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WHEN: Tuesday, September 11, 2012
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Rules and Regulations

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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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11 and 25

[NRC–2011–0161]

RIN 3150–AJ00

Access Authorization Fees; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Correcting amendments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting the preamble, or statement of considerations (SOC), and codified text in a direct final rule that was published in the **Federal Register** on May 3, 2012 (77 FR 26149) and confirmed on June 22, 2012 (77 FR 37553). The direct final rule amended the NRC's access authorization fees charged to licensees for work performed under the Material Access Authorization Program (MAAP) and the Information Access Authority Program (IAAP). This document is necessary to correct an email address, a codification error, a misspelled abbreviation, and the authority citations.

DATES: The correction is effective on August 3, 2012 and applicable to June 22, 2012, the date the original rule became effective.

FOR FURTHER INFORMATION CONTACT: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–492–3667; email: *Cindy.Bladey@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC published a direct final rule in the **Federal Register** on May 3, 2012 (77 FR 26149) and a confirmation of the effective date on June 22, 2012 (77 FR 37553). The direct final rule amended the NRC's access authorization fees charged to licensees for work performed under the MAAP and the IAAP. This document is necessary to correct an email address, a codification error, a misspelled abbreviation, and the authority citations in the codified text. The following corrects the SOC to the May 3, 2012, document:

1. On page 26150, in the second column before the table, the first paragraph, the last sentence is corrected to read as follows:

The NRC's licensees can also obtain the current OPM investigation billing rates schedule by contacting the NRC's Personnel Security Branch (PSB), Division of Facilities and Security (DFS), Office of Administration (ADM) by email to *Licensee_Access_Authorization_Fee.Resource@nrc.gov.*

2. On page 26150, in the first column after the table, the first paragraph, the fifth sentence is corrected to read as follows:

Copies of the current NRC access authorization fee can be obtained by contacting the NRC's Personnel Security Branch, Division of Facilities Security, Office of Administration by email to *Licensee_Access_Authorization_Fee.Resource@nrc.gov.*

List of Subjects

10 CFR Part 11

Hazardous materials—transportation, Investigations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 25

Classified information, Criminal penalties, Investigations, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 11 and 25.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

■ 1. Revise the authority citation for part 11 to read as follows:

Authority: Atomic Energy Act sec. 161 (42 U.S.C. 2201); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

Section 11.15(e) also issued under Independent Offices Appropriations Act sec. 501, (31 U.S.C. 9701); Omnibus Reconciliation Act of 1990 sec. 6101 (42 U.S.C. 2214).

■ 2. In § 11.15:

■ a. In paragraph (e)(2), second sentence, and paragraph (e)(3), sixth sentence, remove the reference ''*Licensee_Access_Authorization_Fee@nrc.gov*'' and add, in its place, the reference ''*Licensee_Access_Authorization_Fee.Resource@nrc.gov*''; and

■ b. In paragraph (e)(3), in the table, revise the first row.

The revision reads as follows:

§ 11.15 Application for special nuclear material access authorization.

* * * * *

(e) * * *

(3) * * *

The NRC application fee for an access authorization of type* * *	Is the sum of the current OPM investigation billing rate charged for an investigation of type * * *	Plus the NRC's processing fee (rounded to the nearest dollar), which is equal to the OPM investigation billing rate for the type of investigation referenced multiplied by * * *
i. NRC–R [1]	NACLC—National Agency Check with Law and Credit (Standard Service, Code C).	55.8%.

* * * * * * *

[1] If the NRC, having reviewed the available data, deems it necessary to perform a single scope investigation, the appropriate NRC–U fee will be assessed before the conduct of the investigation.

* * * * *

PART 25—ACCESS AUTHORIZATION

■ 3. Revise the authority citation for part 25 to read as follows:

Authority: Atomic Energy Act secs. 145, 161, 223, 234 (42 U.S.C. 2165, 2201, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); E.O. 10865, as amended, 3 CFR, 1959–1963 Comp., p. 398 (50 U.S.C. 401, note); E.O. 12829, 3 CFR, 1993 Comp., p. 570; E.O. 13526, 3 CFR, 2010 Comp., pp. 298–327; E.O. 12968, 3 CFR, 1995 Comp., p. 396.

Section 25.17(f) and Appendix A also issued under 31 U.S.C. 9701; Omnibus Reconciliation Act of 1990 sec. 6101 (42 U.S.C. 2214).

§ 25.17 [Corrected]

■ 4. In § 25.17, paragraph (f)(2), second sentence, and paragraph (f)(3), sixth sentence, remove the reference ''*Licensee_Access_Authorization_Fee@nrc.gov*'' and add, in its place, the reference ''*Licensee_Access_Authorization_Fee.Resource@nrc.gov*.''

■ 5. In appendix A to part 25, revise the third row.

The revision reads as follows:

Appendix A to Part 25—Fees for NRC Access Authorization

The NRC application fee for an access authorization of type * * *	Is the sum of the current OPM investigation billing rate charged for an investigation of type * * *	Plus the NRC's processing fee (rounded to the nearest dollar), which is equal to the OPM investigation billing rate for the type of investigation referenced multiplied by * * *
* *	* * *	* *
Renewal of "L" access authorization [1]	NACLC—National Agency Check with Law and Credit (Standard Service, Code C).	55.8%.
* *	* * *	* *

[1] If the NRC determines, based on its review of available data, that a single scope investigation is necessary, