Arca Holdings Bylaws, NYSE Arca Holdings and its officers, directors, employees, and agents are subject to the jurisdiction of the Securities and Exchange Commission (the ''Commission'').

NYSE Group's Second Amended and Restated Certificate of Incorporation of NYSE Group, Inc. (''NYSE Group Certificate'') already contains

comparable provisions. Under Article IV, Section 4(b) of the NYSE Group Certificate, similar ownership and voting restrictions apply to shares of NYSE Group to the extent that the Exchange and NYSE Arca Equities, Inc. (''NYSE Arca Equities''), its wholly owned subsidiary, continue to be controlled directly or indirectly by NYSE Group. In addition, Article XI, Section 3 of the NYSE Group Certificate provides that NYSE Group and its directors, officers, and employees shall give due regard to the preservation of the independence of the self-regulatory function of the Exchange and NYSE Arca Equities. Under Article X of the NYSE Group Certificate, NYSE Group's books and records relating to the Exchange and NYSE Arca Equities must be maintained within the United States and all confidential information in such books and records must be retained in confidence,[4] and under Article IX of the NYSE Group Certificate, NYSE Group's directors and officers already are subject to the jurisdiction of the Commission.

Thus, the Exchange proposes to delete in its entirety the text of the NYSE Arca Holdings Certificate and the NYSE Arca Holdings Bylaws.[5] The Exchange also proposes conforming amendments to its rules and the NYSE Arca Bylaws. First, the Exchange proposes to delete the heading for and text of NYSE Arca Rule 1.1(ff), which provides a definition of NYSE Arca Holdings, and mark it ''Reserved.''[6]

Second, the Exchange proposes to amend Section 2.01 of the NYSE Arca Bylaws, which describes the Exchange as a non-stock corporation with one member, NYSE Arca Holdings, which is defined as the ''Holding Member.'' Section 2.01 would be amended to replace the reference to NYSE Arca Holdings with a reference to NYSE Group, thus designating it as the Holding Member for purposes of the NYSE Arca Bylaws.

Third, certain other references to ''Holding Member'' in the NYSE Arca Bylaws would be amended. Sections 2.02, 2.04, and 2.05 of the NYSE Arca Bylaws set forth provisions for scheduling meetings of the Holding Member and the presiding officer and secretary for such meetings. Articles II and III of the Second Amended and Restated Bylaws of NYSE Group include provisions for meetings of NYSE Group's stockholders and Board of Directors, respectively. The operating agreements of the Exchange's affiliates, NYSE and NYSE MKT, do not contain provisions relating to annual meetings of NYSE Group.[7] As such, the text of Sections 2.02, 2.04, and 2.05 of the NYSE Arca Bylaws is unnecessary and would be deleted and those sections would be marked ''Reserved.''

Section 3.02(f) of the NYSE Arca Bylaws provides that, except as otherwise provided in the NYSE Arca Bylaws or rules, the Nominating Committee of NYSE Arca Holdings shall nominate directors for election at the annual meeting of the Holding Member. NYSE Arca Rule 3.2 sets forth a detailed process for the nomination and selection of fair representation directors for the NYSE Arca Board of Directors, and NYSE Arca Equities Rule 3.2 sets forth a similar process for the nomination and selection of fair representation directors for the NYSE Arca Equities Board of Directors.[8] The NYSE Arca Bylaws and rules do not have any other provisions concerning the nomination of non-fair representation directors. As such, the Exchange proposes to amend Section 3.02(f) of the NYSE Arca Bylaws to provide that except as otherwise provided in the NYSE Arca Bylaws or rules, the Holding Member shall nominate directors for election at the Holding Member's annual meeting.[9] The proposed rule change thus would not have any impact on the process for the nomination and selection of fair representation directors.

Finally, Section 3.13 of the NYSE Arca Bylaws provides that no member of the Board of Directors of NYSE Arca Holdings who is not also a member of the Board of Directors of the Exchange, and no officer, staff, counsel or other advisor of NYSE Arca Holdings who is not also an officer, staff, counsel or advisor of the Exchange, may participate in any meetings of the Exchange's Board of Directors (or any committees thereof) pertaining to the Exchange's self-regulatory function (including disciplinary matters) or relating to the structure of the market which the Exchange regulates. The references to NYSE Arca Holdings would be replaced with references to NYSE Group.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] 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. Specifically, the proposed rule change would result in the Exchange's rules correctly reflecting its ownership structure without having any substantive impact on the Exchange's rules, including those concerning the voting and ownership restrictions that currently apply to the Exchange and its affiliates.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issue or have any impact on competition; rather, it is intended solely to eliminate an

[4] In addition, Section 6.04 of the NYSE Arca Bylaws requires that all books and records of the Exchange reflecting confidential information pertaining to the self-regulatory function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices, and audit information) must be retained in confidence by the Exchange and its personnel and may not be used by the Exchange for any non-regulatory purposes and may not be made available to any persons (including, without limitation, any members of the Exchange) other than to those personnel of the Exchange and to members of the Board of Directors of the Exchange to the extent necessary or appropriate to properly discharge the self-regulatory responsibilities of the Exchange.

[5] Article 9, Section 1(b)(i)(B) of the NYSE Arca Holdings Certificate provides that for so long as NYSE Arca Holdings directly or indirectly controls the Exchange, no Person either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially shares of the capital stock (whether common or preferred stock) of NYSE Arca Holdings constituting more than 40% of the outstanding shares of any class of capital stock of NYSE Arca Holdings unless the Board of Directors of NYSE Arca Holdings has adopted an amendment to the NYSE Arca Holdings Bylaws waiving such a restriction. Such an amendment was already adopted with respect to NYSE Group in connection with an earlier merger of an intermediate holding company. *See* Securities Exchange Act Release 67435 (July 13, 2012), 77 FR 42533 (July 19, 2012) (SR–NYSE 2012–45).

[6] The Exchange also proposes to remove the unnecessary heading for the term ''Related Person,'' which was deleted by SR–NYSE–2012–45. *See supra* note 5.

[7] The operating agreements are available at *https://usequities.nyx.com/sites/usequities.nyx.com/files/fourth_amended_and_restated_operating_agreement_of_nyse_llc.pdf* and *http://wallstreet.cch.com/MKT/pdf/operating_agreement.pdf,* respectively.

[8] *See also* Securities Exchange Act Release No. 67619 (August 8, 2012), 77 FR 49032 (August 15, 2012) (SR–NYSEArca–2012–67).

[9] Article IV of the Second Amended and Restated Bylaws of NYSE Group (''NYSE Group Bylaws'') does not specifically provide for a Nominating Committee. The NYSE Group Bylaws are available at *http://usequities.nyx.com/sites/corporate.nyx.com/files/amendedandrestatedbylawsofnysegroup.pdf.*

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

unnecessary intermediate holding company from the ownership structure of the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2013–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2013–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2013–17 and should be submitted on or before March 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–04369 Filed 2–25–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68950; File No. SR–BX–2013–014]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Pricing Clarification

February 19, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 7, 2013, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add references to certain terms in Chapter XV, entitled ''Options Pricing.'' The Exchange also proposes to make a technical amendment to Section 2 entitled ''BX Options Market—Fees and Rebates.''

The text of the proposed rule change is also available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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 add certain references to Chapter XV in order to provide greater clarity to the terms used throughout this Chapter for the purpose of assessing fees and paying rebates.

Specifically, the Exchange proposes to add the terms ''Customer,'' ''BX Options Market Maker,'' ''Non-BX Options Market Maker,'' ''Firm,'' ''Professional,'' and ''Broker-Dealer'' to Chapter XV to provide guidance on how the Exchange applies the fees and rebates in Chapter XV to these categories of market participants. The Exchange proposes to state that the term ''Customer'' or (''C'') applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of a broker or dealer or for the account of a ''Professional'' (as that term is defined in Chapter I, Section 1(a)(48)). The Exchange proposes to state that the term ''BX Options Market Maker'' or (''M'') is a Participant that has registered as a Market Maker on BX Options pursuant

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive BX Options Market Maker pricing in all securities, the Participant must be registered as a BX Options Market Maker in at least one security. The Exchange proposes to state that the term ''Non-BX Options Market Maker'' or (''O'') is a registered market maker on another options exchange that is not a BX Options Market Maker. A Non-BX Options Market Maker must append the proper Non-BX Options Market Maker designation to orders routed to BX Options. The Exchange proposes to state that the term ''Firm'' or (''F'') applies to any transaction that is identified by a BX Options Participant for clearing in the Firm range at OCC. The Exchange proposes to state that the term ''Professional'' or (''P'') means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by BX Options Participants. Finally, the Exchange proposes to state that the term ''Broker-Dealer'' or (''B'') applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. The order capacity codes, ''C,'' ''M,'' ''O,'' ''F,'' ''P,'' and ''B'' are codes that have been established by the Exchange related to the order entry ports using the Financial Information Exchange (''FIX'') protocol.

The Exchange also proposes to define the terms ''adding liquidity'' and ''removing liquidity'' for purposes of Chapter XV, Section 2(1) pricing. Specifically, the Exchange proposes to state that ''[w]ith respect to Chapter XV, Sections 2(1) and (2), the order that is received by the trading system first in time shall be considered an order adding liquidity and an order that trades against that order shall be considered an order removing liquidity.'' The Exchange believes that specifying which orders are considered adding and which orders are considered removing liquidity would further clarify BX Options' pricing. The Exchange also proposes to remove Section 2(3) of Chapter XV, which is currently reserved, and renumber Section 2(4) as Section 2(3).

2. Statutory Basis

BX believes that its proposal to amend Chapter XV of the Rules to add references to various terms is consistent with Section 6(b) of the Act [3] in general, and furthers the objectives of Section 6(b)(5) of the Act [4] in particular. The Exchange's proposal to clarify its pricing is intended to provide additional guidance to market participants with respect to the application of fees and rebates in Chapter XV, similar to other options exchanges.[5] Further, the Exchange also proposes to provide clarification regarding the manner in which the Exchange applies fee and rebates for adding and removing. The Exchange believes the addition of these references will provide additional transparency to Chapter XV of the Exchange's Rules.

The Exchange does not believe that there is confusion among market participants with respect to the terms described herein, but rather that the addition of these terms to Chapter XV would serve to provide transparency and guidance to the benefit of all market participants. The Exchange believes that the proposal is consistent with Section 6(b)(5) in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by clarifying what fees and rebate in Chapter XV apply to certain transactions and market participants.

The Exchange is not amending the manner in which it applies pricing to various Participants. The proposed terms merely codify the manner in which the Exchange assesses fees and pays rebates today. Similarly, the manner in which fees and rebates for adding and removing liquidity are applied is not changing but merely codified by the addition of the terms to Chapter XV.

The Exchange's renumbering of Section 2(4) is merely a technical amendment to the pricing.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is merely filing this clarification to specify how certain fees and rebates in Chapter XV are applied to market participants. The Exchange believes that this clarification will provide greater transparency to market participants. The Exchange does not believe that this amendment creates intramarket competition among Participants as it is applied uniformly to all Participants. The Exchange believes that clarifying the applicability of certain fees and rebates for adding and removing liquidity within the Pricing Schedule provides market participants clear guidance.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [6] and subparagraph (f)(6) of Rule 19b–4 thereunder.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved. The Exchange has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change

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:

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4) and (5) [sic].

[5] *See* NASDAQ OMX PHLX LLC's Pricing Schedule. *See also* the International Securities Exchange, LLC's Fee Schedule.

[6] 15 U.S.C. 78s(b)(3)(a)(ii).

[7] 17 CFR 240.19b–4(f)(6).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2013–014 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2013–014. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the 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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2013–014, and should be submitted on or before March 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–04350 Filed 2–25–13; 8:45 am]

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[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68954; File No. SR–MIAX–2013–04]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Revise Market Maker Obligations Regarding the Opening Process on the Exchange

February 20, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 11, 2013, Miami International Securities Exchange LLC (''Exchange'' or ''MIAX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Rules 503, 603 and 604 to revise Market Maker obligations regarding the opening process on the Exchange.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise the quoting obligations of Market Makers prior to and during the opening process. Specifically, (i) Lead Market Makers (''LMMs''), including those appointed Primary Lead Market Maker (''PLMM''), will not be required to enter quotes before or during the opening process in their assigned option classes; and (ii) PLMMs will, however, be required to submit valid width quotes not later than one minute following the dissemination of a quote or trade by the market for the underlying security. These changes, which are described in detail below, will make MIAX's Market Maker obligations more consistent with market maker obligations at other options exchanges.

Currently, Rules 503(e)(5), 603(c), 604(e)(1)(i) and 604(e)(2)(i) require PLMMs and LMMs to participate in the opening process by submitting valid width quotes and entering into any transactions resulting from their participation. MIAX proposes to amend each of these rules to revise the PLMM obligations and eliminate the LMM obligations. Rule 503(e) specifies that the opening process can begin following the dissemination of a quote or trade by the market for the underlying security and a pause of no longer than one half second. The pause allows the market place to absorb the dissemination of the underlying security's quote or trade. Thereafter, the option's opening process can be initiated by the occurrence of one of three triggers. These triggers are (i) a valid width quote being submitted by the PLMM in the option class; (ii) the valid width quotes of at least two Market Makers (one of whom must be a LMM) being submitted in the option; or (iii) the valid width quote of one LMM being submitted in the option with at least one other options exchange disseminating a quote in the option and a valid width NBBO being available for that option. Trigger (iii) can only occur in multiply listed option classes; for singly listed option classes either trigger (i) or (ii) must occur to initiate the option's opening process.

While the PLMM can submit a valid width quote to start the option's opening process, there are, as described above, other ways in which the option opening process can begin. Pursuant to the revisions being proposed herein, MIAX will require the PLMM to submit valid width quotes in each of the

PLMM's appointed classes within one minute of a trade or quote in the underlying security being disseminated, thus assuring a timely start of the opening process if none of the other triggers for starting the opening process have occurred.[3] As described above, an LMM's valid width quotes can also be used to trigger the start of the opening process, however, MIAX now proposes to eliminate the requirement that PLMMs and LMMs submit such quotes as part of the opening process.

By eliminating the specific obligations for PLMMs and LMMs to submit valid width quotes prior to regular options trading and only require continuous quoting during regular options trading, the opening obligations for MIAX Market Makers would be consistent with opening obligations for market makers at other options exchanges. For example, in addition to the PHLX rule for their non-specialist market makers referred to in footnote three above, NYSE Amex Options does not require either its specialist or its market makers to submit quotes or participate in the opening process.[4] In addition, NASDAQ Options Market, LLC (''NOM'')[5], NASDAQ OMX BX, Inc (''BX Options'')[6], and BOX Options Exchange LLC (''BOX'')[7] eliminated market maker pre-opening quoting obligations in 2012. As a result of these filings, NOM, BX Options and BOX do not impose obligations on their respective options market makers to continuously quote prior to the regular options trading.

Market Makers have advised the Exchange that other option exchanges do not have opening quoting obligations for their market makers and have requested that MIAX eliminate its opening quoting obligations so that MIAX rules are similar to the other options exchanges. While MIAX agrees that eliminating its opening quoting obligations for Market Makers would be pro-competitive in that it will attract more market makers and additional liquidity to the Exchange, MIAX believes that the PLMM should still have the responsibility to assure a timely start to the opening process in each of its appointed classes and is therefore continuing to require the PLMM to submit valid width quotes not later than one minute after a trade or quote in the underlying security has been disseminated. As it builds its options marketplace, MIAX believes a consistently timely opening of its options classes is essential for attracting order flow.

Moreover, the Exchange believes that its proposal to put LMMs in the same position as market makers on other exchanges with respect to opening obligations will not have a negative effect on MIAX's options market. In particular, the Exchange believes the removal of opening quoting obligations for LMMs will have no impact on the functioning of the MIAX opening process and will not negatively impact MIAX market participants. Exchange rules continue to provide that the PLMM will be required to assure a timely opening by submitting valid width quotes in its appointed option classes if none of the other triggers for opening its appointed option classes have occurred. MIAX, therefore, believes its market participants will continue to experience a quality opening on the Exchange.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange believes the proposal to conform Market Maker obligations to the requirements of competing markets will promote the application of consistent trading practices.

Additionally, the Exchange believes the proposal removes a market maker quoting requirement that is unnecessary, as evidenced by the fact that it does not exist on other competitive markets. The Exchange operates in a highly competitive market comprised of eleven U.S. options exchanges in which sophisticated and knowledgeable market participants can, and do, send order flow to competing exchanges if they deem trading practices at a particular exchange to be onerous or cumbersome. With this proposal, LMMs will be relieved of a market maker requirement that does not materially improve the quality of the markets. On the contrary, the opening quoting obligation creates an additional obligation and burden on LMMs that does not exist on numerous other competitive markets. The Exchange believes that in this competitive marketplace, the impact of the opening quoting obligation that exists on the Exchange today compels this proposal. It will allow LMMs on the Exchange to follow rules that are similar to the rules of other options exchanges that do not impose opening obligations on their market makers, and will allow LMMs to focus on aspects of their operations that contribute to the market in a more efficient and meaningful way. However, as the newest entrant into this competitive marketplace, MIAX also believes it is important to provide consistently timely openings for its options, therefore, MIAX has a requirement that the PLMM in each of its appointed option classes be required to submit valid width quotes within one minute of the dissemination of a quote or trade in the underlying security. This requirement for the PLMM is also consistent with requirements at other options exchanges.

Finally, in determining to revise requirements for its Market Makers, MIAX is mindful of the balance between the obligations and the benefits bestowed on its Market Makers. The proposal will reduce obligations currently in place for PLMMs and LMMs without a corresponding reduction in the benefits currently bestowed upon them. MIAX nevertheless believes this shifting in the balance of obligations and benefits is appropriate given (i) the obligation is not necessary for LMMs; (ii) the obligation is being revised and not eliminated for the PLMM; and (iii) the changes being proposed herein are in place at other options exchanges. MIAX believes that its proposal is consistent with the Act in that the relieving of an unnecessary requirement for LMMs does not detract from the overall market making obligations of LMMs. The requirement that a market maker hold

[3] *See* NASDAQ OMX PHLX (''PHLX'') Rule 1017(k), which requires ''the specialist assigned in a particular equity option must enter opening quotes not later than one minute following the dissemination of a quote or trade by the market for the underlying security.'' PHLX does not require any of its other market makers to enter opening quotes, *see also,* PHLX Rule 1014.

[4] *See* NYSE Amex Options Rules 925NY (Obligations of Market Makers), 925.1NY (Market Maker Quotes), 927NY (Specialists), 927.5NY (e-Specialists Obligations) and 952NY (Opening Process). None of these rules require specialist or market maker participation in the opening process.

[5] *See* Securities Exchange Act Release No. 67722 (August 23, 2012) 77 FR 52375 (August 29, 2012) (SR–NASDAQ–2012–095).

[6] *See* Securities Exchange Act Release No. 68116 (October 26, 2012) 77 FR 66204 (November 2, 2012) (SR–BX–2012–069).

[7] *See* Securities Exchange Act Release No. 68412 (December 12, 2012) 77 FR 74902 (December 18, 2012) (SR–BOX–2012–022).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

itself out as willing to buy and sell options for its own account on a regular or continuous basis is better supported by requirements to quote continuously throughout the trading day rather than by a requirement to quote at the opening. The LMM's continuous quoting obligations are the equivalent of obligations in place for other similarly situated market makers at other options exchanges. Maintaining the PLMM requirement to submit valid width quotes within one minute of a trade or quote in the underlying security being disseminated is consistent with the heightened level of obligations imposed by MIAX rules on PLMMs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. MIAX's proposal to eliminate the obligation for Market Makers to submit quotes and participate in the opening process for each of its appointed option classes is consistent with what is already occurring on other markets. By providing Market Maker obligations that are more consistent with market maker obligations in place at other option exchanges, competition for the liquidity providing services of market makers is enhanced. MIAX is better able to compete for the services of market makers when its requirements for market makers are consistent with the other options exchanges.

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 [10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay, noting that doing so will allow Market Makers on the Exchange to follow rules concerning Market Maker quoting obligations prior to the commencement of daily trading that are similar to the rules of other options Exchanges. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[14] Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[15]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2013–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2013–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–MIAX–2013–04 and should be submitted on or before March 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–04368 Filed 2–25–13; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] The Commission notes that it recently waived the operative delay for a similar filing submitted by BX Options. *See supra* note 6.

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68957; File No. SR–NYSEMKT–2013–14]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Temporary Suspension of Those Aspects of Rules 36.20—Equities and 36.21—Equities That Would Not Permit Floor Brokers To Use Personal Portable Phone Devices on the Trading Floor Following the Aftermath of Hurricane Sandy Until the Earlier of When Phone Service Is Fully Restored or Friday, March 29, 2013

February 20, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 15, 2013, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the temporary suspension of those aspects of Rules 36.20—Equities and 36.21—Equities that would not permit Floor brokers to use personal portable phone devices on the Trading Floor following the aftermath of Hurricane Sandy until the earlier of when phone service is fully restored or Friday, March 29, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On Thursday, November 1, 2012, the Exchange filed a rule proposal to temporarily suspend those aspects of Rules 36.20—Equities, 36.21—Equities, and 36.30—Equities that would not permit Floor brokers and Designated Market Makers (''DMMs'') to use personal portable phone devices on the Trading Floor [4] following the aftermath of Hurricane Sandy and during the period that phone service was not fully functional.[5] Pursuant to that filing, all other aspects of those rules remained applicable and the temporary suspensions of Rule 36—Equities requirements were in effect beginning the first day trading resumed following Hurricane Sandy until Friday, November 2, 2012.

On November 5, 2012, although power had been restored to the downtown Manhattan vicinity, other services were not yet fully operational. Among other things, the telephone services provided by third-party carriers to the Exchange were still not fully operational on the Trading Floor, which continued to impact the ability of Floor members to communicate from the Trading Floor as permitted by Rule 36—Equities. Accordingly, the Exchange filed to extend the temporary suspension of those aspects of Rules 36.20—Equities, 36.21—Equities, and 36.30—Equities that would not permit Floor brokers and DMMs to use personal portable phone devices on the Trading Floor to the earlier of phone service being restored or November 9, 2012,[6] which was subject to the same terms and conditions of the temporary suspension filed for October 31, 2012 through November 2, 2012, including the record retention requirements related to any use of personal portable phones.[7] On November 9, 2012, the Exchange filed an additional extension of the temporary suspension of those aspects of Rules 36.20—Equities and 36.21—Equities that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of phone service being restored or November 16, 2012, again subject to the same terms and conditions of the original temporary suspension that was filed.[8] On November 19, 2012, the Exchange filed to extend the temporary suspension of those aspects of Rules 36.20—Equities and 36.21—Equities that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of when phone service is fully restored or Friday, December 14, 2012, again subject to the same terms and conditions of the original temporary suspension that was filed.[9] The continued extension of the temporary suspension was needed because of the ongoing intermittent phone and internet service. Specifically, the wired telephone lines and internet connections for Floor brokers continued to not be functional, many Exchange authorized and provided portable phones continued to not be functional and therefore Floor brokers still could not consistently use the Exchange authorized and provided portable phones, pursuant to Rules 36.20—Equities and 36.21—Equities. On December 13, 2012, the Exchange filed to extend the temporary suspension of those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of when phone service is fully restored or Friday, January 18, 2013, again subject to the same terms and conditions of the original temporary suspension that was filed.[10] On January 17, 2013, the Exchange filed to extend the temporary suspension of those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of when phone service is fully restored or Friday, February 15, 2013, again subject to the same terms and conditions of the original temporary

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Pursuant to Rule 6A, the Trading Floor is defined as the restricted-access physical areas designated by the Exchange for the trading of securities, but does not include the physical locations where NYSE Amex Options are traded.

[5] *See* Securities Exchange Act Release No. 68138 (Nov. 1, 2012), 77 FR 66890 (Nov. 7, 2012) (SR–NYSEMKT–2012–59).

[6] *See* Securities Exchange Act Release No. 68162 (Nov. 5, 2012), 77 FR 67720 (Nov. 13, 2012) (SR–NYSEMKT–2012–62).

[7] *See supra* note 5 (notice that describes the terms and conditions of the temporary suspension).

[8] *See* Securities Exchange Act Release No. 68212 (Nov. 9, 2012), 77 FR 69536 (Nov. 19, 2012) (SR–NYSEMKT–2012–66). Because the telephone lines for the DMMs were operational, the Exchange did not need to extend the temporary suspension of Rule 36.30—Equities as it related to DMMs.

[9] *See* Securities Exchange Act Release No. 68272 (Nov. 20, 2012), 77 FR 70871 (Nov. 27, 2012) (SR–NYSEMKT–2012–69). Relief was not extended for DMMs. *See infra* note 13.

[10] *See* Securities Exchange Act Release No. 68451 (Dec. 17, 2012), 77 FR 75681 (Dec. 21, 2012) (SR–NYSEMKT–2012–82). Relief was not extended for DMMs. *See infra* note 13.

suspension that was filed.[11] The Exchange now seeks another extension of the temporary suspension of those aspects of Rules 36.20—Equities and 36.21—Equities because of ongoing telephone and internet issues.

The Exchange has been advised by its third-party carrier that the damage to the telephone connections continues to be more extensive than previously anticipated. In addition, there has been damage to the internet connections available to Floor brokers on the Trading Floor, which has adversely impacted service. In particular, the Exchange notes that the lines that support both the wired and wireless phone connections and internet connections for the Floor brokers are based in an area of lower Manhattan that suffered extensive damage as a result of Hurricane Sandy. The type of damage that was sustained will, in some cases, require the third-party carrier to rebuild the infrastructure that supports these services, rather than engage in repairs of existing lines. The process of rebuilding the infrastructure has been incrementally slow without significant improvement since the last extension request. While such rebuilding and repairs are in process, the telephone line and internet connections for Floor brokers still are not fully operational and may not be for another month, given the type of work that needs to be completed to restore the telephone services.

Because of the ongoing intermittent phone and internet service, many Exchange authorized and provided portable phones continue to not be functional and therefore many Floor brokers still cannot consistently use the Exchange authorized and provided portable phones, pursuant to Rules 36.20—Equities and 36.21—Equities. In addition, many of the wired telephone lines and internet connections for Floor brokers continue to not be functional. In certain instances, however, the personal cell phones of Floor brokers are operational on the Trading Floor. The Exchange believes that because communications with customers is a vital part of a Floor broker's role as agent and therefore contributes to maintaining a fair and orderly market, during the period when phone and internet service continues to be intermittent, Floor brokers should be permitted to use personal portable phone devices in lieu of the non-operational Exchange authorized and provided portable phones, wired phone lines, or internet connections.[12]

Accordingly, the Exchange proposes to extend the temporary suspension of those aspects of Rules 36.20—Equities and 36.21—Equities that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of when phone service is fully restored or Friday, March 29, 2013.[13] As noted above, the process of rebuilding the infrastructure has been incrementally slow without significant improvement since the last extension request. However, the Exchange believes that there will be significant improvement in the near future. The third-party carrier recently advised the Exchange that during the next month both the telephone and the Internet connections will be restored to Floor brokers on the Trading floor. The Exchange proposes that the extension of the temporary suspension of those aspects of Rules 36.20—Equities and 36.21—Equities to permit use of the personal portable phones by Floor brokers on the Trading Floor be pursuant to the same terms and conditions of the temporary suspension filed for October 31, 2012 through November 2, 2012, including the record retention requirements related to any use of personal portable phones.[14]

In particular, as set forth in the prior filings, Floor brokers that use a portable personal phone must provide the Exchange with the names of all Floor-based personnel who used personal portable phones during this temporary suspension period, together with the phone number and applicable carrier for each number. Floor broker member organizations must maintain in their books and records all cell phone records that show both incoming and outgoing calls that were made during the period that a personal portable phone was used on the Trading Floor. To the extent the records are unavailable from the third-party carrier, the Floor broker member organizations must maintain contemporaneous records of all calls made or received on a personal portable phone while on the Trading Floor. As with all member organization records, such cell phone records must be provided to Exchange regulatory staff, including without limitation staff of the Financial Industry Regulatory Authority (''FINRA''), on request.

In addition, to the extent that personal portable phones are used to replicate internet connections previously approved pursuant to Rule 36 that are not operational on the Trading Floor because of damage sustained by Hurricane Sandy, such use is subject to the same requirements that would otherwise be applicable, including record-retention requirements. This emergency relief is solely meant to maintain the status quo to the extent provided in Rule 36 and not intended to broaden the scope of the activities allowed pursuant to the Rule (e.g., accessing internet only at the booth). As with all member organization records, such cell phone data records must be provided to Exchange regulatory staff, including without limitation staff of FINRA, on request. To the extent that Exchange-approved telephone or electronic communications are operational, Floor brokers must use those connections rather than use a personal portable phone. Specifically, the Exchange states that Floor brokers must return to pre-Hurricane Sandy communications at any point when service is restored even if temporary.

As noted above, because the Exchange is dependent on third-party carriers for both wired and wireless phone service and internet connections on the Trading Floor, the Exchange does not know how long the proposed temporary suspension of Rules 36.20—Equities and 36.21—Equities will be required. However, based on current estimates, the Exchange understands that phone service may be fully restored during the next month.

Accordingly, the Exchange proposes that the extension of the temporary suspensions of those aspects of Rule 36—Equities that do not permit Floor brokers to use personal portable phones on the Trading Floor continue until the earlier of when phone service is fully restored or Friday, March 29, 2013.[15]

[11] *See* Securities Exchange Act Release No. 68705 (January 22, 2013), 78 FR 5848 (January 28, 2013) (SR–NYSEMKT–2013–06). Relief was not extended for DMMs. *See infra* note 13.

[12] To the extent that Exchange-approved telephone or electronic communications are operational, Floor brokers must use those connections rather than use a personal portable phone. Specifically, the Exchange states that Floor brokers must return to pre-Hurricane Sandy communications at any point when service is restored even if temporary.

[13] Consistent with the existing relief, [sic] Exchange is not proposing to provide any relief to DMMs in this proposal. Because phone service to DMMs has been restored, the existing relief does not provide for a temporary suspension of Rule 36.30—Equities, which prohibits DMMs from using personal portable phones on the Trading Floor. Similarly, because the off-Floor locations for DMMs have been restored, the existing relief does not provide for the temporary suspension for DMMs to be permitted to communicate with off-Floor personnel who may not be located at their regular physical location. The Exchange is not proposing to provide such relief in this proposal. *See supra* notes 5 and 6 (notices describing the relief previously requested for DMMs).

[14] *See supra* note 5 (notice that describes the terms and conditions of the temporary suspension).

[15] The Exchange will provide notice of this rule filing to Floor brokers, including the applicable recordkeeping and other requirements. If telephone

Continued

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

In particular, in the aftermath of Hurricane Sandy, while the Exchange was able to open for trading, many of the services that the Exchange depends on from third-party carriers, such as wired and wireless telephone connections, are not fully restored. The Exchange believes that the proposed extension of the temporary suspensions from those aspects of Rule 36—Equities that restrict Floor broker's use of personal portable phones on the Trading Floor removes impediments to and perfects the mechanism of a free and open market and national market system because the proposed relief will enable Floor brokers to conduct their regular business, notwithstanding the ongoing issues with telephone service. The Exchange further believes that without the requested relief, Floor brokers would be compromised in their ability to conduct their regular course of business on the Trading Floor, which could adversely impact the market generally and investor confidence during this time of unprecedented weather disruptions. In particular, for Floor brokers, because they operate as agents for customers, their inability to communicate with customers could compromise their ability to represent public orders on the Trading Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed extension of the temporary suspensions of those aspects of Rules 36.20—Equities and 36.21—Equities that would not permit Floor brokers to use personal portable phone devices on the Trading Floor is in direct response to damages in the aftermath of Hurricane Sandy. The proposed relief will enable Floor brokers to conduct their regular business, notwithstanding the ongoing issues with telephone service, and thus should not have any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[20] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] 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. The Commission notes that doing so will allow the Exchange to continue uninterrupted, for Floor brokers, the emergency temporary relief necessitated by Hurricane Sandy's disruption of telephone service, as described herein and in the Exchange's prior filings seeking such relief, and to help maintain the status quo, until the earlier of when phone service for Floor brokers is fully restored or March 29, 2013. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[22]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[23] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2013–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2013–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

service is fully restored prior to March 29, 2013, the Exchange will notify Floor brokers that the temporary suspension of those aspects of Rule 36—Equities that do not permit the use of personal portable phones on the Trading Floor has expired as of the time that phone service is fully restored.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78s(b)(2)(B).

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–NYSEMKT–2013–14 and should be submitted on or before March 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–04360 Filed 2–25–13; 8:45 am]

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[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68953; File No. 4–631]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of the Second Amendment to the National Market System Plan To Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

February 20, 2013.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 608 thereunder,[2] notice is hereby given that, on January 23, 2013, NYSE Euronext, on behalf of New York Stock Exchange LLC (''NYSE''), NYSE MKT LLC (''NYSE MKT''), and NYSE Arca, Inc. (''NYSE Arca''), and the following parties to the National Market System Plan: BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, and National Stock Exchange, Inc. (collectively with NYSE, NYSE MKT, and NYSE Arca, the ''Participants''), filed with the Securities and Exchange Commission (the ''Commission'') a proposal to amend the Plan to Address Extraordinary Market Volatility (''Plan'').[3] The proposal represents the second amendment to the Plan (''Second Amendment''), and reflects changes unanimously adopted by the Participants. A copy of the Plan, as amended, is attached as Exhibit A hereto. Pursuant to Rule 608(b)(3)(iii) under Regulation NMS,[4] the Participants designate the amendment as involving solely technical or ministerial matters. As a result, the amendment becomes effective upon filing with the Commission. The Commission is publishing this notice to solicit comments from interested persons on the Second Amendment to the Plan.

I. Rule 608(a) of Regulation NMS

A. Purpose of the Plan

The Participants filed the Plan in order to create a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in ''NMS Stocks,'' as defined in Rule 600(b)(47) of Regulation NMS under the Act.[5] The Plan sets forth procedures that provide for market-wide limit up-limit down requirements that would be designed to prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands.[6] These limit up-limit down requirements would be coupled with Trading Pauses, as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity).

As set forth in Section V of the Plan, the price bands would consist of a Lower Price Band and an Upper Price Band for each NMS Stock.[7] The price bands would be calculated by the Securities Information Processors (''SIPs'' or ''Processors'') responsible for consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Act.[8] Those price bands would be based on a Reference Price [9] for each NMS Stock that equals the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the immediately preceding five-minute period. The price bands for an NMS Stock would be calculated by applying the Percentage Parameter for such NMS Stock to the Reference Price, with the Lower Price Band being a Percentage Parameter [10] below the Reference Price, and the Upper Price Band being a Percentage Parameter above the Reference Price. Between 9:30 a.m. and 9:45 a.m. ET and 3:35 p.m. and 4:00 p.m. ET, the price bands would be calculated by applying double the Percentage Parameters.

The Processors would also calculate a Pro-Forma Reference Price for each NMS Stock on a continuous basis during Regular Trading Hours. If a Pro-Forma Reference Price did not move by one percent or more from the Reference Price in effect, no new price bands would be disseminated, and the current Reference Price would remain the effective Reference Price. If the Pro-Forma Reference Price moved by one percent or more from the Reference Price in effect, the Pro-Forma Reference Price would become the Reference Price, and the Processors would disseminate new price bands based on the new Reference Price. Each new Reference Price would remain in effect for at least 30 seconds.

When one side of the market for an individual security is outside the applicable price band, the Processors would be required to disseminate such

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] *See* Letter from Janet M. McGinness, Executive Vice Present & Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated January 17, 2013 (''Transmittal Letter'').

[4] 17 CFR 242.608(b)(3)(iii).

[5] 17 CFR 242.600(b)(47). *See also* Section I(H) of the Plan.

[6] *See* Section V of the Plan.

[7] Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such terms in the Plan. *See* Exhibit A, *infra.*

[8] 17 CFR 242.603(b). The Plan refers to this entity as the Processor.

[9] *See* Section I(T) of the Plan.

[10] As initially proposed by the Participants, the Percentage Parameters for Tier 1 NMS Stocks (*i.e.,* stocks in the S&P 500 Index or Russell 1000 Index and certain ETPs) with a Reference Price of $1.00 or more would be five percent and less than $1.00 would be the lesser of (a) $0.15 or (b) 75 percent. The Percentage Parameters for Tier 2 NMS Stocks (*i.e.,* all NMS Stocks other than those in Tier 1) with a Reference Price of $1.00 or more would be 10 percent and less than $1.00 would be the lesser of (a) $0.15 or (b) 75 percent. The Percentage Parameters for a Tier 2 NMS Stock that is a leveraged ETP would be the applicable Percentage Parameter set forth above multiplied by the leverage ratio of such product. On May 24, 2012, the Participants amended the Plan to create a 20% price band for Tier 1 and Tier 2 stocks with a Reference Price of $0.75 or more and up to and including $3.00. The Percentage Parameter for stocks with a Reference Price below $0.75 would be the lesser of (a) $0.15 or (b) 75 percent. *See* Letter from Janet M. McGinness, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated May 24, 2012 (''First Amendment'').

National Best Bid [11] or National Best Offer [12] with an appropriate flag identifying it as non-executable. When the other side of the market reaches the applicable price band, the market for an individual security would enter a Limit State,[13] and the Processors would be required to disseminate such National Best Offer or National Best Bid with an appropriate flag identifying it as a Limit State Quotation.[14] All trading would immediately enter a Limit State if the National Best Offer equals the Lower Limit Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Limit Band and does not cross the National Best Offer. Trading for an NMS Stock would exit a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market did not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute trading pause, which would be applicable to all markets trading the security.

These limit up-limit down requirements would be coupled with trading pauses [15] to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). As set forth in more detail in the Plan, all trading centers [16] in NMS Stocks, including both those operated by Participants and those operated by members of Participants, would be required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down and trading pause requirements specified in the Plan.

Under the Plan, all trading centers would be required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processors would disseminate an offer below the Lower Price Band or bid above the Upper Price Band that nevertheless inadvertently may be submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; such bid or offer would not be included in National Best Bid or National Best Offer calculations. In addition, all trading centers would be required to develop, maintain, and enforce policies and procedures reasonably designed to prevent trades at prices outside the price bands, with the exception of single-priced opening, reopening, and closing transactions on the Primary Listing Exchange.

As stated by the Participants in the Plan, the limit up-limit down mechanism is intended to reduce the negative impacts of sudden, unanticipated price movements in NMS Stocks,[17] thereby protecting investors and promoting a fair and orderly market.[18] In particular, the Plan is designed to address the type of sudden price movements that the market experienced on the afternoon of May 6, 2010.[19]

The Participants propose to adopt certain ministerial or technical changes to the Plan on an immediately effective basis. The following summarizes the Second Amendment to the Plan and the rationale behind those changes:

- Amending Section II.D.2.A of the Plan to include a broker-dealer that primarily engages in trading for its own account as a member of the Advisory Committee. This change is designed to ensure the diversity of representation from the industry by including a broker-dealer that primarily engages in trading for their own account on the Advisory Committee to the Plan.
- Amending Section VI.B.5 of the Plan to clarify that a Limit State terminates either when a Primary Listing Market declares a Trading Pause or the end of Regular Trading Hours. This clarification is designed to reduce confusion that may be caused by a Processor disseminating a Limit State Quotation during times when trading is paused or outside Regular Trading Hours when the Plan is not applicable.
- Amending Sections VIII.A of the Plan to establish a new implementation schedule for Phase I. Specifically, Phase I will be amended to provide that on the initial date of Plan operations of April 8, 2013, Phase I of Plan implementation shall begin in select symbols from the Tier 1 NMS Stocks identified in Appendix A of the Plan. In addition, three months after the initial date of Plan operations, or such earlier date as may be announced by the Processor with at least 30 days notice, the Plan shall fully apply to all Tier 1 NMS Stocks identified in Appendix A of the Plan. These modifications are in response to requests by the securities industry for additional time for systems testing by Participants and the securities industry.
- Amending Section VIII.B of the Plan to delete the last clause because the Processor does not disseminate a closing trade for a Primary Listing Exchange earlier than the end or Regular Trading Hours or, in the case of an early scheduled close, earlier than the scheduled close.
- Clarify the manner by which to report the data in Appendix B, Section II.G. The Participants believe that the additional detail regarding the data fields will be helpful for Participants to understand the specific data to be reported under the Plan.

B. Governing or Constituent Documents

The governing documents of the Processor, as defined in Section I(P) of the Plan, will not be affected by the Plan, but once the Plan is implemented, the Processor's obligations will change, as set forth in detail in the Plan. In particular, as set forth in Section V of the Plan, the Processor will be responsible for calculating and disseminating Price Bands during Regular Trading Hours, as defined in Section I(R) of the Plan. Each Participant would take such actions as are necessary and appropriate as a party to the Market Data Plans, as defined in Section I(F) of the Plan, to cause and enable the Processor for each NMS Stock to fulfill the functions set forth in the Plan.

C. Implementation of Plan

The initial date of the Plan operations will be April 8, 2013.

D. Development and Implementation Phases

The Plan will be implemented as a one-year pilot program in two Phases, consistent with Section VIII of the Plan: Phase I of Plan implementation will begin on the initial date of Plan operations, in select symbols, with full Phase I of the Plan implementation completed three months after the initial date of Plan operations, or such earlier date as may be announced by the

[11] 17 CFR 242.600(b)(42). *See also* Section I(G) of the Plan.

[12] *Id.*

[13] A stock enters the Limit State if the National Best Offer equals the Lower Price Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Price Band and does not cross the National Best Offer. *See* Section VI(B) of the Plan.

[14] *See* Section I(D) of the Plan.

[15] The primary listing market would declare a trading pause in an NMS Stock; upon notification by the primary listing market, the Processor would disseminate this information to the public. No trades in that NMS Stock could occur during the trading pause, but all bids and offers may be displayed. *See* Section VII(A) of the Plan.

[16] As defined in Section I(X) of the Plan, a trading center shall have the meaning provided in Rule 600(b)(78) of Regulation NMS under the Act.

[17] 17 CFR 242.600(b)(47).

[18] *See* Transmittal Letter, *supra* note 3.

[19] The limit up-limit down mechanism set forth in the Plan would replace the existing single-stock circuit breaker pilot. *See e.g.,* Securities Exchange Act Release Nos. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025); 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033).

Processor with at least 30 days notice; Phase II of Plan will commence six months after the initial date of the Plan or such earlier date as may be announced by the Processor with at least 30 days notice. The Participants proposed that Phase II of the Plan will begin on the first Monday after the six months after the initial date of the Plan, or if an earlier date is determined, Phase II will begin on a Monday.

At the beginning of Phase I, the Plan shall apply to select symbols from the Tier 1 NMS Stocks identified in Appendix A of the Plan. During full Phase I implementation, the Plan shall apply to all Tier 1 NMS Stocks, as defined in Appendix A of the Plan, and the first price bands shall be calculated and disseminated, as specified in Section V(A) of the Plan. In Phase II, the Plan shall fully apply to all NMS Stocks.

Phase I and Phase II of the Plan may each be rolled out to applicable NMS Stocks over a period not to exceed two weeks. Any such roll-out period will be made available in advance of the implementation dates for Phases I and II of the Plan via the Participants' Web sites and trader updates, as applicable.

E. Analysis of Impact on Competition

The Participants do not believe that the Plan imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Participants also do not believe that the Plan introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Act.[20]

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

The Participants state that they have no written understandings or agreements relating to interpretation of the Plan. Section II(C) of the Plan sets forth how any entity registered as a national securities exchange or national securities association may become a Participant.

G. Approval of Amendment of the Plan

Each of the Plan's Participants has executed a written amended Plan.

H. Terms and Conditions of Access

Section II(C) of the Plan provides that any entity registered as a national securities exchange or national securities association under the Act may become a Participant by: (1) Becoming a participant in the applicable Market Data Plans, as defined in Section I(F) of the Plan; (2) executing a copy of the Plan, as then in effect; (3) providing each then-current Participant with a copy of such executed Plan; and (4) effecting an amendment to the Plan as specified in Section III(B) of the Plan.

I. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

J. Method and Frequency of Processor Evaluation

Not applicable.

K. Dispute Resolution

The Plan does not include specific provisions regarding resolution of disputes between or among Participants. Section III(C) of the Plan provides for each Participant to designate an individual to represent the Participant as a member of an Operating Committee.[21] No later than the initial date of the Plan, the Operating Committee would be required to designate one member of the Operating Committee to act as the Chair of the Operating Committee. The Operating Committee shall monitor the procedures established pursuant to the Plan and advise the Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate. Any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, shall be submitted to the Commission as a request for an amendment to the Plan initiated by the Commission under Rule 608 of Regulation NMS under the Act.[22]

II. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Second Amendment to the Plan 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 4–631 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 4–631. 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 Second Amendment to the Plan that are filed with the Commission, and all written communications relating to the Second Amendment to the Plan 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 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the Participants' principal offices. 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 4–631 and should be submitted on or before March 19, 2013.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

Exhibit A

Proposed new language is *italicized;* proposed deletions are in [brackets].

Plan to Address Extraordinary Market Volatility Submitted to the Securities and Exchange Commission Pursuant to Rule 608 of Regulation Nms Under the Securities Exchange Act of 1934

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[20] 15 U.S.C. 78k–1(c)(1)(D).

[21] *See* Section I(J) of the Plan.

[22] 17 CFR 242.608.

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Preamble

The Participants submit to the SEC this Plan establishing procedures to address extraordinary volatility in NMS Stocks. The procedures provide for market-wide limit up-limit down requirements that prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands. These limit up-limit down requirements are coupled with Trading Pauses to accommodate more fundamental price moves. The Plan procedures are designed, among other things, to protect investors and promote fair and orderly markets. The Participants developed this Plan pursuant to Rule 608(a)(3) of Regulation NMS under the Exchange Act, which authorizes the Participants to act jointly in preparing, filing, and implementing national market system plans.

I. Definitions

(A) ''Eligible Reported Transactions'' shall have the meaning prescribed by the Operating Committee and shall generally mean transactions that are eligible to update the last sale price of an NMS Stock.

(B) ''Exchange Act'' means the Securities Exchange Act of 1934, as amended.

(C) ''Limit State'' shall have the meaning provided in Section VI of the Plan.

(D) ''Limit State Quotation'' shall have the meaning provided in Section VI of the Plan.

(E) ''Lower Price Band'' shall have the meaning provided in Section V of the Plan.

(F) ''Market Data Plans'' shall mean the effective national market system plans through which the Participants act jointly to disseminate consolidated information in compliance with Rule 603(b) of Regulation NMS under the Exchange Act.

(G) ''National Best Bid'' and ''National Best Offer'' shall have the meaning provided in Rule 600(b)(42) of Regulation NMS under the Exchange Act.

(H) ''NMS Stock'' shall have the meaning provided in Rule 600(b)(47) of Regulation NMS under the Exchange Act.

(I) ''Opening Price'' shall mean the price of a transaction that opens trading on the Primary Listing Exchange, or, if the Primary Listing Exchange opens with quotations, the midpoint of those quotations.

(J) ''Operating Committee'' shall have the meaning provided in Section III(C) of the Plan.

(K) ''Participant'' means a party to the Plan.

(L) ''Plan'' means the plan set forth in this instrument, as amended from time to time in accordance with its provisions.

(M) ''Percentage Parameter'' shall mean the percentages for each tier of NMS Stocks set forth in Appendix A of the Plan.

(N) ''Price Bands'' shall have the meaning provided in Section V of the Plan.

(O) ''Primary Listing Exchange'' shall mean the Participant on which an NMS Stock is listed. If an NMS Stock is listed on more than one Participant, the Participant on which the NMS Stock has been listed the longest shall be the Primary Listing Exchange.

(P) ''Processor'' shall mean the single plan processor responsible for the consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act.

(Q) ''Pro-Forma Reference Price'' shall have the meaning provided in Section V(A)(2) of the Plan.

(R) ''Regular Trading Hours'' shall have the meaning provided in Rule 600(b)(64) of Regulation NMS under the Exchange Act. For purposes of the Plan, Regular Trading Hours can end earlier than 4:00 p.m. ET in the case of an early scheduled close.

(S) ''Regulatory Halt'' shall have the meaning specified in the Market Data Plans.

(T) ''Reference Price'' shall have the meaning provided in Section V of the Plan.

(U) ''Reopening Price'' shall mean the price of a transaction that reopens trading on the Primary Listing Exchange following a Trading Pause or a Regulatory Halt, or, if the Primary Listing Exchange reopens with quotations, the midpoint of those quotations.

(V) ''SEC'' shall mean the United States Securities and Exchange Commission.

(W) ''Straddle State'' shall have the meaning provided in Section VII(A)(2) of the Plan.

(X) ''Trading center'' shall have the meaning provided in Rule 600(b)(78) of Regulation NMS under the Exchange Act.

(Y) ''Trading Pause'' shall have the meaning provided in Section VII of the Plan.

(Z) ''Upper Price Band'' shall have the meaning provided in Section V of the Plan.

II. Parties

(A) List of Parties

The parties to the Plan are as follows:

(1) BATS Exchange, Inc., 8050 Marshall Drive, Lenexa, Kansas 66214.

(2) BATS Y-Exchange, Inc., 8050 Marshall Drive, Lenexa, Kansas 66214.

(3) Chicago Board Options Exchange, Incorporated, 400 South LaSalle Street, Chicago, Illinois 60605.

(4) Chicago Stock Exchange, Inc., 440 South LaSalle Street, Chicago, Illinois 60605.

(5) EDGA Exchange, Inc., 545 Washington Boulevard, Sixth Floor, Jersey City, NJ 07310.

(6) EDGX Exchange, Inc., 545 Washington Boulevard, Sixth Floor, Jersey City, NJ 07310.

(7) Financial Industry Regulatory Authority, Inc., 1735 K Street NW., Washington, DC 20006.

(8) NASDAQ OMX BX, Inc., One Liberty Plaza, New York, New York 10006.

(9) NASDAQ OMX PHLX LLC, 1900 Market Street, Philadelphia, Pennsylvania 19103.

(10) The Nasdaq Stock Market LLC, 1 Liberty Plaza, 165 Broadway, New York, NY 10006.

(11) National Stock Exchange, Inc., 101 Hudson, Suite 1200, Jersey City, NJ 07302.

(12) New York Stock Exchange LLC, 11 Wall Street, New York, New York 10005.

(13) NYSE MKT LLC, 20 Broad Street, New York, New York 10005.

(14) NYSE Arca, Inc., 100 South Wacker Drive, Suite 1800, Chicago, IL 60606.

(B) Compliance Undertaking

By subscribing to and submitting the Plan for approval by the SEC, each Participant agrees to comply with and to enforce compliance, as required by Rule 608(c) of Regulation NMS under the Exchange Act, by its members with the provisions of the Plan. To this end, each Participant shall adopt a rule requiring compliance by its members with the provisions of the Plan, and each Participant shall take such actions as are necessary and appropriate as a participant of the Market Data Plans to cause and enable the Processor for each NMS Stock to fulfill the functions set forth in this Plan.

(C) New Participants

The Participants agree that any entity registered as a national securities exchange or national securities association under the Exchange Act may become a Participant by: (1) Becoming a participant in the applicable Market

Data Plans; (2) executing a copy of the Plan, as then in effect; (3) providing each then-current Participant with a copy of such executed Plan; and (4) effecting an amendment to the Plan as specified in Section III(B) of the Plan.

(D) Advisory Committee

(1) *Formation.* Notwithstanding other provisions of this Plan, an Advisory Committee to the Plan shall be formed and shall function in accordance with the provisions set forth in this section.

(2) *Composition.* Members of the Advisory Committee shall be selected for two-year terms as follows:

(A) *Advisory Committee Selections.* By affirmative vote of a majority of the Participants, the Participants shall select at least one representatives from each of the following categories to be members of the Advisory Committee: (1) A broker-dealer with a substantial retail investor customer base; (2) a broker-dealer with a substantial institutional investor customer base; (3) an alternative trading system; *(4) a broker-dealer that primarily engages in trading for its own account;* and [(4)]*(5)* an investor.

(3) *Function.* Members of the Advisory Committee shall have the right to submit their views to the Operating Committee on Plan matters, prior to a decision by the Operating Committee on such matters. Such matters shall include, but not be limited to, proposed material amendments to the Plan.

(4) *Meetings and Information.* Members of the Advisory Committee shall have the right to attend meetings of the Operating Committee and to receive any information concerning Plan matters; provided, however, that the Operating Committee may meet in executive session if, by affirmative vote of a majority of the Participants, the Operating Committee determines that an item of Plan business requires confidential treatment.

III. Amendments to Plan

(A) General Amendments

Except with respect to the addition of new Participants to the Plan, any proposed change in, addition to, or deletion from the Plan shall be effected by means of a written amendment to the Plan that: (1) Sets forth the change, addition, or deletion; (2) is executed on behalf of each Participant; and, (3) is approved by the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act, or otherwise becomes effective under Rule 608 of Regulation NMS under the Exchange Act.

(B) New Participants

With respect to new Participants, an amendment to the Plan may be effected by the new national securities exchange or national securities association executing a copy of the Plan, as then in effect (with the only changes being the addition of the new Participant's name in Section II(A) of the Plan) and submitting such executed Plan to the SEC for approval. The amendment shall be effective when it is approved by the SEC in accordance with Rule 608 of Regulation NMS under the Exchange Act or otherwise becomes effective pursuant to Rule 608 of Regulation NMS under the Exchange Act.

(C) Operating Committee

(1) Each Participant shall select from its staff one individual to represent the Participant as a member of an Operating Committee, together with a substitute for such individual. The substitute may participate in deliberations of the Operating Committee and shall be considered a voting member thereof only in the absence of the primary representative. Each Participant shall have one vote on all matters considered by the Operating Committee. No later than the initial date of Plan operations, the Operating Committee shall designate one member of the Operating Committee to act as the Chair of the Operating Committee.

(2) The Operating Committee shall monitor the procedures established pursuant to this Plan and advise the Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate. The Operating Committee shall establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of this Plan and the Appendixes thereto. With respect to matters in this paragraph, Operating Committee decisions shall be approved by a simple majority vote.

(3) Any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, shall be submitted to the SEC as a request for an amendment to the Plan initiated by the Commission under Rule 608 of Regulation NMS.

IV. Trading Center Policies and Procedures

All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up—limit down requirements specified in Sections VI of the Plan, and to comply with the Trading Pauses specified in Section VII of the Plan.

V. Price Bands

(A) Calculation and Dissemination of Price Bands

(1) The Processor for each NMS stock shall calculate and disseminate to the public a Lower Price Band and an Upper Price Band during Regular Trading Hours for such NMS Stock. The Price Bands shall be based on a Reference Price for each NMS Stock that equals the arithmetic mean price of Eligible Reported Transactions for the NMS stock over the immediately preceding five-minute period (except for periods following openings and reopenings, which are addressed below). If no Eligible Reported Transactions for the NMS Stock have occurred over the immediately preceding five-minute period, the previous Reference Price shall remain in effect. The Price Bands for an NMS Stock shall be calculated by applying the Percentage Parameter for such NMS Stock to the Reference Price, with the Lower Price Band being a Percentage Parameter below the Reference Price, and the Upper Price Band being a Percentage Parameter above the Reference Price. The Price Bands shall be calculated during Regular Trading Hours. Between 9:30 a.m. and 9:45 a.m. ET, and 3:35 p.m. and 4:00 p.m. ET, or in the case of an early scheduled close, during the last 25 minutes of trading before the early scheduled close, the Price Bands shall be calculated by applying double the Percentage Parameters set forth in Appendix A. If a Reopening Price does not occur within ten minutes after the beginning of a Trading Pause, the Price Band, for the first 30 seconds following the reopening after that Trading Pause, shall be calculated by applying triple the Percentage Parameters set forth in Appendix A.

(2) The Processor shall calculate a Pro-Forma Reference Price on a continuous basis during Regular Trading Hours, as specified in Section V(A)(1) of the Plan. If a Pro-Forma Reference Price has not moved by 1% or more from the Reference Price currently in effect, no new Price Bands shall be disseminated, and the current Reference Price shall remain the effective Reference Price. When the Pro-Forma Reference Price has moved by 1% or more from the Reference Price currently

in effect, the Pro-Forma Reference Price shall become the Reference Price, and the Processor shall disseminate new Price Bands based on the new Reference Price; provided, however, that each new Reference Price shall remain in effect for at least 30 seconds.

(B) Openings

(1) Except when a Regulatory Halt is in effect at the start of Regular Trading Hours, the first Reference Price for a trading day shall be the Opening Price on the Primary Listing Exchange in an NMS Stock if such Opening Price occurs less than five minutes after the start of Regular Trading Hours. During the period less than five minutes after the Opening Price, a Pro-Forma Reference Price shall be updated on a continuous basis to be the arithmetic mean price of Eligible Reported Transactions for the NMS Stock during the period following the Opening Price (including the Opening Price), and if it differs from the current Reference Price by 1% or more shall become the new Reference Price, except that a new Reference Price shall remain in effect for at least 30 seconds. Subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(2) If the Opening Price on the Primary Listing Exchange in an NMS Stock does not occur within five minutes after the start of Regular Trading Hours, the first Reference Price for a trading day shall be the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the preceding five minute time period, and subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(C) Reopenings

(1) Following a Trading Pause in an NMS Stock, and if the Primary Listing Exchange has not declared a Regulatory Halt, the next Reference Price shall be the Reopening Price on the Primary Listing Exchange if such Reopening Price occurs within ten minutes after the beginning of the Trading Pause, and subsequent Reference Prices shall be determined in the manner prescribed for normal openings, as specified in Section V(B)(1) of the Plan. If such Reopening Price does not occur within ten minutes after the beginning of the Trading Pause, the first Reference Price following the Trading Pause shall be equal to the last effective Reference Price before the Trading Pause. Subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(2) Following a Regulatory Halt, the next Reference Price shall be the Opening or Reopening Price on the Primary Listing Exchange if such Opening or Reopening Price occurs within five minutes after the end of the Regulatory Halt, and subsequent Reference Prices shall be determined in the manner prescribed for normal openings, as specified in Section V(B)(1) of the Plan. If such Opening or Reopening Price has not occurred within five minutes after the end of the Regulatory Halt, the Reference Price shall be equal to the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the preceding five minute time period, and subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

VI. Limit Up-Limit Down Requirements

(A) Limitations on Trades and Quotations Outside of Price Bands

(1) All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trades at prices that are below the Lower Price Band or above the Upper Price Band for an NMS Stock. Single-priced opening, reopening, and closing transactions on the Primary Listing Exchange, however, shall be excluded from this limitation. In addition, any transaction that both *(i)* does not update the last sale price (except if solely because the transaction was reported late), and *(ii)* is excepted or exempt from Rule 611 under Regulation NMS shall be excluded from this limitation.

(2) When a National Best Bid is below the Lower Price Band or a National Best Offer is above the Upper Price Band for an NMS Stock, the Processor shall disseminate such National Best Bid or National Best Offer with an appropriate flag identifying it as non-executable. When a National Best Offer is equal to the Lower Price Band or a National Best Bid is equal to the Upper Price Band for an NMS Stock, the Processor shall distribute such National Best Bid or National Best Offer with an appropriate flag identifying it as a ''Limit State Quotation''.

(3) All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processor shall disseminate an offer below the Lower Price Band or bid above the Upper Price Band that may be submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; provided, however, that any such bid or offer shall not be included in National Best Bid or National Best Offer calculations.

(B) Entering and Exiting a Limit State

(1) All trading for an NMS Stock shall immediately enter a Limit State if the National Best Offer equals the Lower Price Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Price Band and does not cross the National Best Offer.

(2) When trading for an NMS Stock enters a Limit State, the Processor shall disseminate this information by identifying the relevant quotation (*i.e.,* a National Best Offer that equals the Lower Price Band or a National Best Bid that equals the Upper Price Band) as a Limit State Quotation. At this point, the Processor shall cease calculating and disseminating updated Reference Prices and Price Bands for the NMS Stock until either trading exits the Limit State or trading resumes with an opening or re-opening as provided in Section V.

(3) Trading for an NMS Stock shall exit a Limit State if, within 15 seconds of entering the Limit State, the entire size of all Limit State Quotations are executed or cancelled.

(4) If trading for an NMS Stock exits a Limit State within 15 seconds of entry, the Processor shall immediately calculate and disseminate updated Price Bands based on a Reference Price that equals the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the immediately preceding five-minute period (including the period of the Limit State).

(5) If trading for an NMS Stock does not exit a Limit State within 15 seconds of entry, the Limit State will terminate when the Primary Listing Exchange declares a Trading Pause pursuant to Section VII of the Plan *or at the end of Regular Trading Hours.* [If trading for an NMS Stock is in a Limit State at the end of Regular Trading Hours, the Limit State will terminate when the Primary Listing Exchange executes a closing transaction in the NMS Stock or five minutes after the end of Regular Trading Hours, whichever is earlier.]

VII. Trading Pauses

(A) Declaration of Trading Pauses

(1) If trading for an NMS Stock does not exit a Limit State within 15 seconds of entry during Regular Trading Hours, then the Primary Listing Exchange shall declare a Trading Pause for such NMS Stock and shall notify the Processor.

(2) The Primary Listing Exchange may also declare a Trading Pause for an NMS Stock when an NMS Stock is in a Straddle State, which is when National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State, and trading in that NMS Stock deviates from normal trading characteristics such that declaring a Trading Pause would support the Plan's goal to address extraordinary market volatility. The Primary Listing Exchange shall develop policies and procedures for determining when it would declare a Trading Pause in such circumstances. If a Trading Pause is declared for an NMS Stock under this provision, the Primary Listing Exchange shall notify the Processor.

(3) The Processor shall disseminate Trading Pause information to the public. No trades in an NMS Stock shall occur during a Trading Pause, but all bids and offers may be displayed.

(B) Reopening of Trading During Regular Trading Hours

(1) Five minutes after declaring a Trading Pause for an NMS Stock, and if the Primary Listing Exchange has not declared a Regulatory Halt, the Primary Listing Exchange shall attempt to reopen trading using its established reopening procedures. The Trading Pause shall end when the Primary Listing Exchange reports a Reopening Price.

(2) The Primary Listing Exchange shall notify the Processor if it is unable to reopen trading in an NMS Stock for any reason other than a significant order imbalance and if it has not declared a Regulatory Halt. The Processor shall disseminate this information to the public, and all trading centers may begin trading the NMS Stock at this time.

(3) If the Primary Listing Exchange does not report a Reopening Price within ten minutes after the declaration of a Trading Pause in an NMS Stock, and has not declared a Regulatory Halt, all trading centers may begin trading the NMS Stock.

(4) When trading begins after a Trading Pause, the Processor shall update the Price Bands as set forth in Section V(C)(1) of the Plan.

(C) Trading Pauses Within Five Minutes of the End of Regular Trading Hours

(1) If a Trading Pause for an NMS Stock is declared less than five minutes before the end of Regular Trading Hours, the Primary Listing Exchange shall attempt to execute a closing transaction using its established closing procedures. All trading centers may begin trading the NMS Stock when the Primary Listing Exchange executes a closing transaction.

(2) If the Primary Listing Exchange does not execute a closing transaction within five minutes after the end of Regular Trading Hours, all trading centers may begin trading the NMS Stock.

VIII. Implementation

The initial date of Plan operations shall be April 8, 2013.

(A) Phase I

(1) *On the initial date of Plan operations,* Phase I of Plan implementation shall *begin in select symbols from the Tier 1 NMS Stocks identified in Appendix A of the Plan.* [apply immediately following the initial date of Plan operations.]

(2) *Three months after the initial date of Plan operations, or such earlier date as may be announced by the Processor with at least 30 days notice,*[During Phase I,] the Plan shall *fully* apply [only] to [the]*all* Tier 1 NMS Stocks identified in Appendix A of the Plan.

(3) During Phase I, the first Price Bands for a trading day shall be calculated and disseminated 15 minutes after the start of Regular Trading Hours as specified in Section (V)(A) of the Plan. No Price Bands shall be calculated and disseminated less than 30 minutes before the end of Regular Trading Hours, and trading shall not enter a Limit State less than 25 minutes before the end of Regular Trading Hours.

(B) Phase II—Full Implementation

Six months after the initial date of Plan operations, or such earlier date as may be announced by the Processor with at least 30 days notice, the Plan shall fully apply (i) to all NMS Stocks; and (ii) beginning at 9:30 a.m. ET, and ending at 4:00 p.m. ET each trading day, or earlier in the case of an early scheduled close [or if the Processor disseminates a closing trade for the Primary Listing Exchange].

(C) Pilot

The Plan shall be implemented on a one-year pilot basis.

IX. Withdrawal From Plan

If a Participant obtains SEC approval to withdraw from the Plan, such Participant may withdraw from the Plan at any time on not less than 30 days' prior written notice to each of the other Participants. At such time, the withdrawing Participant shall have no further rights or obligations under the Plan.

X. Counterparts and Signatures

The Plan may be executed in any number of counterparts, no one of which need contain all signatures of all Participants, and as many of such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

IN WITNESS THEREOF, this Plan has been executed as of the __ day of _____ 2013 by each of the parties hereto.

BATS EXCHANGE, INC.
BY: _____

BATS Y–EXCHANGE, INC.
BY: _____

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED
BY: _____

CHICAGO STOCK EXCHANGE, INC.
BY: _____

EDGA EXCHANGE, INC.
BY: _____

EDGX EXCHANGE, INC.
BY: _____

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.
BY: _____

NASDAQ OMX BX, INC.
BY: _____

NASDAQ OMX PHLX LLC
BY: _____

THE NASDAQ STOCK MARKET LLC
BY: _____

NATIONAL STOCK EXCHANGE, INC.
BY: _____

NEW YORK STOCK EXCHANGE LLC
BY: _____

NYSE MKT LLC
BY: _____

NYSE ARCA, INC.
BY: _____

Appendix A—Percentage Parameters

Tier 1 NMS Stocks

(1) Tier 1 NMS Stocks shall include all NMS Stocks included in the S&P 500 Index, the Russell 1000 Index, and the exchange-traded products (''ETP'') listed on Schedule 1 to this Appendix. Schedule 1 to the Appendix will be reviewed and updated semi-annually based on the fiscal year by the Primary Listing Exchange to add ETPs that meet the criteria, or delete ETPs that are no longer eligible. To determine eligibility for an ETP to be included as a Tier 1 NMS Stock, all ETPs across multiple asset classes and issuers, including domestic equity, international equity, fixed income, currency, and commodities and futures will be identified. Leveraged ETPs will be excluded and the list will be sorted by notional consolidated average daily volume (''CADV''). The period used to measure CADV will be from the first day of the previous fiscal half year up until one week before the beginning of the next fiscal half year. Daily volumes will be multiplied by

closing prices and then averaged over the period. ETPs, including inverse ETPs, that trade over $2,000,000 CADV will be eligible to be included as a Tier 1 NMS Stock. To ensure that ETPs that track similar benchmarks but that do not meet this volume criterion do not become subject to pricing volatility when a component security is the subject of a trading pause, non-leveraged ETPs that have traded below this volume criterion, but that track the same benchmark as an ETP that does meet the volume criterion, will be deemed eligible to be included as a Tier 1 NMS Stock. The semi-annual updates to Schedule 1 do not require an amendment to the Plan. The Primary Listing Exchanges will maintain the updated Schedule 1 on their respective Web sites.

(2) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price more than $3.00 shall be 5%.

(3) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price equal to $0.75 and up to and including $3.00 shall be 20%.

(4) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price less than $0.75 shall be the lesser of (a) $0.15 or (b) 75%.

(5) The Reference Price used for determining which Percentage Parameter shall be applicable during a trading day shall be based on the closing price of the NMS Stock on the Primary Listing Exchange on the previous trading day, or if no closing price exists, the last sale on the Primary Listing Exchange reported by the Processor.

II. Tier 2 NMS Stocks

(1) Tier 2 NMS Stocks shall include all NMS Stocks other than those in Tier 1, provided, however, that all rights and warrants are excluded from the Plan.

(2) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price more than $3.00 shall be 10%.

(3) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price equal to $0.75 and up to and including $3.00 shall be 20%.

(4) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price less than $0.75 shall be the lesser of (a) $0.15 or (b) 75%.

(5) Notwithstanding the foregoing, the Percentage Parameters for a Tier 2 NMS Stock that is a leveraged ETP shall be the applicable Percentage Parameter set forth in clauses (2), (3), or (4) above, multiplied by the leverage ratio of such product.

(6) The Reference Price used for determining which Percentage Parameter shall be applicable during a trading day shall be based on the closing price of the NMS Stock on the Primary Listing Exchange on the previous trading day, or if no closing price exists, the last sale on the Primary Listing Exchange reported by the Processor.

Appendix A—Schedule 1

Symbol	Name
AAVX	ETRACS Daily Short 1-Month S&P 500 VIX Futures ETN.
AAXJ	iShares MSCI All Country Asia ex Japan Index Fund.
ACWI	iShares MSCI ACWI Index Fund.
ACWX	iShares MSCI ACWI ex US Index Fund.
AGG	iShares Barclays Aggregate Bond Fund.
AGZ	iShares Barclays Agency Bond Fund.
ALD	WisdomTree Asia Local Debt Fund.
AMJ	JPMorgan Alerian MLP Index ETN.
AMLP	Alerian MLP ETF.
BAB	PowerShares Build America Bond Portfolio.
BDG	PowerShares DB Base Metals Long ETN.
BIK	SPDR S&P BRIC 40 ETF.
BIL	SPDR Barclays Capital 1–3 Month T-Bill ETF.
BIV	Vanguard Intermediate-Term Bond ETF.
BKF	iShares MSCI BRIC Index Fund.
BKLN	PowerShares Senior Loan Portfolio.
BLV	Vanguard Long-Term Bond ETF.
BND	Vanguard Total Bond Market ETF.
BNO	United States Brent Oil Fund LP.
BOND	Pimco Total Return ETF.
BOS	PowerShares DB Base Metals Short ETN.
BRF	Market Vectors Brazil Small-Cap ETF.
BSV	Vanguard Short-Term Bond ETF.
BWX	SPDR Barclays Capital International Treasury Bond ETF.
BXDB	Barclays ETN+short B Leveraged ETN Linked to S&P 500.
CEW	WisdomTree Dreyfus Emerging Currency Fund.
CFT	iShares Barclays Credit Bond Fund.
CIU	iShares Barclays Intermediate Credit Bond Fund.
CLY	iShares 10+ Year Credit Bond Fund.
CORN	Teucrium Corn Fund.
CSJ	iShares Barclays 1–3 Year Credit Bond Fund.
CVY	Guggenheim Multi-Asset Income ETF.
CWB	SPDR Barclays Capital Convertible Securities ETF.
CWI	SPDR MSCI ACWI ex-US ETF.
CYB	WisdomTree Dreyfus Chinese Yuan Fund.
DBA	PowerShares DB Agriculture Fund.
DBB	PowerShares DB Base Metals Fund.
DBC	PowerShares DB Commodity Index Tracking Fund.
DBE	PowerShares DB Energy Fund.
DBO	PowerShares DB Oil Fund.
DBP	PowerShares DB Precious Metals Fund.
DBV	PowerShares DB G10 Currency Harvest Fund.
DEM	WisdomTree Emerging Markets Equity Income Fund.
DGL	PowerShares DB Gold Fund.
DGS	WisdomTree Emerging Markets SmallCap Dividend Fund.
DGZ	PowerShares DB Gold Short ETN.
DHS	WisdomTree Equity Income Fund.
DIA	SPDR Dow Jones Industrial Average ETF. Trust.
DJCI	E–TRACS UBS AG Dow Jones-UBS Commodity Index Total Return ETN.
DJP	iPath Dow Jones-UBS Commodity Index Total Return ETN.

Symbol	Name
DLN	WisdomTree LargeCap Dividend Fund.
DOG	ProShares Short Dow30.
DON	WisdomTree MidCap Dividend Fund.
DOO	WisdomTree International Dividend Ex-Financials Fund.
DTN	WisdomTree Dividend Ex-Financials Fund.
DVY	iShares Dow Jones Select Dividend Index Fund.
DWM	WisdomTree DEFA Fund.
DWX	SPDR S&P International Dividend ETF.
DXJ	WisdomTree Japan Hedged Equity Fund.
ECH	iShares MSCI Chile Investable Market Index Fund.
ECON	EGShares Emerging Markets Consumer ETF.
EDIV	SPDR S&P Emerging Markets Dividend ETF.
EDV	Vanguard Extended Duration Treasury ETF.
EEB	Guggenheim BRIC ETF.
EEM	iShares MSCI Emerging Markets Index Fund.
EFA	iShares MSCI EAFE Index Fund.
EFG	iShares MSCI EAFE Growth Index.
EFV	iShares MSCI EAFE Value Index.
EFZ	ProShares Short MSCI EAFE.
EIDO	iSHARES MSCI Indonesia Investable Market Index Fund.
ELD	WisdomTree Emerging Markets Local Debt Fund.
ELR	SPDR Dow Jones Large Cap ETF.
EMB	iShares JPMorgan USD Emerging Markets Bond Fund.
EMLC	Market Vectors Emerging Markets Local Currency Bond ETF.
EMM	SPDR Dow Jones Mid Cap ETF.
EPHE	iShares MSCI Philippines Investable Market Index Fund.
EPI	WisdomTree India Earnings Fund.
EPP	iShares MSCI Pacific ex-Japan Index Fund.
EPU	iShares MSCI All Peru Capped Index Fund.
ERUS	iShares MSCI Russia Capped Index Fund.
EUM	ProShares Short MSCI Emerging Markets
EWA	iShares MSCI Australia Index Fund.
EWC	iShares MSCI Canada Index Fund.
EWD	iShares MSCI Sweden Index Fund.
EWG	iShares MSCI Germany Index Fund.
EWH	iShares MSCI Hong Kong Index Fund.
EWI	iShares MSCI Italy Index Fund.
EWJ	iShares MSCI Japan Index Fund.
EWL	iShares MSCI Switzerland Index Fund.
EWM	iShares MSCI Malaysia Index Fund.
EWP	iShares MSCI Spain Index Fund.
EWQ	iShares MSCI France Index Fund.
EWS	iShares MSCI Singapore Index Fund.
EWT	iShares MSCI Taiwan Index Fund.
EWU	iShares MSCI United Kingdom Index Fund.
EWW	iShares MSCI Mexico Investable Market Index Fund.
EWX	SPDR S&P Emerging Markets SmallCap ETF.
EWY	iShares MSCI South Korea Index Fund.
EWZ	iShares MSCI Brazil Index Fund.
EZA	iShares MSCI South Africa Index Fund.
EZU	iShares MSCI EMU Index Fund.
FBT	First Trust NYSE Arca Biotechnology Index Fund.
FCG	First Trust ISE-Revere Natural Gas Index Fund.
FDL	First Trust Morningstar Dividend Leaders Index.
FDN	First Trust Dow Jones Internet Index Fund.
FEX	First Trust Large Cap Core AlphaDEX Fund.
FEZ	SPDR EURO STOXX 50 ETF.
FGD	First Trust DJ Global Select Dividend Index Fund.
FLAT	iPath US Treasury Flattener ETN.
FNX	First Trust Mid Cap Core AlphaDEX Fund.
FRI	First Trust S&P REIT Index Fund.
FVD	First Trust Value Line Dividend Index Fund.
FXA	CurrencyShares Australian Dollar Trust.
FXB	CurrencyShares British Pound Sterling Trust.
FXC	CurrencyShares Canadian Dollar Trust.
FXD	First Trust Consumer Discretionary AlphaDEX Fund.
FXE	CurrencyShares Euro Trust.
FXF	CurrencyShares Swiss Franc Trust.
FXG	First Trust Consumer Staples AlphaDEX Fund.
FXH	First Trust Health Care AlphaDEX Fund.
FXI	iShares FTSE China 25 Index Fund.
FXL	First Trust Technology AlphaDEX Fund.
FXU	First Trust Utilities AlphaDEX Fund.
FXY	CurrencyShares Japanese Yen Trust.

Symbol	Name
FXZ	First Trust Materials AlphaDEX Fund.
GAZ	iPath Dow Jones-UBS Natural Gas Subindex Total Return ETN.
GCC	GreenHaven Continuous Commodity Index Fund.
GDX	Market Vectors Gold Miners ETF.
GDXJ	Market Vectors Junior Gold Miners ETF.
GIY	Guggenheim Enhanced Core Bond ETF.
GLD	SPDR Gold Shares.
GMF	SPDR S&P Emerging Asia Pacific ETF.
GNR	SPDR S&P Global Natural Resources ETF.
GOVT	iShares Barclays U.S. Treasury Bond Fund.
GSG	iShares S&P GSCI Commodity Indexed Trust.
GSP	iPath GSCI Total Return Index ETN.
GSY	Guggenheim Enhanced Short Duration Bond ETF.
GVI	iShares Barclays Intermediate Government/Credit Bond Fund.
GWX	SPDR S&P International Small Cap ETF.
GXC	SPDR S&P China ETF.
GXG	Global X FTSE Colombia 20 ETF.
HAO	Guggenheim China Small Cap ETF.
HDGE	Active Bear ETF/The.
HDV	iShares High Dividend Equity Fund.
HYD	Market Vectors High Yield Municipal Index ETF.
HYG	iShares iBoxx $ High Yield Corporate Bond Fund.
HYS	PIMCO 0–5 Year High Yield Corporate Bond Index Fund.
IAU	iShares Gold Trust.
IBB	iShares Nasdaq Biotechnology Index Fund.
ICF	iShares Cohen & Steers Realty Majors Index Fund.
ICI	iPath Optimized Currency Carry ETN.
IDU	iShares Dow Jones US Utilities Sector Index Fund.
IDV	iShares Dow Jones International Select Dividend Index Fund.
IDX	Market Vectors Indonesia Index ETF.
IEF	iShares Barclays 7–10 Year Treasury Bond Fund.
IEI	iShares Barclays 3–7 Year Treasury Bond Fund.
IEO	iShares Dow Jones US Oil & Gas Exploration & Production Index. Fund.
IEV	iShares S&P Europe 350 Index Fund.
IEZ	iShares Dow Jones US Oil Equipment & Services Index Fund.
IGE	iShares S&P North American Natural Resources Sector Index Fund.
IGF	iShares S&P Global Infrastructure Index Fund.
IGOV	iShares S&P/Citigroup International Treasury Bond Fund.
IGS	ProShares Short Investment Grade Corporate.
IGV	iShares S&P North American Technology-Software Index Fund.
IHE	iShares Dow Jones US Pharmaceuticals Index Fund.
IHF	iShares Dow Jones US Healthcare Providers Index Fund.
IHI	iShares Dow Jones US Medical Devices Index Fund.
IJH	iShares S&P MidCap 400 Index Fund.
IJJ	iShares S&P MidCap 400/BARRA Value Index Fund.
IJK	iShares S&P MidCap 400 Growth Index Fund.
IJR	iShares S&P SmallCap 600 Index Fund.
IJS	iShares S&P SmallCap 600 Value Index Fund.
IJT	iShares S&P SmallCap 600/BARRA Growth Index Fund.
ILF	iShares S&P Latin America 40 Index Fund.
INDA	iShares MSCI India Index Fund.
INDY	iShares S&P India Nifty 50 Index Fund.
INP	iPath MSCI India Index ETN.
IOO	iShares S&P Global 100 Index Fund.
IPE	SPDR Barclays Capital TIPS ETF.
ITB	iShares Dow Jones US Home Construction Index Fund.
ITM	Market Vectors Intermediate Municipal ETF.
IVE	iShares S&P 500 Value Index Fund.
IVOO	Vanguard S&P Mid-Cap 400 ETF.
IVOP	iPath Inverse S&P 500 VIX Short-Term FuturesTM ETN II.
IVV	iShares S&P 500 Index Fund/US.
IVW	iShares S&P 500 Growth Index Fund.
IWB	iShares Russell 1000 Index Fund.
IWC	iShares Russell Microcap Index Fund.
IWD	iShares Russell 1000 Value Index Fund.
IWF	iShares Russell 1000 Growth Index Fund.
IWM	iShares Russell 2000 Index Fund.
IWN	iShares Russell 2000 Value Index Fund.
IWO	iShares Russell 2000 Growth Index Fund.
IWP	iShares Russell Midcap Growth Index Fund.
IWR	iShares Russell Midcap Index Fund.
IWS	iShares Russell Midcap Value Index Fund.
IWV	iShares Russell 3000 Index Fund.
IWW	iShares Russell 3000 Value Index Fund.

Symbol	Name
IWY	iShares Russell Top 200 Growth Index Fund.
IWZ	iShares Russell 3000 Growth Index Fund.
IXC	iShares S&P Global Energy Sector Index Fund.
IXG	iShares S&P Global Financials Sector Index Fund.
IXJ	iShares S&P Global Healthcare Sector Index Fund.
IXN	iShares S&P Global Technology Sector Index Fund.
IXP	iShares S&P Global Telecommunications Sector Index Fund.
IYC	iShares Dow Jones US Consumer Services Sector Index Fund.
IYE	iShares Dow Jones US Energy Sector Index Fund.
IYF	iShares Dow Jones US Financial Sector Index Fund.
IYG	iShares Dow Jones US Financial Services Index Fund.
IYH	iShares Dow Jones US Healthcare Sector Index Fund.
IYJ	iShares Dow Jones US Industrial Sector Index Fund.
IYK	iShares Dow Jones US Consumer Goods Sector Index Fund.
IYM	iShares Dow Jones US Basic Materials Sector Index Fund.
IYR	iShares Dow Jones US Real Estate Index Fund.
IYT	iShares Dow Jones Transportation Average Index Fund.
IYW	iShares Dow Jones US Technology Sector Index Fund.
IYY	iShares Dow Jones US Index Fund.
IYZ	iShares Dow Jones US Telecommunications Sector Index Fund.
JJC	iPath Dow Jones-UBS Copper Subindex Total Return ETN.
JJG	iPath Dow Jones-UBS Grains Subindex Total Return ETN.
JNK	SPDR Barclays Capital High Yield Bond ETF.
JXI	iShares S&P Global Utilities Sector Index Fund.
JYN	iPath JPY/USD Exchange Rate ETN.
KBE	SPDR S&P Bank ETF.
KBWB	PowerShares KBW Bank Portfolio.
KIE	SPDR S&P Insurance ETF.
KOL	Market Vectors Coal ETF.
KRE	SPDR S&P Regional Banking ETF.
KXI	iShares S&P Global Consumer Staples Sector Index Fund.
LAG	SPDR Barclays Capital Aggregate Bond ETF.
LQD	iShares iBoxx Investment Grade Corporate Bond Fund.
LTPZ	PIMCO 15+ Year US TIPS Index Fund.
LWC	SPDR Barclays Capital Long Term Corporate Bond ETF.
MBB	iShares Barclays MBS Bond Fund.
MBG	SPDR Barclays Capital Mortgage Backed Bond ETF.
MCHI	iShares MSCI China Index Fund.
MDY	SPDR S&P MidCap 400 ETF Trust.
MGC	Vanguard Mega Cap 300 ETF.
MGK	Vanguard Mega Cap 300 Growth ETF.
MINT	PIMCO Enhanced Short Maturity Strategy Fund.
MLPI	UBS E–TRACS Alerian MLP Infrastructure ETN.
MLPN	Credit Suisse Cushing 30 MLP Index ETN.
MOO	Market Vectors Agribusiness ETF.
MUB	iShares S&P National Municipal Bond Fund.
MXI	iShares S&P Global Materials Sector Index Fund.
MYY	ProShares Short MidCap 400.
NKY	MAXIS Nikkei 225 Index Fund ETF.
OEF	iShares S&P 100 Index Fund.
OIH	Market Vectors Oil Service ETF.
OIL	iPath Goldman Sachs Crude Oil Total Return Index ETN.
PALL	ETFS Physical Palladium Shares.
PBJ	Powershares Dynamic Food & Beverage Portfolio.
PCEF	PowerShares CEF Income Composite Portfolio.
PCY	PowerShares Emerging Markets Sovereign Debt Portfolio.
PDP	Powershares DWA Technical Leaders Portfolio.
PEY	PowerShares High Yield Equity Dividend Achievers Portfolio.
PFF	iShares S&P US Preferred Stock Index Fund.
PFM	PowerShares Dividend Achievers Portfolio.
PGF	PowerShares Financial Preferred Portfolio.
PGX	PowerShares Preferred Portfolio.
PHB	PowerShares Fundamental High Yield Corporate Bond Portfolio.
PHO	PowerShares Water Resources Portfolio.
PHYS	Sprott Physical Gold Trust.
PID	PowerShares International Dividend Achievers Portfolio.
PIE	PowerShares DWA Emerging Markets Technical Leaders Portfolio.
PIN	PowerShares India Portfolio.
PJP	Powershares Dynamic Pharmaceuticals Portfolio.
PLW	PowerShares 1–30 Laddered Treasury Portfolio.
PPH	Market Vectors Pharmaceutical ETF.
PPLT	ETFS Platinum Trust.
PRF	Powershares FTSE RAFI US 1000 Portfolio.
PRFZ	PowerShares FTSE RAFI US 1500 Small-Mid Portfolio.

Symbol	Name
PSLV	Sprott Physical Silver Trust.
PSP	PowerShares Global Listed Private Equity Portfolio.
PSQ	ProShares Short QQQ.
PVI	PowerShares VRDO Tax Free Weekly Portfolio.
PXH	PowerShares FTSE RAFI Emerging Markets Portfolio.
PZA	PowerShares Insured National Municipal Bond Portfolio.
QQQ	Powershares QQQ Trust Series 1.
REM	iShares FTSE NAREIT Mortgage Plus Capped Index Fund.
REMX	Market Vectors Rare Earth/Strategic Metals ETF.
REZ	iShares FTSE NAREIT Residential Plus Capped Index Fund.
RFG	Guggenheim S&P Midcap 400 Pure Growth ETF.
RJA	ELEMENTS Linked to the Rogers International Commodity Index—Agri Tot Return.
RJI	ELEMENTS Linked to the Rogers International Commodity Index—Total Return.
RJN	ELEMENTS Linked to the Rogers International Commodity Index—Energy To Return.
RJZ	ELEMENTS Linked to the Rogers International Commodity Index—Metals Tot Return.
RPG	Guggenheim S&P 500 Pure Growth ETF.
RSP	Guggenheim S&P 500 Equal Weight ETF.
RSX	Market Vectors Russia ETF.
RTH	Market Vectors Retail ETF.
RWM	ProShares Short Russell2000.
RWO	SPDR Dow Jones Global Real Estate ETF.
RWR	SPDR Dow Jones REIT ETF.
RWX	SPDR Dow Jones International Real Estate ETF.
RYH	Guggenheim S&P 500 Equal Weight Healthcare ETF.
SAGG	Direxion Daily Total Bond Market Bear 1x Shares
SCHA	Schwab US Small-Cap ETF.
SCHB	Schwab US Broad Market ETF.
SCHD	Schwab US Dividend Equity ETF.
SCHE	Schwab Emerging Markets Equity ETF.
SCHF	Schwab International Equity ETF.
SCHG	Schwab U.S. Large-Cap Growth ETF.
SCHH	Schwab U.S. REIT ETF.
SCHM	Schwab U.S. Mid-Cap ETF.
SCHO	Schwab Short-Term U.S. Treasury ETF.
SCHP	Schwab U.S. TIPs ETF.
SCHR	Schwab Intermediate-Term U.S. Treasury ETF.
SCHV	Schwab U.S. Large-Cap Value ETF.
SCHX	Schwab US Large-Cap ETF.
SCHZ	Schwab U.S. Aggregate Bond ETF.
SCPB	SPDR Barclays Capital Short Term Corporate Bond ETF.
SCZ	iShares MSCI EAFE Small Cap Index Fund.
SDY	SPDR S&P Dividend ETF.
SEF	ProShares Short Financials
SGG	iPath Dow Jones-UBS Sugar Subindex Total Return ETN.
SGOL	ETFS Gold Trust.
SH	ProShares Short S&P500.
SHM	SPDR Nuveen Barclays Capital Short Term Municipal Bond ETF.
SHV	iShares Barclays Short Treasury Bond Fund.
SHY	iShares Barclays 1–3 Year Treasury Bond Fund.
SIL	Global X Silver Miners ETF.
SIVR	ETFS Physical Silver Shares.
SJB	ProShares Short High Yield.
SJNK	SPDR Barclays Capital Short Term High Yield Bond ETF.
SLV	iShares Silver Trust.
SLX	Market Vectors Steel Index Fund.
SMH	Market Vectors Semiconductor ETF.
SOXX	iShares PHLX SOX Semiconductor Sector Index Fund.
SPLV	PowerShares S&P 500 Low Volatility Portfolio.
SPY	SPDR S&P 500 ETF Trust.
SPYG	SPDR S&P 500 Growth ETF.
SPYV	SPDR S&P 500 Value ETF.
STIP	iShares Barclays 0–5 Year TIPS Bond Fund.
STPP	iPath US Treasury Steepener ETN.
STPZ	PIMCO 1–5 Year US TIPS Index Fund.
SUB	iShares S&P Short Term National AMT-Free Municipal Bond Fund.
SVXY	ProShares Short VIX Short-Term Futures ETF.
TAN	Guggenheim Solar ETF.
TBF	ProShares Short 20+ Year Treasury.
TBX	ProShares Short 7–10 Treasury.
TFI	SPDR Nuveen Barclays Capital Municipal Bond ETF.
THD	iShares MSCI Thailand Index Fund.
TIP	iShares Barclays TIPS Bond Fund.
TLH	iShares Barclays 10–20 Year Treasury Bond Fund.
TLT	iShares Barclays 20+ Year Treasury Bond Fund.

Symbol	Name
TUR	iShares MSCI Turkey Index Fund.
UDN	PowerShares DB US Dollar Index Bearish Fund.
UGA	United States Gasoline Fund LP.
UNG	United States Natural Gas Fund LP.
URA	Global X Uranium ETF.
USCI	United States Commodity Index Fund.
USL	United States 12 Month Oil Fund LP.
USO	United States Oil Fund LP.
UUP	PowerShares DB US Dollar Index Bullish Fund.
VAW	Vanguard Materials ETF.
VB	Vanguard Small-Cap ETF.
VBK	Vanguard Small-Cap Growth ETF.
VBR	Vanguard Small-Cap Value ETF.
VCIT	Vanguard Intermediate-Term Corporate Bond ETF.
VCLT	Vanguard Long-Term Corporate Bond ETF.
VCR	Vanguard Consumer Discretionary ETF.
VCSH	Vanguard Short-Term Corporate Bond ETF.
VDC	Vanguard Consumer Staples ETF.
VDE	Vanguard Energy ETF.
VEA	Vanguard MSCI EAFE ETF.
VEU	Vanguard FTSE All-World ex-US ETF.
VFH	Vanguard Financials ETF.
VGK	Vanguard MSCI European ETF.
VGT	Vanguard Information Technology ETF.
VHT	Vanguard Health Care ETF.
VIG	Vanguard Dividend Appreciation ETF.
VIIX	VelocityShares VIX Short Term ETN.
VIOO	Vanguard S&P Small-Cap 600 ETF.
VIS	Vanguard Industrials ETF.
VIXM	ProShares VIX Mid-Term Futures ETF.
VIXY	ProShares VIX Short-Term Futures ETF.
VMBS	Vanguard Mortgage-Backed Securities ETF.
VNM	Market Vectors Vietnam ETF.
VNQ	Vanguard REIT ETF.
VO	Vanguard Mid-Cap ETF.
VOE	Vanguard Mid-Cap Value Index Fund/Closed-end.
VONE	Vanguard Russell 1000.
VONG	Vanguard Russell 1000 Growth ETF.
VONV	Vanguard Russell 1000 Value.
VOO	Vanguard S&P 500 ETF.
VOOG	Vanguard S&P 500 Growth ETF.
VOOV	Vanguard S&P 500 Value ETF.
VOT	Vanguard Mid-Cap Growth Index Fund/Closed-end.
VOX	Vanguard Telecommunication Services ETF.
VPL	Vanguard MSCI Pacific ETF.
VPU	Vanguard Utilities ETF.
VQT	Barclays ETN+ ETNs Linked to the S&P 500 Dynamic VEQTORTM TotaL Return Index.
VSS	Vanguard FTSE All World ex-US Small-Cap ETF.
VT	Vanguard Total World Stock Index Fund ETF.
VTHR	Vanguard Russell 3000.
VTI	Vanguard Total Stock Market ETF.
VTV	Vanguard Value ETF.
VTWG	Vanguard Russell 2000 Growth.
VTWO	Vanguard Russell 2000.
VTWV	Vanguard Russell 2000 Value.
VUG	Vanguard Growth ETF.
VV	Vanguard Large-Cap ETF.
VWO	Vanguard MSCI Emerging Markets ETF.
VXAA	ETRACS 1-Month S&P 500 VIX Futures ETN.
VXEE	ETRACS 5-Month S&P 500 VIX Futures ETN.
VXF	Vanguard Extended Market ETF.
VXUS	Vanguard Total International Stock ETF.
VXX	iPATH S&P 500 VIX Short-Term Futures ETN.
VXZ	iPATH S&P 500 VIX Mid-Term Futures ETN.
VYM	Vanguard High Dividend Yield ETF.
VZZB	iPath Long Enhanced S&P 500 VIX Mid-Term FuturesTM ETN II.
WDTI	WisdomTree Managed Futures Strategy Fund.
WIP	SPDR DB International Government Inflation-Protected Bond ETF.
XBI	SPDR S&P Biotech ETF.
XES	SPDR S&P Oil & Gas Equipment & Services ETF.
XHB	SPDR S&P Homebuilders ETF.
XIV	VelocityShares Daily Inverse VIX Short Term ETN.
XLB	Materials Select Sector SPDR Fund.
XLE	Energy Select Sector SPDR Fund.

Symbol	Name
XLF	Financial Select Sector SPDR Fund.
XLG	Guggenheim Russell Top 50 ETF.
XLI	Industrial Select Sector SPDR Fund.
XLK	Technology Select Sector SPDR Fund.
XLP	Consumer Staples Select Sector SPDR Fund.
XLU	Utilities Select Sector SPDR Fund.
XLV	Health Care Select Sector SPDR Fund.
XLY	Consumer Discretionary Select Sector SPDR Fund.
XME	SPDR S&P Metals & Mining ETF.
XOP	SPDR S&P Oil & Gas Exploration & Production ETF.
XPH	SPDR S&P Pharmaceuticals ETF.
XRT	SPDR S&P Retail ETF.
XSD	SPDR S&P Semiconductor ETF.
XXV	iPath Inverse S&P 500 VIX Short-Term Futures ETN.
ZROZ	PIMCO 25+ Year Zero Coupon US Treasury Index Fund.

Appendix B—Data

Unless otherwise specified, the following data shall be collected and transmitted to the SEC in an agreed-upon format on a monthly basis, to be provided 30 calendar days following month end. Unless otherwise specified, the Primary Listing Exchanges shall be responsible for collecting and transmitting the data to the SEC. Data collected in connection with Sections II(E)—(G) below shall be transmitted to the SEC with a request for confidential treatment under the Freedom of Information Act. 5 U.S.C. 552, and the SEC's rules and regulations thereunder.

I. Summary Statistics

A. Frequency with which NMS Stocks enter a Limit State. Such summary data shall be broken down as follows:

1. Partition stocks by category
   a. Tier 1 non-ETP issues > $3.00
   b. Tier 1 non-ETP issues > = $0.75 and < = $3.00
   c. Tier 1 non-ETP issues < $0.75
   d. Tier 1 non-leveraged ETPs in each of above categories
   e. Tier 1 leveraged ETPs in each of above categories
   f. Tier 2 non-ETPs in each of above categories
   g. Tier 2 non-leveraged ETPs in each of above categories
   h. Tier 2 leveraged ETPs in each of above categories
2. Partition by time of day
   a. Opening (prior to 9:45 a.m. ET)
   b. Regular (between 9:45 a.m. ET and 3:35 p.m. ET)
   c. Closing (after 3:35 p.m. ET)
   d. Within five minutes of a Trading Pause re-open or IPO open
3. Track reasons for entering a Limit State, such as:
   a. Liquidity gap –price reverts from a Limit State Quotation and returns to trading within the Price Bands
   b. Broken trades
   c. Primary Listing Exchange manually declares a Trading Pause pursuant to Section (VII)(2) of the Plan
   d. Other

B. Determine (1), (2) and (3) for when a Trading Pause has been declared for an NMS Stock pursuant to the Plan.

II. Raw Data *(all Participants, except A–E, which are for the Primary Listing Exchanges only)*

A. Record of Every Straddle State

1. Ticker, date, time entered, time exited, flag for ending with Limit State, flag for ending with manual override.
2. Pipe delimited with field names as first record.

B. Record of Every Price Band

1. Ticker, date, time at beginning of Price Band, Upper Price Band, Lower Price Band.
2. Pipe delimited with field names as first record.

C. Record of every Limit State

1. Ticker, date, time entered, time exited, flag for halt.
2. Pipe delimited with field names as first record.

D. Record of every Trading Pause or halt

1. Ticker, date, time entered, time exited, type of halt (i.e., regulatory halt, non-regulatory halt, Trading Pause pursuant to the Plan, other).
2. Pipe delimited with field names as first record.

E. Data set or orders entered into reopening auctions during halts or Trading Pauses

1. Arrivals, Changes, Cancels, # shares, limit/market, side, Limit State side.
2. Pipe delimited with field name as first record.

F. Data set of order events received during Limit States

G. Summary data on order flow of arrivals and cancellations for each 15-second period for discrete time periods and sample stocks to be determined by the SEC in subsequent data requests. Must indicate side(s) of Limit State.

1. Market/marketable sell orders arrivals and executions
   a. Count
   b. Shares
   c. Shares executed
2. Market/marketable buy orders arrivals and executions
   a. Count
   b. Shares
   c. Shares executed
3. Count arriving, volume arriving and shares executing in limit sell orders above NBBO mid-point
4. Count arriving, volume arriving and shares executing in limit sell orders *at or below* [<=] NBBO mid-point (non-marketable)
5. Count arriving, volume arriving and shares executing in limit buy orders *at or* above NBBO mid-point (non-marketable)
6. Count arriving, volume arriving and shares executing in limit buy orders below NBBO mid-point
7. Count and volume arriving of limit sell orders priced at or above NBBO *mid-point plus* [+]$0.05
8. Count and volume arriving of limit buy orders priced at or below NBBO *mid-point minus* [−]$0.05
9. Count and volume of ([iii]*3* − [viii]*8*) for cancels
10. Include: ticker, date, time at start, time of Limit S[s]*t*ate, *all* data item fields *in 1,* last sale prior to [1-minute] *15-second* period (null if no trades today), range during 15-second period, last trade during 15-second period

III. At least two months prior to the end of the Pilot Period, all Participants shall provide to the SEC assessments relating to *the* impact of the Plan and calibration of the Percentage Parameters as follows:

A. Assess the statistical and economic impact on *liquidity*[limit order book] of approaching Price Bands.

B. Assess the statistical and economic impact of the Price Bands on erroneous trades.

C. Assess the statistical and economic impact of the appropriateness of the Percentage Parameters used for the Price Bands.

D. Assess whether the Limit State is the appropriate length to allow for liquidity replenishment when a Limit State is reached because of a temporary liquidity gap.

E. Evaluate concerns from the options markets regarding the statistical and economic impact of Limit States on liquidity and market quality in the options markets. (Participants that operate options exchange should also prepare such assessment reports.)

F. Assess whether the process for entering a Limit State should be adjusted and whether Straddle States are problematic.

G. Assess whether the process for exiting a Limit State should be adjusted.

H. Assess whether the Trading Pauses are too long or short and whether the reopening procedures should be adjusted.

[FR Doc. 2013–04356 Filed 2–25–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68958; File No. SR–NYSE–2013–14]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Temporary Suspension of Those Aspects of Rules 36.20 and 36.21 That Would Not Permit Floor Brokers To Use Personal Portable Phone Devices on the Trading Floor Following the Aftermath of Hurricane Sandy Until the Earlier of When Phone Service Is Fully Restored or Friday, March 29, 2013

February 20, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that February 15, 2013, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the temporary suspension of those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor following the aftermath of Hurricane Sandy until the earlier of when phone service is fully restored or Friday, March 29, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On Thursday, November 1, 2012, the Exchange filed a rule proposal to temporarily suspend those aspects of Rules 36.20, 36.21, and 36.30 that would not permit Floor brokers and Designated Market Makers (''DMMs'') to use personal portable phone devices on the Trading Floor [4] following the aftermath of Hurricane Sandy and during the period that phone service was not fully functional.[5] Pursuant to that filing, all other aspects of those rules remained applicable and the temporary suspensions of Rule 36 requirements were in effect beginning the first day trading resumed following Hurricane Sandy until Friday, November 2, 2012.

On November 5, 2012, although power had been restored to the downtown Manhattan vicinity, other services were not yet fully operational. Among other things, the telephone services provided by third-party carriers to the Exchange were still not fully operational on the Trading Floor, which continued to impact the ability of Floor members to communicate from the Trading Floor as permitted by Rule 36. Accordingly, the Exchange filed to extend the temporary suspension of those aspects of Rules 36.20, 36.21, and 36.30 that would not permit Floor brokers and DMMs to use personal portable phone devices on the Trading Floor to the earlier of phone service being restored or November 9, 2012,[6] which was subject to the same terms and conditions of the temporary suspension filed for October 31, 2012 through November 2, 2012, including the record retention requirements related to any use of personal portable phones.[7] On November 9, 2012, the Exchange filed an additional extension of the temporary suspension of those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of phone service being restored or November 16, 2012, again subject to the same terms and conditions of the original temporary suspension that was filed.[8] On November 19, 2012, the Exchange filed to extend the temporary suspension of those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of when phone service is fully restored or Friday, December 14, 2012, again subject to the same terms and conditions of the original temporary suspension that was filed.[9] The continued extension of the temporary suspension was needed because of the ongoing intermittent phone and internet service. Specifically, the wired telephone lines and internet connections for Floor brokers continued to not be functional, many Exchange authorized and provided portable phones continued to not be functional and therefore Floor brokers still could not consistently use the Exchange authorized and provided portable phones, pursuant to Rules 36.20 and 36.21. On December 13, 2012, the Exchange filed to extend the temporary suspension of those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of when phone service is fully restored or Friday, January 18, 2013, again subject to the same terms and conditions of the original temporary suspension that was filed.[10] On January 18, 2013, the Exchange filed to extend the temporary suspension of those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of when phone service is fully restored or Friday, February 15, 2013, again subject to the

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Pursuant to Rule 6A, the Trading Floor is defined as the restricted-access physical areas designated by the Exchange for the trading of securities, but does not include the physical locations where NYSE Amex Options are traded.

[5] *See* Securities Exchange Act Release No. 68137 (Nov. 1, 2012), 77 FR 66893 (Nov. 7, 2012) (SR–NYSE–2012–58).

[6] *See* Securities Exchange Act Release No. 68161 (Nov. 5, 2012), 77 FR 67704 (Nov. 12, 2012) (SR–NYSE–2012–61).

[7] *See supra* note 5 (notice that describes the terms and conditions of the temporary suspension).

[8] *See* Securities Exchange Act Release No. 68211 (Nov. 9, 2012), 77 FR 69534 (Nov. 19, 2012) (SR–NYSE–2012–64). Because the telephone lines for the DMMs were operational, the Exchange did not need to extend the temporary suspension of Rule 36.30 as it related to DMMs.

[9] *See* Securities Exchange Act Release No. 68271 (Nov. 20, 2012), 77 FR 70862 (Nov. 27, 2012) (SR–NYSE–2012–67). Relief was not extended for DMMs. *See infra* note 13.

[10] *See* Securities Exchange Act Release No. 68452 (Dec. 17, 2012), 77 FR 75683 (Dec. 21, 2012) (SR–NYSE–2012–73). Relief was not extended for DMMs. *See infra* note 13.

same terms and conditions of the original temporary suspension that was filed.[11] The Exchange now seeks another extension of the temporary suspension of those aspects of Rules 36.20 and 36.21 because of ongoing telephone and internet issues.

The Exchange has been advised by its third-party carrier that the damage to the telephone connections continues to be more extensive than previously anticipated. In addition, there has been damage to the internet connections available to Floor brokers on the Trading Floor, which has adversely impacted service. In particular, the Exchange notes that the lines that support both the wired and wireless phone connections and internet connections for the Floor brokers are based in an area of lower Manhattan that suffered extensive damage as a result of Hurricane Sandy. The type of damage that was sustained will, in some cases, require the third-party carrier to rebuild the infrastructure that supports these services, rather than engage in repairs of existing lines. The process of rebuilding the infrastructure has been incrementally slow without significant improvement since the last extension request. While such rebuilding and repairs are in process, the telephone line and internet connections for Floor brokers still are not fully operational and may not be for another month, given the type of work that needs to be completed to restore the telephone services.

Because of the ongoing intermittent phone and internet service, many Exchange authorized and provided portable phones continue to not be functional and therefore many Floor brokers still cannot consistently use the Exchange authorized and provided portable phones, pursuant to Rules 36.20 and 36.21. In addition, many of the wired telephone lines and internet connections for Floor brokers continue to not be functional. In certain instances, however, the personal cell phones of Floor brokers are operational on the Trading Floor. The Exchange believes that because communications with customers is a vital part of a Floor broker's role as agent and therefore contributes to maintaining a fair and orderly market, during the period when phone and internet service continues to be intermittent, Floor brokers should be permitted to use personal portable phone devices in lieu of the non-operational Exchange authorized and provided portable phones, wired phone lines, or internet connections.[12]

Accordingly, the Exchange proposes to extend the temporary suspension of those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of when phone service is fully restored or Friday, March 29, 2013.[13] As noted above, the process of rebuilding the infrastructure has been incrementally slow without significant improvement since the last extension request. However, the Exchange believes that there will be significant improvement in the near future. The third-party carrier recently advised the Exchange that during the next month both the telephone and the internet connections will be restored to Floor brokers on the Trading floor. The Exchange proposes that the extension of the temporary suspension of those aspects of Rules 36.20 and 36.21 to permit use of the personal portable phones by Floor brokers on the Trading Floor be pursuant to the same terms and conditions of the temporary suspension filed for October 31, 2012 through November 2, 2012, including the record retention requirements related to any use of personal portable phones.[14]

In particular, as set forth in the prior filings, Floor brokers that use a portable personal phone must provide the Exchange with the names of all Floor-based personnel who used personal portable phones during this temporary suspension period, together with the phone number and applicable carrier for each number. Floor broker member organizations must maintain in their books and records all cell phone records that show both incoming and outgoing calls that were made during the period that a personal portable phone was used on the Trading Floor. To the extent the records are unavailable from the third-party carrier, the Floor broker member organizations must maintain contemporaneous records of all calls made or received on a personal portable phone while on the Trading Floor. As with all member organization records, such cell phone records must be provided to Exchange regulatory staff, including without limitation staff of the Financial Industry Regulatory Authority (''FINRA''), on request.

In addition, to the extent that personal portable phones are used to replicate internet connections previously approved pursuant to Rule 36 that are not operational on the Trading Floor because of damage sustained by Hurricane Sandy, such use is subject to the same requirements that would otherwise be applicable, including record-retention requirements. This emergency relief is solely meant to maintain the status quo to the extent provided in Rule 36 and not intended to broaden the scope of the activities allowed pursuant to the Rule (e.g., accessing internet only at the booth). As with all member organization records, such cell phone data records must be provided to Exchange regulatory staff, including without limitation staff of FINRA, on request. To the extent that Exchange-approved telephone or electronic communications are operational, Floor brokers must use those connections rather than use a personal portable phone. Specifically, the Exchange states that Floor brokers must return to pre-Hurricane Sandy communications at any point when service is restored even if temporary.

As noted above, because the Exchange is dependent on third-party carriers for both wired and wireless phone service and internet connections on the Trading Floor, the Exchange does not know how long the proposed temporary suspension of Rules 36.20 and 36.21 will be required. However, based on current estimates, the Exchange understands that phone service may be fully restored during the next month.

Accordingly, the Exchange proposes that the extension of the temporary suspensions of those aspects of Rule 36 that do not permit Floor brokers to use personal portable phones on the Trading Floor continue until the earlier of when phone service is fully restored or Friday, March 29, 2013.[15]

[11] *See* Securities Exchange Act Release No. 68704 (January 22, 2013), 78 FR 5851 (January 28, 2013) (SR–NYSE–2013–06). Relief was not extended for DMMs. *See infra* note 13.

[12] To the extent that Exchange-approved telephone or electronic communications are operational, Floor brokers must use those connections rather than use a personal portable phone. Specifically, the Exchange states that Floor brokers must return to pre-Hurricane Sandy communications at any point when service is restored even if temporary.

[13] Consistent with the existing relief, [sic] Exchange is not proposing to provide any relief to DMMs in this proposal. Because phone service to DMMs has been restored, the existing relief does not provide for a temporary suspension of Rule 36.30—Equities [sic], which prohibits DMMs from using personal portable phones on the Trading Floor. Similarly, because the off-Floor locations for DMMs have been restored, the existing relief does not provide for the temporary suspension for DMMs to be permitted to communicate with off-Floor personnel who may not be located at their regular physical location. The Exchange is not proposing to provide such relief in this proposal. *See supra* notes 5 and 6 (notices describing the relief previously requested for DMMs).

[14] *See supra* note 5 (notice that describes the terms and conditions of the temporary suspension).

[15] The Exchange will provide notice of this rule filing to Floor brokers, including the applicable recordkeeping and other requirements. If telephone service is fully restored prior to March 29, 2013, the Exchange will notify Floor brokers that the temporary suspension of those aspects of Rule 36 that do not permit the use of personal portable

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

In particular, in the aftermath of Hurricane Sandy, while the Exchange was able to open for trading, many of the services that the Exchange depends on from third-party carriers, such as wired and wireless telephone connections, are not fully restored. The Exchange believes that the proposed extension of the temporary suspensions from those aspects of Rule 36 that restrict Floor broker's use of personal portable phones on the Trading Floor removes impediments to and perfects the mechanism of a free and open market and national market system because the proposed relief will enable Floor brokers to conduct their regular business, notwithstanding the ongoing issues with telephone service. The Exchange further believes that without the requested relief, Floor brokers would be compromised in their ability to conduct their regular course of business on the Trading Floor, which could adversely impact the market generally and investor confidence during this time of unprecedented weather disruptions. In particular, for Floor brokers, because they operate as agents for customers, their inability to communicate with customers could compromise their ability to represent public orders on the Trading Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed extension of the temporary suspensions of those aspects of Rules 36.20—Equities and 36.21—Equities that would not permit Floor brokers to use personal portable phone devices on the Trading Floor is in direct response to damages in the aftermath of Hurricane Sandy. The proposed relief will enable Floor brokers to conduct their regular business, notwithstanding the ongoing issues with telephone service, and thus should not have any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[20] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] 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. The Commission notes that doing so will allow the Exchange to continue uninterrupted, for Floor brokers, the emergency temporary relief necessitated by Hurricane Sandy's disruption of telephone service, as described herein and in the Exchange's prior filings seeking such relief, and to help maintain the status quo, until the earlier of when phone service for Floor brokers is fully restored or March 29, 2013. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[22]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[23] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2013–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2013–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule 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

phones on the Trading Floor has expired as of the time that phone service is fully restored.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78s(b)(2)(B).

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–NYSE–2013–14 and should be submitted on or before March 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–04358 Filed 2–25–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68955; File No. SR–ICEEU–2012–11]

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Enhanced Margin Methodology

February 20, 2013.

I. Introduction

On December 28, 2012, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–ICEEU–2012–11 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on January 8, 2013.[3] On February 14, 2013, ICE Clear Europe filed Amendment No. 1 to the proposed rule change.[4] The Commission received one comment regarding this proposal.[5] For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

ICE Clear Europe proposes to implement an enhanced margin methodology (''Decomp Model'') that addresses the risk of both index and single-name credit default swaps (''CDS'') cleared by ICE Clear Europe and permits appropriate portfolio margining between related index and single-name CDS positions. ICE Clear Europe believes that the Decomp Model will enhance its own risk management, as discussed below, and thereby facilitate the prompt and accurate settlement and risk management of swaps and contribute to the safeguarding of securities and funds associated with CDS transactions.

A fundamental aspect of the Decomp Model is the recognition that index CDS instruments cleared by ICE Clear Europe are essentially a composition of specific single-name CDS. The Decomp Model includes the following enhancements to the ICE Clear Europe margin methodology (''Margin Methodology Enhancements'') for index CDS instruments (which are already in place for single-name CDS): Replacing standard deviation with mean absolute deviation (MAD) as a measure of credit spread variability, use of an auto regressive process to obtain multi-horizon risk measures, an increased number of spread response scenarios, and introduction of liquidity requirements. These enhancements and the enhancements referenced below have been reviewed and/or recommended by the ICE Clear Europe risk management personnel, risk and model review working groups and committees, the ICE Clear Europe Risk Committee and an independent third-party risk expert (Finance Concepts). Implementation of these enhancements to the ICE Clear Europe risk methodology will result specifically in a better measurement of the risk associated with clearing index CDS.

As a result of the decomposition of the index CDS, ICE Clear Europe also will be able to (1) incorporate jump-to-default risk as a component of the risk margin associated with index CDS (which is already in place for single-name CDS) and (2) provide appropriate portfolio margin treatment between index CDS and offsetting single-name CDS positions. Incorporating jump-to-default risk as a component of the Decomp Model will result in a better measurement of the risk associated with clearing index CDS (as is already the case for single-name CDS). Recognizing the highly correlated relationship between long-short positions in index CDS and the underlying single-name CDS constituents of an index CDS will provide for fundamental and appropriate portfolio margin treatment.

Upon approval of the Decomp Model, ICE Clear Europe would initially make appropriate portfolio margining available with respect to its Clearing Members' proprietary positions. ICE Clear Europe does not currently clear CDS positions of customers of its Clearing Members, but it plans to introduce customer clearing for CDS upon receipt of applicable regulatory approvals.[6] The Commission has granted an exemptive order permitting ICE Clear Europe to commingle customer positions in index CDS and single-name CDS carried through FCM/BD Clearing Members in a single account; [7] in addition, ICE Clear Europe has petitioned the Commodity Futures Trading Commission (''CFTC'') to permit such commingling.[8] Following the commencement of customer clearing for CDS, and upon receipt of all necessary regulatory approvals, ICE Clear Europe would make appropriate portfolio margining available to commingled customer positions in index and single-name CDS using the Decomp Model. Accordingly, the Decomp Model is an important component of ICE Clear Europe's planned customer clearing offering.

ICE Clear Europe has stated that it does not believe that the expected phased implementation of the portfolio margining element of the proposed Decomp Model (commencing with proprietary positions) raises an issue of unfair discrimination. ICE Clear Europe believes the portfolio margining aspect of the Decomp Model does not unfairly discriminate with respect to similarly situated participants because it is available to any participant for whom ICE Clear Europe is currently able to provide portfolio margin treatment. Once ICE Clear Europe makes customer clearing available and obtains all necessary regulatory approvals, ICE Clear Europe will offer portfolio margining with respect to its Clearing Members' customer positions. ICE Clear

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[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 68563 (January 2, 2013), 78 FR 1281 (January 8, 2013).

[4] In Amendment No. 1, ICE Clear Europe clarified the description of the current and proposed approaches to its concentration charge calculations.

[5] *See* Comment from Mark Sokolow dated January 17, 2013, *available at http://www.sec.gov/comments/sr-iceeu-2012–11/iceeu201211.shtml.*

[6] The Commission recently approved proposed rule changes by ICE Clear Europe to implement customer clearing for CDS. *See* Securities Exchange Act Release No. 68812 (February 1, 2013), 78 FR 9088 (February 7, 2013).

[7] *See* Securities Exchange Act Release No. 68433 (December 14, 2012), 77 FR 75211 (December 19, 2012).

[8] *See* letter from Paul Swann, President & Chief Operating Officer, ICE Clear Europe to Mr. David Stawick, Secretary, CFTC, dated May 31, 2012, *available at http://www.cftc.gov/stellent/groups/public/@requestsandactions/documents/ifdocs/icecleareurope4dfrequest.pdf.*

Europe believes the proposed rule amendments are therefore not designed to permit unfair discrimination among participants in the use of ICE Clear Europe's clearing services.

In addition, as part of the implementation of the proposed Decomp Model, ICE Clear Europe proposes to (1) reduce the current level of risk mutualization among ICE Clear Europe's CDS Clearing Members through the default resources held in the mutualized CDS Guaranty Fund and significantly increase the level of resources held as initial margin for CDS Contracts (the ''Guaranty Fund/IM Modification''), (2) modify the initial margin risk model approach in a manner that will make it easier for market participants to measure their risks, by removing the conditional recovery rate stress scenarios and adding a new recovery rate sensitivity component (the ''IM Recovery Rate Modification''), (3) modify the concentration charge calculation by introducing the net notional amount (''NNA'') per single-name/index calculation and applying the more conservative concentration charge based on the 5-Year equivalent notional amount (''5Y ENA'') or NNA (the ''IM Concentration Charge Modification''), (4) add a new basis risk component from single-name CDS positions that are offset by index-derived single-name CDS positions (the ''IM Basis Risk Modification'') and (5) combine a single guaranty fund calculation for index CDS and single-name CDS positions (the ''Guaranty Fund Modification'').

Currently, ICE Clear Europe maintains a high percentage of its default resources for CDS Contracts in the CDS Guaranty Fund, as compared to initial margin for CDS Contracts. This reflects the fact that the current CDS Guaranty Fund model is designed to cover the uncollateralized losses that would result from the three single names that would cause the greatest losses when entering a state of default. The Guaranty Fund/IM Modification incorporates into the initial margin risk model [9] the single name that causes the greatest loss when entering a state of default (*i.e.,* the single name that results in the greatest amount of loss when stress-tested to undergo a credit event). This change effectively collateralizes the loss that would occur from this single name upon default. Consequently, the amount of uncollateralized loss that would result from the three single names causing the greatest losses when entering a state of default is reduced, thereby reducing the amount of required contributions to the CDS Guaranty Fund.

ICE Clear Europe notes that the decrease in the CDS Guaranty Fund and the increase in initial margin requirements are not equivalent in terms of magnitudes. Instead, based on current portfolios, it is expected that for every $1 decrease in the CDS Guaranty Fund requirement there will be a corresponding increase of approximately $5 in initial margin requirements.

The IM Recovery Rate Modification modifies the initial margin risk model by removing the conditional recovery rate stress scenarios and adding a new recovery rate sensitivity component that is computed by considering changes in the recovery rate assumptions and their impact on the net asset value of the CDS portfolio. This modification will make it easier for market participants to replicate their initial margin requirements.

The IM Concentration Charge Modification defines concentration charge thresholds in terms of NNA as well as 5Y ENA and takes the more conservative concentration requirement based on either notional amount. The current concentration charge approach only takes into account 5Y ENA. This modification captures the risk of large directional CDS positions that may not be captured by the calculation based on the 5Y ENA. For example, a set of large NNA positions, whose maturity date is close to the current date, may not be subject to concentration charges based on 5Y ENA if the estimated 5Y ENA is below the established threshold. The alternative NNA-based concentration charge computations may yield significant additional initial margin requirements as the NNA exceeds the established threshold.

As index-derived single-name positions and outright single-name positions are offset, an additional basis risk requirement is introduced to account for the fact that the index instruments are more actively traded than single-name instruments and thus are the preferred instruments to express changing views about the credit market as a whole, or even about specific single-name components of the indices. The IM Basis Risk Modification captures the risk associated with differences between outright single-name CDS positions and index-derived single-name CDS positions. In other words, a ''perfectly hedged'' portfolio consisting of an index CDS position and opposite index replicating single-name CDS positions will still attract an initial margin requirement due to the basis risk that exists.

Currently, ICE Clear Europe estimates separate guaranty fund sizes for index CDS positions and single-name positions. The Guaranty Fund Modification takes into account the portfolio benefits between index and single-name positions, and incorporates the worst 2-member uncollateralized losses coming from the jump-to-default, spread response, basis and interest rate stress scenario considerations. As noted above, the Decomp Model also extends the jump-to-default calculation to index CDS as well as single-name CDS.

III. Comments

The Commission received one comment on the proposed rule change.[10] The commenter queried whether the Commission's exemptive order permitting ICE Clear Europe to commingle customer positions in index CDS and single-name CDS carried through FCM/BD Clearing Members in a single account is in compliance with generally accepted accounting principles and is in the best interest of customers.[11] The commenter also queried whether customers are aware of the commingling and whether such commingling is industry standard.[12] The comment is not directly applicable to the proposed rule change, which relates to ICE Clear Europe's implementation of an enhanced margin methodology designed to address the risk of clearing both index and single-name credit default swaps.[13]

IV. Discussion

Section 19(b)(2)(C) of the Act [14] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act [15] requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds

[9] The modification applies to the jump-to-default requirements component of IM.

[10] *See* supra note 5.

[11] *See* supra note 7.

[12] *Id.*

[13] The Commission notes that such commingled positions would be held in a segregated account established and maintained in accordance with Section 4d(f) of the Commodity Exchange Act, and the CFTC has adopted rules requiring that cleared swaps customer collateral be held separately from the FCM's own property and be accounted for on a customer-by-customer basis (*i.e.,* the collateral of one cleared swaps customer may not be used to satisfy the losses of the FCM or any other customer). *See* Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions, Final Rule, 77 FR 6336 (February 7, 2012).

[14] 15 U.S.C. 78s(b)(2)(C).

[15] 15 U.S.C. 78q–1(b)(3)(F).

which are in the custody or control of the clearing agency or for which it is responsible.

The Decomp Model would implement a number of Margin Methodology Enhancements for index CDS instruments, as described above, which are already in place for single-name CDS. The decomposition of index CDS also would permit ICE Clear Europe to incorporate jump-to-default risk as a component of the risk margin associated with index CDS. The Commission believes that the Margin Methodology Enhancements and the incorporation of jump-to-default risk as a component of the index CDS margin methodology would result in better measurement of the risk associated with clearing index CDS.

The proposed rule change also includes modifications to ICE Clear Europe's initial margin and CDS Guaranty Fund methodologies. The Guaranty Fund/IM Modification would incorporate into the initial margin risk model the single name that causes the greatest loss when entering a state of default, thus requiring Clearing Members to collateralize a greater portion of the loss resulting from their default. The IM Recovery Rate Modification would facilitate the ability of market participants to replicate their initial margin requirements and evaluate the risk of their CDS clearing portfolio. The IM Concentration Charge Modification would allow for a potentially more conservative concentration requirement for large directional CDS positions. The IM Basis Risk Modification would capture the risk associated with differences between outright single-name CDS positions and index-derived single-name CDS positions, such that even ''perfectly hedged'' portfolios will still attract an initial margin requirement due to the basis risk that exists. Finally, the Guaranty Fund Modification would combine a single guaranty fund calculation for index CDS and single-name CDS positions, which takes into account the portfolio benefits between index and single-name positions and incorporates the worst 2-member uncollateralized losses coming from the jump-to-default, spread response, basis and interest rate stress scenario considerations. The Commission believes that these modifications, and the enhancements described above, would facilitate the safeguarding of securities and funds in the custody or control of ICE Clear Europe or for which it is responsible.

After considering the proposed changes, including each of the representations made by ICE Clear Europe in the filing, the Commission believes that these changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act,[16] including ICE Clear Europe's obligation to ensure that its rules are designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[17] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (File No. SR–ICEEU–2012–11), as modified by Amendment No. 1, be, and hereby is, approved.[19]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–04357 Filed 2–25–13; 8:45 am]

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[16] 15 U.S.C. 78q–1(b)(3)(F).

[17] 15 U.S.C. 78q–1.

[18] 15 U.S.C. 78s(b)(2).

[19] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68960; File No. SR–Phlx–2013–09]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change To Enhance the Functionality Offered on Its Options Floor Broker Management System (''FBMS'') by, Among Other Things, Automating Functions Currently Performed by Floor Brokers

February 20, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on February 6, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to enhance the functionality offered on its Options Floor Broker Management System (''FBMS'') in a number of ways, described in detail below. As a result of these enhancements, Floor Brokers will no longer execute most trades on the Exchange's options trading floor, resulting in changes to a number of rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to enhance the Exchange's options regulatory program by expanding the tools available to Floor Brokers in order to reduce the potential for violations of various Exchange rules by Floor Brokers. Specifically, under the proposal, most Floor Broker transactions will be executed through FBMS rather than verbally by Floor Brokers in the trading crowd, which should result in fewer priority rule and trade-through rule violations, because FBMS will check the Exchange's market and/or the National Best Bid/Offer (''NBBO'') to help prevent violations, as described further below.

Today, Floor Brokers use FBMS for a number of reasons. Historically, Floor Brokers were not connected to the order entry portals like order flow providers are, because their business was focused on receiving orders at the Floor Broker booths on the trading floor and executing such orders in person, manually. As options trading has

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

become more electronic, this has continued to change over time, such that the Exchange began to provide technology to Floor Brokers, as did other options exchanges.[3] The main driving force behind the creation of FBMS was the Consolidated Options Audit Trail System (''COATS''), mandated in 2000.[4] The COATS requirements created the need for tools to assist Floor Brokers [5] in complying with the requirement to capture certain options order information, including the time of order receipt and execution, contemporaneously with receipt and execution.

In addition, today, Floor Brokers can use FBMS to submit orders, including Complex Orders, to Phlx XL, the Exchange's trading system rather than executing the order in the trading crowd. Those orders are processed just like any other electronic order on the Exchange, subject to the rules governing Phlx XL, such as Rule 1080. Floor Brokers may do so for a variety of reasons, including that the order is far away from the market such that the Floor Broker would prefer to place it on the electronic book or that there is a contra-side order on the book with which the order can trade.

At this time, the Exchange proposes to expand upon FBMS functionality with several enhancements.

Complex Calculator

The Exchange proposes to provide Floor Brokers with a feature called a complex calculator. Floor Brokers entering multi-leg option orders up to 15 legs on a net debit or net credit basis via FBMS would receive suggested prices for each component of the multi-leg order that would achieve the desired net debit or net credit price. Such prices would then be displayed on FBMS. The Floor Broker would not be required to submit the multi-leg order at the suggested prices; the new FBMS functionality is intended to function as a tool to assist Floor Brokers in calculating the component prices and expedite the process of handling multi-leg orders in the trading crowd.[6] Accordingly, the Floor Broker can override the prices and attempt to achieve the net price using different prices. The net debit/credit price can also be expressed as an overall cash value. For example, a multi-leg order to purchase 100 of option A and sell 100 of option B could be entered with a net debit price of $5,000. If the option legs were trading $0.90–$1.10 and $0.45—$0.55, respectively, the complex calculator could generate suggested prices of $1.00 and $0.50 [(($1.00 − $0.50)*100 times)*100 options premium multiplier = $5,000], which would satisfy the $5,000 net debit.

When a Floor Broker enters a trading crowd with a multi-leg order, often he or she will simply request a market for that order and announce a net debit or credit price, rather than separate prices for each component. For example, a Floor Broker representing a two-legged spread order to buy 10 XYZ Mar 50 calls and sell 10 XYZ Jun 60 calls may announce the price as a net debit of, for example, $1.00. This means that the purchase price for 10 XYZ Mar 50 calls is $1.00 greater than the selling price of 10 XYZ Jun 60 calls.[7] Conversely, a net credit price of $1.00 would indicate that the purchase price of 10 XYZ Mar 50 calls is $1.00 less than the selling price of 10 XYZ Jun 60 calls.[8]

Currently, when a Floor Broker receives a single order that has multiple components with instructions to execute such order on a net debit or credit basis, the Floor Broker must first consider prices on various different markets, all as close to contemporaneously as possible. He must calculate the bid and ask of the total net debit and credit. If the Floor Broker is able to achieve the specified net debit or credit based upon the then-current market conditions, the Floor Broker will enter the trading crowd (after entering all of the required electronic audit trail information onto the FBMS in accordance with Exchange rules [9]) and request a market. The members of the trading crowd would then make their own calculations and respond with a net debit or credit price.[10] Next, the Floor Broker must ascertain the current market price of each component of the order to determine whether or not the order can be executed at the specified net debit or credit price. Taking all of this into account, he must then execute the trade verbally in open outcry at the net debit or credit price. Following the verbal execution, he must consider whether the markets for the legs of the order are still the same as they were when he traded the order in open outcry. Often, those markets have changed in the small amount of time, perhaps one second, it took to announce and execute the trade in open outcry. If so, when the Floor Broker submits the trade for trade reporting, the trade report is marked as late or out of sequence to indicate that the trade report is at a price outside of the current market, even though the trade occurred within the market at the time.

This process can be time-consuming, especially when the order consists of a large number of components. It sometimes results in missed opportunities to trade at the market prices that would support the specified net debit or credit. Overall, the Floor Broker has significant manual order handling and post-trade responsibilities today.

The new functionality proposed herein is intended to expedite this process by providing a calculation tool in the FBMS. The tool is intended to significantly reduce and potentially eliminate out of sequence or late trade reporting that often results due to the current protracted open outcry trade execution process. Specifically, once the Floor Broker has submitted the required electronic audit trail information into FBMS, FBMS will enable the Floor Broker to ''query'' the prices of each component of such an order such that the specified net debit or credit can be achieved. The System will then calculate the prices of each component and display those suggested prices. Initially, multi-leg orders with up to 15

[3] *See e.g.,* Securities Exchange Act Release Nos. 41524 (June 14, 1999) (SR–Phlx–99–11); 50070 (July 23, 2004) (SR–Phlx–2004–46); 50996 (January 7, 2005) (SR–CBOE–2004–77); and 64057 (March 8, 2011) (SR–CBOE–2011–019) at note 4.

[4] *See* subparagraph IV.B.e(v) of the Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. *See* Securities Exchange Act Release No. 43268 (September 11, 2000) (Requiring options exchanges to design and implement COATS to ''incorporate into the audit trail all non-electronic orders such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on such respondent exchange, beginning with the receipt of an order by such respondent exchange and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order* * *'' (''Phase V'')).

[5] COATS is not just applicable to Floor Brokers but was particularly challenging for them because of the number of orders they executed manually.

[6] The complex calculator functionality will not execute orders.

[7] The Floor Broker might pay, for example, $5.00 to purchase 10 XYZ Mar 50 calls, and would receive $4.00 for the sale of 10 XYZ Jun 60 calls. This leaves the Floor Broker with a net debit of $1.00.

[8] In this example, the Floor Broker might pay $4.00 to purchase 10 XYZ Mar 50 calls, and would receive $5.00 for the sale of 10 XYZ Jun 60calls. This leaves the Floor Broker with a net credit of $1.00.

[9] *See* Rules 1063(e) and (f).

[10] The trading crowd will continue to have a reasonable time period to respond, but, over time, that time period has become shorter, as trading becomes more electronic, and the Exchange expects that to be the case following these changes as well. The Exchange will continue to provide guidance to trading crowds regarding what is a reasonable time period to respond, depending on a number of factors, including market conditions and the type of order.

legs will be accepted.[11] The new feature will be in Rule 1063(e)(iii).[12]

In this way, the Floor Broker can quickly: (i) Expose the order to the trading crowd; (ii) ascertain whether the order can be executed at the specified net debit or credit, and (iii) if so, submit the prospective prices of the components of the order that will achieve the specified net debit or credit to FBMS for execution. The Exchange believes that the new calculation functionality will substantially increase the speed with which Floor Brokers can ascertain the marketability of multi-leg orders at a specified net debit or credit price, and should result in more efficient executions in the trading crowd.

Today, Floor Brokers can enter Complex Orders [13] consisting of two option legs into FBMS for execution using the Complex Order functionality of Phlx XL, pursuant to Rule 1080.08(b)(iii). The Exchange is proposing to permit orders up to six legs (one of which may be stock) to be entered through FBMS.[14] One-sided (not crosses) Complex Orders are then subject to the Exchange' Complex Order processing, including an auction, placement on the Complex Order Book and/or execution by the System. The new complex calculator functionality assists Floor Brokers with pricing multi-leg orders for representation in the trading crowd as one-sided orders as well as with pricing multi-leg orders for submission for execution as a two-sided order, as discussed further below.

Execution of Two-Sided Orders

Phlx proposes to provide enhanced order handling functionality to its Floor Brokers as part of its various enhancements to FBMS. Orders represented in the trading crowd by a Floor Broker must now, under this proposal, be submitted to FBMS for execution. Specifically, Floor Brokers will submit orders represented in the trading crowd as two-sided orders (or crosses).[15] This is described in proposed Rule 1063(e)(iv) and Advice C–2 (and cross-referenced in Rule 1080.06) as follows: FBMS is designed to execute two-sided orders entered by Floor Brokers for execution, including multi-leg orders, after representation in the trading crowd.[16] When a Floor Broker submits a two-sided order for execution by FBMS, the order will be executed based on existing markets and Exchange rules. If the order cannot be executed due to, for example, change in the market, the System will attempt to execute the order a number of times for a period of no more than one second, which period shall be established by the Exchange and announced by Options Trader Alert, after which it will be returned to the Floor Broker on the FBMS. The Floor Broker may resubmit the two-sided order for execution, as long as the quotes/orders that comprise the order have not been withdrawn.[17] Floor Brokers are responsible for handling all orders in accordance with Exchange priority and trade-through rules, including Rules 1014, 1033 and 1084.

The new FBMS functionality will thereby perform automatically the functions previously handled manually by Floor Brokers, such as checking the Phlx book.[18] Accordingly, FBMS will now assist Floor Brokers with this function by ''clearing the book.'' For example, if a Floor Broker enters a two-sided order through the new FBMS and there is an order on the book at a price that prevents the Floor Broker's order from executing, FBMS will indicate to the Floor Broker how many contracts need to be satisfied before the Floor Broker's order can execute at the agreed-upon price. If the Floor Broker agrees to satisfy that order, consistent with the order placed in his care, he can cause FBMS to send a portion of one of his orders to Phlx XL to trade against the order on the book, thereby clearing it and permitting the remainder of the Floor Broker's order to trade. This functionality is optional in the sense that the Floor Broker can decide not to trade against the book, consistent with order instructions he has been given,[19] and therefore not execute his two-sided order at that particular price. Today, the Floor Broker employs the same process, albeit in two separate steps, to clear the book, including considering whether one side of his two-sided order can, in effect, give up a certain number of contracts in order for the rest of the order to trade at that price.[20] FBMS will not similarly assist the Floor Broker with checking and clearing away markets if the NBBO is better at another market, but FBMS will prevent the order from executing through the NBBO, consistent with Exchange rules, as described below.

FBMS will not execute an order that violates the priority of orders on the book [21] or trades through the NBBO for an option.[22] Thus, sometimes, when a Floor Broker submits an order for execution, the order will not be executed. One reason could be that the price of the trade would result in a trade through of the NBBO for that option, which is prohibited by Rule 1084(a). There is an exception from the trade through prohibition for ''Complex Trades.'' [23] If an order meets the requirements of a Complex Trade, FBMS will execute such order.

Another reason why an order might not be executable by FBMS is if the Exchange's priority rules would not permit an execution at a certain price, because, for example, there is an order on the book at that price and certain priority rules apply.[24] FBMS, before executing an order, will validate that a multi-leg order meets the definition of Complex Order in Rule 1080.08 [25] and will apply a new spread priority provision, which is the same in Rule 1080.08(c)(iii) applicable to the Exchange's complex order functionality in Phlx XL. The new provision will be in Rule 1033(i) [26] and state that, in FBMS, an order can be executed at a

[11] Today, without a complex calculator feature, FBMS accepts up to 20 legs. The Exchange believes that 15 legs should be sufficient for Floor Brokers' current business needs.

[12] The Exchange is proposing to delete the existing language of Rule 1063(e)(ii),which is obsolete.

[13] As distinguished from multi-leg orders under Rule 1066, Complex Orders are the specific types of orders accepted into Phlx XL's Complex Order process. *See* Phlx Rule 1080.08.

[14] The Exchange is also proposing to permit Do Not Auction (''DNA'') orders to be entered into FBMS as one of the new enhancements to FBMS. DNA orders are Complex Orders that are prevented from triggering a Complex Order Live Auction or joining one that is in progress. *See* Phlx Rule 1080.08(a)(viii) and (e).

[15] The reason they are two-sided orders is either that the order came in to the Floor Broker with both sides and was handled pursuant to Rule 1064 or that the Floor Broker represented the order to the trading crowd, thereby finding the second side.

[16] This proposal does not permit executions in a Floor Broker booth or elsewhere, nor does it affect how Qualified Contingent Cross orders are handled.

[17] *See* discussion surrounding proposed Rule 1000(g) below.

[18] Checking the Phlx book refers to making sure that an order is not executed outside of Phlx's priority provisions which generally give priority to the best price, and then customers at a given price.

[19] For example, the Floor Broker may have been instructed to trade a certain minimum amount.

[20] Of course, the Floor Broker must exercise due diligence in the execution of the order pursuant to Rule 155. Presumably, Floor Brokers' clients send them orders (rather than entering them electronically into Phlx XL), because they desire the order handling that a Floor Broker provides; if the client wanted a portion of their order to trade against the book, they could submit their order to do so. Nothing requires the book to be cleared if the client or Floor Broker determines not to pursue the execution of their order at that time.

[21] *See* Rules 1014 and 1033.

[22] *See* Rule 1084(a).

[23] Rule 1084(b)(viii).

[24] Like executions of all electronic orders on Phlx XL, all-or-none orders do not have standing and are not taken into consideration. *See* Advice A–9.

[25] Complex Orders must have a conforming ratio.

[26] The current language of Rule 1033(i) is being deleted, as explained below.

total net credit or debit with priority over either the bid or the offer established in the marketplace that is not better than the bids or offers comprising such total credit or debit, provided that (i) at least one option leg is executed at a better price than established bid or offer for that option contract, and (ii) no option leg is executed at a price outside of the established bid or offer for that option contract. For example, a multi-leg order to purchase option A and sell option B for a net debit of $0.50 would not be permitted to trade if option A was quoted as $1.00–$1.05 and option B was quoted as $0.50–$0.55 because there are no prices which satisfy the net debit. However, if option A was quoted as $0.95 bid instead of $1.00 as stipulated above, FBMS would allow a $0.50 debit in this strategy to trade with option prices of $1.00 and $0.50.

If a multi-leg order does not comply with the definition of Complex Order because it has more than six legs, its execution in FBMS will nevertheless be subject to new Rule 1033(i) if it is an order with a conforming ratio. Today, for executions on the trading floor, Rule 1033(d), (e), (g) and (h) effectively require one leg of a spread to be improved for every two legs of a multi-leg order. Under this proposal, a different priority provision will apply to multi-leg orders executed through FBMS with more than six legs than does today on the trading floor. Rather than requiring one leg out of every two legs in a multi-leg order to be improved, only one total leg needs to be improved. This is the same as for Complex Orders traded on Phlx XL pursuant to Rule 1080.08(c)(iii). For example, assuming all of these options do not trade in penny increments, and assume that the market for option A is $1.00–$1.05, option B is $0.50–$0.55, option C is $0.60–$0.80 and option D is $0.20–$0.25. Based on these markets, the combined market for an order to buy option A, sell option B, buy option C, and sell option D is $0.80–$1.15. An order to buy option A, sell option B, buy option C, and sell option D could trade at $1.10 with option A trading at $1.05, option B trading at $0.50, option C trading at $0.75 (this is the leg improving the market), and option D trading at $0.20. The Exchange believes that extending the spread priority provision that exists for Complex Orders to orders with more than six legs executed through FBMS is consistent with the Act, as described further below. The Exchange notes that other options exchanges, such as the ISE, have similar complex order priority provisions for Complex Orders that do not limit the number of legs and require only one leg to be improved.

In addition, an order may be subject to special priority treatment pursuant to Rule 1014.05. If an order is for 500 contracts or more or if one leg of a multi-leg order is for 500 contracts or more, then such order or individual leg of a multi-leg order has priority over bids/offers other than customers on the book and crowd participants (including other Floor Brokers representing orders in the trading crowd). FBMS will prevent an execution if there is a customer order at that price; the Floor Broker must ensure that there is no bid/offer in the trading crowd. In the aforementioned example where the order is to buy option A and sell option B for a net debit of $0.50 and the market for option A is $1.00–$1.05 and option B is $0.50–$0.55, if each leg of the spread is for 500 contracts or more, then pursuant to Rule 1014.05, each leg has priority over existing bids/offers at that price, except customer interest and crowd participants. Thus, if each leg was for 500 contracts, option A and option B would be permitted to trade at a net debit of $0.50 with execution prices of $1.00 and $0.50, respectively. The execution would not be allowed to occur if there was customer interest at either $1.00 in option A or $.50 in option B.

Similarly, whether or not an order complies with the definition of a Complex Order, FBMS will execute orders at split prices like can be done on the trading floor today, consistent with Rule 1014(g)(i)(B). Rule 1014(g)(i)(B) provides that if a member purchases (sells) 50 or more option contracts of a particular series at a particular price or prices, he shall, at the next lower (higher) price have priority in purchasing (selling) up to the equivalent number of option contracts of the same series that he purchased (sold) at the higher (lower) price or prices, but only if his bid (offer) is made promptly and the purchase (sale) so effected represents the opposite side of a transaction with the same order or offer (bid) as the earlier purchase or purchases (sale or sales). When the market has a bid/ask differential of one minimum trading increment and the bid and/or offer represent the quotation of an out-of-crowd SQT or an RSQT, such member shall have priority over such SQT and/or RSQT with respect to both the bid and the offer. For example, a Floor Broker may purchase 100 options for $5.25 when the quoted market is $5.20–$5.30 by executing 50 contracts at $5.30 and 50 contracts at $5.20.

Exchange rules also govern the execution prices for multi-leg orders where one leg is the underlying security (stock). Rule 1033(e) provides that a synthetic option order may be executed at a total net credit or debit, provided that, the member executes the option leg at a better price than the established bid or offer for that option contract, in accordance with Rule 1014. If there is more than one option leg and stock, Rule 1033(d) applies. Synthetic option orders in open outcry, in which the option component is for a size of 100 contracts or more, have priority over bids (offers) of crowd participants who are bidding (offering) only for the option component of the synthetic option order, but not over bids (offers) of public customers on the limit order book, and not over crowd participants that are willing to participate in the synthetic option order at the net debit or credit price. FBMS will validate that an order complies with these requirements.[27]

As discussed above, today, when a Floor Broker executes an order in the trading crowd verbally, that order is deemed executed; when the Floor Broker is entering the execution price into FBMS to complete the processing of the trade, including trade reporting to the tape, markets can change. Because the trade has already occurred, the fact that the Exchange's best bid/offer changes before the trade is reported does not matter, as long as the trade was at a valid price when the trade occurred. However, the trade may *appear* to have violated priority or trade through rules to someone looking at a time-sequenced audit trail. The Exchange's surveillance programs endeavor to ascertain whether such a violation occurred. From the Floor Broker's perspective, the time stamp on the order ticket is intended to capture the time of order execution and is the relevant time to determine whether a violation occurred, rather than the time of trade reporting. Determining whether or not a violation occurred and whether a disciplinary process should ensue is currently a manually-driven event; this proposal seeks to introduce better time sequencing and certainty about when a trade occurred, and, to the extent possible, cause executions through FBMS to comply with the applicable exchange rules.

In short, the proposed execution functionality of FBMS should help ensure the certainty about when a trade

[27] The stock portion of such orders is handled by the Floor Broker, not on the Exchange (off Exchange). The Floor Broker must validate, after representing the order in the trading crowd, whether there are crowd participants bidding/offering.

occurred and what the market was at the time, consistent with Exchange rules.

No Floor-Based Executions

One of the most significant changes proposed herein is that most orders handled by Floor Brokers (limited exceptions apply) will now be executed through FBMS and not verbally by Floor Brokers in the trading crowd. Accordingly, the Exchange is proposing to amend a variety of rules applicable to Floor Brokers to make clear that Floor Brokers handle orders, rather than execute them. These include Rule 155, Rule 1033(d), (e), (f), (h) and (i), Rule 1060, Rule 1063(c) and .02, and Advices C–1 and C–3.

In addition, the Exchange proposes to adopt Rule 1000(f) to expressly state that all Exchange options transactions shall be executed in one of the following ways, once the Exchange's new FBMS functionality has been operating for a certain period to be established by the Exchange: (I) Automatically by the Exchange Trading System, Phlx XL, pursuant to Rule 1080 and other applicable options rules; (ii) by and among members in the Exchange's options trading crowd neither of whom is a Floor Broker; or (iii) through the FBMS for trades involving at least one Floor Broker. The rule will further state that although Floor Brokers represent orders in the trading crowd, Floor Brokers are not permitted to execute orders in the Exchange's options trading crowd, except when the Exchange determines to permit manual executions in the event of a problem with Exchange systems, except with respect to accommodation transactions pursuant to Rule 1059 and FLEX trades pursuant to Rules 1079 or 1079A, and except where there are more than 15 legs of an order. Accordingly, certain executions will still occur manually in the trading crowd and not through FBMS. Specifically, FLEX orders will continue to be executable by Floor Brokers in the trading crowd pursuant to Rule 1079 and 1079A, rather than through FBMS. This is because FBMS will not be able to accept FLEX orders, which have varied and complicated terms. Similarly, accommodation transactions (also known as cabinet trades) will continue to be executable by Floor Brokers in the trading crowd pursuant to Rule 1059. Neither FLEX nor accommodation transactions are executed through Exchange systems today. Floor Brokers will also be permitted to execute orders in the trading crowd if they are handling an order with more than 15 legs, because the Exchange determined to limit the complexity of FBMS functionality and does not believe that many orders fall into this category or that Floor Brokers will be adversely affected.

Trades not involving a Floor Broker will still be executable verbally in the trading crowd.[28] For example, a specialist trading with a Registered Options Trader (" ROT") will continue to be able to do so; specialists and ROTs do not have FBMS, because it is a tool for Floor Brokers. The Exchange does not expect that the number of trades occurring manually will be significant.

The Exchange proposes to amend the following rules to make clear that certain orders must be executed through the FBMS: Rule 1064(a), (b), (c) and 1064.04(h).[29]

Specifically, such orders are not deemed executed upon agreement and verbalization in the trading crowd, but rather once entered and processed as two-sided orders through FBMS. The language will provide: All such orders are not deemed executed until entered into and executed by FBMS; bids and offers can be withdrawn pursuant to Rule 1000(g). As explained above, it will be possible that FBMS will not execute an order because market conditions have changed, preventing the execution from occurring, in which case FBMS "returns" the order to the Floor Broker,[30] who can then determine to resubmit it. The Exchange also proposes to amend Rule 1014(g)(vi) and Advice F–2, which pertain to how trades are allocated, matched and time stamped. In order to facilitate timely tape reporting of trades, it is the duty of certain persons identified in these provisions to allocate, match and time stamp trades executed in open outcry and to submit the matched trade tickets to an Exchange Data Entry Technician ("DET") located on the trading floor immediately upon execution. Trades executed electronically via the XL System are automatically trade reported without further action required by executing parties; these provisions will now also state that trades executed electronically through FBMS are also automatically trade reported.

The Exchange also proposes to amend Rule 1066, Certain Types of Orders Defined, and rename it "Certain Types of Floor-Based (Non-Phlx XL) Orders Defined" to make clear that the order types in the rule reflect what can be traded on the floor. The order types that are handled and executed automatically by Phlx XL appear in Rule 1080. The Exchange is also proposing introductory language specifically stating that these order types are eligible for entry by a Floor Broker for execution through FBMS and, respecting transactions where there is no Floor Broker involved, for execution by members in the trading crowd. Rule 1066 is also proposed to be amended to delete the following order types, because FBMS will not accept these order types:[31] Multi-part order, delta order, market-on-close order, and one-cancels-the-other order.[32] These order types are being deleted because they are not easily automated and are rarely used. Once the proposal is in full effect, these deleted order types will not be available on the Exchange, neither through the PHLX XL nor on the trading floor (including by non-Floor Brokers such as ROTs and specialists). The Exchange does not believe that this is a significant change, because these are not common order types.

The Exchange proposes to rename "Hedge Order" in Rule 1066(f) to "Multi-leg Order," and make corresponding changes in Rule 1033, 1063(e) and Advices C–2 and F–14. A synthetic options order will also be re-categorized as a type of multi-leg order in Rule 1066(f)(5), rather than a separate order type in Rule 1066(g). The definition and description of an Intermarket Sweep Order will be moved from Rule 1066(i) to Rule 1080.03 because it is (and will continue to be) only available on Phlx XL. The definition is not changing. Rule 1066(f) will also be amended to add three new definitions—Spread Type Order, and Complex Order, to help distinguish between the multi-leg orders that also meet the definition of Complex Order in Rule 1080.08 from those that do not,[33] and DNA Order which will now be accepted through FBMS for all orders, not just Complex Orders. In sum, Rule 1066, as revised, will contain all of the order types available for open outcry trading on the trading floor and through FBMS; Rule 1080 will continue to

[28] The restriction from manual trading in Rule 1000(f) is limited to trades involving at least one Floor Broker. *See* proposed Rule 1000(f)(ii).

[29] Rather than making changes to Advice B–11, which generally tracks the language of Rule 1064, the Exchange proposes to delete it. Some Advices have fine schedules adopted pursuant to the Exchange's minor rule enforcement and reporting plan, such that they are necessary, but this one does not.

[30] The System will first attempt to execute the order a number of times for a certain number of seconds.

[31] The Exchange is also proposing to delete Rule 1033(i), Inter-Currency Spread Priority, because FBMS will not handle order multi-leg orders involving two different underlying currencies; these trades rarely occur.

[32] This order type is also being deleted from Rule 1063(b).

[33] A spread type order, which can only be entered through FBMS, can have up to 15 legs, while a Complex Order entered for handling through PHLX XL can have up to six legs, each including the underlying security.

govern the order types available through PHLX XL.

Lastly, the Exchange proposes to adopt new Rule 1000(g) to codify how bids and offers are made and maintained on the trading floor, because the Exchange believes that eliminating most Floor Broker verbal executions will place additional emphasis on how long a bid/offer is in effect. Today, Rule 110 [34] provides, in pertinent part, that bids and offers must be made in an audible tone of voice. A member shall be considered ''in'' on a bid or offer, while he remains at the post, unless he shall distinctly and audibly say ''out.'' A member bidding and offering in immediate and rapid succession shall be deemed ''in'' until he shall say ''out'' on either bid or offer. The Exchange proposes to add this language to new Rule 1000(g), Manner of Bidding and Offering, as well as additional language to address how a member can be ''out'' of a bid/offer when dealing with a Floor Broker using FBMS. Specifically, a member must say ''out'' before the Floor Broker submits the order into the FBMS for execution (and before each time the Floor Broker resubmits the order). Otherwise, once such order is submitted and electronically executed, the quoting member cannot withdraw his/her bid/offer. To more fully address this aspect of floor trading, the Exchange proposes to state that once the trading crowd has provided a quote, it will remain in effect until: (A) a reasonable amount of time has passed, or (B) there is a significant change in the price of the underlying security, or (C) the market given in response to the request has been improved. In the case of a dispute, the term ''significant change'' will be interpreted on a case-by-case basis by an Options Exchange Official [35] based upon the extent of the recent trading in the option and, in the case of equity and index options, in the underlying security, and any other relevant factors. This language is currently used in Rule 1064.02(v) to emphasize when bids/offers are in effect, which will be helpful to emphasize with these new FBMS enhancements. The concepts are not new; they are merely being codified into the options portion of the rules.

The changes proposed herein will be incorporated into any applicable fine schedules under the Exchange's minor rule violation plan. Although the Exchange is not adding any new fine schedules or changing any fines, the Exchange is proposing to add the new electronic trading requirement to Advice C–2, Options Floor Broker Management System, which will continue to be subject to the existing fine schedule. The changes to Advices C–1, C–3 and F–14, which also have a fine schedule, are minor. Advice C–1 is being amended to require that a Floor Broker ascertain the presence of at least one ROT in the trading crowd where an option is traded (rather than executed). Advice C–3(c), regarding opening orders of ROTs, is being amended to reflect that Floor Brokers will handle rather than execute orders. Advice F–14 is being amended to replace the term ''hedge order'' with ''multi-leg order.'' The change to Advice F–2, Allocation, Time Stamping, Matching and Access to Matched Trades, results in fewer trades being subject to it, because electronic trades, which there will be more of, are automatically matched and reported.

Implementation

The Exchange proposes to implement the enhancements with a trial period of two to four weeks, to be determined by the Exchange, during which the new FBMS enhancements and related rules will operate along with the existing FBMS and rules. The Exchange seeks to begin implementation in February 2013 and complete it in March 2013. Thus, Floor Brokers and their personnel will be able to get accustomed to the new features over a period of time, before the old FBMS is no longer available. During this period, Floor Brokers will still be able to execute orders verbally in the trading crowd and submit the execution reports through FBMS, like they do today. Floor Brokers will also be able to use the new FBMS to execute trades. The Exchange is adopting new rule language into Rule 1000(f) to address this trial period. The Exchange believes that this trial period is reasonable and should assist Floor Brokers and their staff in learning the new features.

Conclusion

The Exchange believes that the proposed enhancements to FBMS (and resulting changes in priority rules) will strengthen its regulatory program and modernize how trading occurs on the options trading floor. The Exchange does not believe that the proposal will adversely impact Floor Brokers, specialists or ROTs significantly. Specifically, the additional automation should reduce the possibility of Floor Broker violations and mistakes, which should, in turn, reduce their regulatory liability. Of course, there is likely to be a period of adjustment while Floor Brokers become accustomed to executions occurring through the System rather than verbally, but the Exchange believes that the implementation period should be helpful. The Exchange believes that the benefit of reduced, and in some instances the elimination of certain violations outweighs the potential inconvenience of a new system where the system, rather than the Floor Broker executed the order.

With respect to the potential adverse impact on specialists and ROTs, the Exchange acknowledges that it may be challenging for them to adapt to the new FBMS process, because they may be asked to make markets more quickly. As stated above, the trading crowd will continue to have a reasonable time period to respond, and the Exchange will continue to provide guidance to trading crowds regarding what is a reasonable time period to respond, depending on a number of factors, including market conditions and the type of order. Nevertheless, with respect to orders with multiple legs, the challenge for specialists and ROTs will be to respond to a Floor Broker with a market when the Floor Broker has had the opportunity to look at each leg and price the whole order, whereas specialists and ROTs first hear of the details when the Floor Broker announces the order in the trading crowd. To address this, the Exchange intends to, in providing guidance on what is a reasonable time period to respond before the Floor Broker can submit an order for execution, consider the complexity of multi-leg orders.

The Exchange does not believe that this proposal will adversely affect market quality on the Exchange. To the contrary, the Exchange believes that it should enhance market quality by providing quicker and more reliable confirmation of trade executions, because automating executions of Floor Brokered orders results in automated trade reporting and more certainty about which orders have been executed. Crowd participants will benefit from increased trade certainty and fewer regulatory inquiries related to trades that are reported late and or out of sequence. Floor Brokered orders today are require to be reported within 90 seconds, which has proven to be challenging for multi-leg orders. The Exchange believes that quicker reporting and the resulting certainty about trade executions should benefit all market participants, including Floor Brokers, specialists and ROTs.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

[34] Rule 110 is also proposed to be renamed from ''Bids and Offers—Precedence'' to Bids and Offers—Manner,'' to better cover its content.

[35] *See* Rule 124.

of the Act [36] in general, and furthers the objectives of Section 6(b)(5) of the Act [37] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Specifically, the new calculation function of FBMS is a tool for Floor Brokers that should enhance their ability to calculate the prices of the components of a multi-leg order, which should increase the speed with which they can represent such orders, thereby making the Exchange's markets more efficient, all to the benefit of the investing public. In addition, the Exchange believes that the requirement to execute most Floor Broker transactions through FBMS is a sound one, consistent with the aforementioned provisions, intended to reduce certain types of rule violations and further automate Exchange trading, without imposing an undue burden on Floor Brokers. For the same reasons, the new FBMS execution functionality is also consistent with these statutory standards and should improve how trading occurs on the Exchange.

The Exchange also believes that the proposal to adopt a new FBMS priority provision in Rule 1033(i) akin to Complex Order priority is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest by improving Floor Brokers' ability to execute multi-leg orders, to the benefit of customers and other market participants. Multi-leg orders are different than regular orders and more complicated to execute. The priority rules applicable to ''spread'' orders on the various exchanges balance the difficulty of executing related orders within existing individual markets with the importance maintaining a priority model that makes clear in what orders executions occur. The Exchange does not believe that this is a significant or controversial change, because other exchanges automatically execute orders with many legs and only require one leg to be improved.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that these enhancements to FBMS should result in the Exchange's trading floor operating in a more efficient way, which should help it compete with other floor-based exchanges and help the Exchange's Floor Brokers compete with floor brokers on other options exchanges. The proposal does not impose a burden on intra-market competition not necessary or appropriate in furtherance of the purposes of the Act, because it modernizes floor trading without undue impact on any particular segment of the membership, as explained above. Overall, the proposal is pro-competitive for several reasons; in addition, to helping Phlx Floor Brokers compete for executions against floor brokers at other exchanges, it also helps them be more efficient and compete more effectively against fully electronic executions. This, in turn, helps the Exchange compete against other exchanges in a deeply competitive landscape comprised of ten other options exchanges. In addition, the proposal helps the Exchange compete by ensuring the robustness of its regulatory program, Floor Brokers' compliance with applicable rules, and enhancing customer protection through further utilization of electronic tools my members, which can be a differentiator in attracting participants and order flow and which should benefit customers in the long term.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2013–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2013–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2013–09, and should be submitted on or before March 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–04359 Filed 2–25–13; 8:45 am]

BILLING CODE 8011–01–P

[36] 15 U.S.C. 78f(b).

[37] 15 U.S.C. 78f(b)(5).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Digital Video Systems, Inc., Geocom Resources, Inc., and GoldMountain Exploration Corp., and Real Data, Inc. (a/k/a Galtech Semiconductor Materials Corporation)

February 22, 2013.

Order of Suspension of Trading

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Digital Video Systems, Inc. because it has not filed any periodic reports since the period ended September 30, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Geocom Resources, Inc. because it has not filed any periodic reports since the period ended March 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of GoldMountain Exploration Corp. because it has not filed any periodic reports since the period ended December 31, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Real Data, Inc. (a/k/a Galtech Semiconductor Materials Corporation), because it has not filed any periodic reports since the period ended December 31, 2004.

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 February 22, 2013, through 11:59 p.m. EST on March 7, 2013.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2013–04506 Filed 2–22–13; 11:15 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 8198]

Additional Designation of A North Korean Entity and Two North Korean Individuals Pursuant to Executive Order 13382

AGENCY: Department of State.

ACTION: Designation of the Korean Committee for Space Technology, Paek Chang-Ho, and Chang Myong-Chin Pursuant to E.O. 13382.

SUMMARY: Pursuant to the authority in section 1(ii) of Executive Order 13382, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters'', the State Department, in consultation with the Secretary of the Treasury and the Attorney General, has determined that the Korean Committee for Space Technology, as well as two individuals, Paek Chang-Ho and Chang Myong-Chin, have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern.

DATES: The designation by the Under Secretary of State for Arms Control and International Security of the entity identified in this notice pursuant to Executive Order 13382 is effective on January 24, 2013.

FOR FURTHER INFORMATION CONTACT: Director, Office of Counterproliferation Initiatives, Bureau of International Security and Nonproliferation, Department of State, Washington, DC 20520, tel.: 202–647–5193.

Background:

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 30, 2005. In the Order the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

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 the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

Information on the additional designees is as follows:

Korean Committee For Space Technology

A.K.A. DPRK Committee for Space Technology
A.K.A. Department of Space Technology of North Korea
A.K.A. Committee for Space Technology
A.K.A. KCST
Location: Pyongyang, North Korea

Paek Chang–Ho

A.K.A. Pak Chang-Ho
A.K.A. Paek Ch'ang-Ho
Passport: 381420754
Passport Date of Issue: 7 December 2011
Passport Date of Expiration: 7 December 2016
D.O.B. 18 June 1964
P.O.B. Kaesong, DPRK

Chang Myong–Chin

A.K.A. Jang Myong-Jin
D.O.B. 1966

Alt. D.O.B. 1965

Dated: January 24, 2013.

Rose Gottemoeller,

Under Secretary for Arms Control and International Security, Department of State, Acting.

[FR Doc. 2013–04423 Filed 2–25–13; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice 8200]

Additional Designation of Amr Armanazi Pursuant to Executive Order 13382

AGENCY: Department of State.

ACTION: Designation of Amr Armanazi Pursuant to E.O. 13382.

SUMMARY: Pursuant to the authority in section 1(ii) of Executive Order 13382, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters'', the State Department, in consultation with the Secretary of the Treasury and the Attorney General, has determined that Amr Armanazi, has engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern.

DATES: The designation by the Acting Under Secretary of State for Arms Control and International Security of the entity identified in this notice pursuant to Executive Order 13382 is effective on September 18, 2012.

FOR FURTHER INFORMATION CONTACT: Director, Office of Counterproliferation Initiatives, Bureau of International Security and Nonproliferation, Department of State, Washington, DC 20520, tel.: 202–647–5193.

Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 30, 2005. In the Order the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

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 the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

Information on the additional designee is as follows:

AMR Armanazi

A.K.A. Amr Muhammad Najib Al-Armanazi

A.K.A. Amr Najib Armanazi

DOB: 07 FEB 1944

Dated: September 14, 2012.

Rose Gottemoeller,

Acting Under Secretary for Arms Control and International Security, Department of State.

[FR Doc. 2013–04418 Filed 2–25–13; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice 8204]

60-Day Notice of Proposed Information Collection: Evacuee Manifest and Promissory Note

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to *April 29, 2013.*

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

- *Web:* Persons with access to the Internet may use the Federal Docket Management System (FDMS) to comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Public Notice ####'' in the Search bar. If necessary, use the Narrow by Agency filter option on the Results page.
- *Email: mailto: Ask-OCS–L-Public-Inquiries@state.gov.*
- *Mail:* (paper, disk, or CD–ROM submissions): U.S. Department of State, CA/OCS/L, SA–29, 4th Floor, Washington, DC 20037–3202.
- *Fax:* 202–736–9111.
- *Hand Delivery or Courier:* U.S. Department of State, CA/OCS/L 2100 Pennsylvania Avenue, 4th Floor, Washington, DC 20037–3202.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Derek A. Rivers, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/L), U.S. Department of State, SA–29, 4th Floor, Washington, DC 20037–3202, who may be reached at *mailto: Ask-OCS–L-Public-Inquiries@state.gov.*

SUPPLEMENTARY INFORMATION: *Title of Information Collection:* Evacuee Manifest and Promissory Note.

- *OMB Control Number:* 1405–XXXX.
- *Type of Request:* New.

• *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).

• *Form Number:* DS–5528.

• *Respondents:* U.S. Citizens applying for emergency loan assistance during an evacuation..

• *Estimated Number of Respondents:* 790.

• *Estimated Number of Responses:* 790.

• *Average Hours per Response:* 20 minutes.

• *Total Estimated Burden:* 263 hours.

• *Frequency:* On Occasion.

• *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: The purpose of the DS–5528 is to document the evacuation of persons from abroad when their lives are endangered by war, civil unrest, or natural disaster, document issuance of a crisis evacuation loan, to obtain a Privacy Act waiver to share information about the welfare of a citizen or lawful permanent resident with authorized, designated persons, and to facilitate debt collection. 22 U.S.C. § 4802(b) is one of the primary statutes that make the use of the DS–5528 legal.

Methodology: An electronic version of the Evacuee Manifest and Promissory Note will be created to allow applicants to submit their loan requests to the Bureau of Consular Affairs and our embassies and consulates abroad. Once the applicant has entered the information and submitted the form, the information will be made available to Consular Officers via the Department of State network and systems for further processing.

Dated: February 14, 2013.

Michelle Bernier-Toth,

Managing Director, Bureau of Consular Affairs, Overseas Citizens Services, Department of State.

[FR Doc. 2013–04472 Filed 2–25–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8203]

30-Day Notice of Proposed Information Collection: Exchange Visitor Program Participant Survey—Summer Work Travel

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: The Department will accept comments from the public up to March 28, 2013.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

• *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.

• *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Robin J. Lerner, Deputy Assistant Secretary for Private Sector Exchange, U.S. Department of State, SA–5, Floor 5, 2200 C Street NW., Washington, DC 20522–0505, who may be reached at 202–632–2805 or email at *jexchanges@state.gov.*

SUPPLEMENTARY INFORMATION:

• *Title of Information Collection:* Exchange Visitor Program Participant Survey—Summer Work Travel Program.

• *OMB Control Number:* None.

• *Type of Request:* New Collection.

• *Originating Office:* Bureau of Educational and Cultural Affairs, ECA/EC.

• *Form Number:* SV 2012–0004.

• *Respondents:* Exchange Visitor Program participants in the Summer Work Travel category.

• *Estimated Number of Respondents:* 109,000.

• *Estimated Number of Responses:* 109,000.

• *Average Hours per Response:* 30 minutes.

• *Total Estimated Burden Time:* 54,500 hours

• *Frequency:* On occasion.

• *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the effective administration of the Summer Work Travel category of the Exchange Visitor Program.

• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: This collection of information is under the provisions of the Mutual Educational and Cultural Exchange Act, as amended, and its implementing regulations (22 CFR Part 62). Summer Work Travel Participant Surveys will be sent to all Summer Work Travel participants at least once during their program. Sponsors are required to ensure that the link to the Survey is provided to all exchange participants in orientation materials, follow-up emails, etc. Although the survey is voluntary, the Department is trying to capture a high volume of responses to trend participant satisfaction, complaints, safety and welfare.

Methodology: The collection will be submitted to the Department electronically through Survey Monkey.

Dated:February 14, 2013.

Robin J. Lerner,

Deputy Assistant Secretary, Office of Private Sector Exchange, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–04469 Filed 2–25–13; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 8199]

Designation of the Center for Innovation and Technology Cooperation (CITC), Pentane Chemistry Industries (PCI), and Hossein Tanideh Pursuant to Executive Order 13382

AGENCY: Department of State.

ACTION: Designation of the Center for Innovation and Technology Cooperation (CITC), Pentane Chemistry Industries (PCI), and Hossein Tanideh Pursuant to E.O. 13382.

SUMMARY: Pursuant to the authority in section 1(ii) of Executive Order 13382, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters,'' the State Department, in consultation with the Secretary of the Treasury and the Attorney General, has determined that the Center for Innovation and Technology Cooperation (CITC), Pentane Chemistry Industries (PCI), and Hossein Tanideh, have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer, or use such items, by any person or foreign country of proliferation concern.

DATES: The designation by the Acting Under Secretary of State for Arms Control and International Security of the entity identified in this notice pursuant to Executive Order 13382 is effective on July 12, 2012.

FOR FURTHER INFORMATION CONTACT: Director, Office of Counterproliferation Initiatives, Bureau of International Security and Nonproliferation, Department of State, Washington, DC 20520, tel.: 202–647–5193.

Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 30, 2005. In the Order the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

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 the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

Information on the additional designee is as follows:

Center for Innovation and Technology Cooperation, A.K.A. CITC, A.K.A. Technology Cooperation Office, A.K.A. TCO, A.K.A. Office of Scientific and Technical Cooperation, F.K.A. Presidency Office of Scientific and Industrial Studies (POSIS), F.K.A. Office of Scientific and Industrial Studies (OSIS). Location: Tehran, Iran.

Pentane Chemistry Industries, A.K.A. PCI, A.K.A. Pentane Chemistry Industries Company. Location: 5th Floor, No. 192, Darya and Paknejad Blv. Cross Section, Shahrak Gharb, Tehran, Iran.

Hossein Tanideh, D.O.B. 9 June 1964, passport number H13781445; expiration: 9 June 2013.

Dated: July 9, 2012.

Rose Gottemoeller

Acting Under Secretary for Arms Control and International Security, Department of State.

[FR Doc. 2013–04425 Filed 2–25–13; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice 8201]

Additional Designation of Faratech, Neda Industrial Group, Towlid Abzar Boreshi Iran, Tarh O Palayesh, Amir Hossein Rahimyar, and Mohammad Reza Rezvanianzadeh Pursuant to Executive Order 13382

AGENCY: Department of State.

ACTION: Designation of Six Iranian Entities and Individuals Pursuant to Executive Order (E.O.) 13382.

SUMMARY: Pursuant to the authority in section 1(ii) of Executive Order 13382, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters'', the State Department, in consultation with the Secretary of the Treasury and the Attorney General, has determined that Faratech, Neda Industrial Group, Towlid Abzar Boreshi Iran, Tarh O Palayesh, Amir Hossein Rahimyar, and Mohammad Reza Rezvanianzadeh have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern.

DATES: The designation by the Acting Under Secretary of State for Arms Control and International Security of the entity identified in this notice pursuant to Executive Order 13382 is effective on December 13, 2012.

FOR FURTHER INFORMATION CONTACT: Director, Office of Counterproliferation Initiatives, Bureau of International Security and Nonproliferation, Department of State, Washington, DC 20520, tel.: 202–647–5193.

Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 30, 2005. In the Order the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

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 the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery, including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

Information on the additional designee is as follows:

FARATECH
AKA: Faratech Company
Location: Ghezelbash 15, Tohid St., Isfahan, Iran.
NEDA INDUSTRIAL GROUP
Location: Address Number 10 & 12, 64th Street, Yousef Abad Avenue, Tehran, Iran.
TOWLID ABZAR BORESHI IRAN
AKA: TABA
AKA: TABA Company
AKA: Iran Cutting Tools Company
Location: Northwest of Karaj at Km 55 Qazvin (alt. Ghazvin) Highway, Haljerd, Iran
Location: No. 66 Sarhang Sakhaei St., Hafez Avenue, Tehran, Iran
TARH O PALAYESH
Location: Tehran, Iran
AMIR HOSSEIN RAHIMYAR
Address: #15, Golestan Alley, Baradaran Shahid Rahimi St, Imam Khomeini Ave, Lavasan, Tehran, Iran.
DOB: January 31, 1974
POB: Tehran, Iran
MOHAMMAD REZA REZVANIANZADEH
DOB: December 11, 1969
National ID: 118–984105–3

Dated: December 12, 2012.

Rose Gottemoeller,

Acting Under Secretary for Arms Control and International Security, Department of State.

[FR Doc. 2013–04477 Filed 2–25–13; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

Notice of Funding Availability for the Small Business Transportation Resource Center Program

AGENCY: Department of Transportation (DOT), Office of the Secretary of Transportation (OST), Office of Small and Disadvantaged Business Utilization (OSDBU).

ACTION: Notice of Funding Availability for the Mid-South Atlantic Region.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary (OST), Office of Small and Disadvantaged Business Utilization (OSDBU) announces the opportunity for; (1) Business centered community-based organizations; (2) transportation-related trade associations; (3) colleges and universities; (4) community colleges or; (5) chambers of commerce, registered with the Internal Revenue Service as 501 C (6) or 501 C (3) tax-exempt organizations, to compete for participation in OSDBU's Small Business Transportation Resource Center (SBTRC) program in the Mid-South Atlantic Region.

OSDBU will enter into Cooperative Agreements with these organizations to provide outreach to the small business community in their designated region and provide financial and technical assistance, business training programs, business assessment, management training, counseling, marketing and outreach, and the dissemination of information, to encourage and assist small businesses to become better prepared to compete for, obtain, and manage DOT funded transportation-related contracts and subcontracts at the federal, state and local levels. Throughout this notice, the term ''small business'' will refer to: 8(a), small disadvantaged businesses (SDB), disadvantaged business enterprises (DBE), women owned small businesses (WOSB), HubZone, service disabled veteran owned businesses (SDVOB), and veteran owned small businesses (VOSB). Throughout this notice, ''transportation-related'' is defined as the maintenance, rehabilitation, restructuring, improvement, or revitalization of any of the nation's modes of transportation.

Funding Opportunity Number: USDOT–OST–OSDBU–SBTRC2013–3.

Catalog of Federal Domestic Assistance (CFDA) Number: 20.910 Assistance to Small and Disadvantaged Businesses.

Type of Award: Cooperative Agreement.

Award Ceiling: $140,000.

Award Floor: $120,000.

Program Authority: DOT is authorized under 49 U.S.C. 332 (b) (4), (5) & (7) to design and carry out programs to assist small disadvantaged businesses in getting transportation-related contracts and subcontracts; develop support mechanisms, including management and technical services, that will enable small disadvantaged businesses to take advantage of those business opportunities; and to make arrangements to carry out the above purposes.

DATES: Complete Proposals must be electronically submitted to OSDBU via email on or before March 25, 2013 5:00 pm Eastern Standard Time (EST). Proposals received after the deadline will be considered non-responsive and will not be reviewed. The applicant is advised to request delivery receipt notification for email submissions. DOT plans to give notice of award for the competed region on or before April 11, 2013.

ADDRESSES: Applications must be electronically submitted to OSDBU via email at *SBTRC@dot.gov.*

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, contact Ms. Patricia Martin, Program Analyst, U.S. Department of

Transportation, Office of Small and Disadvantaged Business Utilization, 1200 New Jersey Avenue SE., W56–462, Washington, DC, 20590. Telephone: 1–800–532–1169 or email *patricia.martin@dot.gov.*

SUPPLEMENTARY INFORMATION:

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1. Introduction

1.1 Background

The Department of Transportation (DOT) established Office of Small and Disadvantaged Business Utilization (OSDBU) in accordance with Public Law 95–507, an amendment to the Small Business Act and the Small Business Investment Act of 1958.

The mission of OSDBU at DOT is to ensure that the small and disadvantaged business policies and goals of the Secretary of Transportation are developed and implemented in a fair, efficient and effective manner to serve small and disadvantaged businesses throughout the country. The OSDBU also administers the provisions of Title 49, Section 332, the Minority Resource Center (MRC) which includes the duties of advocacy, outreach and financial services on behalf of small and disadvantaged business and those certified under CFR 49 parts 23 and or 26 as Disadvantaged Business Enterprises (DBE) and the development of programs to encourage, stimulate, promote and assist small businesses to become better prepared to compete for, obtain and manage transportation-related contracts and subcontracts.

The Regional Assistance Division of OSDBU, through the SBTRC program, allows OSDBU to partner with local organizations to offer a comprehensive delivery system of business training, technical assistance and dissemination of information, targeted towards small business transportation enterprises in their regions.

1.2 Program Description and Goals

The national SBTRC program utilizes Cooperative Agreements with chambers of commerce, trade associations, educational institutions and business-centered community based organizations to establish SBTRCs to provide business training, technical assistance and information to DOT grantees and recipients, prime contractors and subcontractors. In order to be effective and serve their target audience, the SBTRCs must be active in the local transportation community in order to identify and communicate opportunities and provide the required technical assistance. SBTRCs must already have, or demonstrate the ability to, establish working relationships with the state and local transportation agencies and technical assistance agencies (i.e., The U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Small Business Development Centers (SBDCs), and Procurement Technical Assistance Centers (PTACs), SCORE and State DOT highway supportive services contractors in their region. Utilizing these relationships and their own expertise, the SBTRCs are involved in activities such as information dissemination, small business counseling, and technical assistance with small businesses currently doing business with public and private entities in the transportation industry.

Effective outreach is critical to the success of the SBTRC program. In order for their outreach efforts to be effective, SBTRCs must be familiar with DOT's Operating Administrations, its funding sources, and how funding is awarded to DOT grantees, recipients, contractors, subcontractors, and its financial assistance programs. SBTRCs must provide outreach to the regional small business transportation community to disseminate information and distribute DOT-published marketing materials, such as Short Term Lending Program (STLP) Information, Bonding Education Program (BEP) information, SBTRC brochures and literature, Procurement Forecasts; Contracting with DOT booklets, Women and Girls in Transportation Initiative (WITI) information, and any other materials or resources that DOT or OSDBU may develop for this purpose. To maximize outreach, the SBTRC may be called upon to participate in regional and national conferences and seminars. Quantities of DOT publications for on-hand inventory and dissemination at conferences and seminars will be available upon request from the OSDBU office.

1.3 Description of Competition

The purpose of this Request For Proposal (RFP) is to solicit proposals from transportation-related trade associations, chambers of commerce, community based entities, colleges and universities, community colleges, and any other qualifying transportation-related non-profit organizations with the desire and ability to partner with OSDBU to establish and maintain an SBTRC.

It is OSDBU's intent to award a Cooperative Agreement to one organization in the Mid-South Atlantic Region, from herein referred to as ''region'', in this solicitation. However, if warranted, OSDBU reserves the option to make multiple awards to selected partners. Proposals submitted for a region must contain a plan to service all states listed in the entire region, not just the SBTRC's state or local geographical area. The region's SBTRC headquarters must be established in one of the designated states set forth below. Submitted proposals must also contain justification for the establishment of the SBTRC headquarters in a particular city within the designated state.

SBTRC Region Competed in This Solicitation:

Mid-South Atlantic Regions: South Carolina; Tennessee; Georgia

Program requirements and selection criteria, set forth in Sections 2 and 4 respectively, indicate that the OSDBU intends for the SBTRC to be multidimensional; that is, the selected organization must have the capacity to effectively access and provide supportive services to the broad range of small businesses within the respective geographical region. To this end, the SBTRC must be able to demonstrate that they currently have established relationships within the geographic region with whom they may coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies to maximize resources.

Cooperative agreement awards will be distributed to the region(s) as follows:

Mid-South Atlantic Region: Ceiling: $140,000 per year; Floor: $120,000 per year.

Cooperative agreement awards by region are based upon an analysis of DBEs, Certified Small Businesses, and US DOT transportation dollars in each region. It is OSDBU's intent to maximize the benefits received by the small business transportation community

through the SBTRC. Funding may be utilized to reimburse an on-site Project Director up to 100% of salary plus fringe benefits, an on-site Executive Director up to 20% of salary plus fringe benefits, up to 100% of a Project Coordinator salary plus fringe benefits, the cost of designated SBTRC space, other direct costs, and all other general and administrative expenses. Selected SBTRC partners will be expected to provide in-kind administrative support. Submitted proposals must contain an alternative funding source with which the SBTRC will fund administrative support costs. Preference will be given to proposals containing in-kind contributions for the Project Director, the Executive Director, the Project Coordinator, cost of designated SBTRC space, other direct costs, and all other general and administrative expenses.

1.4 Duration of Agreements

The cooperative agreement will be awarded for a period of 12 months (one year) with options for two (2) additional one year periods. OSDBU will notify the SBTRC of our intention to exercise an option year or not to exercise an option year 30 days in advance of expiration of the current year.

1.5 Authority

DOT is authorized under 49 U.S.C. 332(b)(4)(5) & (7) to design and carry out programs to assist small disadvantaged businesses in getting transportation-related contracts and subcontracts; develop support mechanisms, including management and technical services, that will enable small disadvantaged businesses to take advantage of those business opportunities; and to make arrangements to carry out the above purposes.

1.6 Eligibility Requirements

To be eligible, an organization must be an established, nonprofit, community-based organization, transportation-related trade association, chamber of commerce, college or university, community college, and any other qualifying transportation-related non-profit organization which has the documented experience and capacity necessary to successfully operate and administer a coordinated delivery system that provides access for small businesses to prepare and compete for transportation-related contracts. In addition, to be eligible, the applicant organization must:

(A) Be an established 501C(3) or 501C (6) tax-exempt organization and provide documentation as verification. No application will be accepted without proof of tax-exempt status;

(B) Have at least one year of documented and continuous experience prior to the date of application in providing advocacy, outreach, and technical assistance to small businesses within the region in which proposed services will be provided. Prior performance providing services to the transportation community is preferable, but not required; and

(C) Have an office physically located within the proposed city in the designated headquarters state in the region for which they are submitting the proposal that is readily accessible to the public.

2. Program Requirements

2.1 Recipient Responsibilities

(A) Assessments, Business Analyses

1. Conduct an assessment of small businesses in the SBTRC region to determine their training and technical assistance needs, and use information that is available at no cost to structure programs and services that will enable small businesses to become better prepared to compete for and receive transportation-related contract awards.

2. Contact other federal, state and local government agencies, such as the U.S. Small Business Administration (SBA), state and local highway agencies, state and local airport authorities, and transit authorities to identify relevant and current information that may support the assessment of the regional small business transportation community needs.

(B) General Management & Technical Training and Assistance

1. Utilize OSDBU's Monthly Reporting Form to document each small business assisted by the SBTRC and type of service(s) provided. The completed form must be transmitted electronically to the SBTRC Program Analyst on a monthly basis, accompanied by a narrative report on the activities and performance results for that period. The data gathered must be supportive by the narrative and must relate to the numerical data on the monthly reports.

2. Ensure that an array of information is made available for distribution to the small business transportation community that is designed to inform and educate the community on DOT/OSDBU services and opportunities.

3. Coordinate efforts with OSDBU's in order to maintain an on-hand inventory of DOT/OSDBU informational materials for general dissemination and for distribution at transportation-related conferences and other events.

(C) Business Counseling

1. Collaborate with agencies, such as the State, Regional, and Local Transportation Government Agencies, SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), and Small Business Development Centers (SBDCs), to offer a broad range of counseling services to transportation-related small business enterprises.

2. Create a technical assistance plan that will provide each counseled participant with the knowledge and skills necessary to improve the management of their own small business to expand their transportation-related contracts and subcontracts portfolio.

3. Provide a minimum of 20 hours of individual or group counseling sessions to small businesses per month.

(D) Planning Committee

1. Establish a Regional Planning Committee consisting of at least 7 members that includes representatives from the regional community and federal, state, and local agencies. The highway, airport, and transit authorities for the SBTRC's headquarters state must have representation on the planning committee. This committee shall be established no later than 60 days after the execution of the Cooperative agreement between the OSDBU and the selected SBRTC.

2. Provide a forum for the federal, state, and local agencies to disseminate information about upcoming procurements.

3. Hold either monthly or quarterly meetings at a time and place agreed upon by SBTRC and planning committee members.

4. Use the initial session (teleconference call) by the SBTRC explain the mission of the committee and identify roles of the staff and the members of the group.

5. Responsibility for the agenda and direction of the Planning Committee should be handled by the SBTRC Executive Director or his/her designee.

(E) Outreach Services/Conference Participation

1. Utilize the services of the System for Award Management (SAM) and other sources to construct a database of regional small businesses that currently or may in the future participate in DOT direct and DOT funded transportation related contracts, and make this database available to OSDBU, upon request.

2. Utilize the database of regional transportation-related small businesses to match opportunities identified through the planning committee forum, FedBiz Opps (a web-based system for posting solicitations and other Federal procurement-related documents on the Internet), and other sources to eligible small businesses and inform the small business community about those opportunities.

3. Develop a ''targeted'' database of firms (100–150) that have the capacity and capabilities, and are ready, willing and able to participate in DOT contracts and subcontracts immediately. This control group will receive ample resources from the SBTRC, i.e., access to working capital, bonding assistance, business counseling, management assistance and direct referrals to DOT agencies at the state and local levels, and to prime contractors as effective subcontractor firms.

4. Identify regional, state and local conferences where a significant number of small businesses, with transportation related capabilities, are expected to be in attendance. Maintain and submit a list of those events to the SBTRC Program Analyst for review and posting on the OSDBU Web site on a monthly basis. Clearly identify the events designated for SBTRC participation and include recommendations for OSDBU participation.

5. Conduct outreach and disseminate information to small businesses at regional transportation-related conferences, seminars, and workshops. In the event that the SBTRC is requested to participate in an event, the SBTRC will send DOT materials, the OSDBU banner and other information that is deemed necessary for the event.

6. Submit a conference summary report to OSDBU no later than 5 business days after participation in the event or conference. The conference summary report must summarize activities, contacts, outreach results, and recommendations for continued or discontinued participation in future similar events sponsored by that organization.

7. Upon request by OSDBU, coordinate efforts with DOT's grantees and recipients at the state and/or local levels to sponsor or cosponsor an OSDBU transportation related conference in the region.

8. Participate in monthly teleconference call with the Regional Assistance Division Program Manager and OSDBU staff.

(F) Short Term Lending Program (STLP)

1. Work with STLP participating banks and if not available, other lending institutions to deliver a minimum of five (5) seminars/workshops per year on the STLP financial assistance program to the transportation-related small business community. The seminar/workshop must cover the entire STLP process, from completion of STLP loan applications and preparation of the loan package to graduation from the STLP.

2. Provide direct support, technical support, and advocacy services to potential STLP applicants to increase the probability of STLP loan approval and generate a minimum of 7 approved STLP applications per year.

(G) Bonding Education Program (BEP)

Work with OSDBU, bonding industry partners, local small business transportation stakeholders, and local bond producers/agents in your region to deliver a minimum of 2 complete BEP seminars. The BEP consists of the following components; 1) the stakeholder's meeting; 2) the educational workshops component; 3) the bond readiness component; and 4) follow-on assistance to BEP participants via technical and procurement assistance based on the prescriptive plan determined by the BEP. For each BEP event, work with the local bond producers/agents in your region and the disadvantaged business participants to deliver minimum of 10 disadvantaged business participants in the BEP event with either access to bonding or an increase in bonding capacity. Furnish all labor, facilities and equipment to perform the services described in this announcement.

(H) Women and Girls in Transportation Initiative (WITI)

Pursuant to Executive Order 13506, and 49 U.S.C. 332(b)(4) & (7), the SBTRC shall administer the WITI in their geographical region. The SBTRC shall implement the DOT WITI program as defined by the DOT WITI Policy. The WITI program is designed to identify, educate, attract, and retain women and girls from a variety of disciplines in the transportation industry. The SBTRC shall also be responsible for outreach activities in the implementation of this program and advertising the WITI program to all colleges and universities and transportation entities in their region. The WITI program shall be developed in conjunction with the skill needs of the USDOT, state and local transportation agencies and appropriate private sector transportation-related participants including, S/WOBs/DBEs, and women organizations involved in transportation. Emphasis shall be placed on establishing partnerships with transportation-related businesses. The SBTRC will be required to host 1 WITI event and attend at least 5 events where WITI is presented and marketed.

2.2 Office of Small and Disadvantaged Business Utilization (OSDBU) Responsibilities

(A) Provide consultation and technical assistance in planning, implementing and evaluating activities under this announcement.

(B) Provide orientation and training to the applicant organization.

(C) Monitor SBTRC activities, cooperative agreement compliance, and overall SBTRC performance.

(D) Assist SBTRC to develop or strengthen its relationships with federal, state, and local transportation authorities, other technical assistance organizations, and DOT grantees.

(E) Facilitate the exchange and transfer of successful program activities and information among all SBTRC regions.

(F) Provide the SBTRC with DOT/OSDBU materials and other relevant transportation related information for dissemination.

(G) Maintain effective communication with the SBTRC and inform them of transportation news and contracting opportunities to share with small businesses in their region.

(H) Provide all required forms to be used by the SBTRC for reporting purposes under the program.

(I) Perform an annual performance evaluation of the SBTRC. Satisfactory performance is a condition of continued participation of the organization as an SBTRC and execution of all option years.

3. Submission of Proposals

3.1 Format for Proposals

Each proposal must be submitted to DOT's OSDBU in the format set forth in the application form attached as Appendix A to this announcement.

3.2 Address; Number of Copies; Deadlines for Submission

Any eligible organization, as defined in Section 1.6 of this announcement, will submit only one proposal per organization for consideration by OSDBU. Applications must be double spaced, and printed in a font size not smaller than 12 points. Applications will not exceed 35 single-sided pages, not including any requested attachments. All pages should be numbered at the top of each page. All documentation, attachments, or other information pertinent to the application must be included in a single submission. Proposal packages must be

submitted electronically to OSDBU at *SBTRC@dot.gov*. The applicant is advised to turn on request delivery receipt notification for email submission. Proposals must be received by DOT/OSDBU no later than March 25, 2013, 5:00 p.m., EST. If you have any problems submitting your proposal, please email *patricia.martin@dot.gov* or telephone (202) 366–5337.

4. Selection Criteria

4.1 General Criteria

OSDBU will award the cooperative agreement on a best value basis, using the following criteria to rate and rank applications:

Applications will be evaluated using a point system (maximum number of points = 100);

- Approach and strategy (25 points)
- Linkages (25 points)
- Organizational Capability/Site visit (25 points)
- Staff Capabilities and Experience (15 points)
- Cost Proposal (10 points)

(A) Approach and Strategy (25 Points)

The applicant must describe their strategy to achieve the overall mission of the SBTRC as described in this solicitation and service the small business community in their entire geographic regional area. The applicant must also describe how the specific activities outlined in Section 2.1 will be implemented and executed in the organization's regional area. OSDBU will consider the extent to which the proposed objectives are specific, measurable, time-specific, and consistent with OSDBU goals and the applicant organization's overall mission. OSDBU will give priority consideration to applicants that demonstrate innovation and creativity in their approach to assist small businesses to become successful transportation contractors and increase their ability to access DOT contracting opportunities and financial assistance programs. Applicants must also submit the estimated direct costs, other than labor, to execute their proposed strategy. OSDBU will consider the quality of the applicant's plan for conducting program activities and the likelihood that the proposed methods will be successful in achieving proposed objectives at the proposed cost.

(B) Linkages (25 Points)

The applicant must describe their established relationships within their geographic region and demonstrate their ability to coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies to maximize resources. OSDBU will consider innovative aspects of the applicant's approach and strategy to build upon their existing relationships and established networks with existing resources in their geographical area. The applicant should describe their strategy to obtain support and collaboration on SBTRC activities from DOT grantees and recipients, transportation prime contractors and subcontractors, the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), Small Business Development Centers (SBDCs), State DOTs, and State highway supportive services contractors. In rating this factor, OSDBU will consider the extent to which the applicant demonstrates ability to be multidimensional. The applicant must demonstrate that they have the ability to access a broad range of supportive services to effectively serve a broad range of transportation-related small businesses within their respective geographical region. Emphasis will also be placed on the extent to which the applicant identifies a clear outreach strategy related to the identified needs that can be successfully carried out within the period of this agreement and a plan for involving the Planning Committee in the execution of that strategy.

(C) Organizational Capability (25 Points)

The applicant must demonstrate that they have the organizational capability to meet the program requirements set forth in Section 2. The applicant organization must have sufficient resources and past performance experience to successfully provide outreach to the small business transportation resources in their geographical area and carry out the mission of the SBTRC. In rating this factor, OSDBU will consider the extent to which the applicant's organization has recent, relevant and successful experience in advocating for and addressing the needs of small businesses. Applicants will be given points for demonstrated past transportation-related performance. The applicant must also describe technical and administrative resources it plans to use in achieving proposed objectives. In their description, the applicant must describe their facilities, computer and technical facilities, ability to tap into volunteer staff time, and a plan for sufficient matching alternative financial resources to fund the general and administrative costs of the SBTRC. The applicant must also describe their administrative and financial management staff. It will be the responsibility of the successful candidate to not only provide the services outlined herein to small businesses in the transportation industry, but to also successfully manage and maintain their internal financial, payment and invoicing process with their financial management offices. OSDBU will place an emphasis on capabilities of the applicant's financial management staff. Additionally, a site visit will be required prior to award for those candidates that are being strongly considered. A member of the OSDBU team will contact those candidates to schedule the site visits prior to the award of the agreement.

(D) Staff Capability and Experience (15 Points)

The applicant organization must provide a list of proposed personnel for the project, with salaries, fringe benefit burden factors, educational levels and previous experience clearly delineated. The applicant's project team must be well-qualified, knowledgeable, and able to effectively serve the diverse and broad range of small businesses in their geographical region. The Executive Director and the Project Director shall be deemed key personnel. Detailed resumes must be submitted for all proposed key personnel and outside consultants and subcontractors. Proposed key personnel must have detailed demonstrated experience providing services similar in scope and nature to the proposed effort. The proposed Project Director will serve as the responsible individual for the program. 100% of the Project Director's time must be dedicated to the SBTRC. Both the Executive Director and the Project Director must be located on-site. In this element, OSDBU will consider the extent to which the applicant's proposed Staffing Plan; (a) clearly meets the education and experience requirements to accomplish the objectives of the cooperative agreement; b) delineates staff responsibilities and accountability for all work required and; (c) presents a clear and feasible ability to execute the applicant's proposed approach and strategy.

(E) Cost Proposal (10 Points)

Applicants must submit the total proposed cost of establishing and administering the SBTRC in the applicant's geographical region for a 12 month period, inclusive of costs funded through alternative matching resources.

The applicant's budget must be adequate to support the proposed strategy and costs must be reasonable in relation to project objectives. The portion of the submitted budget funded by OSDBU cannot exceed the ceiling outlined in Section 1.3: Description of Competition of this RFP per fiscal year. Applicants are encouraged to provide in-kind costs and other innovative cost approaches.

4.2 Scoring of Applications

A review panel will score each application based upon the evaluation criteria listed above. Points will be given for each evaluation criteria category, not to exceed the maximum number of points allowed for each category. Proposals which are deemed non–responsive, do not meet the established criteria, or incomplete at the time of submission will be disqualified. OSDBU will perform a responsibility determination of the prospective awardee in the region, which will include a site visit, before awarding the cooperative agreement.

4.3 Conflicts of Interest

Applicants must submit signed statements by key personnel and all organization principals indicating that they, or members of their immediate families, do not have a personal, business or financial interest in any DOT-funded transportation project, nor any relationships with local or state transportation agencies that may have the appearance of a conflict of interest.

APPENDIX A

Format for Proposals for the Department of Transportation Office of Small and Disadvantaged Business Utilization's Small Business Transportation Resource Center (SBTRC) Program

Submitted proposals for the DOT, Office of Small and Disadvantaged Business Utilization's Small Business Transportation Resource Center Program must contain the following 12 sections and be organized in the following order:

1. Table of Contents

Identify all parts, sections and attachments of the application.

2. Application Summary

Provide a summary overview of the following:

- The applicant's proposed SBTRC region and city and key elements of the plan of action/strategy to achieve the SBTRC objectives.
- The applicant's relevant organizational experience and capabilities.

3. Understanding of the Work

Provide a narrative which contains specific project information as follows:

- The applicant will describe its understanding of the OSDBU's SBTRC program mission and the role of the applicant's proposed SBTRC in advancing the program goals.
- The applicant will describe specific outreach needs of transportation-related small businesses in the applicant's region and how the SBTRC will address the identified needs.

4. Approach And Strategy

- Describe the applicant's plan of action/strategy for conducting the program in terms of the tasks to be performed.
- Describe the specific services or activities to be performed and how these services/activities will be implemented.
- Describe innovative and creative approaches to assist small businesses to become successful transportation contractors and increase their ability to access DOT contracting opportunities and financial assistance programs.
- Estimated direct costs, other than labor, to execute the proposed strategy.

5. Linkages

- Describe established relationships within the geographic region and demonstrate the ability to coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies.
- Describe the strategy to obtain support and collaboration on SBTRC activities from DOT grantees and recipients, transportation prime contractors and subcontractors, the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), Small Business Development Centers (SBDCs), State DOTs, and State highway supportive services contractors.
- Describe the outreach strategy related to the identified needs that can be successfully carried out within the period of this agreement and a plan for involving the Planning Committee in the execution of that strategy.

6. Organizational Capability

- Describe recent and relevant past successful performance in addressing the needs of small businesses, particularly with respect to transportation-related small businesses.
- Describe internal technical, financial management, and administrative resources.
- Propose a plan for sufficient matching alternative financial resources to fund the general and administrative costs of the SBTRC.

7. Staff Capability and Experience

- List proposed key personnel, their salaries and proposed fringe benefit factors.
- Describe the education, qualifications and relevant experience of key personnel. Attach detailed resumes.
- Proposed staffing plan. Describe how personnel are to be organized for the program and how they will be used to accomplish program objectives. Outline staff responsibilities, accountability and a schedule for conducting program tasks.

8. Cost Proposal

- Outline the total proposed cost of establishing and administering the SBTRC in the applicant's geographical region for a 12 month period, inclusive of costs funded through alternative matching resources. Clearly identify the portion of the costs funded by OSDBU.
- Provide a brief narrative linking the cost proposal to the proposed strategy.

9. Proof of Tax Exempt Status

10. Assurances Signature Form

Complete the attached Standard Form 424B ASSURANCES—NON-CONSTRUCTION PROGRAMS.

11. Certification Signature Forms

Complete form DOTF2307–1 Drug-Free Workplace Act Certification and Form DOTF2308–1 Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements.

Signed Conflict of Interest Statements

The statements must say that they, or members of their immediate families, do not have a personal, business or financial interest in any DOT-funded transportation projects, nor any relationships with local or state transportation agencies that may have the appearance of a conflict of interest.

12. Standard Form 424

Complete Standard Form 424 Application for Federal Assistance.

Note: All forms can be downloaded from U.S. Department of Transportation Web site at *http://www.dot.gov/gsearch/424%2Bform.*

PLEASE BE SURE THAT ALL FORMS HAVE BEEN SIGNED BY AN AUTHORIZED OFFICIAL WHO CAN LEGALLY REPRESENT THE ORGANIZATION.

Issued in Washington, DC, on February 15, 2013.

Brandon Neal,

Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, U.S. Department of Transportation.

[FR Doc. 2013–04399 Filed 2–25–13; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

Notice of Funding Availability for the Small Business Transportation Resource Center Program

AGENCY: Department of Transportation (DOT), Office of the Secretary of Transportation (OST), Office of Small and Disadvantaged Business Utilization (OSDBU).

ACTION: Notice of Funding Availability for the Southwest Region.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary (OST), Office of Small and Disadvantaged Business Utilization (OSDBU) announces the opportunity for: (1) Business centered community-based organizations; (2) transportation-

related trade associations; (3) colleges and universities; (4) community colleges or; (5) chambers of commerce, registered with the Internal Revenue Service as 501C(6) or 501C(3) tax-exempt organizations, to compete for participation in OSDBU's Small Business Transportation Resource Center (SBTRC) program in the Southwest Region.

OSDBU will enter into Cooperative Agreements with these organizations to provide outreach to the small business community in their designated region and provide financial and technical assistance, business training programs, business assessment, management training, counseling, marketing and outreach, and the dissemination of information, to encourage and assist small businesses to become better prepared to compete for, obtain, and manage DOT funded transportation-related contracts and subcontracts at the federal, state and local levels. Throughout this notice, the term ''small business'' will refer to: 8(a), small disadvantaged businesses (SDB), disadvantaged business enterprises (DBE), women owned small businesses (WOSB), HubZone, service disabled veteran owned businesses (SDVOB), and veteran owned small businesses (VOSB). Throughout this notice, ''transportation-related'' is defined as the maintenance, rehabilitation, restructuring, improvement, or revitalization of any of the nation's modes of transportation.

Funding Opportunity Number: USDOT–OST–OSDBU–SBTRC2013–2.

Catalog of Federal Domestic Assistance (CFDA) Number: 20.910 Assistance to Small and Disadvantaged Businesses.

Type of Award: Cooperative Agreement.

Award Ceiling: $150,000.

Award Floor: $125,000.

Program Authority: DOT is authorized under 49 U.S.C. 332(b)(4), (5) & (7) to design and carry out programs to assist small disadvantaged businesses in getting transportation-related contracts and subcontracts; develop support mechanisms, including management and technical services, that will enable small disadvantaged businesses to take advantage of those business opportunities; and to make arrangements to carry out the above purposes.

DATES: Complete Proposals must be electronically submitted to OSDBU via email on or before March 18, 2013, 5:00 p.m. Eastern Standard Time (EST). Proposals received after the deadline will be considered non-responsive and will not be reviewed. The applicant is advised to request delivery receipt notification for email submissions. DOT plans to give notice of award for the competed region on or before April 4, 2013.

ADDRESSES: Applications must be electronically submitted to OSDBU via email at *SBTRC@dot.gov.*

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, contact Ms. Patricia Martin, Program Analyst, U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization, 1200 New Jersey Avenue SE., W56–462, Washington, DC 20590. Telephone: 1–800–532–1169 or email *patricia.martin@dot.gov.*

SUPPLEMENTARY INFORMATION:

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   1.2 Program Description and Goals
   1.3 Description of Competition
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4. Selection Criteria
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   4.3 Conflicts of Interest

Format for Proposals—Appendix A

Full Text of Announcement

1. Introduction

1.1 Background

The Department of Transportation (DOT) established Office of Small and Disadvantaged Business Utilization (OSDBU) in accordance with Public Law 95–507, an amendment to the Small Business Act and the Small Business Investment Act of 1958.

The mission of OSDBU at DOT is to ensure that the small and disadvantaged business policies and goals of the Secretary of Transportation are developed and implemented in a fair, efficient and effective manner to serve small and disadvantaged businesses throughout the country. The OSDBU also administers the provisions of Title 49, Section 332, the Minority Resource Center (MRC) which includes the duties of advocacy, outreach and financial services on behalf of small and disadvantaged business and those certified under CFR 49 parts 23 and or 26 as Disadvantaged Business Enterprises (DBE) and the development of programs to encourage, stimulate, promote and assist small businesses to become better prepared to compete for, obtain and manage transportation-related contracts and subcontracts.

The Regional Assistance Division of OSDBU, through the SBTRC program, allows OSDBU to partner with local organizations to offer a comprehensive delivery system of business training, technical assistance and dissemination of information, targeted towards small business transportation enterprises in their regions.

1.2 Program Description and Goals

The national SBTRC program utilizes Cooperative Agreements with chambers of commerce, trade associations, educational institutions and business-centered community based organizations to establish SBTRCs to provide business training, technical assistance and information to DOT grantees and recipients, prime contractors and subcontractors. In order to be effective and serve their target audience, the SBTRCs must be active in the local transportation community in order to identify and communicate opportunities and provide the required technical assistance. SBTRCs must already have, or demonstrate the ability to, establish working relationships with the state and local transportation agencies and technical assistance agencies (i.e., The U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Small Business Development Centers (SBDCs), and Procurement Technical Assistance Centers (PTACs), SCORE and State DOT highway supportive services contractors in their region. Utilizing these relationships and their own expertise, the SBTRCs are involved in activities such as information dissemination, small business counseling, and technical assistance with small businesses currently doing business with public and private entities in the transportation industry.

Effective outreach is critical to the success of the SBTRC program. In order for their outreach efforts to be effective, SBTRCs must be familiar with DOT's Operating Administrations, its funding sources, and how funding is awarded to DOT grantees, recipients, contractors, subcontractors, and its financial assistance programs. SBTRCs must provide outreach to the regional small business transportation community to disseminate information and distribute DOT-published marketing materials, such as Short Term Lending Program (STLP) Information, Bonding Education Program (BEP) information, SBTRC

brochures and literature, Procurement Forecasts; Contracting with DOT booklets, Women and Girls in Transportation Initiative (WITI) information, and any other materials or resources that DOT or OSDBU may develop for this purpose. To maximize outreach, the SBTRC may be called upon to participate in regional and national conferences and seminars. Quantities of DOT publications for on-hand inventory and dissemination at conferences and seminars will be available upon request from the OSDBU office.

1.3 Description of Competition

The purpose of this Request For Proposal (RFP) is to solicit proposals from transportation-related trade associations, chambers of commerce, community based entities, colleges and universities, community colleges, and any other qualifying transportation-related non-profit organizations with the desire and ability to partner with OSDBU to establish and maintain an SBTRC.

It is OSDBU's intent to award a Cooperative Agreement to one organization in the Southwest Region, from herein referred to as ''region'', in this solicitation. However, if warranted, OSDBU reserves the option to make multiple awards to selected partners. Proposals submitted for a region must contain a plan to service all states listed in the entire region, not just the SBTRC's state or local geographical area. The region's SBTRC headquarters must be established in one of the designated states set forth below. Submitted proposals must also contain justification for the establishment of the SBTRC headquarters in a particular city within the designated state.

SBTRC Region Competed in This Solicitation:

Southwest Regions:

California, Arizona, Nevada, Hawaii

Program requirements and selection criteria, set forth in Sections 2 and 4 respectively, indicate that the OSDBU intends for the SBTRC to be multidimensional; that is, the selected organization must have the capacity to effectively access and provide supportive services to the broad range of small businesses within the respective geographical region. To this end, the SBTRC must be able to demonstrate that they currently have established relationships within the geographic region with whom they may coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies to maximize resources.

Cooperative agreement awards will be distributed to the region(s) as follows:

Southwest Region:

Ceiling: $150,000 per year.

Floor: $125,000 per year.

Cooperative agreement awards by region are based upon an analysis of DBEs, Certified Small Businesses, and US DOT transportation dollars in each region.

It is OSDBU's intent to maximize the benefits received by the small business transportation community through the SBTRC. Funding may be utilized to reimburse an on-site Project Director up to 100% of salary plus fringe benefits, an on-site Executive Director up to 20% of salary plus fringe benefits, up to 100% of a Project Coordinator salary plus fringe benefits, the cost of designated SBTRC space, other direct costs, and all other general and administrative expenses. Selected SBTRC partners will be expected to provide in-kind administrative support. Submitted proposals must contain an alternative funding source with which the SBTRC will fund administrative support costs. Preference will be given to proposals containing in-kind contributions for the Project Director, the Executive Director, the Project Coordinator, cost of designated SBTRC space, other direct costs, and all other general and administrative expenses.

1.4 Duration of Agreements

The cooperative agreement will be awarded for a period of 12 months (one year) with options for two (2) additional one year periods. OSDBU will notify the SBTRC of our intention to exercise an option year or not to exercise an option year 30 days in advance of expiration of the current year.

1.5 Authority

DOT is authorized under 49 U.S.C. 332(b)(4), (5) & (7) to design and carry out programs to assist small disadvantaged businesses in getting transportation-related contracts and subcontracts; develop support mechanisms, including management and technical services, that will enable small disadvantaged businesses to take advantage of those business opportunities; and to make arrangements to carry out the above purposes.

1.6 Eligibility Requirements

To be eligible, an organization must be an established, nonprofit, community-based organization, transportation-related trade association, chamber of commerce, college or university, community college, and any other qualifying transportation-related nonprofit organization which has the documented experience and capacity necessary to successfully operate and administer a coordinated delivery system that provides access for small businesses to prepare and compete for transportation-related contracts. In addition, to be eligible, the applicant organization must:

(A) Be an established 501C(3) or 501C(6) tax-exempt organization and provide documentation as verification. No application will be accepted without proof of tax-exempt status;

(B) Have at least one year of documented and continuous experience prior to the date of application in providing advocacy, outreach, and technical assistance to small businesses within the region in which proposed services will be provided. Prior performance providing services to the transportation community is preferable, but not required; and

(C) Have an office physically located within the proposed city in the designated headquarters state in the region for which they are submitting the proposal that is readily accessible to the public.

2. Program Requirements

2.1 Recipient Responsibilities

(A) Assessments, Business Analyses

1. Conduct an assessment of small businesses in the SBTRC region to determine their training and technical assistance needs, and use information that is available at no cost to structure programs and services that will enable small businesses to become better prepared to compete for and receive transportation-related contract awards.

2. Contact other federal, state and local government agencies, such as the U.S. Small Business Administration (SBA), state and local highway agencies, state and local airport authorities, and transit authorities to identify relevant and current information that may support the assessment of the regional small business transportation community needs.

(B) General Management & Technical Training and Assistance

1. Utilize OSDBU's Monthly Reporting Form to document each small business assisted by the SBTRC and type of service(s) provided. The completed form must be transmitted electronically to the SBTRC Program Analyst on a monthly basis, accompanied by a narrative report on the activities and performance results for that period. The data gathered must be supportive by the narrative and must

relate to the numerical data on the monthly reports.

2. Ensure that an array of information is made available for distribution to the small business transportation community that is designed to inform and educate the community on DOT/OSDBU services and opportunities.

3. Coordinate efforts with OSDBU's in order to maintain an on-hand inventory of DOT/OSDBU informational materials for general dissemination and for distribution at transportation-related conferences and other events.

(C) Business Counseling

1. Collaborate with agencies, such as the State, Regional, and Local Transportation Government Agencies, SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), and Small Business Development Centers (SBDCs), to offer a broad range of counseling services to transportation-related small business enterprises.

2. Create a technical assistance plan that will provide each counseled participant with the knowledge and skills necessary to improve the management of their own small business to expand their transportation-related contracts and subcontracts portfolio.

3. Provide a minimum of 20 hours of individual or group counseling sessions to small businesses per month.

(D) Planning Committee

1. Establish a Regional Planning Committee consisting of at least 7 members that includes representatives from the regional community and federal, state, and local agencies. The highway, airport, and transit authorities for the SBTRC's headquarters state must have representation on the planning committee. This committee shall be established no later than 60 days after the execution of the Cooperative agreement between the OSDBU and the selected SBRTC.

2. Provide a forum for the federal, state, and local agencies to disseminate information about upcoming procurements.

3. Hold either monthly or quarterly meetings at a time and place agreed upon by SBTRC and planning committee members.

4. Use the initial session (teleconference call) by the SBTRC explain the mission of the committee and identify roles of the staff and the members of the group.

5. Responsibility for the agenda and direction of the Planning Committee should be handled by the SBTRC Executive Director or his/her designee.

(E) Outreach Services/Conference Participation

1. Utilize the services of the System for Award Management (SAM) and other sources to construct a database of regional small businesses that currently or may in the future participate in DOT direct and DOT funded transportation related contracts, and make this database available to OSDBU, upon request.

2. Utilize the database of regional transportation-related small businesses to match opportunities identified through the planning committee forum, FedBiz Opps (a web-based system for posting solicitations and other Federal procurement-related documents on the Internet), and other sources to eligible small businesses and inform the small business community about those opportunities.

3. Develop a ''targeted'' database of firms (100–150) that have the capacity and capabilities, and are ready, willing and able to participate in DOT contracts and subcontracts immediately. This control group will receive ample resources from the SBTRC, i.e., access to working capital, bonding assistance, business counseling, management assistance and direct referrals to DOT agencies at the state and local levels, and to prime contractors as effective subcontractor firms.

4. Identify regional, state and local conferences where a significant number of small businesses, with transportation related capabilities, are expected to be in attendance. Maintain and submit a list of those events to the SBTRC Program Analyst for review and posting on the OSDBU Web site on a monthly basis. Clearly identify the events designated for SBTRC participation and include recommendations for OSDBU participation.

5. Conduct outreach and disseminate information to small businesses at regional transportation-related conferences, seminars, and workshops. In the event that the SBTRC is requested to participate in an event, the SBTRC will send DOT materials, the OSDBU banner and other information that is deemed necessary for the event.

6. Submit a conference summary report to OSDBU no later than 5 business days after participation in the event or conference. The conference summary report must summarize activities, contacts, outreach results, and recommendations for continued or discontinued participation in future similar events sponsored by that organization.

7. Upon request by OSDBU, coordinate efforts with DOT's grantees and recipients at the state and/or local levels to sponsor or cosponsor an OSDBU transportation related conference in the region.

8. Participate in monthly teleconference call with the Regional Assistance Division Program Manager and OSDBU staff.

(F) Short Term Lending Program (STLP)

1. Work with STLP participating banks and if not available, other lending institutions to deliver a minimum of five (5) seminars/workshops per year on the STLP financial assistance program to the transportation-related small business community. The seminar/workshop must cover the entire STLP process, from completion of STLP loan applications and preparation of the loan package to graduation from the STLP.

2. Provide direct support, technical support, and advocacy services to potential STLP applicants to increase the probability of STLP loan approval and generate a minimum of 7 approved STLP applications per year.

(G) Bonding Education Program (BEP)

Work with OSDBU, bonding industry partners, local small business transportation stakeholders, and local bond producers/agents in your region to deliver a minimum of 2 complete BEP seminars. The BEP consists of the following components: (1) The stakeholder's meeting; (2) the educational workshops component; (3) the bond readiness component; and (4) follow-on assistance to BEP participants via technical and procurement assistance based on the prescriptive plan determined by the BEP. For each BEP event, work with the local bond producers/agents in your region and the disadvantaged business participants to deliver minimum of 10 disadvantaged business participants in the BEP event with either access to bonding or an increase in bonding capacity. Furnish all labor, facilities and equipment to perform the services described in this announcement.

(H) Women and Girls in Transportation Initiative (WITI)

Pursuant to Executive Order 13506, and 49 U.S.C. 332(b)(4) & (7), the SBTRC shall administer the WITI in their geographical region. The SBTRC shall implement the DOT WITI program as defined by the DOT WITI Policy. The WITI program is designed to identify, educate, attract, and retain women and girls from a variety of disciplines in the transportation industry. The SBTRC shall also be responsible for outreach

activities in the implementation of this program and advertising the WITI program to all colleges and universities and transportation entities in their region. The WITI program shall be developed in conjunction with the skill needs of the USDOT, state and local transportation agencies and appropriate private sector transportation-related participants including S/WOBs/DBEs, and women organizations involved in transportation. Emphasis shall be placed on establishing partnerships with transportation-related businesses. The SBTRC will be required to host 1 WITI event and attend at least 5 events where WITI is presented and marketed.

2.2 Office of Small and Disadvantaged Business Utilization (OSDBU) Responsibilities

(A) Provide consultation and technical assistance in planning, implementing and evaluating activities under this announcement.

(B) Provide orientation and training to the applicant organization.

(C) Monitor SBTRC activities, cooperative agreement compliance, and overall SBTRC performance.

(D) Assist SBTRC to develop or strengthen its relationships with federal, state, and local transportation authorities, other technical assistance organizations, and DOT grantees.

(E) Facilitate the exchange and transfer of successful program activities and information among all SBTRC regions.

(F) Provide the SBTRC with DOT/OSDBU materials and other relevant transportation related information for dissemination.

(G) Maintain effective communication with the SBTRC and inform them of transportation news and contracting opportunities to share with small businesses in their region.

(H) Provide all required forms to be used by the SBTRC for reporting purposes under the program.

(I) Perform an annual performance evaluation of the SBTRC. Satisfactory performance is a condition of continued participation of the organization as an SBTRC and execution of all option years.

3. Submission of Proposals

3.1 Format for Proposals

Each proposal must be submitted to DOT's OSDBU in the format set forth in the application form attached as Appendix A to this announcement.

3.2 Address; Number of Copies; Deadlines for Submission

Any eligible organization, as defined in Section 1.6 of this announcement, will submit only one proposal per organization for consideration by OSDBU. Applications must be double spaced, and printed in a font size not smaller than 12 points. Applications will not exceed 35 single-sided pages, not including any requested attachments. All pages should be numbered at the top of each page. All documentation, attachments, or other information pertinent to the application must be included in a single submission. Proposal packages must be submitted electronically to OSDBU at *SBTRC@dot.gov.* The applicant is advised to turn on request delivery receipt notification for email submission. Proposals must be received by DOT/OSDBU no later than March 18, 2013, 5:00 p.m. EST. If you have any problems submitting your proposal, please email *patricia.martin@dot.gov* or telephone (202) 366–5337.

4. Selection Criteria

4.1 General Criteria

OSDBU will award the cooperative agreement on a best value basis, using the following criteria to rate and rank applications:

Applications will be evaluated using a point system (maximum number of points = 100);

- Approach and Strategy (25 Points).
- Linkages (25 Points).
- Organizational Capability/Site Visit (25 Points).
- Staff Capabilities and Experience (15 Points).
- Cost Proposal (10 Points).

(A) Approach and Strategy (25 Points)

The applicant must describe their strategy to achieve the overall mission of the SBTRC as described in this solicitation and service the small business community in their entire geographic regional area. The applicant must also describe how the specific activities outlined in Section 2.1 will be implemented and executed in the organization's regional area. OSDBU will consider the extent to which the proposed objectives are specific, measurable, time-specific, and consistent with OSDBU goals and the applicant organization's overall mission. OSDBU will give priority consideration to applicants that demonstrate innovation and creativity in their approach to assist small businesses to become successful transportation contractors and increase their ability to access DOT contracting opportunities and financial assistance programs. Applicants must also submit the estimated direct costs, other than labor, to execute their proposed strategy. OSDBU will consider the quality of the applicant's plan for conducting program activities and the likelihood that the proposed methods will be successful in achieving proposed objectives at the proposed cost.

(B) Linkages (25 Points)

The applicant must describe their established relationships within their geographic region and demonstrate their ability to coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies to maximize resources. OSDBU will consider innovative aspects of the applicant's approach and strategy to build upon their existing relationships and established networks with existing resources in their geographical area. The applicant should describe their strategy to obtain support and collaboration on SBTRC activities from DOT grantees and recipients, transportation prime contractors and subcontractors, the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), Small Business Development Centers (SBDCs), State DOTs, and State highway supportive services contractors. In rating this factor, OSDBU will consider the extent to which the applicant demonstrates ability to be multidimensional. The applicant must demonstrate that they have the ability to access a broad range of supportive services to effectively serve a broad range of transportation-related small businesses within their respective geographical region. Emphasis will also be placed on the extent to which the applicant identifies a clear outreach strategy related to the identified needs that can be successfully carried out within the period of this agreement and a plan for involving the Planning Committee in the execution of that strategy.

(C) Organizational Capability (25 Points)

The applicant must demonstrate that they have the organizational capability to meet the program requirements set forth in Section 2. The applicant organization must have sufficient resources and past performance experience to successfully provide outreach to the small business transportation resources in their geographical area and carry out the mission of the SBTRC. In rating this factor, OSDBU will consider the extent to which the applicant's organization has recent, relevant and successful experience in advocating for and

addressing the needs of small businesses. Applicants will be given points for demonstrated past transportation-related performance. The applicant must also describe technical and administrative resources it plans to use in achieving proposed objectives. In their description, the applicant must describe their facilities, computer and technical facilities, ability to tap into volunteer staff time, and a plan for sufficient matching alternative financial resources to fund the general and administrative costs of the SBTRC. The applicant must also describe their administrative and financial management staff. It will be the responsibility of the successful candidate to not only provide the services outlined herein to small businesses in the transportation industry, but to also successfully manage and maintain their internal financial, payment and invoicing process with their financial management offices. OSDBU will place an emphasis on capabilities of the applicant's financial management staff. Additionally, a site visit will be required prior to award for those candidates that are being strongly considered. A member of the OSDBU team will contact those candidates to schedule the site visits prior to the award of the agreement.

(D) Staff Capability and Experience (15 Points)

The applicant organization must provide a list of proposed personnel for the project, with salaries, fringe benefit burden factors, educational levels and previous experience clearly delineated. The applicant's project team must be well-qualified, knowledgeable, and able to effectively serve the diverse and broad range of small businesses in their geographical region. The Executive Director and the Project Director shall be deemed key personnel. Detailed resumes must be submitted for all proposed key personnel and outside consultants and subcontractors. Proposed key personnel must have detailed demonstrated experience providing services similar in scope and nature to the proposed effort. The proposed Project Director will serve as the responsible individual for the program. 100% of the Project Director's time must be dedicated to the SBTRC. Both the Executive Director and the Project Director must be located on-site. In this element, OSDBU will consider the extent to which the applicant's proposed Staffing Plan; (a) clearly meets the education and experience requirements to accomplish the objectives of the cooperative agreement; (b) delineates staff responsibilities and accountability for all work required and; (c) presents a clear and feasible ability to execute the applicant's proposed approach and strategy.

(E) Cost Proposal (10 Points)

Applicants must submit the total proposed cost of establishing and administering the SBTRC in the applicant's geographical region for a 12-month period, inclusive of costs funded through alternative matching resources. The applicant's budget must be adequate to support the proposed strategy and costs must be reasonable in relation to project objectives. The portion of the submitted budget funded by OSDBU cannot exceed the ceiling outlined in Section 1.3: Description of Competition of this RFP per fiscal year. Applicants are encouraged to provide in-kind costs and other innovative cost approaches.

4.2 Scoring of Applications

A review panel will score each application based upon the evaluation criteria listed above. Points will be given for each evaluation criteria category, not to exceed the maximum number of points allowed for each category. Proposals which are deemed non-responsive, do not meet the established criteria, or incomplete at the time of submission will be disqualified. OSDBU will perform a responsibility determination of the prospective awardee in the region, which will include a site visit, before awarding the cooperative agreement.

4.3 Conflicts of Interest

Applicants must submit signed statements by key personnel and all organization principals indicating that they, or members of their immediate families, do not have a personal, business or financial interest in any DOT-funded transportation project, nor any relationships with local or state transportation agencies that may have the appearance of a conflict of interest.

Appendix A—Format for Proposals for the Department of Transportation Office of Small and Disadvantaged Business Utilization's Small Business Transportation Resource Center (SBTRC) Program

Submitted proposals for the DOT, Office of Small and Disadvantaged Business Utilization's Small Business Transportation Resource Center Program must contain the following 12 sections and be organized in the following order:

1. *Table of Contents.*

Identify all parts, sections and attachments of the application.

2. *Application Summary.*

Provide a summary overview of the following:

- The applicant's proposed SBTRC region and city and key elements of the plan of action/strategy to achieve the SBTRC objectives.
- The applicant's relevant organizational experience and capabilities.

3. *Understanding of the Work.*

Provide a narrative which contains specific project information as follows:

- The applicant will describe its understanding of the OSDBU's SBTRC program mission and the role of the applicant's proposed SBTRC in advancing the program goals.
- The applicant will describe specific outreach needs of transportation-related small businesses in the applicant's region and how the SBTRC will address the identified needs.

4. *Approach and Strategy.*

- Describe the applicant's plan of action/strategy for conducting the program in terms of the tasks to be performed.
- Describe the specific services or activities to be performed and how these services/activities will be implemented.
- Describe innovative and creative approaches to assist small businesses to become successful transportation contractors and increase their ability to access DOT contracting opportunities and financial assistance programs.
- Estimated direct costs, other than labor, to execute the proposed strategy.

5. *Linkages.*

- Describe established relationships within the geographic region and demonstrate the ability to coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies.
- Describe the strategy to obtain support and collaboration on SBTRC activities from DOT grantees and recipients, transportation prime contractors and subcontractors, the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), Small Business Development Centers (SBDCs), State DOTs, and State highway supportive services contractors.
- Describe the outreach strategy related to the identified needs that can be successfully carried out within the period of this agreement and a plan for involving the Planning Committee in the execution of that strategy.

6. *Organizational Capability.*

- Describe recent and relevant past successful performance in addressing the needs of small businesses, particularly with respect to transportation-related small businesses.
- Describe internal technical, financial management, and administrative resources.
- Propose a plan for sufficient matching alternative financial resources to fund the general and administrative costs of the SBTRC.

7. *Staff Capability and Experience.*

- List proposed key personnel, their salaries and proposed fringe benefit factors.

• Describe the education, qualifications and relevant experience of key personnel. Attach detailed resumes.

• Proposed staffing plan. Describe how personnel are to be organized for the program and how they will be used to accomplish program objectives. Outline staff responsibilities, accountability and a schedule for conducting program tasks.

8. *Cost Proposal.*

• Outline the total proposed cost of establishing and administering the SBTRC in the applicant's geographical region for a 12 month period, inclusive of costs funded through alternative matching resources. Clearly identify the portion of the costs funded by OSDBU.

• Provide a brief narrative linking the cost proposal to the proposed strategy.

9. *Proof of Tax Exempt Status.*

10. *Assurances Signature Form.*

Complete the attached Standard Form 424B ASSURANCES–NON–CONSTRUCTION PROGRAMS.

11. *Certification Signature Forms.*

Complete form DOTF2307–1 Drug-Free Workplace Act Certification and Form DOTF2308–1 Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements.

Signed Conflict of Interest Statements.

The statements must say that they, or members of their immediate families, do not have a personal, business or financial interest in any DOT-funded transportation projects, nor any relationships with local or state transportation agencies that may have the appearance of a conflict of interest.

12. *Standard Form 424.*

Complete Standard Form 424 Application for Federal Assistance.

Note: All forms can be downloaded from U.S. Department of Transportation Web site at *http://www.dot.gov/gsearch/424%2Bform.*

PLEASE BE SURE THAT ALL FORMS HAVE BEEN SIGNED BY AN AUTHORIZED OFFICIAL WHO CAN LEGALLY REPRESENT THE ORGANIZATION.

Issued in Washington, DC, on February 15, 2013.

Brandon Neal,

Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, U.S. Department of Transportation.

[FR Doc. 2013–04305 Filed 2–25–13; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2013–0010]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated January 31, 2013, the Chessie Logistics Company LLC (CLCY), a Class III railroad, has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations. FRA assigned the petition Docket Number FRA–2013–0010.

Specifically, CLCY has petitioned for a waiver of compliance from the requirements of: 49 CFR Sections 223.11, Requirements for existing locomotives; 231.30, Locomotives used in switching service; 229.47, Emergency brake valve; 229.115, Slip/slide alarms; 229.125, Headlights and auxiliary lights; 224.105, Sheeting dimensions and quantity; 224.106, Location of retroreflective sheeting; 229.129, Locomotive horn; 229.131, Sanders; and 229.135, Event recorders. CLCY seeks this waiver for its 5TM track mobile, CLCY 106. CLCY employs the track mobile for yard and industry switching, which is confined to CLCY's tracks within the J. Emil Anderson & Son, Inc. Industrial Park, located in Melrose Park, Cook County, IL. CLCY operates on 1.06 miles of track and 431 feet of siding. It interchanges railcars with the Indiana Harbor Belt Railroad on a transfer track that is west of Mannheim Road. CLCY is the sole rail operator on this line and provides rail service to two shippers. The 5TM track mobile switches, shoves, and pulls all railcars with their train air brakes cut in to maintain control of all switching movements. The track mobile will always operate at speeds not to exceed 10 mph. CLCY will not use a locomotive for these switching operations.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

• *Web site: http://www.regulations.gov/.* Follow the online instructions for submitting comments.

• *Fax:* 202–493–2251.

• *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.

• *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by April 12, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on February 21, 2013.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2013–04375 Filed 2–25–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2002–11809]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that the North County Transit District (NCTD) has petitioned the Federal Railroad Administration (FRA) to modify NCTD's petition for approval of Shared Use and waiver of compliance from certain provisions of the Federal railroad safety regulations (Shared Use waiver) to include 49 CFR Part 228–Hours of Service of Railroad Employees; Recordkeeping and Reporting; Sleeping Quarters. (*See* Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment, 65 FR 42529 (July 10, 2000). *See also* Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light

Rail Transit Systems, 65 FR 42626 (July 10, 2000).) FRA assigned the petition Docket Number FRA–2002–11809.

NCTD operates its SPRINTER light rail transit system (SPRINTER) between Oceanside and Escondido, CA. On June 24, 2003, FRA issued the initial waiver that granted NCTD conditional relief from certain Federal railroad safety regulations, provided that NCTD maintains temporal separation on track that is shared between SPRINTER and freight railroads so that each would operate at separate and distinct portions of the day and would not operate on the shared track at the same time. Since 2003, NCTD has requested and been granted additional relief from FRA.

NCTD's SPRINTER also falls under the safety oversight of the California Public Utilities Commission (CPUC) as authorized by the Federal Transit Administration.

NCTD's requested modification to its existing Shared Use waiver seeks relief from the hours of service requirements for its light rail transit (LRT) operators. In its petition, NCDT states that SPRINTER operates with an engineer-only train crew. Additionally, NCTD's operator training and qualification program for SPRINTER is approved and monitored by the CPUC. NCTD's program complies with CPUC's General Order 143–B, Section 12.04, which provides that LRT systems shall not allow any safety sensitive employees to remain on duty for more than 12 consecutive hours or more than an aggregate of 12 hours distributed over a period of 16 hours. Finally, NCTD states that the dispatch and signal employees for SPRINTER will continue to meet all of the requirements of 49 CFR Part 228.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov/.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by April 12, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on February 21, 2013.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2013–04390 Filed 2–25–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2001–9717]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated February 22, 2011, the Little Kanawha River Railroad (LKRR), a division of Marietta Industrial Enterprises, Inc., has petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations regarding safety glazing contained at 49 CFR Part 223. FRA assigned the petition Docket Number FRA–2001–9717.

LKRR seeks to extend a waiver of compliance for one locomotive, specifically, one 1955 General Motors' Electro-Motive Division Model SW–1200, Number LKRR 1205, from 49 CFR Section 223.11, Requirements for existing locomotives. FRA issued the initial waiver that granted LKRR relief on May 20, 2002, and FRA extended the waiver on August 7, 2006.

The current glazing that is installed in the locomotive has no identifying marks. LKRR states that it operates on 1.75 miles of level track at speeds not exceeding 10 mph, as a yard-type system. LKRR interchanges directly with the CSX Corporation (CSX), and it is a shortline operation that only moves CSX cars for loading and unloading. LKRR states that it operates in a secure area and there have been no known incidents of broken windows as a result of vandalism and, therefore, no resulting worker injuries have occurred due to broken glass from the locomotive's windows. LKRR is requesting an extension of relief on account of the prohibitive cost involved in retrofitting the locomotive with certified glazing.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- Web site: *http://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Fax: 202–493–2251.
- Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by April 12, 2013 will be considered by FRA

before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on February 21, 2013.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2013–04382 Filed 2–25–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2008–0010]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations, this document provides the public notice that by a document dated January 18, 2013, the Northwestern Pacific Railroad Company (NWP), the National Railroad Passenger Corporation, and the Capitol Corridor Joint Powers Authority (Petitioners) have jointly petitioned the Federal Railroad Administration (FRA) for an exception to a condition in a previously granted application for an approval of the discontinuance and removal of NWP's interlocking signal system on three drawbridges—including the Brazos Drawbridge—in Docket Number FRA–2008–0010. By letter dated April 3, 2009, FRA had approved NWP's block signal application subject to certain conditions, including the condition that the approval was for freight movements only and should be revisited prior to any passenger operations over the three drawbridges.

Petitioners request this exception for a one-time, one-day, roundtrip, chartered passenger train movement on June 23, 2013, over the Brazos Drawbridge. The charter train will operate from Sacramento to the Sears Point Raceway in Sonoma, CA, and then back to Sacramento.

Petitioners have agreed to a service operating plan for this charter train movement that includes the safety of train operations, equipment, passenger boarding/alighting, staffing, access/egress considerations, dispatching, and all relevant safety precautions that have been established for freight train movements. NWP's general manager will be responsible for the charter train's operations over NWP track between Brazos Junction and the Sears Point Raceway, including across the Brazos Drawbridge.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov/.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by April 12, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on February 21, 2013.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2013–04378 Filed 2–25–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. EP 670 (Sub-No. 1)]

Notice of Rail Energy Transportation Advisory Committee Meeting

AGENCY: Surface Transportation Board, Transportation.

ACTION: Notice of Rail Energy Transportation Advisory Committee meeting.

SUMMARY: Notice is hereby given of a meeting of the Rail Energy Transportation Advisory Committee (RETAC), pursuant to section 10(a)(2) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2).

DATES: The meeting will be held on Thursday, March 14, 2013, at 9:00 a.m., E.D.T.

ADDRESSES: The meeting will be held in the Hearing Room on the first floor of the Board's headquarters at 395 E Street SW., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Scott M. Zimmerman (202) 245–0386. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339].

SUPPLEMENTARY INFORMATION: RETAC arose from a proceeding instituted by the Board, in *Establishment of a Rail Energy Transportation Advisory Committee,* Docket No. EP 670. RETAC was formed to provide advice and guidance to the Board, and to serve as a forum for discussion of emerging issues regarding the transportation by rail of energy resources, particularly, but not necessarily limited to, coal, ethanol, and other biofuels. The purpose of this meeting is to continue discussions regarding issues such as rail performance, capacity constraints, infrastructure planning and development, and effective coordination among suppliers, carriers, and users of energy resources. Potential agenda items include introduction of new members; a review of applicable rules; a performance measures review; discussion of domestic oil production

and transportation; discussion of the impact of increases in export coal; industry segment reports by RETAC members; and a roundtable discussion.

The meeting, which is open to the public, will be conducted pursuant to RETAC's charter and Board procedures. Further communications about this meeting may be announced through the Board's Web site at *WWW.STB.DOT.GOV.*

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 721, 49 U.S.C. 11101; 49 U.S.C. 11121.

Decided: February 20, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2013–04365 Filed 2–25–13; 8:45 a.m.]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13803

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13803, Application to Participate in the Income Verification Express Service (IVES) Program.

DATES: Written comments should be received on or before April 29, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application to Participate in the Income Verification Express Service (IVES) Program.

OMB Number: 1545–2032.

Form Number: Form 13803.

Abstract: Form 13803, Application to Participate in the Income Verification Express Service (IVES) Program, is used to submit the required information necessary to complete the e-services enrollment process for IVES users and to identify delegates receiving transcripts on behalf of the principle account user.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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.

Approved: February 12, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–03922 Filed 2–25–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Recruitment Notice for the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: Notice of Open Season for Recruitment of IRS Taxpayer Advocacy Panel (TAP) Members.

DATES: February 22, 2013, through April 1, 2013.

FOR FURTHER INFORMATION CONTACT: Sheila Andrews at 317–685–7596 (not a toll-free call).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department of the Treasury and the Internal Revenue Service (IRS) are inviting individuals to help improve the nation's tax agency by applying to be members of the Taxpayer Advocacy Panel (TAP). The mission of the TAP is to listen to taxpayers, identify issues that affect taxpayers, and make suggestions for improving IRS service and customer satisfaction. The TAP serves as an advisory body to the Secretary of the Treasury, the Commissioner of Internal Revenue, and the National Taxpayer Advocate. TAP members will participate in subcommittees that channel their feedback to the IRS through the Panel's parent committee.

The IRS is seeking applicants who have an interest in good government, a personal commitment to volunteer approximately 200 to 300 hours a year, and a desire to help improve IRS customer service. To the extent possible, the TAP Director will ensure that TAP membership is balanced and represents a cross-section of the taxpaying public with at least one member from each state and the District of Columbia. In addition, the TAP is seeking to include at least one member representing international taxpayers. For these purposes, ''international taxpayers'' are broadly defined to include U.S. citizens working, living, or doing business abroad or in a U.S. territory. Potential candidates must be U.S. citizens and must pass an IRS tax compliance check

and a Federal Bureau of Investigation background investigation. Federally-registered lobbyists cannot be members of the TAP.

TAP members are a diverse group of citizens who represent the interests of taxpayers from their respective geographic locations by providing feedback from a taxpayer's perspective on ways to improve IRS customer service and administration of the federal tax system, and by identifying grassroots taxpayer issues. Members should have good communications skills and be able to speak to taxpayers about the TAP and TAP activities, while clearly distinguishing between TAP positions and their personal viewpoints.

Interested applicants should visit the TAP Web site at *www.improveirs.org* to complete the on-line application or call the TAP toll-free number, 1–888–912–1227, if they have questions about TAP membership. The opening date for submitting applications is February 22, 2013, and the deadline for submitting applications is April 1, 2013. Interviews may be held. The Department of the Treasury will review the recommended candidates and make final selections. New TAP members will serve a three-year term starting in December 2013. (**Note:** highly-ranked applicants not selected as members may be placed on a roster of alternates who will be eligible to fill future vacancies that may occur on the Panel.)

Questions regarding the selection of TAP members may be directed to Sheila Andrews, Acting Director, Taxpayer Advocacy Panel, Internal Revenue Service, 1111 Constitution Avenue NW., TA: TAP Room 1509, Washington, DC 20224, or 317–685–7596 (not a toll-free call).

Dated: February 20, 2013.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2013–04328 Filed 2–25–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0162]

Proposed Information Collection (Monthly Certification of Flight Training) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to ensure that the amount of benefits payable to a student pursuing flight training is correct.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 29, 2013.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0162'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8921 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Monthly Certification of Flight Training, VA Form 22–6553c.

OMB Control Number: 2900–0162.

Type of Review: Revision of a currently approved collection.

Abstract: Veterans, individuals on active duty training and reservist training, may receive benefits for enrolling in or pursuing approved vocational flight training. VA Form 22–6553c serves as a report of flight training pursued and termination of such training. Payments are based on the number of hours of flight training completed during each month.

Affected Public: Individuals or households.

Estimated Annual Burden: 7,306 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 2,435.

Estimated Total Annual Responses: 14,610.

Dated: February 21, 2013.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2013–04402 Filed 2–25–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0736]

Proposed Information Collection (Authorization To Disclose Personal Beneficiary/Claimant Information to a Third Party) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA) is announcing an opportunity for public comment on the proposed collection of information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to allow VA to share personal beneficiary or claims information to a third party.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 29, 2013.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS), *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0736'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Authorization to Disclose Personal Beneficiary/Claimant Information to a Third Party, VA Form 21–0845.

OMB Control Number: 2900–0736.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–0845 will be used to release information in the following circumstances: where the individual identifies the particular information and consents to its use; for the purpose for which it was collected or a consistent purpose (i.e. a purpose which the individual might have reasonably expected).

Affected Public: Individuals or Households.

Estimated Annual Burden: 1,667 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,000.

Dated: February 7, 2013.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2013–04400 Filed 2–25–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0325]

Proposed Information Collection (Certificate of Delivery of Advance Payment and Enrollment) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to authorize advance payment of educational assistance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 29, 2013.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0325'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA. With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Certificate of Delivery of Advance Payment and Enrollment, VA Form 22–1999V.

OMB Control Number: 2900–0325.

Type of Review: Revision of a currently approved collection.

Abstract: VA will make payments of educational assistance in advance when the veteran, servivcemember, reservist, or eligible person has specifically requested such payment. The school in which a student is accepted or enrolled delivers the advance payment to the student and is required to certify the deliveries to VA. VA Form 22–1999V serves as the certificate of delivery of advance payment and to report any changes in a student's training status. Schools are required to report when a student fails to enroll; has an interruption or termination of attendance; or unsatisfactory attendance, conduct or progress to VA.

Affected Public: State, Local or Tribal Governments.

Estimated Annual Burden: 76 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 159.

Estimated Total Number of Responses: 700.

Dated: February 21, 2013.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2013–04401 Filed 2–25–13; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 679

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 2013 and 2014 Harvest Specifications for Groundfish; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 120918468–3111–02]

RIN 0648–XC254

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 2013 and 2014 Harvest Specifications for Groundfish

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

ACTION: Final rule; closures.

SUMMARY: NMFS announces final 2013 and 2014 harvest specifications, apportionments, and Pacific halibut prohibited species catch limits for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits for groundfish during the 2013 and 2014 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the GOA. The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: Effective at 1200 hrs, Alaska local time (A.l.t.), February 26, 2013, through 2400 hrs, A.l.t., December 31, 2014.

ADDRESSES: Electronic copies of the Final Alaska Groundfish Harvest Specifications Environmental Impact Statement (EIS), Record of Decision (ROD), Supplementary Information Report (SIR) to the EIS, and the Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available from *http://alaskafisheries.noaa.gov*. The final 2012 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the GOA, dated November 2012, is available from the North Pacific Fishery Management Council (Council) at 605 West 4th Avenue, Suite 306, Anchorage, AK 99510–2252, phone 907–271–2809, or from the Council's Web site at *http://alaskafisheries.noaa.gov/npfmc*.

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

SUPPLEMENTARY INFORMATION: NMFS manages the GOA groundfish fisheries in the exclusive economic zone (EEZ) of the GOA under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The Council prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600, 679, and 680.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify the total allowable catch (TAC) for each target species, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt). Section 679.20(c)(1) further requires NMFS to publish and solicit public comment on proposed annual TACs, Pacific halibut prohibited species catch (PSC) limits, and seasonal allowances of pollock and Pacific cod. Upon consideration of public comment received under § 679.20(c)(1), NMFS must publish notice of final harvest specifications for up to two fishing years as annual target TAC, per § 679.20(c)(3)(ii). The final harvest specifications set forth in Tables 1 through 31 of this document reflect the outcome of this process, as required at § 679.20(c).

The proposed 2013 and 2014 harvest specifications for groundfish of the GOA and Pacific halibut PSC limits were published in the **Federal Register** on December 5, 2012 (77 FR 72297). Comments were invited and accepted through January 4, 2013. NMFS did not receive any comments on the proposed harvest specifications. In December 2012, NMFS consulted with the Council regarding the 2013 and 2014 harvest specifications. After considering public testimony, as well as biological and economic data that were available at the Council's December 2012 meeting, NMFS is implementing the final 2013 and 2014 harvest specifications, as recommended by the Council. For 2013, the sum of the TAC amounts is 436,255 mt. For 2014, the sum of the TAC amounts is 427,772 mt.

Acceptable Biological Catch (ABC) and TAC Specifications

In December 2012, the Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC), reviewed current biological and harvest information about the condition of groundfish stocks in the GOA. This information was compiled by the Council's GOA Plan Team and was presented in the draft 2012 SAFE report for the GOA groundfish fisheries, dated November 2012 (see **ADDRESSES**). The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the GOA ecosystem and the economic condition of the groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an overfishing level (OFL) and ABC for each species or species group. The 2012 SAFE report was made available for public review during the public comment period for the proposed harvest specifications.

In previous years, the largest changes from the proposed to the final harvest specifications have been based on recent NMFS stock surveys, which provide updated estimates of stock biomass and spatial distribution, and changes to the models used for producing stock assessments. In October 2012, the Council also reviewed the proposed TACs recommended for several flatfish and other rockfish species, adjusting them downward from ABCs. At the November 2012 Plan Team meeting, NMFS scientists presented updated and new survey results, changes to stock assessment models, and accompanying stock assessment estimates for all groundfish species and species groups that are included in the final 2012 SAFE report. The SSC reviewed this information at the December 2012 Council meeting. Changes from the proposed to the final harvest specifications in 2013 and 2014 for newly assessed groundfish stocks are discussed below.

The final 2013 and 2014 OFLs, ABCs, and TACs are based on the best available biological and socioeconomic information, including projected biomass trends, information on assumed distribution of stock biomass, and revised methods used to calculate stock biomass. The FMP specifies the formulas, or tiers, to be used to compute OFLs and ABCs. The formulas applicable to a particular stock or stock complex are determined by the level of reliable information available to fisheries scientists. This information is categorized into a successive series of six tiers to define OFL and ABC amounts, with tier 1 representing the highest level of information quality available and tier 6 representing the lowest level of information quality available. The Plan Team used the FMP tier structure to calculate OFL and ABC amounts for each groundfish species. The SSC adopted the final 2013 and 2014 OFLs and ABCs recommended by the Plan Team for all groundfish species.

The Council adopted the SSC's OFL and ABC recommendations and the AP's TAC recommendations. The final TAC recommendations were based on

the ABCs as adjusted for other biological and socioeconomic considerations, including maintaining the sum of all TACs within the required OY range of 116,000 to 800,000 mt.

The Council recommended TACs for 2013 and 2014 that are equal to ABCs for pollock, sablefish, deep-water flatfish, rex sole, Pacific ocean perch, northern rockfish, shortraker rockfish, dusky rockfish, rougheye rockfish, demersal shelf rockfish, thornyhead rockfish, ''other rockfish,'' big skates, longnose skates, other skates, sculpins, sharks, and octopuses in the Central, Western, and West Yakutat district of the GOA. The Council recommended TACs for 2013 and 2014 that are less than the ABCs for Pacific cod, shallow-water flatfish, arrowtooth flounder, flathead sole, ''other rockfish,'' and Atka mackerel in the Southeast Outside (SEO) District. The Pacific cod TACs are set to accommodate the State of Alaska's (State's) guideline harvest levels (GHLs) for Pacific cod so that the ABC is not exceeded. The shallow-water flatfish, arrowtooth flounder, and flathead sole TACs are set to allow for increased harvest opportunities for these targets while conserving the halibut PSC limit for use in other, more fully utilized, fisheries. The ''other rockfish'' TAC in the SEO is set to reduce the amount of discards. The Atka mackerel TAC is set to accommodate incidental catch amounts in other fisheries.

The final 2013 and 2014 harvest specifications approved by the Secretary of Commerce (Secretary) are unchanged from those recommended by the Council and are consistent with the preferred harvest strategy alternative in the EIS (see ADDRESSES). NMFS finds that the Council's recommended OFLs, ABCs, and TACs are consistent with the biological condition of the groundfish stocks as described in the final 2012 SAFE report. NMFS also finds that the Council's recommendations for OFLs, ABCs, and TACs are consistent with the biological condition of groundfish stocks as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the OY range. NMFS reviewed the Council's recommended TAC specifications and apportionments, and approves these harvest specifications under 50 CFR 679.20(c)(3)(ii). The apportionment of TAC amounts among gear types and sectors, processing sectors, and seasons is discussed below.

Tables 1 and 2 list the final 2013 and 2014 OFLs, ABCs, TACs, and area apportionments of groundfish in the GOA. The sums of the 2013 and 2014 ABCs are 595,920 mt and 584,094 mt, respectively, which are lower in 2013 and 2014 than the 2012 ABC sum of 606,048 mt (77 FR 15194, March 14, 2012).

Specification and Apportionment of TAC Amounts

The ABC for the pollock stock in the combined Western, Central, and West Yakutat Regulatory Areas (W/C/WYK) has been decreased to account for the GHL established by the State for the Prince William Sound (PWS) pollock fishery. Based upon genetic studies, fisheries scientists believe that the pollock in PWS is not a separate stock from the combined W/C/WYK population. At the November 2012 Plan Team meeting, State fisheries managers recommended fixing the PWS GHL at 2.5 percent of the annual W/C/WYK pollock ABC. For 2013, this yields a PWS pollock GHL of 2,827 mt, an increase of 57 mt from the 2012 PWS GHL of 2,770 mt. For 2014, the PWS pollock GHL is 2,583 mt, a decrease from the 2012 PWS pollock GHL.

The apportionment of annual pollock TAC among the Western and Central Regulatory Areas of the GOA reflects the seasonal biomass distribution and is discussed in greater detail below. The annual pollock TAC in the Western and Central Regulatory Areas of the GOA is apportioned among Statistical Areas 610, 620, and 630, and divided equally among each of the following four seasons: The A season (January 20 through March 10), the B season (March 10 through May 31), the C season (August 25 through October 1), and the D season (October 1 through November 1) (§ 679.23(d)(2)(i) through (iv), and § 679.20(a)(5)(iv)(A) through (B)). Tables 3 and 4 list the final 2013 and 2014 distribution of pollock in the Western and Central Regulatory Areas of the GOA, and area and seasonal allowances of annual TAC.

The AP, SSC, and Council recommended apportionment of the ABC for Pacific cod in the GOA among regulatory areas based on the three most recent NMFS summer trawl surveys. The 2013 and 2014 Pacific cod TACs are affected by the State's fishery for Pacific cod in State waters in the Central and Western Regulatory Areas, as well as in PWS. The Plan Team, SSC, AP, and Council recommended that the sum of all State and Federal water Pacific cod removals from the GOA not exceed ABC recommendations. Accordingly, the Council reduced the 2013 and 2014 Pacific cod TACs in the Eastern, Central, and Western Regulatory Areas to account for State GHLs. Therefore, the 2013 Pacific cod TACs are less than the ABCs by the following amounts: (1) Eastern GOA, 808 mt; (2) Central GOA, 12,322 mt; and (3) Western GOA, 7,070 mt. The 2014 Pacific cod TACs are less than the ABCs by the following amounts: (1) Eastern GOA, 842 mt; (2) Central GOA, 12,840 mt; and (3) Western GOA, 7,367 mt. These amounts reflect the sum of the State's 2013 and 2014 GHLs in these areas, which are 25 percent of the Eastern, Central, and Western GOA ABCs, respectively.

NMFS establishes seasonal apportionments of the annual Pacific cod TAC in the Central and Western Regulatory Areas. Sixty percent of the annual TAC is apportioned to the A season for hook-and-line, pot, and jig gear from January 1 through June 10, and for trawl gear from January 20 through June 10. Forty percent of the annual TAC is apportioned to the B season for hook-and-line, pot, and jig gear from September 1 through December 31, and for trawl gear from September 1 through November 1 (§§ 679.23(d)(3) and 679.20(a)(12)). The Central and Western GOA Pacific cod TACs are allocated among various gear and operational sectors. The Pacific cod sector apportionments are discussed in detail in a subsequent section of this preamble.

The Council's recommendation for sablefish area apportionments takes into account the prohibition on the use of trawl gear in the SEO District of the Eastern Regulatory Area and makes available five percent of the combined Eastern Regulatory Area ABCs to trawl gear for use as incidental catch in other groundfish fisheries in the WYK District (§ 679.20(a)(4)(i)). Tables 7 and 8 list the final 2013 and 2014 allocations of sablefish TAC to hook-and-line and trawl gear in the GOA.

Halibut Prohibited Species Catch Limits Revisions

At its June 2012 meeting, the Council took final action to reduce halibut PSC limits in the GOA trawl and hook-and-line groundfish fisheries. The Council's preferred alternative for Amendment 95 to the GOA FMP would change the process for setting halibut PSC limits. Halibut PSC limits would be established in Federal regulations and would remain in effect until changed by a subsequent Council action to amend those regulations.

If approved by the Secretary, Amendment 95 would reduce the GOA halibut PSC limit for the groundfish trawl gear sector and groundfish catcher vessel (CV) hook-and-line gear sector by 15 percent. The Council's proposed reduction would be phased in over 3 years: 7 percent in year 1, 5 percent in year 2 (to 12 percent), and 3 percent in year 3 (for a total of 15 percent). The

Council's proposed reduction for the catcher/processor (C/P) hook-and-line gear sector would be 7 percent, which would be implemented in one step in year 1. The Council used 1,973 mt as the baseline for the proposed trawl halibut PSC limit reductions. This is based on a deduction of 27 mt from the 2,000 mt trawl halibut PSC limit, per halibut PSC limit reductions made in conjunction with the implementation of the Central Gulf of Alaska Rockfish Program in 2011 (76 FR 81248, December 27, 2011). The Council recommended that the first year of implementation would occur in 2014 and that all reductions would occur by 2016.

Changes From the Proposed 2013 and 2014 Harvest Specifications in the GOA

In October 2012, the Council's recommendations for the proposed 2013 and 2014 harvest specifications (77 FR 72297, December 5, 2012) were based largely on information contained in the final 2011 SAFE report for the GOA groundfish fisheries, dated November 2011 (see **ADDRESSES**). The Council proposed that the final OFLs, ABCs, and TACs established for the 2013 groundfish fisheries (77 FR 15194, March 14, 2012) be used for the proposed 2013 and 2014 harvest specifications, pending completion and review of the 2012 SAFE report at its December 2012 meeting.

As described previously, the SSC adopted the final 2013 and 2014 OFLs and ABCs recommended by the Plan Team. The Council adopted the SSC's OFL and ABC recommendations and the AP's TAC recommendations for 2013 and 2014. The final 2013 ABCs are higher than the 2013 ABCs published in the proposed 2013 and 2014 harvest specifications (77 FR 72297, December 5, 2012) for rex sole, flathead sole, demersal shelf rockfish, and sculpins. The final 2013 ABCs are lower than the proposed 2013 ABCs for pollock, Pacific cod, sablefish, shallow-water flatfish, arrowtooth flounder, Pacific ocean perch, northern rockfish, dusky rockfish, and rougheye rockfish. The final 2014 ABCs are higher than the proposed 2014 ABCs for rex sole, flathead sole, rougheye rockfish, demersal shelf rockfish, and sculpins. The final 2014 ABCs are lower than the proposed 2014 ABCs for pollock, Pacific cod, sablefish, shallow-water flatfish, arrowtooth flounder, Pacific ocean perch, northern rockfish, and dusky rockfish. For the remaining target species, shortraker rockfish, thornyhead rockfish, ''other rockfish,'' Atka mackerel, skates, sharks, squids, and octopuses, the Council recommended, and the Secretary approved, final 2013 and 2014 ABCs that are the same as the proposed 2013 and 2014 ABCs.

Additional information explaining the changes between the proposed and final ABCs is included in the final 2012 SAFE report, which was not available when the Council made its proposed ABC and TAC recommendations in October 2012. At that time, the most recent stock assessment information was contained in the final 2011 SAFE report. The final 2012 SAFE report contains the best and most recent scientific information on the condition of the groundfish stocks, as previously discussed in this preamble, and is available for review (see **ADDRESSES**). The Council considered the final 2012 SAFE report in December 2012 when it made recommendations for the final 2013 and 2014 harvest specifications. In the GOA, the total final 2013 TAC amount is 436,255 mt, a decrease of 3 percent from the total proposed 2013 TAC amount of 447,752 mt. The total final 2014 TAC amount is 427,722 mt, a decrease of 4.5 percent from the total proposed 2014 TAC amount of 447,752 mt.

The largest individual TAC decrease was for Pacific cod, which changed eleven percent from the proposed 2013 TAC to the final 2013 TAC. This decrease was based on changes to the Pacific cod assessment method used by the stock assessment scientists, which established a lower Pacific cod ABC. The Pacific cod TAC was set equal to ABC, as were those for most other species. The Council recommended setting the TACs at amounts below ABCs for some species, including shallow-water flatfish, rex sole, flathead sole, and sculpins. The Council believed, and NMFS concurs, that setting TACs for these species equal to ABCs would not reflect anticipated harvest levels accurately, as the Council and NMFS expect halibut PSC limits to constrain these fisheries in 2013 and 2014. With the exception of Pacific cod, the percentage change to the final 2013 TAC from the proposed 2013 TAC is plus or minus five percent of the proposed TACs. These changes corresponded to associated changes in the ABCs, as recommended by the SSC, and to the TACs, as recommended by the AP, and Council. With respect to the 2014 TACs, the largest difference between the proposed TAC and final TAC was an 11 percent decrease in the pollock TAC. The percentage change to the final 2014 TAC from the proposed 2014 TAC for all other species ranged from plus three to minus eight percent of the proposed TACs.

Detailed information providing the basis for the changes described above is contained in the final 2012 SAFE report. The final TACs are based on the best scientific information available. These TACs are specified in compliance with the harvest strategy described in the proposed and final rules for the 2013 and 2014 harvest specifications. The changes in TACs between the proposed rule and this final rule are compared in the following table.

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Comparison of Proposed and Final 2013 and 2014 GOA Total Allowable Catch Limits
(Values are rounded to the nearest metric ton and percentage.)

Species	2013 and 2014 Proposed TAC	2013 Final TAC	2013 Final minus 2013 Proposed TAC	Percentage difference	2014 Final TAC	2014 Final minus 2014 Proposed TAC	Percentage difference	Principle reason for difference
Pollock	125,334	121,046	-4,288	-3%	111,530	-13,804	-11%	Biomass[1]
Pacific cod	68,250	60,600	-7,650	-11%	63,150	-5,100	-7%	Model[2]
Sablefish	12,794	12,510	-284	-2%	11,731	-1,063	-8%	Biomass
Shallow-water flatfish	36,550	37,077	527	1%	37,077	527	1%	Biomass
Deep-water flatfish	5,126	5,126	0	0%	5,126	0	0%	Not applicable
Rex sole	9,432	9,560	128	1%	9,460	28	0%	Biomass
Arrowtooth flounder	103,300	103,300	0	0%	103,300	0	0%	N/A
Flathead sole	30,408	30,496	88	0%	30,632	224	1%	Biomass
Pacific ocean perch	16,500	16,412	-88	-1%	16,133	-367	-2%	Biomass
Northern rockfish	5,153	5,130	-23	0%	4,850	-303	-6%	Biomass
Shortraker rockfish	1,081	1,081	0	0%	1,081	0	0%	N/A
Dusky rockfish	4,762	4,700	-62	-1%	4,413	-349	-7%	Biomass
Rougheye rockfish	1,240	1,232	-8	-1%	1,254	14	1%	Biomass
Demersal shelf rockfish	293	303	10	3%	303	10	3%	Biomass
Thornyhead rockfish	1,665	1,665	0	0%	1,665	0	0%	N/A
Other rockfish	1,080	1,080	0	0%	1,080	0	0%	N/A
Atka mackerel	2,000	2,000	0	0%	2,000	0	0%	N/A
Big skate	3,767	3,767	0	0%	3,767	0	0%	N/A
Longnose skates	2,625	2,625	0	0%	2,625	0	0%	N/A
Other skates	2,030	2,030	0	0%	2,030	0	0%	N/A
Squids	1,148	1,148	0	0%	1,148	0	0%	N/A
Sharks	6,028	6,028	0	0%	6,028	0	0%	N/A
Octopuses	1,455	1,455	0	0%	1,455	0	0%	N/A
Sculpins	5,731	5,884	153	3%	5,884	153	3%	Biomass
Total	447,752	436,255	-11,497	-3%	427,722	-20,030	-4.5%	N/A

[1] Biomass – Change in estimate of biomass
[2] Model – Change in assessment methodology

The final 2013 and 2014 TAC recommendations for the GOA are within the OY range established for the GOA and do not exceed the ABC for any species or species group. Tables 1 and 2 list the final OFL, ABC, and TAC amounts for GOA groundfish for 2013 and 2014, respectively.

Table 1. Final 2013 ABCs, TACs, and OFLs of Groundfish for the Western/Central/West Yakutat, Western, Central, Eastern Regulatory Areas, and in the West Yakutat, Southeast Outside, and Gulfwide Districts of the Gulf of Alaska (Values are rounded to the nearest metric ton.)

Species	Area[1]	OFL	ABC	TAC
Pollock[2]	Shumagin (610)	n/a	28,072	28,072
	Chirikof (620)	n/a	51,443	51,443
	Kodiak (630)	n/a	27,372	27,372
	WYK (640)	n/a	3,385	3,385
	W/C/WYK (subtotal)	150,817	110,272	110,272
	SEO (650)	14,366	10,774	10,774
	Total	165,183	121,046	121,046
Pacific cod[3]	W	n/a	28,280	21,210
	C	n/a	49,288	36,966
	E	n/a	3,232	2,424
	Total	97,200	80,800	60,600
Sablefish[4]	W	n/a	1,750	1,750
	C	n/a	5,540	5,540
	WYK	n/a	2,030	2,030
	SEO	n/a	3,190	3,190
	E (WYK and SEO) (subtotal)	n/a	5,220	5,220
	Total	14,780	12,510	12,510
Shallow-water flatfish[5]	W	n/a	19,489	13,250
	C	n/a	20,168	18,000
	WYK	n/a	4,647	4,647
	SEO	n/a	1,180	1,180
	Total	55,680	45,484	37,077
Deep-water flatfish[6]	W	n/a	176	176
	C	n/a	2,308	2,308
	WYK	n/a	1,581	1,581
	SEO	n/a	1,061	1,061
	Total	6,834	5,126	5,126
Rex sole	W	n/a	1,300	1,300
	C	n/a	6,376	6,376
	WYK	n/a	832	832
	SEO	n/a	1,052	1,052
	Total	12,492	9,560	9,560
Arrowtooth flounder	W	n/a	27,181	14,500
	C	n/a	141,527	75,000
	WYK	n/a	20,917	6,900
	SEO	n/a	20,826	6,900
	Total	247,196	210,451	103,300
Flathead sole	W	n/a	15,729	8,650

	C	n/a	26,563	15,400
	WYK	n/a	4,686	4,686
	SEO	n/a	1,760	1,760
	Total	61,036	48,738	30,496
Pacific ocean perch[7]	W	n/a	2,040	2,040
	C	n/a	10,926	10,926
	WYK	n/a	1,641	1,641
	W/C/WYK	16,838	n/a	n/a
	SEO	2,081	1,805	1,805
	Total	18,919	16,412	16,412
Northern rockfish[8]	W	n/a	2,008	2,008
	C	n/a	3,122	3,122
	E	n/a	n/a	n/a
	Total	6,124	5,130	5,130
Shortraker rockfish[9]	W	n/a	104	104
	C	n/a	452	452
	E	n/a	525	525
	Total	1,441	1,081	1,081
Dusky rockfish[10]	W	n/a	377	377
	C	n/a	3,533	3,533
	WYK	n/a	495	495
	SEO	n/a	295	295
	Total	5,746	4,700	4,700
Rougheye and Blackspotted rockfish[11]	W	n/a	81	81
	C	n/a	856	856
	E	n/a	295	295
	Total	1,482	1,232	1,232
Demersal shelf rockfish[12]	SEO	487	303	303
Thornyhead rockfish	W	n/a	150	150
	C	n/a	766	766
	E	n/a	749	749
	Total	2,220	1,665	1,665
Other rockfish[13, 14]	W	n/a	44	44
	C	n/a	606	606
	WYK	n/a	230	230
	SEO	n/a	3,165	200
	Total	5,305	4,045	1,080
Atka mackerel	GW	6,200	4,700	2,000
Big skate[15]	W	n/a	469	469
	C	n/a	1,793	1,793
	E	n/a	1,505	1,505
	Total	5,023	3,767	3,767

Longnose skate[16]	W	n/a	70	70
	C	n/a	1,879	1,879
	E	n/a	676	676
	Total	3,500	2,625	2,625
Other skates[17]	GW	2,706	2,030	2,030
Sculpins	GW	7,614	5,884	5,884
Sharks	GW	8,037	6,028	6,028
Squids	GW	1,530	1,148	1,148
Octopus	GW	1,941	1,455	1,455
Total		738,676	595,920	436,255

[1] Regulatory areas and districts are defined at § 679.2. (W=Western Gulf of Alaska; C=Central Gulf of Alaska; E=Eastern Gulf of Alaska; WYK=West Yakutat District; SEO=Southeast Outside District; GW=Gulf-wide).

[2] Pollock is apportioned in the Western/Central Regulatory Areas among three statistical areas. During the A season, the apportionment is based on an adjusted estimate of the relative distribution of pollock biomass of approximately 16 percent, 62 percent, and 22 percent in Statistical Areas 610, 620, and 630, respectively. During the B season, the apportionment is based on the relative distribution of pollock biomass at 16 percent, 74 percent, and 10 percent in Statistical Areas 610, 620, and 630, respectively. During the C and D seasons, the apportionment is based on the relative distribution of pollock biomass at 36 percent, 28 percent, and 35 percent in Statistical Areas 610, 620, and 630, respectively. Table 3 lists the final 2013 seasonal apportionments. In the West Yakutat and Southeast Outside Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

[3] The annual Pacific cod TAC is apportioned 60 percent to the A season and 40 percent to the B season in the Western and Central Regulatory Areas of the GOA. Pacific cod in the Eastern Regulatory Area is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Table 5 lists the final 2013 Pacific cod seasonal apportionments.

[4] Sablefish is allocated to trawl and hook-and-line gear in 2013. Table 7 lists the final 2013 allocations of sablefish TACs.

[5] "Shallow-water flatfish" means flatfish not including "deep-water flatfish," flathead sole, rex sole, or arrowtooth flounder.

[6] "Deep-water flatfish" means Dover sole, Greenland turbot, Kamchatka flounder, and deepsea sole.

[7] "Pacific ocean perch" means Sebastes alutus.

[8] "Northern rockfish" means Sebastes polyspinous. For management purposes the 2 mt apportionment of ABC to the WYK District of the Eastern Gulf of Alaska has been included in the other rockfish species group.

[9] "Shortraker rockfish" means Sebastes borealis.

[10] "Dusky rockfish" means Sebastes variabilis.

[11] "Rougheye rockfish" means Sebastes aleutianus (rougheye) and Sebastes melanostictus (blackspotted).

[12] "Demersal shelf rockfish" means Sebastes pinniger (canary), S. nebulosus (china), S. caurinus (copper), S. maliger (quillback), S. helvomaculatus (rosethorn), S. nigrocinctus (tiger), and S. ruberrimus (yelloweye).

[13] "Other rockfish" means Sebastes aurora (aurora), S. melanostomus (blackgill), S. paucispinis (bocaccio), S. goodei (chilipepper), S. crameri (darkblotch), S. elongatus (greenstriped), S. variegatus (harlequin), S. wilsoni (pygmy), S. babcocki (redbanded), S. proriger (redstripe), S. zacentrus (sharpchin), S. jordani (shortbelly), S. brevispinis (silvergrey), S. diploproa (splitnose), S. saxicola (stripetail), S. miniatus (vermilion), S. reedi (yellowmouth), S. entomelas (widow), and S. flavidus (yellowtail). In the Eastern GOA only, other rockfish also includes northern rockfish, S. polyspinous

[14] "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means other rockfish and demersal shelf rockfish. The "other rockfish" species group in the SEO District only includes other rockfish.

[15] "Big skate" means Raja binoculata.

[16] "Longnose skate" means Raja rhina.

[17] "Other skates" means Bathyraja spp.

Table 2—Final 2014 ABCs, TACs, and OFLs of Groundfish for the Western/Central/West Yakutat, Western, Central, Eastern Regulatory Areas, and in the West Yakutat, Southeast Outside, and Gulfwide Districts of the Gulf of Alaska

(Values are rounded to the nearest metric ton.)

Species	Area[1]	OFL	ABC	TAC
Pollock[2]	Shumagin (610)	n/a	25,648	25,648
	Chirikof (620)	n/a	47,004	47,004
	Kodiak (630)	n/a	25,011	25,011
	WYK (640)	n/a	3,093	3,093
	W/C/WYK (subtotal)	138,610	100,756	100,756
	SEO (650)	14,366	10,774	10,774
	Total	152,976	111,530	111,530
Pacific cod[3]	W	n/a	29,470	22,103
	C	n/a	51,362	38,522
	E	n/a	3,368	2,526
	Total	101,100	84,200	63,150
Sablefish[4]	W	n/a	1,641	1,641
	C	n/a	5,195	5,195
	WYK	n/a	1,902	1,902
	SEO	n/a	2,993	2,993
	E (WYK and SEO) (subtotal)	n/a	4,895	4,895
	Total	13,871	11,731	11,731
Shallow-water flatfish[5]	W	n/a	18,033	13,250
	C	n/a	18,660	18,000
	WYK	n/a	4,299	4,647
	SEO	n/a	1,092	1,180
	Total	51,580	42,084	37,077
Deep-water flatfish[6]	W	n/a	176	176
	C	n/a	2,308	2,308
	WYK	n/a	1,581	1,581
	SEO	n/a	1,061	1,061
	Total	6,834	5,126	5,126
Rex sole	W	n/a	1,287	1,287
	C	n/a	6,310	6,310
	WYK	n/a	823	1,041
	SEO	n/a	1,040	822
	Total	12,362	9,460	9,460
Arrowtooth flounder	W	n/a	26,970	14,500
	C	n/a	140,424	75,000
	WYK	n/a	20,754	6,900
	SEO	n/a	20,663	6,900
	Total	245,262	208,811	103,300
Flathead sole	W	n/a	16,063	8,650

	C	n/a	27,126	15,400
	WYK	n/a	4,785	4,785
	SEO	n/a	1,797	1,797
	Total	62,296	49,771	30,632
Pacific ocean perch[7]	W	n/a	2,005	2,005
	C	n/a	10,740	10,740
	WYK	n/a	1,613	1,613
	W/C/WYK	16,555		
	SEO	2,046	1,775	1,775
	Total	18,601	16,133	16,133
Northern rockfish[8]	W	n/a	1,899	1,899
	C	n/a	2,951	2,951
	E	n/a		-
	Total	5,791	4,850	4,850
Shortraker rockfish[9]	W	n/a	104	104
	C	n/a	452	452
	E	n/a	525	525
	Total	1,441	1,081	1,081
Dusky rockfish[10]	W	n/a	354	354
	C	n/a	3,317	3,317
	WYK	n/a	465	465
	SEO	n/a	277	277
	Total	5,395	4,413	4,413
Rougheye and Blackspotted rockfish[11]	W	n/a	83	83
	C	n/a	871	871
	E	n/a	300	300
	Total	1,508	1,254	1,254
Demersal shelf rockfish[12]	SEO	487	303	303
Thornyhead rockfish	W	n/a	150	150
	C	n/a	766	766
	E	n/a	749	749
	Total	2,220	1,665	1,665
Other rockfish[13,14]	W	n/a	44	44
	C	n/a	606	606
	WYK	n/a	230	230
	SEO	n/a	3,165	200
	Total	5,305	4,045	1,080
Atka mackerel	GW	6,200	4,700	2,000
Big skate[15]	W	n/a	469	469
	C	n/a	1,793	1,793
	E	n/a	1,505	1,505
	Total	5,023	3,767	3,767

Longnose skate[16]	W	n/a	70	70
	C	n/a	1,879	1,879
	E	n/a	676	676
	Total	3,500	2,625	2,625
Other skates[17]	GW	2,706	2,030	2,030
Sculpins	GW	7,614	5,884	5,884
Sharks	GW	8,037	6,028	6,028
Squids	GW	1,530	1,148	1,148
Octopus	GW	1,941	1,455	1,455
Total		723,580	584,094	427,722

[1] Regulatory areas and districts are defined at § 679.2. (W=Western Gulf of Alaska; C=Central Gulf of Alaska; E=Eastern Gulf of Alaska; WYK=West Yakutat District; SEO=Southeast Outside District; GW=Gulf-wide).

[2] Pollock is apportioned in the Western/Central Regulatory Areas among three statistical areas. During the A season, the apportionment is based on an adjusted estimate of the relative distribution of pollock biomass of approximately 16 percent, 62 percent, and 22 percent in Statistical Areas 610, 620, and 630, respectively. During the B season, the apportionment is based on the relative distribution of pollock biomass at 16 percent, 74 percent, and 10 percent in Statistical Areas 610, 620, and 630, respectively. During the C and D seasons, the apportionment is based on the relative distribution of pollock biomass at 37 percent, 28 percent, and 35 percent in Statistical Areas 610, 620, and 630, respectively. Table 4 lists the final 2014 seasonal apportionments. In the West Yakutat and Southeast Outside Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

[3] The annual Pacific cod TAC is apportioned 60 percent to the A season and 40 percent to the B season in the Western and Central Regulatory Areas of the GOA. Pacific cod in the Eastern Regulatory Area is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Table 6 lists the final 2014 Pacific cod seasonal apportionments.

[4] Sablefish is only allocated to trawl gear for 2014. Table 8 lists the final 2014 allocation of sablefish TACs to trawl gear.

[5] "Shallow-water flatfish" means flatfish not including "deep-water flatfish," flathead sole, rex sole, or arrowtooth flounder.

[6] "Deep-water flatfish" means Dover sole, Greenland turbot, Kamchatka flounder, and deepsea sole.

[7] "Pacific ocean perch" means Sebastes alutus.

[8] "Northern rockfish" means Sebastes polyspinous. For management purposes the 2 mt apportionment of ABC to the WYK District of the Eastern Gulf of Alaska has been included in the other rockfish species group.

[9] "Shortraker rockfish" means Sebastes borealis.

[10] "Dusky rockfish" means Sebastes variabilis.

[11] "Rougheye rockfish" means Sebastes aleutianus (rougheye) and Sebastes melanostictus (blackspotted).

[12] "Demersal shelf rockfish" means Sebastes pinniger (canary), S. nebulosus (china), S. caurinus (copper), S. maliger (quillback), S. helvomaculatus (rosethorn), S. nigrocinctus (tiger), and S. ruberrimus (yelloweye).

[13] "Other rockfish" means Sebastes aurora (aurora), S. melanostomus (blackgill), S. paucispinis (bocaccio), S. goodei (chilipepper), S. crameri (darkblotch), S. elongatus (greenstriped), S. variegatus (harlequin), S. wilsoni (pygmy), S. babcocki (redbanded), S. proriger (redstripe), S. zacentrus (sharpchin), S. jordani (shortbelly), S. brevispinis (silvergrey), S. diploproa (splitnose), S. saxicola (stripetail), S. miniatus (vermilion), S. reedi (yellowmouth), S. entomelas (widow), and S. flavidus (yellowtail). In the Eastern GOA only, other rockfish also includes northern rockfish, S. polyspinous

[14] "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means other rockfish and demersal shelf rockfish. The "other rockfish" species group in the SEO District only includes other rockfish.

[15] "Big skate" means Raja binoculata.

[16] "Longnose skate" means Raja rhina.

[17] "Other skates" means Bathyraja spp.

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Apportionment of Reserves

Section 679.20(b)(2) requires NMFS to set aside 20 percent of each TAC for pollock, Pacific cod, flatfish, sculpins, sharks, squids, and octopuses in reserves for possible apportionment at a later date during the fishing year. For 2013 and 2014, NMFS proposed reapportionment of all the reserves in the proposed 2013 and 2014 harvest specifications published in the **Federal Register** on December 5, 2012 (77 FR 72297). NMFS did not receive any public comments on the proposed reapportionments. For the final 2013 and 2014 harvest specifications, NMFS reapportioned, as proposed, all the reserves for pollock, Pacific cod, flatfish, sculpins, sharks, squids, and octopuses. The TAC amounts shown in Tables 1 and 2 reflect reapportionment of reserve amounts for these species and species groups.

Apportionments of Pollock TAC Among Seasons and Regulatory Areas, and Allocations for Processing by Inshore and Offshore Components

In the GOA, pollock is apportioned by season and area, and is further allocated for processing by inshore and offshore components. Pursuant to § 679.20(a)(5)(iv)(B), the annual pollock TAC specified for the Western and Central Regulatory Areas of the GOA is apportioned into four equal seasonal allowances of 25 percent. As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 to March 10, March 10 to May 31, August 25 to October 1, and October 1 to November 1, respectively.

Pollock TACs in the Western and Central Regulatory Areas of the GOA are apportioned among Statistical Areas 610, 620, and 630, pursuant to § 679.20(a)(5)(iv)(A). In the A and B seasons, the apportionments are in proportion to the distribution of pollock biomass based on the four most recent NMFS winter surveys. In the C and D seasons, the apportionments are in proportion to the distribution of pollock biomass based on the four most recent NMFS summer surveys. However, for 2013 and 2014, the Council recommends, and NMFS approves, averaging the winter and summer distribution of pollock in the Central Regulatory Area for the A season instead of using the distribution based on only the winter surveys. The average is intended to reflect the migration patterns and distribution of pollock, and the performance of the fishery, in that area during the A season for the 2013 and 2014 fishing years. During the A season, the apportionment is based on an adjusted estimate of the relative distribution of pollock biomass of approximately 16 percent, 62 percent, and 22 percent in Statistical Areas 610, 620, and 630, respectively. During the B season, the apportionment is based on the relative distribution of pollock biomass at 16 percent, 74 percent, and 10 percent in Statistical Areas 610, 620, and 630, respectively. During the C and D seasons, the apportionment is based on the relative distribution of pollock biomass at 37 percent, 28 percent, and 35 percent in Statistical Areas 610, 620, and 630, respectively.

Within any fishing year, the amount by which a seasonal allowance is underharvested or overharvested may be added to, or subtracted from, subsequent seasonal allowances in a manner to be determined by the Regional Administrator (§ 679.20(a)(5)(iv)(B)). The rollover amount is limited to 20 percent of the unharvested seasonal apportionment for the statistical area. Any unharvested pollock above the 20-percent limit could be further distributed to the other statistical areas, in proportion to the estimated biomass in the subsequent season in those statistical areas (§ 679.20(a)(5)(iv)(B)). The pollock TACs in the WYK and SEO District of 3,385 mt and 10,774 mt, respectively, in 2013, and 3,093 mt and10,774 mt, respectively, in 2014, are not allocated by season.

Section 679.20(a)(6)(i) requires the allocation of 100 percent of the pollock TAC in all regulatory areas and all seasonal allowances to vessels catching pollock for processing by the inshore component after subtraction of amounts projected by the Regional Administrator to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. Thus, the amount of pollock available for harvest by vessels harvesting pollock for processing by the offshore component is that amount that will be taken as incidental catch during directed fishing for groundfish species other than pollock, up to the maximum retainable amounts allowed by § 679.20(e) and (f). At this time, these incidental catch amounts of pollock are unknown and will be determined during the fishing year during the course of fishing activities by the offshore component.

Tables 3 and 4 list the final 2013 and 2014 seasonal biomass distribution of pollock in the Western and Central Regulatory Areas, area apportionments, and seasonal allowances. The amounts of pollock for processing by the inshore and offshore components are not shown.

Table 3. Final 2013 Distribution of Pollock in the Central and Western Regulatory Areas of the GOA; Seasonal Biomass Distribution, Area Apportionments; and Seasonal Allowances of Annual TAC
(Values are rounded to the nearest metric ton and percentages are rounded to the nearest 0.01.)

Season[1]	Shumagin (Area 610)		Chirikof (Area 620)		Kodiak (Area 630)		Total[2]
A (Jan 20-Mar 10)	4,292	(16.06%)	16,433	(61.50%)	5,998	(22.45%)	26,722
B (Mar 10-May 31)	4,292	(16.06%)	19,811	(74.14%)	2,618	(9.80%)	26,722
C (Aug 25-Oct 1)	9,744	(36.47%)	7,600	(28.44%)	9,378	(35.10%)	26,722
D (Oct 1-Nov 1)	9,744	(36.47%)	7,600	(28.44%)	9,378	(35.10%)	26,722
Annual Total	28,072		51,444		27,372		106,887

[1] As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 to March 10, March 10 to May 31, August 25 to October 1, and October 1 to November 1, respectively. The amounts of pollock for processing by the inshore and offshore components are not shown in this table.
[2] The WYK and SEO District pollock TACs are not allocated by season and are not included in the total pollock TACs shown in this table.

Table 4. Final 2014 Distribution of Pollock in the Central and Western Regulatory Areas of the GOA; Seasonal Biomass Distribution, Area Apportionments; and Seasonal Allowances of Annual TAC
(Values are rounded to the nearest metric ton and percentages are rounded to the nearest 0.01.)

Season[1]	Shumagin (Area 610)		Chirikof (Area 620)		Kodiak (Area 630)		Total[2]
A (Jan 20-Mar 10)	3,921	(16.06%)	15,015	(61.50%)	5,481	(22.45%)	24,416
B (Mar 10-May 31)	3,920	(16.06%)	18,102	(74.14%)	2,393	(9.80%)	24,416
C (Aug 25-Oct 1)	8,903	(36.47%)	6,944	(28.44%)	8,568	(35.10%)	24,416
D (Oct 1-Nov 1)	8,903	(36.47%)	6,944	(28.44%)	8,568	(35.10%)	24,416
Annual Total	25,648		47,004		25,011		97,663

[1] As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 to March 10, March 10 to May 31, August 25 to October 1, and October 1 to November 1, respectively. The amounts of pollock for processing by the inshore and offshore components are not shown in this table.
[2] The WYK and SEO District pollock TACs are not allocated by season and are not included in the total pollock TACs shown in this table.

Annual and Seasonal Apportionments of Pacific Cod TAC

Section 679.20(a)(12)(i) requires the allocation among gear and operational sectors of the Pacific cod TACs in the Western and Central Regulatory Areas of the GOA. Section 679.20(a)(6)(ii) requires the allocation between the inshore and offshore components of the Pacific cod TACs in the Eastern Regulatory Area of the GOA. NMFS allocates the 2013 and 2014 Pacific cod TAC based on these sector allocations annually between the inshore and offshore components in the Eastern GOA; seasonally between vessels using jig gear, CVs less than 50 feet in length

overall using hook-and-line gear, CVs equal to or greater than 50 feet in length overall using hook-and-line gear, C/Ps using hook-and-line gear, CVs using trawl gear, C/Ps using trawl gear, and vessels using pot gear in the Central GOA; and seasonally between vessels using jig gear, CVs using hook-and-line gear, C/Ps using hook-and-line gear, CVs using trawl gear, and vessels using pot gear in the Western GOA. The overall seasonal apportionments in the Western and Central GOA are 60 percent of the annual TAC to the A season and 40 percent of the annual TAC to the B season.

Under § 679.20(a)(12)(ii), any overage or underage of the Pacific cod allowance from the A season will be subtracted from, or added to, the subsequent B season allowance. In addition, any portion of the hook-and-line, trawl, pot, or jig sector allocations that are determined by NMFS as likely to go unharvested by a sector may be reapportioned to other sectors for harvest during the remainder of the fishery year.

Pursuant to § 679.20(a)(12)(i), NMFS allocates the 2013 and 2014 Pacific cod TACs in the Western and Central Regulatory Areas of the GOA. In accordance with the FMP, the annual jig sector allocations may increase to up to 6 percent of the annual Western and Central GOA Pacific cod TACs, depending on the annual performance of the jig sector (See Table 1 of Amendment 83 to the FMP for a detailed discussion of the jig sector allocation process (76 FR 74670, December 1, 2011)). NMFS is increasing the jig sector's Pacific cod allocation in the Western GOA to 2.5 percent of the annual Pacific cod TAC. This includes a base allocation of 1.5 percent and an additional 1.0 percent because this sector harvested greater than 90 percent of its initial 2012 allocation in the Western GOA. NMFS also is increasing the jig sector's Pacific cod allocation in the Central GOA to 2.0 percent of the annual Pacific cod TAC. This includes a base allocation of 1.0 percent and an additional 1.0 percent because this sector harvested greater than 90 percent of its initial 2012 allocation in the Central GOA. The jig sector allocations are further apportioned between the A (60 percent) and B (40 percent) season. The sector allocations based on gear type, operation type, and vessel length overall are allocated the remainder of the annual Pacific cod TAC in the Western and Central GOA. Tables 5 and 6 list the seasonal apportionments and allocations of the 2013 and 2014 Pacific cod TACs.

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Table 5. Final 2013 Seasonal Apportionments and Allocation of Pacific Cod Total Allowable Catch Amounts in the GOA; Allocations for the Western GOA and Central GOA Sectors and the Eastern GOA Inshore and Offshore Processing Components (Values are rounded to the nearest metric ton and percentages to the nearest 0.01. Seasonal allowances may not total precisely to annual allocation amount.)

Regulatory area and sector	Annual allocation (mt)	A Season		B Season	
		Sector percentage of annual non-jig TAC	Seasonal allowances (mt)	Sector percentage of annual non-jig TAC	Seasonal allowances (mt)
Western GOA					
Jig (2.5 % of TAC)	530	N/A	318	N/A	212
Hook-and-line CV	290	0.70	145	0.70	145
Hook-and-line C/P	4,094	10.90	2,254	8.90	1,840
Trawl CV	7,941	27.70	5,728	10.70	2,213
Trawl C/P	496	0.90	186	1.50	310
All Pot CV and Pot C/P	7,859	19.80	4,095	18.20	3,764
Total	21,210	60.00	12,726	40.00	8,484
Central GOA					
Jig (2.0% of TAC)	739	N/A	444	N/A	296
Hook-and-line < 50 CV	5,290	9.32	3,375	5.29	1,915
Hook-and-line ≥ 50 CV	2,430	5.61	2,032	1.10	398
Hook-and-line C/P	1,849	4.11	1,488	1.00	361
Trawl CV[1]	15,065	21.14	7,657	20.45	7,408
Trawl C/P	1,521	2.00	726	2.19	795
All Pot CV and Pot C/P	10,073	17.83	6,459	9.97	3,614
Total	36,966	60.00	22,180	40.00	14,786
Eastern GOA		Inshore (90% of Annual TAC)		Offshore (10% of Annual TAC)	
	2,424		2,182		242

[1] Trawl vessels participating in Rockfish Program cooperatives receive 3.81 percent of the annual Central GOA TAC, which is deducted from the Trawl CV B season allowance (see Table 12).

Table 6. Final 2014 Seasonal Apportionments and Allocation of Pacific Cod Total Allowable Catch Amounts in the GOA; Allocations for the Western GOA and Central GOA Sectors and the Eastern GOA Inshore and Offshore Processing Components (Values are rounded to the nearest metric ton and percentages to the nearest 0.01. Seasonal allowances may not total precisely to annual allocation amount.)

Regulatory area and sector	Annual allocation (mt)	A Season		B Season	
		Sector percentage of annual non-jig TAC	Seasonal allowances (mt)	Sector percentage of annual non-jig TAC	Seasonal allowances (mt)
Western GOA					
Jig (2.5 % of TAC)	553	N/A	332	N/A	221
Hook-and-line CV	302	0.70	151	0.70	151
Hook-and-line C/P	4,267	10.90	2,349	8.90	1,918
Trawl CV	8,275	27.70	5,969	10.70	2,306
Trawl C/P	517	0.90	194	1.50	323
All Pot CV and Pot C/P	8,189	19.80	4,267	18.20	3,922
Total	22,103	60.00	13,262	40.00	8,841
Central GOA					
Jig (2.0% of TAC)	770	N/A	462	N/A	308
Hook-and-line < 50 CV	5,513	9.32	3,517	5.29	1,996
Hook-and-line ≥ 50 CV	2,532	5.61	2,118	1.10	414
Hook-and-line C/P	1,927	4.11	1,550	1.00	377
Trawl CV[1]	15,698	21.14	7,979	20.45	7,720
Trawl C/P	1,585	2.00	756	2.19	828
All Pot CV and Pot C/P	10,497	17.83	6,731	9.97	3,766
Total	38,522	60.00	23,113	40.00	15,409
Eastern GOA		Inshore (90% of Annual TAC)		Offshore (10% of Annual TAC)	
	2,526		2,273		253

[1] Trawl vessels participating in Rockfish Program cooperatives receive 3.81 percent of the annual Central GOA TAC, which is deducted from the Trawl CV B season allowance (see Table13).

Allocations of the Sablefish TACs

Section 679.20(a)(4)(i) and (ii) require allocations of sablefish TACs for each of the regulatory areas and districts to hook-and-line and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is allocated to hook-and-line gear, and 20 percent of each TAC is allocated to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is allocated to hook-and-line gear, and 5 percent is allocated to trawl

gear. The trawl gear allocation in the Eastern Regulatory Area may only be used to support incidental catch of sablefish in directed fisheries for other target species (§ 679.20(a)(4)(i)).

In recognition of the prohibition against trawl gear in the SEO District of the Eastern Regulatory Area, the Council recommended and NMFS approves the allocation of 5 percent of the combined Eastern Regulatory Area sablefish TAC to trawl gear in the WYK District, making the remainder of the WYK sablefish TAC available to vessels using hook-and-line gear. NMFS allocates 100 percent of the sablefish TAC in the SEO District to vessels using hook-and-line gear. This recommendation results in a 2013 allocation of 261 mt to trawl gear and 1,769 mt to hook-and-line gear in the WYK District, a 2013 allocation of 3,190 mt to hook-and-line gear in the SEO District, and a 2014 allocation of 245 mt to trawl gear in the WYK District. Table 7 lists the allocations of the 2013 sablefish TACs to hook-and-line and trawl gear. Table 8 lists the allocations of the 2014 sablefish TACs to trawl gear.

The Council recommended that the hook-and-line sablefish TAC be established annually to ensure that this Individual Fishery Quota (IFQ) fishery is conducted concurrent with the halibut IFQ fishery and is based on recent sablefish survey information. The Council also recommended that only a trawl sablefish TAC be established for two years so that retention of incidental catch of sablefish by trawl gear could commence in January in the second year of the groundfish harvest specifications. Since there is an annual assessment for sablefish and the final harvest specifications are expected to be published before the IFQ season begins (typically, early March), the Council recommended that the hook-and-line sablefish TAC be set on an annual basis, rather than for two years, so that the best scientific information available could be considered in establishing the sablefish ABCs and TACs. With the exception of the trawl allocations that were provided to the Rockfish Program cooperatives, directed fishing for sablefish with trawl gear is closed during the fishing year. Also, fishing for groundfish with trawl gear is prohibited prior to January 20. Therefore, it is not likely that the sablefish allocation to trawl gear would be reached before the effective date of the final 2013 and 2014 harvest specifications.

Table 7. Final 2013 Sablefish TAC Specifications in the GOA and Allocations to Hook-and-Line and Trawl Gear
(Values are rounded to the nearest metric ton.)

Area/District	TAC	Hook-and-line allocation	Trawl allocation
Western	1,750	1,400	350
Central	5,540	4,432	1,108
West Yakutat[1]	2,030	1,769	261
Southeast Outside	3,190	3,190	0
Total	12,510	10,791	1,719

[1] The trawl allocation is based on allocating 5 percent of the combined Eastern Regulatory Area (West Yakutat and Southeast Outside combined) sablefish TAC to trawl gear in the West Yakutat District.

Table 8. Final 2014 Sablefish TAC Specifications in the GOA and Allocation to Trawl Gear[1]
(Values are rounded to the nearest metric ton.)

Area/District	TAC	Hook-and-line allocation	Trawl allocation
Western	1,641	n/a	328
Central	5,195	n/a	1,039
West Yakutat[2]	1,902	n/a	245
Southeast Outside	2,993	n/a	0
Total	11,731	n/a	1,612

[1] The Council recommended that harvest specifications for the hook-and-line gear sablefish Individual Fishing Quota fisheries be limited to 1 year.
[2] The trawl allocation is based on allocating 5 percent of the combined Eastern Regulatory Area (West Yakutat and Southeast Outside combined) sablefish TAC to trawl gear in the West Yakutat District.

Demersal Shelf Rockfish (DSR)

The recommended 2013 and 2014 DSR TAC is 303 mt, and management of DSR is delegated to the State. In 2006, the Alaska Board of Fish allocated future SEO District DSR TACs between the commercial fishery (84 percent) and the sport fishery (16 percent) after deductions were made for anticipated subsistence harvests (7 mt). This results in 2013 and 2014 allocations of 255 mt

to the commercial fishery and 48 mt to the sport fishery.

The State deducts estimates of incidental catch of DSR in the commercial halibut fishery and test fishery mortality from the DSR commercial fishery allocation. In 2013, this resulted in 139 mt being available for the directed commercial DSR fishery apportioned between four outer coast areas. DSR harvest in the halibut fishery is linked to the annual halibut catch limits; therefore the State can only estimate potential DSR incidental catch in that fishery when those halibut catch limits are established by the IPHC. Federally-permitted CVs using hook-and-line or jig gear fishing for groundfish and Pacific halibut in the SEO District of the GOA are required to retain all DSR (§ 679.20(j)). The State announced the opening of directed fishing for DSR effective on January 30, 2013.

Apportionments to the Central GOA Rockfish Program

These final 2013 and 2014 groundfish harvest specifications for the GOA include the various fishery cooperative allocations and sideboard limitations established by the Central GOA Rockfish Program. Under the Rockfish Program, the primary rockfish species (Pacific ocean perch, northern rockfish, and dusky rockfish) are allocated to participants after deducting for incidental catch needs in other directed groundfish fisheries. Program participants are primarily trawl catcher vessels and trawl catcher/processors, with limited participation by vessels using longline gear.

The Rockfish Program assigns quota share and cooperative quota to participants for primary and secondary species, allows a participant holding a license limitation program (LLP) license with rockfish quota share to form a rockfish cooperative with other persons, and allows holders of C/P LLP licenses to opt-out of the fishery. The Rockfish Program also has an entry level fishery for rockfish primary species for vessels using longline gear. Additionally, the Rockfish Program continues to establish sideboard limits to restrict the ability of harvesters operating under the Rockfish Program to increase their participation in other, non-Rockfish Program fisheries. Besides groundfish species, the Rockfish Program allocates a portion of the halibut PSC limit from the third season deep-water species fishery allowance for the GOA trawl fisheries to Rockfish Program participants (§ 679.81(d)), which includes 117 mt to the CV sector and 74 mt to the C/P sector.

Section 679.81(a)(2)(ii) requires allocations of 5 mt of Pacific ocean perch, 5 mt of northern rockfish, and 30 mt of dusky rockfish to the entry level longline fishery in 2013 and 2014. The allocation for the entry level longline fishery would increase incrementally each year if the catch exceeds 90 percent of the allocation of a species. The incremental increase in the allocation would continue each year until it is the maximum percent of the TAC for that species. In 2012, the catch did not exceed 90 percent of any allocated rockfish species. Therefore, NMFS is not increasing the entry level longline fishery 2013 and 2014 allocations in the Central GOA. Longline gear includes hook-and-line, jig, troll, and handline gear. The remainder of the TACs for the rockfish primary species would be allocated to the CV and C/P cooperatives. Table 9 lists the allocations of the 2013 and initial 2014 TACs for each rockfish primary species to the entry level longline fishery, the incremental increase for future years, and the maximum percent of the TAC for the entry level longline fishery.

Table 9. Final 2013 and Initial 2014 Allocations of Rockfish to the Entry Level Longline Fishery in the Central Gulf of Alaska.

Rockfish primary species	2013 and 2014 allocations	Incremental increase in 2014 if ≥ 90% of 2013 allocation is harvested	Up to maximum % of TAC
Pacific ocean perch	5 metric tons	5 metric tons	1%
Northern rockfish	5 metric tons	5 metric tons	2%
Dusky rockfish	30 metric tons	20 metric tons	5%

Section 679.81(a)(2)(iii) requires allocations of the primary rockfish species among various components of the Rockfish Program. Tables 10 and 11 list the final 2013 and 2014 allocations of rockfish in the Central GOA to the entry level longline fishery and other participants in the Rockfish Program, which include CV and C/P cooperatives. NMFS also is setting aside incidental catch amounts (ICAs) for other directed fisheries in the Central GOA of 900 mt of Pacific ocean perch, 125 mt of northern rockfish, and 200 mt of dusky rockfish. These amounts are based on recent average incidental catches in the Central GOA by other groundfish fisheries.

Allocations between vessels belonging to CV or C/P cooperatives are not included in these final harvest specifications. Rockfish Program applications for CV cooperatives and C/P cooperatives are not due to NMFS until March 1 of each calendar year, thereby preventing NMFS from calculating 2013 and 2014 allocations in conjunction with these final harvest specifications. NMFS will post these allocations on the Alaska Region Web site at (*http://alaskafisheries.noaa.gov/sustainablefisheries/goarat/default.htm*) when they become available after March 1.

Table 10. Final 2013 Allocations of Rockfish in the Central Gulf of Alaska to the Entry Level Longline Fishery and Other Participants in the Rockfish Program (Values are rounded to the nearest metric ton.)

Rockfish Primary Species	TAC	Incidental catch allowance	TAC minus ICA	Allocation to the entry level longline[1] fishery	Allocation to other participants in the Rockfish Program[2]
Pacific ocean perch	10,926	900	10,026	5	10,021
Northern rockfish	3,122	125	2,997	5	2,992
Dusky rockfish	3,533	200	3,333	30	3,303
Total	17,581	1,225	16,356	40	16,316

[1] Longline gear includes hook-and-line, jig, troll, and handline gear.
[2] Other participants in the Rockfish Program include vessels in CV and C/P cooperatives.

Table 11. Final 2014 Allocations of Rockfish in the Central Gulf of Alaska to the Entry Level Longline Fishery and Other Participants in the Rockfish Program (Values are rounded to the nearest metric ton.)

Rockfish Primary Species	TAC	Incidental catch allowance	TAC minus ICA	Allocation to the entry level longline[1] fishery	Allocation to other participants in the Rockfish Program [2]
Pacific ocean perch	10,740	900	9,840	5	9,835
Northern rockfish	2,951	125	2,826	5	2,821
Dusky rockfish	3,317	200	3,117	30	3,087
Total	17,008	1,225	15,783	40	15,743

[1] Longline gear includes hook-and-line, jig, troll, and handline gear.
[2] Other participants in the Rockfish Program include vessels in CV and C/P cooperatives.

Section 679.81(c) requires allocations of rockfish secondary species to CV and C/P cooperatives in the Central GOA. CV cooperatives receive allocations of Pacific cod, sablefish from the trawl gear allocation, and thornyhead rockfish. C/P cooperatives receive allocations of sablefish from the trawl allocation, rougheye rockfish, shortraker rockfish, and thornyhead rockfish. Tables 12 and 13 lists the apportionments of the 2013 and 2014 TACs of rockfish secondary species in the Central GOA to CV and C/P cooperatives.

Table 12. Final 2013 Apportionments of Rockfish Secondary Species in the Central GOA to Catcher Vessel and Catcher/Processor Cooperatives (Values are rounded to the nearest metric ton.)

Rockfish Secondary Species	Annual Central GOA TAC	Catcher vessel cooperatives		Catcher/Processor cooperatives	
		Percentage of TAC	Apportionment (mt)	Percentage of TAC	Apportionment (mt)
Pacific cod	36,966	3.81	1,408	N/A	N/A
Sablefish	5,540	6.78	376	3.51	194
Shortraker rockfish	452	N/A	N/A	40.00	181
Rougheye rockfish	856	N/A	N/A	58.87	504
Thornyhead rockfish	766	7.84	60	26.50	203

Table 13. Final 2014 Apportionments of Rockfish Secondary Species in the Central GOA to Catcher Vessel and Cather/Processor Cooperatives (Values are rounded to the nearest metric ton.)

Rockfish Secondary Species	Annual Central GOA TAC	Catcher Vessel cooperatives		Catcher/Processor cooperatives	
		Percentage of TAC	Apportionment (mt)	Percentage of TAC	Apportionment (mt)
Pacific cod	38,522	3.81	1,468	N/A	N/A
Sablefish	5,195	6.78	352	3.51	182
Shortraker rockfish	452	N/A	N/A	40.00	181
Rougheye rockfish	871	N/A	N/A	58.87	513
Thornyhead rockfish	766	7.84	60	26.50	203

Halibut PSC Limits

Section 679.21(d) establishes the annual halibut PSC limit apportionments to trawl and hook-and-line gear, and authorizes the establishment of apportionments for pot gear. In December 2012, the Council recommended halibut PSC limits of 1,973 mt for trawl gear and 300 mt for hook-and-line gear for the 2013 and 2014 groundfish fisheries. As discussed previously in this preamble, at its June 2012 meeting the Council took action to further reduce the GOA halibut PSC limits. If approved and implemented by the Secretary, these reductions may lead to adjustments or reductions to the 2014 halibut PSC limits in this action at the beginning of 2014.

Ten mt of the hook-and-line limit is further allocated to the DSR fishery in the SEO District. The DSR fishery is defined at § 679.21(d)(4)(iii)(A). This fishery has been apportioned 10 mt in recognition of its small-scale harvests of groundfish. Most vessels in the DSR fishery are less than 60 ft (18.3 m) length overall and have been exempt from observer coverage. Therefore, observer data are not available to verify actual bycatch amounts. NMFS estimates low halibut bycatch in the DSR fishery because (1) the duration of the DSR fisheries and the gear soak times are short; (2) the DSR fishery occurs in the winter when less overlap occurs in the distribution of DSR and halibut; and (3) the directed commercial DSR fishery has a low DSR TAC. Of the

300 mt TAC for DSR in 2012, 128 mt was available for the commercial fishery, of which 105 mt were harvested.

The FMP authorizes the Council to exempt specific gear from the halibut PSC limits. NMFS, after consultation with the Council, exempts pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from the non-trawl halibut limit for 2013 and 2014. The Council recommended, and NMFS approves, these exemptions because (1) the pot gear fisheries have low annual halibut bycatch mortality; (2) IFQ program regulations prohibit discard of halibut if any halibut IFQ permit holder on board a catcher vessel holds unused halibut IFQ (§ 679.7(f)(11)); (3) sablefish IFQ fishermen typically hold halibut IFQ permits and are therefore required to retain the halibut they catch while fishing sablefish IFQ; and (4) NMFS estimates negligible halibut mortality for the jig gear fisheries. NMFS estimates that halibut mortality is negligible in the jig gear fisheries given the small amount of groundfish harvested by jig gear, the selective nature of jig gear, and the high survival rates of halibut caught and released with jig gear.

Section 679.21(d)(5) authorizes NMFS to seasonally apportion the halibut PSC limits after consultation with the Council. The FMP and regulations require the Council and NMFS to consider the following information in seasonally apportioning halibut PSC limits: (1) Seasonal distribution of halibut, (2) seasonal distribution of target groundfish species relative to halibut distribution, (3) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catch of target groundfish species, (4) expected bycatch rates on a seasonal basis, (5) expected changes in directed groundfish fishing seasons, (6) expected actual start of fishing effort, and (7) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry. The Council obtained the information it considered when setting the halibut PSC limits from the 2012 SAFE report, NMFS catch data, State of Alaska catch data, IPHC stock assessment and mortality data, and public testimony. NMFS concurs with the Council's recommendations listed in Table 14, which shows the final 2013 and 2014 Pacific halibut PSC limits, allowances, and apportionments. Sections 679.21(d)(5)(iii) and (iv) specify that any underages or overages of a seasonal apportionment of a PSC limit will be deducted from or added to the next respective seasonal apportionment within the fishing year.

Table 14. Final 2013 and 2014 Pacific Halibut PSC Limits, Allowances, and Apportionments
(Values are in metric tons.)

Trawl gear			Hook-and-line gear[1]				
			Other than DSR			DSR	
Season	Percent	Amount	Season	Percent	Amount	Season	Amount
January 20 - April 1	27.5%	543	January 1 - June 10	86%	249	January 1 - December 31	10
April 1 - July 1	20%	395	June 10 - September 1	2%	6		
July 1 - September 1	30%	592	September 1 - December 31	12%	35		
September 1 - October 1	7.5%	148					
October 1 - December 31	15%	296					
Total		1,973			290		10

[1] The Pacific halibut PSC limit for hook-and-line gear is allocated to the demersal shelf rockfish (DSR) fishery and fisheries other than DSR. The hook-and-line sablefish fishery is exempt from halibut PSC limits, as are pot and jig gear for all groundfish fisheries.

Section 679.21(d)(3)(ii) authorizes further apportionment of the trawl halibut PSC limit to trawl fishery categories. The annual apportionments are based on each category's proportional share of the anticipated halibut bycatch mortality during the fishing year and optimization of the total amount of groundfish harvest under the halibut PSC limit. The fishery categories for the trawl halibut PSC limits are (1) a deep-water species fishery, composed of sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder; and (2) a shallow-water species fishery, composed of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates, and ''other species'' (sculpins, sharks, squids, and octopuses) (§ 679.21(d)(3)(iii)). Table 15 lists the final 2013 and 2014 apportionments of Pacific halibut PSC trawl limits between the trawl gear deep-water and the shallow-water species fishery categories.

Table 28d to 50 CFR part 679 specifies the amount of halibut PSC that is assigned to the CV and C/P sectors that are participating in the Central GOA Rockfish Program. This includes 117 mt of halibut PSC to the CV sector and 74 mt of halibut PSC to the C/P sector. These amounts are allocated from the trawl deep-water species fishery's halibut PSC third seasonal apportionment.

Section 679.21(d)(5)(iii)(B) limits the amount of the halibut PSC limit allocated to Rockfish Program participants that could be re-apportioned to the general GOA trawl fisheries to no more than 55 percent of

the unused annual halibut PSC apportioned to Rockfish Program participants. The remainder of the unused Rockfish Program halibut PSC limit is unavailable for use by vessels directed fishing with trawl gear for the remainder of the fishing year.

Table 15. Final 2013 and 2014 Apportionment of Pacific Halibut PSC Trawl Limits Between the Trawl Gear Deep-Water Species Fishery and the Shallow-Water Species Fishery Categories
(Values are in metric tons)

Season	Shallow-water	Deep-water[1]	Total
January 20 - April 1	444	99	543
April 1 - July 1	99	296	395
July 1 - September 1	197	395	592
September 1 - October 1	148	Any remainder	148
Subtotal January 20 - October 1	888	789	1,677
October 1 - December 31[2]			296
Total			1,973

[1] Vessels participating in cooperatives in the Central GOA Rockfish Program will receive 191 mt of the third season (July 1 through September 1) deep-water species fishery halibut PSC apportionment.
[2] There is no apportionment between trawl shallow-water and deep-water species fishery categories during the fifth season (October 1 through December 31).

Section 679.21(d)(4) requires that the ''other than DSR'' halibut PSC apportionment to vessels using hook-and-line gear must be apportioned between CVs and C/Ps. NMFS must calculate the halibut PSC limit apportionments for the entire GOA to hook-and-line CVs and C/Ps in accordance with § 679.21(d)(4)(iii)(B)(*1*) and (*2*) in conjunction with these harvest specifications. A comprehensive description and example of the calculations necessary to apportion the ''other than DSR'' hook-and-line halibut PSC limit between the hook-and-line CV and C/P sectors were included in the proposed rule to implement Amendment 83 (76 FR 44700, July 26, 2011) and is not repeated here.

For 2013 and 2014, NMFS is apportioning halibut PSC limits of 166 mt and 124 mt to the hook-and-line CV and hook-and-line C/P sectors, respectively. These amounts differ from the proposed halibut PSC limits of 174 mt and 117 mt, respectively. Pacific cod is apportioned among the management areas in the GOA based on the percentage of overall biomass per area, as calculated in the 2012 Pacific cod stock assessment. Updated information in the final 2012 SAFE report describes this distributional change, which is based on allocating ABC among regulatory areas on the basis of the three most recent stock surveys. The distribution of the total GOA Pacific cod ABC has changed to 35 percent Western GOA, 61 percent Central GOA, and 4 percent Eastern GOA. The corresponding TAC amounts are a component in the halibut PSC calculations made in accordance with § 679.21(d)(4)(iii)(B)(*1*) and (*2*). The net effect of the change in Pacific cod distribution across the GOA also affects the annual halibut PSC limit each hook-and-line sector receives.

In addition, these annual limits are divided into three seasonal apportionments, using seasonal percentages of 86 percent, 2 percent, and 12 percent. Table 16 lists the 2013 and 2014 annual and seasonal halibut PSC apportionments between the hook-and-line sectors in the GOA.

No later than November 1 of each year, NMFS would calculate the projected unused amount of halibut PSC limit by either of the hook-and-line sectors for the remainder of the year. The projected unused amount of halibut PSC limit would be made available to the other hook-and-line sector for the remainder of that fishing year if NMFS determines that an additional amount of halibut PSC is necessary for that sector to continue its directed fishing operations (§ 679.21(d)(4)(iii)(B)(*3*)).

Table 16. Final 2013 and 2014 Apportionments of the "other hook-and-line fisheries" Annual Halibut PSC Allowance between the Hook-and-Line Gear Catcher Vessel and Catcher/Processor Sectors.
(Values are in metric tons.)

"Other than DSR" allowance	Hook-and-line sector	Percent of annual amount	Sector annual amount	Season	Seasonal percentage	Sector seasonal amount
290	Catcher Vessel	57.3	166	January 1 - June 10	86	143
				June 10 - September 1	2	3
				September 1 - December 31	12	20
	Catcher/ Processor	42.7	124	January 1 - June 10	86	106
				June 10 - September 1	2	2
				September 1 - December 31	12	15

Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch consists of data collected by fisheries observers during 2012. The calculated halibut bycatch mortality by trawl and hook-and-line gear in 2012 is 1,723 mt and 182 mt, respectively, for a total halibut mortality of 1,905 mt.

Halibut bycatch restrictions seasonally constrained trawl gear fisheries during the 2012 fishing year. Table 17 lists the closure dates for fisheries that resulted from the attainment of seasonal or annual halibut PSC limits.

Table 17. 2012 Fishery Closures Due to Attainment of Pacific Halibut PSC Limits

Fishery category	Opening date	Closure date	Federal Register citation
Trawl Shallow-water, Amendment 80 vessels, season 1	January 20, 2012	February 24, 2012	77 FR 12213, February 29, 2012
Trawl Shallow-water,[1] season 1	January 20, 2012	March 26, 2012	77 FR 19146, March 30, 2012
Trawl Deep-water,[1] season 2	April 1, 2012	April 19, 2012	77 FR 24154, April 23, 2012
Trawl Shallow-water, season 2	April 1, 2012	May 31, 2012	77 FR 33103, June 5, 2012
Trawl Shallow-water, season 3	July 1, 2012	July 14, 2012	77 FR 42193, July 18, 2012
Trawl Shallow-water,[1] season 4	September 1, 2012	September 2, 2012	77 FR 54837, September 6, 2012
Hook-and-line gear, all sectors and targets[2]	January 1, 2012	Remains open	

[1] With the exception of vessels participating in the Central GOA Rockfish Program and vessels fishing for pollock using pelagic trawl gear.
[2] With the exception of the sablefish fishery which was open March 17, 2012, through November 7, 2012.

Current Estimates of Halibut Biomass and Stock Condition

The IPHC annually assesses the abundance and potential yield of the Pacific halibut using all available data from the commercial and sport fisheries, other removals, and scientific surveys. Additional information on the Pacific halibut stock assessment may be found in the IPHC's 2012 Pacific halibut stock assessment (December 2012), available on the IPHC Web site at *www.iphc.int*. The IPHC considered the 2012 Pacific halibut stock assessment at its January 2013 annual meeting when it set the

2013 commercial halibut fishery catch limits.

The halibut resource is fully utilized. Recent catches in the commercial halibut fisheries off Alaska have averaged 31,535 mt round weight per year (1994 through 2011). In January 2013, the IPHC recommended Alaska commercial catch limits totaling 13,910 mt round weight for 2013, a 10 percent decrease from 15,427 mt in 2012. Through December 31, 2012, commercial hook-and-line harvests of halibut off Alaska totaled 14,981 mt round weight.

The 2013 catch limit recommendations for Alaska decreased for each IPHC management area except Area 2C. For Area 3A, the catch limit decreased to 6,670 mt from 7,208 mt round weight in 2012; for Area 3B, the catch limit decreased to 2,594 mt from 3,066 mt in 2012; for Area 4A, the catch limit decreased to 806 mt from 948 mt in 2012; for Area 4B, the catch limit decreased to 877 mt from 1,130 mt in 2012; and for combined Areas CDE, the catch limit decreased to 1,167 mt from 1,491 mt in 2012. The only increase in catch limit recommendations in Alaska is for Area 2C, to 1,796 mt round weight from 1,587 mt round weight in 2012.

For more information, see the proposed 2013 and 2014 harvest specifications (77 FR 72297, December 5, 2012), which discusses the potential impacts of expected fishing for groundfish on halibut stocks, as well as methods available for reducing halibut bycatch in the groundfish fisheries.

Halibut Discard Mortality Rates

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator uses observed halibut incidental catch rates, discard mortality rates (DMRs), and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. The DMRs are based on the best information available, including information contained in the annual SAFE report.

NMFS is implementing the Council's recommendation that the halibut DMRs developed and recommended by the IPHC for the 2013 through 2015 GOA groundfish fisheries be used for monitoring the final 2013 and 2014 halibut bycatch mortality allowances (see Tables 14 through 16). The IPHC developed the DMRs for the 2013 through 2015 GOA groundfish fisheries using the 10-year mean DMRs for those fisheries. Long-term average DMRs were not available for some fisheries, so rates from the most recent years were used. For the skate, sculpin, shark, squid, and octopus fisheries, where insufficient mortality data are available, the mortality rate of halibut caught in the Pacific cod fishery for that gear type was recommended as a default rate. The IPHC will analyze observer data annually and recommend changes to the DMRs when a fishery DMR shows large variation from the mean. A discussion of the DMRs and how the IPHC establishes them is available from the Council (see **ADDRESSES**).

Table 18 lists the final 2013 and 2014 DMRs. These DMRs are unchanged from the proposed 2013 and 2014 harvest specifications (77 FR 72297, December 5, 2012).

Table 18. Final 2013 and 2014 Halibut Discard Mortality Rates for Vessels Fishing in the Gulf of Alaska (Values are percent of halibut assumed to be dead.)

Gear	Target fishery	Mortality rate (%)
Hook-and-line	Other fisheries[1]	11
	Skates	11
	Pacific cod	11
	Rockfish	9
Trawl	Arrowtooth flounder	73
	Deep-water flatfish	43
	Flathead sole	65
	Non-pelagic pollock	60
	Other fisheries[1]	62
	Pacific cod	62
	Pelagic pollock	71
	Rex sole	69
	Rockfish	66
	Sablefish	71
	Shallow-water flatfish	67
Pot	Other fisheries[1]	17
	Pacific cod	17

[1] Other fisheries includes all gear types for skates, sculpins, sharks, squids, octopuses, and hook-and-line sablefish.

Chinook Salmon Prohibited Species Catch Limits

In 2012, NMFS issued a final rule to implement Amendment 93 to the GOA FMP (77 FR 42629, July 20, 2012). Amendment 93 established separate Chinook salmon PSC limits in the Western and Central GOA in the directed pollock fishery. These limits require NMFS to close the pollock directed fishery in the Western and Central regulatory areas of the GOA if the applicable limit is reached (§ 679.21(h)(6)). The annual Chinook salmon PSC limits in the pollock directed fishery of 6,684 salmon in the Western GOA and 18,316 salmon in the Central GOA are set in regulation at § 679.21(h)(2)(i) and (ii). In addition, all salmon (regardless of species) taken in the pollock directed fisheries in the Western and Central GOA must be retained until an observer at the processing facility that takes delivery of the catch is provided an opportunity to count the number of salmon and to collect any scientific data or biological samples from the salmon (§ 679.21(h)(4)).

American Fisheries Act C/P and CV Groundfish Harvest and PSC Limits

Section 679.64 establishes groundfish harvesting and processing sideboard limitations on AFA C/Ps and CVs in the GOA. These sideboard limits are necessary to protect the interests of fishermen and processors who do not directly benefit from the AFA from those fishermen and processors who receive exclusive harvesting and processing privileges under the AFA. Section 679.7(k)(1)(ii) prohibits listed AFA C/Ps from harvesting any species of groundfish in the GOA. Additionally, § 679.7(k)(1)(iv) prohibits listed AFA C/Ps from processing any pollock harvested in a directed pollock fishery in the GOA and any groundfish harvested in Statistical Area 630 of the GOA.

AFA CVs that are less than 125 ft (38.1 meters) length overall, have annual landings of pollock in the Bering Sea and Aleutian Islands less than 5,100 mt, and have made at least 40 groundfish landings from 1995 through 1997 are exempt from GOA sideboard limits under § 679.64(b)(2)(ii). Sideboard limits for non-exempt AFA CVs in the GOA are based on their traditional harvest levels of TAC in groundfish fisheries covered by the FMP. Section 679.64(b)(3)(iii) establishes the groundfish sideboard limitations in the GOA based on the retained catch of non-exempt AFA CVs of each sideboard species from 1995 through 1997 divided by the TAC for that species over the same period.

Tables 19 and 20 list the final 2013 and 2014 groundfish sideboard limits for non-exempt AFA CVs. NMFS will deduct all targeted or incidental catch of sideboard species made by non-exempt AFA CVs from the sideboard limits listed in Tables 19 and 20.

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Table 19. Final 2013 GOA Non-Exempt American Fisheries Act Catcher Vessel (CV) Groundfish Harvest Sideboard Limits
(Values are rounded to the nearest metric ton.)

Species	Apportionments by season/gear	Area/component	Ratio of 1995-1997 non-exempt AFA CV catch to 1995-1997 TAC	Final 2013 TACs	Final 2013 non-exempt AFA CV sideboard limit
Pollock	A Season January 20 – March 10	Shumagin (610)	0.6047	4,292	2,595
		Chirikof (620)	0.1167	16,433	1,918
		Kodiak (630)	0.2028	5,998	1,216
	B Season March 10 - May 31	Shumagin (610)	0.6047	4,292	2,595
		Chirikof (620)	0.1167	19,811	2,312
		Kodiak (630)	0.2028	2,618	531
	C Season August 25 - October 1	Shumagin (610)	0.6047	9,744	5,892
		Chirikof (620)	0.1167	7,600	887
		Kodiak (630)	0.2028	9,378	1,902
	D Season October 1 - November 1	Shumagin (610)	0.6047	9,744	5,892
		Chirikof (620)	0.1167	7,600	887
		Kodiak (630)	0.2028	9,378	1,902
	Annual	WYK (640)	0.3495	3,385	1,183
		SEO (650)	0.3495	10,774	3,766
Pacific cod	A Season[1] January 1 - June 10	W	0.1331	12,726	1,694
		C	0.0692	22,180	1,535
	B Season[2] September 1 - December 31	W	0.1331	8,484	1,129
		C	0.0692	14,786	1,023
	Annual	E inshore	0.0079	2,182	17
		E offshore	0.0078	242	2
Sablefish	Annual, trawl gear	W	0.0000	350	0
		C	0.0642	1,108	71
		E	0.0433	261	11
Flatfish, Shallow-water	Annual	W	0.0156	13,250	207
		C	0.0587	18,000	1,057
		E	0.0126	5,827	73
Flatfish, deep-water	Annual	W	0.0000	176	0
		C	0.0647	2,308	149
		E	0.0128	2,642	34
Rex sole	Annual	W	0.0007	1,300	1
		C	0.0384	6,376	245
		E	0.0029	1,884	5
Arrowtooth	Annual	W	0.0021	14,500	30

flounder		C	0.0280	75,000	2,100
		E	0.0002	13,800	3
Flathead sole	Annual	W	0.0036	8,650	31
		C	0.0213	15,400	328
		E	0.0009	6,446	6
Pacific ocean perch	Annual	W	0.0023	2,040	5
		C	0.0748	10,926	817
		E	0.0466	3,446	161
Northern rockfish	Annual	W	0.0003	2,008	1
		C	0.0277	3,122	86
Shortraker rockfish	Annual	W	0.0000	104	0
		C	0.0218	452	10
		E	0.0110	525	6
Dusky rockfish	Annual	W	0.0001	377	0
		C	0.0000	3,533	0
		E	0.0067	790	5
Rougheye rockfish	Annual	W	0.0000	81	0
		C	0.0237	856	20
		E	0.0124	295	4
Demersal shelf rockfish	Annual	SEO	0.0020	303	1
Thornyhead rockfish	Annual	W	0.0280	150	4
		C	0.0280	766	21
		E	0.0280	749	21
Other rockfish	Annual	W	0.0034	44	0
		C	0.1699	606	103
		E	0.0000	430	0
Atka mackerel	Annual	Gulfwide	0.0309	2,000	62
Big skates	Annual	W	0.0063	469	3
		C	0.0063	1,793	11
		E	0.0063	1,505	9
Longnose skates	Annual	W	0.0063	70	0
		C	0.0063	1,879	12
		E	0.0063	676	4
Other skates	Annual	Gulfwide	0.0063	2,030	13
Sculpins	Annual	Gulfwide	0.0063	5,884	37
Sharks	Annual	Gulfwide	0.0063	6,028	38
Squids	Annual	Gulfwide	0.0063	1,148	7
Octopuses	Annual	Gulfwide	0.0063	1,455	9

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

Table 20. Final 2014 GOA Non-Exempt American Fisheries Act Catcher Vessel (CV) Groundfish Harvest Sideboard Limits
(Values are rounded to the nearest metric ton.)

Species	Apportionments by season/gear	Area/component	Ratio of 1995-1997 non-exempt AFA CV catch to 1995-1997 TAC	Final 2014 TACs	Final 2014 non-exempt AFA CV sideboard limit
Pollock	A Season January 20 - March 10	Shumagin (610)	0.6047	3,921	2,371
		Chirikof (620)	0.1167	15,015	1,752
		Kodiak (630)	0.2028	5,481	1,112
	B Season March 10 - May 31	Shumagin (610)	0.6047	3,920	2,371
		Chirikof (620)	0.1167	18,102	2,112
		Kodiak (630)	0.2028	2,393	485
	C Season August 25 - October 1	Shumagin (610)	0.6047	8,903	5,384
		Chirikof (620)	0.1167	6,944	810
		Kodiak (630)	0.2028	8,568	1,738
	D Season October 1 - November 1	Shumagin (610)	0.6047	8,903	5,384
		Chirikof (620)	0.1167	6,944	810
		Kodiak (630)	0.2028	8,568	1,738
	Annual	WYK (640)	0.3495	3,093	1,081
		SEO (650)	0.3495	10,774	3,766
Pacific cod	A Season[1] January 1 - June 10	W	0.1331	13,262	1,765
		C	0.0692	23,113	1,599
	B Season[2] September 1 - December 31	W	0.1331	8,841	1,177
		C	0.0692	15,409	1,066
	Annual	E inshore	0.0079	2,273	18
		E offshore	0.0078	253	2
Sablefish	Annual, trawl gear	W	0.0000	328	0
		C	0.0642	1,039	67
		E	0.0433	245	11
Flatfish, Shallow-water	Annual	W	0.0156	13,250	207
		C	0.0587	18,000	1,057
		E	0.0126	5,827	73
Flatfish, deep-water	Annual	W	0.0000	176	0
		C	0.0647	2,308	149
		E	0.0128	2,642	34
Rex sole	Annual	W	0.0007	1,287	1
		C	0.0384	6,310	242
		E	0.0029	1,863	5

Arrowtooth flounder	Annual	W	0.0021	14,500	30
		C	0.0280	75,000	2,100
		E	0.0002	13,800	3
Flathead sole	Annual	W	0.0036	8,650	31
		C	0.0213	15,400	328
		E	0.0009	6,582	6
Pacific ocean perch	Annual	W	0.0023	2,005	5
		C	0.0748	10,740	803
		E	0.0466	3,388	158
Northern rockfish	Annual	W	0.0003	1,899	1
		C	0.0277	2,951	82
Shortraker rockfish	Annual	W	0.0000	104	0
		C	0.0218	452	10
		E	0.0110	525	6
Dusky rockfish	Annual	W	0.0001	354	0
		C	0.0000	3317	0
		E	0.0067	742	5
Rougheye rockfish	Annual	W	0.0000	83	0
		C	0.0237	871	21
		E	0.0124	300	4
Demersal shelf rockfish	Annual	SEO	0.0020	303	1
Thornyhead rockfish	Annual	W	0.0280	150	4
		C	0.0280	766	21
		E	0.0280	749	21
Other rockfish	Annual	W	0.0034	44	0
		C	0.1699	606	103
		E	0.0000	430	0
Atka mackerel	Annual	Gulfwide	0.0309	2,000	62
Big skates	Annual	W	0.0063	469	3
		C	0.0063	1,793	11
		E	0.0063	1,505	9
Longnose skates	Annual	W	0.0063	70	0
		C	0.0063	1,879	12
		E	0.0063	676	4
Other skates	Annual	Gulfwide	0.0063	2,030	13
Sculpins	Annual	Gulfwide	0.0063	5,884	37
Squids	Annual	Gulfwide	0.0063	6,028	38
Sharks	Annual	Gulfwide	0.0063	1,148	7
Octopuses	Annual	Gulfwide	0.0063	1,455	9

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

Non-Exempt AFA Catcher Vessel Halibut PSC Limits

The halibut PSC sideboard limits for non-exempt AFA CVs in the GOA are based on the aggregate retained groundfish catch by non-exempt AFA CVs in each PSC target category from 1995 through 1997 divided by the retained catch of all vessels in that fishery from 1995 through 1997 (§ 679.64(b)(4)). Table 21 lists the final 2013 and 2014 non-exempt AFA CV halibut PSC limits for vessels using trawl gear in the GOA. These halibut PSC limits are unchanged from the proposed 2013 and 2014 harvest specifications.

Table 21. Final 2013 and 2014 Non-Exempt AFA CV Halibut Prohibited Species Catch (PSC) Limits for Vessels Using Trawl Gear in the GOA (Values are rounded to nearest metric ton.)

Season	Season dates	Target fishery	Ratio of 1995-1997 non-exempt AFA CV retained catch to total retained catch	2013 and 2014 PSC limit	2013 and 2014 non-exempt AFA CV PSC limit
1	January 20 - April 1	shallow-water	0.340	444	151
		deep-water	0.070	99	7
2	April 1 - July 1	shallow-water	0.340	99	34
		deep-water	0.070	296	21
3	July 1 - September 1	shallow-water	0.340	197	67
		deep-water	0.070	395	28
4	September 1 - October 1	shallow-water	0.340	148	50
		deep-water	0.070	0	0
5	October 1 - December 31	all targets	0.205	296	61

Non-AFA Crab Vessel Groundfish Harvest Limitations

Section 680.22 establishes groundfish catch limits for vessels with a history of participation in the Bering Sea snow crab fishery to prevent these vessels from using the increased flexibility provided by the Crab Rationalization Program to expand their level of participation in the GOA groundfish fisheries. Sideboard limits restrict these vessels' catch to their collective historical landings in each GOA groundfish fishery (except the fixed-gear sablefish fishery). Sideboard limits also apply to catch made using an LLP license derived from the history of a restricted vessel, even if that LLP license is used on another vessel.

The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the Allocation of Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources (70 FR 10174, March 2, 2005), Amendment 34 to the Fishery Management Plan for Bering Sea/Aleutian Island King and Tanner Crabs (76 FR 35772, June 20, 2011), and Amendment 83 to the GOA FMP (76 FR 74670, December 1, 2011).

Tables 22 and 23 list the final 2013 and 2014 groundfish sideboard limitations for non-AFA crab vessels. All targeted or incidental catch of sideboard species made by non-AFA crab vessels or associated LLP licenses will be deducted from these sideboard limits.

Table 22. Final 2013 GOA Non-American Fisheries Act Crab Vessel Groundfish Harvest Sideboard Limits
(Values are rounded to the nearest metric ton.)

Species	Season/gear	Area/component/ gear	Ratio of 1996-2000 non-AFA crab vessel catch to 1996-2000 total harvest	Final 2013 TACs	Final 2013 non-AFA crab vessel sideboard limit
Pollock	A Season January 20 - March 10	Shumagin (610)	0.0098	4,292	42
		Chirikof (620)	0.0031	16,433	51
		Kodiak (630)	0.0002	5,998	1
	B Season March 10 - May 31	Shumagin (610)	0.0098	4,292	42
		Chirikof (620)	0.0031	19,811	61
		Kodiak (630)	0.0002	2,618	1
	C Season August 25 - October 1	Shumagin (610)	0.0098	9,744	95
		Chirikof (620)	0.0031	7,600	24
		Kodiak (630)	0.0002	9,378	2
	D Season October 1 - November 1	Shumagin (610)	0.0098	9,744	95
		Chirikof (620)	0.0031	7,600	24
		Kodiak (630)	0.0002	9,378	2
	Annual	WYK (640)	0.0000	3,385	0
		SEO (650)	0.0000	10,774	0
Pacific cod	A Season[1] January 1 - June 10	W Jig	0.0000	12,726	0
		W Hook-and-line CV	0.0004	12,726	5
		W Hook-and-line C/P	0.0018	12,726	23
		W Pot CV	0.0997	12,726	1,269
		W Pot C/P	0.0078	12,726	99
		W Trawl CV	0.0007	12,726	9
		C Jig	0.0000	22,180	0
		C Hook-and-line CV	0.0001	22,180	2
		C Hook-and-line C/P	0.0012	22,180	27
		C Pot CV	0.0474	22,180	1,051
		C Pot C/P	0.0136	22,180	302
		C Trawl CV	0.0012	22,180	27
	B Season[2] Jig Gear: June 10 - December 31	W Jig	0.0000	8,484	0
		W Hook-and-line CV	0.0004	8,484	3
		W Hook-and-line C/P	0.0001	8,484	15
	All other gears:	W Pot CV	0.0997	8,484	846

	September 1 - December 31	W Pot C/P	0.0078	8,484	66
		W Trawl CV	0.0007	8,484	6
		C Jig	0.0000	14,786	0
		C Hook-and-line CV	0.0001	14,786	1
		C Hook-and-line C/P	0.0012	14,786	18
		C Pot CV	0.0474	14,786	701
		C Pot C/P	0.0136	14,786	201
		C Trawl CV	0.0012	14,786	18
	Annual	E inshore	0.0110	2,182	24
		E offshore	0.0000	242	0
Sablefish	Annual, trawl gear	W	0.0000	350	0
		C	0.0000	1,108	0
		E	0.0000	261	0
Flatfish, shallow-water	Annual	W	0.0059	13,250	78
		C	0.0001	18,000	2
		E	0.0000	5,827	0
Flatfish, deep-water	Annual	W	0.0035	176	1
		C	0.0000	2,308	0
		E	0.0000	2,642	0
Rex sole	Annual	W	0.0000	1,300	0
		C	0.0000	6,376	0
		E	0.0000	1,884	0
Arrowtooth flounder	Annual	W	0.0004	14,500	6
		C	0.0001	75,000	8
		E	0.0000	13,800	0
Flathead sole	Annual	W	0.0002	8,650	2
		C	0.0004	15,400	6
		E	0.0000	6,446	0
Pacific ocean perch	Annual	W	0.0000	2,040	0
		C	0.0000	10,926	0
		E	0.0000	3,446	0
Northern rockfish	Annual	W	0.0005	2,008	1
		C	0.0000	3,122	0
Shortraker rockfish	Annual	W	0.0013	104	0
		C	0.0012	452	1
		E	0.0009	525	0
Dusky rockfish	Annual	W	0.0017	377	1
		C	0.0000	3,533	0
		E	0.0000	790	0
Rougheye rockfish	Annual	W	0.0067	81	1
		C	0.0047	856	4

		E	0.0008	295	0
Demersal shelf rockfish	Annual	SEO	0.0000	303	0
Thornyhead rockfish	Annual	W	0.0047	150	1
		C	0.0066	766	5
		E	0.0045	749	3
Other rockfish	Annual	W	0.0035	44	0
		C	0.0033	606	2
		E	0.0000	430	0
Atka mackerel	Annual	Gulfwide	0.0000	2,000	0
Big skate	Annual	W	0.0392	469	18
		C	0.0159	1,793	29
		E	0.0000	1,505	0
Longnose skate	Annual	W	0.0392	70	3
		C	0.0159	1,879	30
		E	0.0000	676	0
Other skates	Annual	Gulfwide	0.0176	2,030	36
Sculpins	Annual	Gulfwide	0.0176	5,884	104
Sharks	Annual	Gulfwide	0.0176	6,028	106
Squids	Annual	Gulfwide	0.0176	1,148	20
Octopuses	Annual	Gulfwide	0.0176	1,455	26

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

Table 23. Final 2014 GOA Non-American Fisheries Act Crab Vessel Groundfish Harvest Sideboard Limits
(Values are rounded to the nearest metric ton.)

Species	Season/gear	Area/component/ gear	Ratio of 1996-2000 non-AFA crab vessel catch to 1996-2000 total harvest	Final 2014 TACs	Final 2014 non-AFA crab vessel sideboard limit
Pollock	A Season January 20 - March 10	Shumagin (610)	0.0098	3,921	38
		Chirikof (620)	0.0031	16,434	51
		Kodiak (630)	0.0002	5,999	1
	B Season March 10 - May 31	Shumagin (610)	0.0098	3,920	38
		Chirikof (620)	0.0031	18,101	56
		Kodiak (630)	0.0002	2,393	0
	C Season August 25 - October 1	Shumagin (610)	0.0098	8,903	87
		Chirikof (620)	0.0031	6,944	22
		Kodiak (630)	0.0002	8,568	2
	D Season October 1 - November 1	Shumagin (610)	0.0098	8,903	87
		Chirikof (620)	0.0031	6,944	22
		Kodiak (630)	0.0002	8,568	2
	Annual	WYK (640)	0.0000	3,093	0
		SEO (650)	0.0000	10,774	0
Pacific cod	A Season[1] January 1 - June 10	W Jig	0.0000	13,262	0
		W Hook-and-line CV	0.0004	13,262	5
		W Hook-and-line C/P	0.0018	13,262	24
		W Pot CV	0.0997	13,262	1,322
		W Pot C/P	0.0078	13,262	103
		W Trawl CV	0.0007	13,262	9
		C Jig	0.0000	23,113	0
		C Hook-and-line CV	0.0001	23,113	2
		C Hook-and-line C/P	0.0012	23,113	28
		C Pot CV	0.0474	23,113	1,096
		C Pot C/P	0.0136	23,113	314
		C Trawl CV	0.0012	23,113	28
	B Season[2] Jig Gear: June 10 - December 31	W Jig	0.0000	8,841	0
		W Hook-and-line CV	0.0004	8,841	4
		W Hook-and-line C/P	0.0018	8,841	16

	All other gears: September 1 - December 31	W Pot CV	0.0997	8,841	881
		W Pot C/P	0.0078	8,841	69
		W Trawl CV	0.0012	8,841	6
		C Jig	0.0000	15,409	0
		C Hook-and-line CV	0.0001	15,409	2
		C Hook-and-line C/P	0.0012	15,409	18
		C Pot CV	0.0474	15,409	730
		C Pot C/P	0.0136	15,409	210
		C Trawl CV	0.0012	15,409	18
	Annual	E inshore	0.0110	2,273	25
		E offshore	0.0000	253	0
Sablefish	Annual, trawl gear	W	0.0000	328	0
		C	0.0000	1,039	0
		E	0.0000	245	0
Flatfish, shallow-water	Annual	W	0.0059	13,250	78
		C	0.0001	18,000	2
		E	0.0000	5,827	0
Flatfish, deep-water	Annual	W	0.0035	176	1
		C	0.0000	2,308	0
		E	0.0000	2,642	0
Rex sole	Annual	W	0.0000	1,287	0
		C	0.0000	6,310	0
		E	0.0000	1,863	0
Arrowtooth flounder	Annual	W	0.0004	14,500	6
		C	0.0001	75,000	8
		E	0.0000	13,800	0
Flathead sole	Annual	W	0.0002	8,650	2
		C	0.0004	15,400	6
		E	0.0000	6,582	0
Pacific ocean perch	Annual	W	0.0000	2,005	0
		C	0.0000	10,740	0
		E	0.0000	3,388	0
Northern rockfish	Annual	W	0.0005	1,899	1
		C	0.0000	2,951	0
Shortraker rockfish	Annual	W	0.0013	104	0
		C	0.0012	452	1
		E	0.0009	525	0
Dusky rockfish	Annual	W	0.0017	354	1
		C	0.0000	3,317	0
		E	0.0000	742	0
Rougheye	Annual	W	0.0067	83	1

rockfish		C	0.0047	871	4
		E	0.0008	300	0
Demersal shelf rockfish	Annual	SEO	0.0000	303	0
Thornyhead rockfish	Annual	W	0.0047	150	1
		C	0.0066	766	5
		E	0.0045	749	3
Other rockfish	Annual	W	0.0035	44	0
		C	0.0033	606	2
		E	0.0000	430	0
Atka mackerel	Annual	Gulfwide	0.0000	2,000	0
Big skate	Annual	W	0.0392	469	18
		C	0.0159	1,793	29
		E	0.0000	1,505	0
Longnose skate	Annual	W	0.0392	70	3
		C	0.0159	1,879	30
		E	0.0000	676	0
Other skates	Annual	Gulfwide	0.0176	2,030	36
Sculpins	Annual	Gulfwide	0.0176	5,884	104
Sharks	Annual	Gulfwide	0.0176	6,028	106
Squids	Annual	Gulfwide	0.0176	1,148	20
Octopuses	Annual	Gulfwide	0.0176	1,455	26

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

Rockfish Program Groundfish Sideboard and Halibut PSC Limitations

The Rockfish Program establishes three classes of sideboard provisions: CV groundfish sideboard restrictions, C/P rockfish sideboard restrictions, and C/P opt-out vessel sideboard restrictions. These sideboards are intended to limit the ability of rockfish harvesters to expand into other fisheries.

CVs participating in the Rockfish Program may not participate in directed fishing for northern rockfish, Pacific ocean perch, and pelagic shelf rockfish (dusky rockfish) in the West Yakutat district and Western GOA from July 1 through July 31. Furthermore, CVs may not participate in directed fishing for arrowtooth flounder, deep-water flatfish, and rex sole in the GOA from July 1 through July 31 (§ 679.82(d)).

Catcher/processors participating in Rockfish Program cooperatives are restricted by rockfish and halibut PSC limitations. These C/Ps are prohibited from directed fishing for northern rockfish, Pacific ocean perch, and pelagic shelf rockfish (dusky rockfish) in the West Yakutat district and Western GOA from July 1 through July 31. Holders of C/P-designated LLP licenses that opt-out of participating in a Rockfish Program cooperative will be able to access that portion of each sideboard limit that is not assigned to rockfish cooperatives. Tables 24 and 25 list the final 2013 and 2014 Rockfish Program C/P sideboard limits in the West Yakutat district and the Western GOA. Due to confidentiality requirements associated with fisheries data, the sideboard limits for the West Yakutat district are not displayed.

Table 24. Final 2013 Rockfish Program Harvest Limits by Sector for West Yakutat District and Western GOA by the Catcher/Processor Sector. (Values are rounded to the nearest metric ton.)

Area	Fishery	C/P sector (% of TAC)	Final 2013 TACs	Final 2013 C/P limit
West Yakutat District	Dusky rockfish	Confidential[1]	495	Confidential[1]
	Pacific ocean perch	Confidential[1]	1,641	Confidential[1]
Western GOA	Dusky rockfish	72.3	377	273
	Pacific ocean perch	50.6	2,040	1,032
	Northern rockfish	74.3	2,008	1,492

[1] Not released due to confidentiality requirements associated with fish ticket data, as established by NMFS and the State of Alaska.

Table 25. Final 2014 Rockfish Program Harvest Limits by Sector for West Yakutat District and Western GOA by the Catcher/Processor Sector. (Values are rounded to the nearest metric ton.)

Area	Fishery	C/P sector (% of TAC)	Final 2014 TACs	Final 2014 C/P limit
West Yakutat District	Dusky rockfish	Confidential[1]	465	Confidential[1]
	Pacific ocean perch	Confidential[1]	1,613	Confidential[1]
Western GOA	Dusky rockfish	72.3	354	256
	Pacific ocean perch	50.6	2,005	1,015
	Northern rockfish	74.3	1,899	1,411

[1] Not released due to confidentiality requirements associated with fish ticket data, as established by NMFS and the State of Alaska.

The C/P sector is subject to halibut PSC sideboard limits for the trawl deep-water and shallow-water species fisheries during the period July 1 through July 31. No halibut PSC sideboard limits apply to the CV sector, as vessels participating in cooperatives receive a portion of the annual halibut PSC limit. C/Ps that opt-out of the Rockfish Program would be able to access that portion of the deep-water and shallow-water halibut PSC sideboard limit not assigned to C/P rockfish cooperatives. The sideboard provisions for C/Ps that elect to opt-out of participating in a rockfish cooperative are described in § 679.82(c), (e), and (f). Sideboards are linked to the catch history of specific vessels that may choose to opt-out. Once NMFS determines which C/Ps have opted-out of the Rockfish Program in 2013, the ratios and amounts used to calculate opt-out sideboard ratios will be known. NMFS will then calculate any applicable opt-out sideboards and post these allocations on the Alaska Region Web site at *http://alaskafisheries.noaa.gov/sustainablefisheries/goarat/default.htm*). Table 26 lists the 2013 and 2014 Rockfish Program halibut PSC limits for the catcher/processor sector.

Table 26. Final 2013 and 2014 Rockfish Program Halibut Mortality Limits for the Catcher/Processor Sector
(Values are rounded to the nearest metric ton.)

Sector	Shallow-water complex halibut PSC sideboard ratio (percent)	Deep-water complex halibut PSC sideboard ratio (percent)	Annual halibut mortality limit (mt)	Annual shallow-water complex halibut PSC sideboard limit (mt)	Annual deep-water complex halibut PSC sideboard limit (mt)
Catcher/ processor	0.10	2.50	1,973	2	49

Amendment 80 Program Groundfish and PSC Sideboard Limits

Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (Amendment 80 Program) established a limited access privilege program for the non-AFA trawl C/P sector. To limit the ability of participants eligible for the Amendment 80 Program to expand their harvest efforts in the GOA, the Amendment 80 Program established groundfish and halibut PSC catch limits for Amendment 80 Program participants.

Section 679.92 establishes groundfish harvesting sideboard limits on all Amendment 80 program vessels, other than the F/V GOLDEN FLEECE, to amounts no greater than the limits shown in Table 37 to 50 CFR part 679. Under regulations at § 679.92(d), the F/V GOLDEN FLEECE is prohibited from directed fishing for pollock, Pacific cod, Pacific ocean perch, dusky rockfish, and northern rockfish in the GOA.

Groundfish sideboard limits for Amendment 80 Program vessels operating in the GOA are based on their average aggregate harvests from 1998 through 2004. Tables 27 and 28 list the final 2013 and 2014 sideboard limits for Amendment 80 Program vessels. These limits are based on the final 2013 and 2014 TACs established by this action, and thus may differ proportionately from the sideboard limits in the proposed harvest specifications. NMFS will deduct all targeted or incidental catch of sideboard species made by Amendment 80 Program vessels from the sideboard limits in Tables 27 and 28.

Table 27. Final 2013 GOA Groundfish Sideboard Limits for Amendment 80 Program Vessels
(Values are rounded to nearest metric ton.)

Species	Apportionments and allocations by season	Area	Ratio of Amendment 80 sector vessels 1998 - 2004 catch to TAC	2013 TAC (mt)	2013 Amendment 80 vessel sideboards (mt)
Pollock	A Season January 20 - February 25	Shumagin (610)	0.003	4,292	13
		Chirikof (620)	0.002	16,433	33
		Kodiak (630)	0.002	5,998	12
	B Season March 10 - May 31	Shumagin (610)	0.003	4,292	13
		Chirikof (620)	0.002	19,811	40
		Kodiak (630)	0.002	2,618	5
	C Season August 25 - September 15	Shumagin (610)	0.003	9,744	29
		Chirikof (620)	0.002	7,600	15
		Kodiak (630)	0.002	9,378	19
	D Season October 1 - November 1	Shumagin (610)	0.003	9,744	29
		Chirikof (620)	0.002	7,600	15
		Kodiak (630)	0.002	9,378	19
	Annual	WYK (640)	0.002	3,385	7
Pacific cod	A Season[1] January 1 - June 10	W	0.020	12,726	255
		C	0.044	22,180	976
	B Season[2] September 1 - December 31	W	0.020	8,484	170
		C	0.044	14,786	651
	Annual	WYK	0.034	2,424	82
Pacific ocean perch	Annual	W	0.994	2,040	2,028
		WYK	0.961	1,641	1,577
Northern rockfish	Annual	W	1.000	2,008	2,008
Dusky rockfish	Annual	W	0.764	377	288
		WYK	0.896	495	444

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

Table 28. Final 2014 GOA Groundfish Sideboard Limits for Amendment 80 Program Vessels
(Values are rounded to nearest metric ton.)

Species	Apportionments and allocations by season	Area	Ratio of Amendment 80 sector vessels 1998 - 2004 catch to TAC	2014 TAC (mt)	2014 Amendment 80 vessel sideboards (mt)
Pollock	A Season January 20 - February 25	Shumagin (610)	0.003	3,921	12
		Chirikof (620)	0.002	15,016	30
		Kodiak (630)	0.002	5,481	11
	B Season March 10 - May 31	Shumagin (610)	0.003	3,920	12
		Chirikof (620)	0.002	18,101	36
		Kodiak (630)	0.002	2,393	5
	C Season August 25 - September 15	Shumagin (610)	0.003	8,903	27
		Chirikof (620)	0.002	6,944	14
		Kodiak (630)	0.002	8,568	17
	D Season October 1 - November 1	Shumagin (610)	0.003	8,903	27
		Chirikof (620)	0.002	6,944	14
		Kodiak (630)	0.002	8,568	17
	Annual	WYK (640)	0.002	3,093	6
Pacific cod	A Season[1] January 1 - June 10	W	0.020	13,262	265
		C	0.044	23,113	1,017
	B Season[2] September 1 - December 31	W	0.020	8,841	177
		C	0.044	15,409	678
	Annual	WYK	0.034	2,526	86
Pacific ocean perch	Annual	W	0.994	2,005	1,993
		WYK	0.961	1,613	1,550
Northern rockfish	Annual	W	1.000	1,899	1,899
Dusky rockfish	Annual	W	0.764	354	270
		WYK	0.896	465	417

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

The PSC sideboard limits for Amendment 80 Program vessels in the GOA are based on the historic use of halibut PSC by Amendment 80 Program vessels in each PSC target category from 1998 through 2004. These values are slightly lower than the average historic use to accommodate two factors: Allocation of halibut PSC cooperative quota under the Central GOA Rockfish Program and the exemption of the F/V GOLDEN FLEECE from this restriction (§ 679.92(b)(2)). Table 29 lists the final 2013 and 2014 halibut PSC limits for Amendment 80 Program vessels, as contained in Table 38 to 50 CFR part 679. These halibut PSC limits are unchanged from those listed in the proposed 2013 and 2014 harvest specifications.

Table 29. Final 2013 and 2014 Halibut PSC Limits for Amendment 80 Program Vessels in the GOA
(Values are rounded to nearest metric ton.)

Season	Season dates	Target fishery	Historic Amendment 80 use of the annual halibut PSC limit catch (ratio)	2013 and 2014 annual PSC limit (mt)	2013 and 2014 Amendment 80 vessel PSC limit
1	January 20 - April 1	shallow-water	0.0048	1,973	9
		deep-water	0.0115	1,973	23
2	April 1 - July 1	shallow-water	0.0189	1,973	37
		deep-water	0.1072	1,973	212
3	July 1 - September 1	shallow-water	0.0146	1,973	29
		deep-water	0.0521	1,973	103
4	September 1 - October 1	shallow-water	0.0074	1,973	15
		deep-water	0.0014	1,973	3
5	October 1 - December 31	shallow-water	0.0227	1,973	45
		deep-water	0.0371	1,973	73

Directed Fishing Closures

Pursuant to § 679.20(d)(1)(i), if the Regional Administrator determines (1) that any allocation or apportionment of a target species or species group allocated or apportioned to a fishery will be reached; or (2) with respect to pollock and Pacific cod, that an allocation or apportionment to an inshore or offshore component or sector allocation will be reached, the Regional Administrator may establish a directed fishing allowance (DFA) for that species or species group. If the Regional Administrator establishes a DFA and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified GOA regulatory area or district (§ 679.20(d)(1)(iii)).

The Regional Administrator has determined that the TACs for the species listed in Table 30 are necessary to account for the incidental catch of these species in other anticipated groundfish fisheries for the 2013 and 2014 fishing years.

Table 30. 2013 and 2014 Directed Fishing Closures in the GOA (Amounts for incidental catch in other directed fisheries are in metric tons.)

Target	Area/component/gear	Incidental catch amount
Pollock	all/offshore	not applicable[1]
Sablefish[2]	all/trawl	1,719 (2013) 1,612 (2014)
Pacific cod	Western, catcher/processor, trawl	496 (2013) 517 (2014)
Shortraker rockfish[2]	all	1,081
Other rockfish	all	1,080
Rougheye rockfish	all	1,232 (2013) 1,254 (2014)
Thornyhead rockfish	all	1,665
Atka mackerel	all	2,000
Big skate	all	3,767
Longnose skate	all	2,625
Other skates	all	2,030
Sharks	all	6,028
Squids	all	1,148
Octopuses	all	1,455

[1] Pollock is closed to directed fishing in the GOA by the offshore component under § 679.20(a)(6)(i).
[2] Closures not applicable to participants in cooperatives conducted under the Central GOA Rockfish Program.

Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the DFA for the species or species groups listed in Table 30 as zero mt. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for those species, areas, gear types, and components in the GOA listed in Table 30. These closures will remain in effect through 2400 hrs, A.l.t., December 31, 2014.

Section 679.64(b)(5) provides for management of AFA CV groundfish harvest limits and PSC bycatch limits using directed fishing closures and PSC closures according to procedures set out at §§ 679.20(d)(1)(iv), 679.21(d)(8), and 679.21(e)(3)(v). The Regional Administrator has determined that, in addition to the closures listed above, many of the non-exempt AFA CV sideboard limits listed in Tables 19 and 20 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2013 and 2014 fishing years. In accordance with § 679.20(d)(1)(iv), the Regional Administrator sets the DFAs for the species and species groups in Table 31 at zero. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by non-exempt AFA CVs in the GOA for the species and specified areas listed in Table 31. These closures will remain in effect through 2400 hrs, A.l.t., December 31, 2014.

Table 31. 2013 and 2014 Non-Exempt AFA CV Sideboard Directed Fishing Closures for All Gear Types in the GOA
(Amounts for incidental catch in other directed fisheries are in metric tons.)

Species	Regulatory area/district	Incidental catch amount
Pacific cod	Eastern	17 (inshore) and 2 (offshore) in 2013 18 (inshore) and 2 (offshore) in 2014
Shallow-water flatfish	Eastern	73
Deep-water flatfish	Western	0
Rex sole	Eastern and Western	1 and 5
Arrowtooth flounder	Eastern and Western	3 and 30
Flathead sole	Eastern and Western	6 and 31
Pacific ocean perch	Western	5
Northern rockfish	Western	1
Dusky rockfish	Entire GOA	5
Demersal shelf rockfish	SEO District	1
Sculpins	Entire GOA	37
Squids	Entire GOA	7

Section 680.22 provides for the management of non-AFA crab vessel sideboards using directed fishing closures in accordance with § 680.22(e)(2) and (3). The Regional Administrator has determined that the non-AFA crab vessel sideboards listed in Tables 22 and 23 are insufficient to support a directed fishery and has set the sideboard DFA at zero, with the exception of Pacific cod pot CV sector apportionments in the Western and Central Regulatory Areas. Therefore, NMFS is prohibiting directed fishing by non-AFA crab vessels in the GOA for all species and species groups listed in Tables 22 and 23, with the exception of the Pacific cod pot CV sector apportionments in the Western and Central Regulatory Areas.

Section 679.82 provides for the management of Rockfish Program sideboard limits using directed fishing closures in accordance with § 679.82(d) and (e). The Regional Administrator has determined that the CV sideboards listed in Tables 24 and 25 are insufficient to support a directed fishery and has set the sideboard DFA at zero. Therefore, NMFS is closing directed fishing for Pacific ocean perch and dusky rockfish in the WYK district and the Western Regulatory Area, and for northern rockfish in the Western Regulatory Area by CVs participating in the Central GOA Rockfish Program during the month of July in 2013 and 2014. These closures will remain in effect through 2400 hrs, A.l.t., December 31, 2014.

Closures implemented under the 2012 and 2013 GOA harvest specifications for groundfish (77 FR 15194, March 14, 2012) remain effective under authority of these final 2013 and 2014 harvest specifications, and are posted at the following Web site: *http://www.alaskafisheries.noaa.gov/cm/info_bulletins/*.

While these closures are in effect, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 679. NMFS may implement other closures during the 2013 and 2014 fishing years as necessary for effective conservation and management.

Comments and Response

NMFS did not receive any comments in response to the proposed 2013 and 2014 harvest specifications (77 FR 72297, December 5, 2012).

Classification

NMFS has determined that these final harvest specifications are consistent with the FMP and with the Magnuson-Stevens Act and other applicable laws.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866 and 13563.

NMFS prepared an EIS for this action (see **ADDRESSES**) and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the Record of Decision (ROD) for the EIS. In January 2013, NMFS prepared a Supplemental Information Report (SIR) for this action. Copies of the EIS, ROD, and SIR for this action are available from NMFS (see **ADDRESSES**). The EIS analyzes the environmental consequences of the groundfish harvest specifications and alternative harvest strategies on resources in the action area. The EIS found no significant environmental consequences of this action and its alternatives. The preferred alternative is a harvest strategy in which TACs are set at a level that falls within the range of ABCs recommended by the Council's SSC; the sum of the TACs must achieve the OY specified in the FMP. The SIR evaluates the need to prepare a Supplemental EIS (SEIS) for

the 2013 and 2014 groundfish harvest specifications.

An SEIS should be prepared if (1) the agency makes substantial changes in the proposed action that are relevant to environmental concerns, or (2) significant new circumstances or information exist relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)(1)). After reviewing the information contained in the SIR and SAFE reports, the Regional Administrator has determined that (1) approval of the 2013 and 2014 harvest specifications, which were set according to the preferred harvest strategy in the EIS, do not constitute a change in the action; and (2) there are no significant new circumstances or information relevant to environmental concerns and bearing on the action or its impacts. Additionally, the 2013 and 2014 harvest specifications will result in environmental impacts within the scope of those analyzed and disclosed in the EIS. Therefore, supplemental National Environmental Policy Act documentation is not necessary to implement the 2013 and 2014 harvest specifications.

Pursuant to section 604 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* a FRFA was prepared for this action. The FRFA incorporates the IRFA, and includes a summary of the significant issues raised by public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action.

A copy of the FRFA prepared for this final rule is available from NMFS (see **ADDRESSES**). A description of this action, its purpose, and its legal basis are contained at the beginning of the preamble to this final rule and are not repeated here.

NMFS published the proposed rule on December 5, 2012 (77 FR 72297). NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) to accompany this action, and included a summary in the proposed rule. The comment period closed on January 4, 2013. No comments were received on the IRFA or the economic impacts of the rule more generally.

The entities directly regulated by this action are those that receive allocations of groundfish in the EEZ of the GOA, and in parallel fisheries within State of Alaska waters, during the annual harvest specifications process. These directly regulated entities include the groundfish CVs and C/Ps active in these areas. Direct allocations of groundfish are also made to Central GOA Rockfish Program cooperatives. These entities are, therefore, also considered to be directly regulated.

In 2011, there were 1,049 individual CVs with revenues less than or equal to $4 million. Some of these vessels are members of AFA inshore pollock cooperatives, or of GOA rockfish cooperatives. Vessels that participate in these cooperatives are considered to be large entities within the meaning of the RFA. After accounting for membership in these cooperatives, there are an estimated 1,002 small CVs remaining in the GOA.

In 2011, nine C/Ps grossed less than $4 million. Some of these vessels were affiliated through ownership by the same business firm. NMFS estimates that these vessels were owned by eight separate firms. Vessels in this group were also affiliated through membership in two cooperatives (the Amendment 80 Alaska Seafood Cooperative and the Freezer Longline Conservation Cooperative). After taking account of firm and cooperative affiliations, NMFS estimates that these nine vessels represent four small entities.

The number of Rockfish Program cooperatives can change yearly. In 2011, there were 10 separate cooperatives. The Rockfish Program cooperatives are directly regulated, since they receive allocations of TAC through the harvest specifications process. The cooperatives are large entities, since they are affiliated with firms with a combined total gross revenue of over $4 million.

This action does not modify recordkeeping or reporting requirements.

NMFS considered other, alternative harvest strategies when choosing the preferred harvest strategy (Alternative 2) in December 2006. These included the following:

- Alternative 1: Set TACs to produce fishing mortality rates, F, that are equal to maxFABC, unless the sum of the TACs is constrained by the OY established in the FMPs. This is equivalent to setting TACs to produce harvest levels equal to the maximum permissible ABCs, as constrained by OY. The term ''maxFABC'' refers to the maximum permissible value of FABC under Amendment 56 to the groundfish FMPs. Historically, the TAC has been set at or below the ABC, therefore, this alternative represents a likely upper limit for setting the TAC within the OY and ABC limits.
- Alternative 3: For species in Tiers 1, 2, and 3, set TAC to produce F equal to the most recent 5-year average actual F. For species in Tiers 4, 5, and 6, set TAC equal to the most recent 5-year average actual catch. For stocks with a high level of scientific information, TACs would be set to produce harvest levels equal to the most recent 5-year average actual fishing mortality rates. For stocks with insufficient scientific information, TACs would be set equal to the most recent 5-year average actual catch. This alternative recognizes that for some stocks, catches may fall well below ABCs, and recent average F may provide a better indicator of actual F than FABC does.
- Alternative 4: (1) Set TACs for rockfish species in Tier 3 at F75%. Set TACs for rockfish species in Tier 5 at F=0.5M. Set spatially explicit TACs for shortraker and rougheye rockfish in the GOA. (2) Taking the rockfish TACs as calculated above, reduce all other TACs by a proportion that does not vary across species, so that the sum of all TACs, including rockfish TACs, is equal to the lower bound of the area OY (116,000 mt in the GOA). This alternative sets conservative and spatially explicit TACs for rockfish species that are long-lived and late to mature and sets conservative TACs for the other groundfish species.
- Alternative 5: (No Action) Set TACs at zero.

These alternatives do not both meet the objectives of this action although they have a smaller adverse economic impact on small entities than the preferred alternative. The Council rejected these alternatives as harvest strategies in 2006, and the Secretary did so in 2007.

Alternative 1 selected harvest rates that will allow fishermen to harvest stocks at the level of ABCs, unless total harvests are constrained by the upper bound of the GOA OY of 800,000 metric tons. The sums of ABCs in 2013 and 2014 are 595,920 mt and 584,094 mt, respectively. The sums of the TACs in 2013 and 2014 are 436,255 mt and 427,722 mt, respectively. Thus, although the sum of ABCs in each year is less than 800,000 metric tons, the sums of the TACs in each year are less than the sums of the ABCs.

In most cases, the Council has set TACs equal to ABCs. The divergence between aggregate TACs and aggregate ABCs reflects a variety of special species- and fishery-specific circumstances:

- Pacific cod TACs are set equal to 75 percent of the Pacific cod ABCs in each year to account for the guideline harvest levels set by the State of Alaska for Pacific cod in its fisheries that are equal to 25 percent of the Council's ABCs. Thus, this difference does not actually reflect a Pacific cod harvest below the Pacific cod ABC.
- Shallow-water flatfish and flathead sole TACs are set below ABCs in the

Western and Central GOA regulatory areas. Arrowtooth flounder TACs are set below ABC in all GOA regulatory areas. Catches of these flatfish species rarely, if ever, approach the proposed ABCs or TACs. Important trawl fisheries in the GOA take halibut PSC, and are constrained by limits on the allowable halibut PSC mortality. These limits routinely force the closure of trawl fisheries before they have harvested the available groundfish ABC. Thus, actual harvests of groundfish in the GOA routinely fall short of some ABCs and TACs. Markets can also constrain harvests below the TACs, as has been the case with arrowtooth flounder, in the past. These TACs are set to allow for increased harvest opportunities for these targets while conserving the halibut PSC limit for use in other, more fully utilized, fisheries.

• The other rockfish TAC is set below the ABC in the Southeast Outside district based on several factors. In addition to conservation concerns for the rockfish species in this group, there is a regulatory prohibition against using trawl gear east of 140° W. longitude. Because most species of other rockfish are caught exclusively with trawl gear, the catch of such species with other gear types, such as hook-and-line, is low. The commercial catch of other rockfish in the Eastern regulatory area, which includes the West Yakutat and Southeast Outside districts, in the last decade has ranged from approximately 70 mt to 248 mt per year.

• The GOA-wide Atka mackerel TAC is set below the ABC. The estimates of survey biomass continue to be unreliable in the GOA. Therefore, the Council recommended and NMFS agrees that the Atka mackerel TAC in the GOA be set at an amount to support incidental catch in other directed fisheries.

Alternative 3 selects harvest rates based on the most recent 5 years of harvest rates (for species in Tiers 1 through 3) or for the most recent 5 years of harvests (for species in Tiers 4 through 6). This alternative is inconsistent with the objectives of this action, because it does not take account of the most recent biological information for this fishery.

Alternative 4 would lead to significantly lower harvests of all species to reduce TACs from the upper end of the OY range in the GOA to its lower end of 116,000 mt. Overall, this would reduce 2013 TACs by about 73 percent. This would lead to significant reductions in harvests of species harvested by small entities. While production declines in the GOA would undoubtedly be associated with price increases in the GOA, these increases would still be constrained by the availability of substitutes, and are very unlikely to offset revenue declines from smaller production. Thus, this action would have a detrimental economic impact on small entities.

Alternative 5, which sets all harvests equal to zero, may also address conservation issues, but would have a significant adverse economic impact on small entities.

Impacts on marine mammals resulting from fishing activities conducted under this rule are discussed in the EIS (see **ADDRESSES**).

Pursuant to 5 U.S.C. 553(d)(3), the Acting Assistant Administrator for Fisheries, NOAA, finds good cause to waive the 30-day delay in effectiveness for this rule because delaying this rule would be contrary to the public interest. The Plan Team review occurred in November 2012, and Council consideration and recommendations occurred in December 2012. Accordingly, NMFS review could not begin until January 2013. For all fisheries not currently closed because the TACs established under the final 2012 and 2013 harvest specifications (77 FR 15194, March 14, 2012) were not reached, it is possible that they would be closed prior to the expiration of a 30-day delayed effectiveness period, because their TACs could be reached within that time period. If implemented immediately, this rule would allow these fisheries to continue to fish because the new TACs implemented by this rule are higher than the ones under which they are currently fishing.

Certain fisheries, such as those for pollock and Pacific cod are intensive, fast-paced fisheries. Other fisheries, such as those for sablefish, flatfish, rockfish, Atka mackerel, skates, sculpins, sharks, squids, and octopuses are critical as directed fisheries and as incidental catch in other fisheries. U.S. fishing vessels have demonstrated the capacity to catch the TAC allocations in many of these fisheries. If this rule allowed for a 30-day delay in effectiveness and if a TAC is reached, NMFS would close directed fishing or prohibit retention for the applicable species. Any delay in allocating the final TACs in these fisheries would cause confusion to the industry and potential economic harm through unnecessary discards, thus undermining the intent of the rule. Waiving the 30-day delay allows NMFS to prevent economic loss to fishermen that could otherwise occur should the 2013 TACs be reached. Determining which fisheries may close is impossible because these fisheries are affected by several factors that cannot be predicted in advance, including fishing effort, weather, movement of fishery stocks, and market price. Furthermore, the closure of one fishery has a cascading effect on other fisheries by freeing-up fishing vessels, allowing them to move from closed fisheries to open ones, increasing the fishing capacity in those open fisheries, and causing them to close at an accelerated pace.

In fisheries subject to declining sideboards, a failure to implement the updated sideboards before initial season's end could deny the intended economic protection to the non-sideboarded sectors. Conversely, in fisheries with increasing sideboards, economic benefit could be denied to the sideboarded sectors.

If the final harvest specifications are not effective by March 23, 2013, which is the start of the 2013 Pacific halibut season as specified by the IPHC, the hook-and-line sablefish fishery will not begin concurrently with the Pacific halibut IFQ season. This would result in confusion for the industry and economic harm from unnecessary discard of sablefish that are caught along with Pacific halibut, as both hook-and-line sablefish and Pacific halibut are managed under the same IFQ program. Immediate effectiveness of the final 2013 and 2014 harvest specifications will allow the sablefish IFQ fishery to begin concurrently with the Pacific halibut IFQ season.

In addition, the immediate effectiveness of this action is required to provide consistent management and conservation of fishery resources based on the best available scientific information. This is particularly true for those species that have lower 2013 ABCs and TACs than those established in the 2012 and 2013 harvest specifications (77 FR 15194, March 14, 2012). Immediate effectiveness also would give the fishing industry the earliest possible opportunity to plan and conduct its fishing operations with respect to new information about TACs. Therefore, NMFS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3).

Small Entity Compliance Guide

The following information is a plain language guide to assist small entities in complying with this final rule as required by the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule's primary purpose is to announce the final 2013 and 2014 harvest specifications and prohibited species bycatch allowances for the groundfish fisheries of the GOA. This action is necessary to establish harvest

limits and associated management measures for groundfish during the 2013 and 2014 fishing years, and to accomplish the goals and objectives of the FMP. This action affects all fishermen who participate in the GOA fisheries. The specific amounts of OFL, ABC, TAC, and PSC are provided in tables to assist the reader. NMFS will announce closures of directed fishing in the **Federal Register** and information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closures.

Authority: 16 U.S.C. 773 *et seq.;* 16 U.S.C. 1540(f), 1801 *et seq.;* 16 U.S.C. 3631 *et seq.;* Public Law 105–277; Public Law 106–31; Public Law 106–554; Public Law 108–199; Public Law 108–447; Public Law 109–241; Public Law 109–479.

Dated: February 19, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2013–04162 Filed 2–25–13; 8:45 am]

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Part III

The President

Notice of February 22, 2013—Continuation of the National Emergency With Respect to Cuba and of the Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels

Federal Register
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Presidential Documents

Title 3—

The President

Notice of February 22, 2013

Continuation of the National Emergency With Respect to Cuba and of the Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels

On March 1, 1996, by Proclamation 6867, a national emergency was declared to address the disturbance or threatened disturbance of international relations caused by the February 24, 1996, destruction by the Cuban government of two unarmed U.S.-registered civilian aircraft in international airspace north of Cuba. On February 26, 2004, by Proclamation 7757, the national emergency was extended and its scope was expanded to deny monetary and material support to the Cuban government. The Cuban government has not demonstrated that it will refrain from the use of excessive force against U.S. vessels or aircraft that may engage in memorial activities or peaceful protest north of Cuba. In addition, the unauthorized entry of any U.S.-registered vessel into Cuban territorial waters continues to be detrimental to the foreign policy of the United States. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Cuba and the emergency authority relating to the regulation of the anchorage and movement of vessels set out in Proclamation 6867 as amended by Proclamation 7757.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
February 22, 2013.

[FR Doc. 2013–04641
Filed 2–25–13; 11:15 am]
Billing code 3295–F3

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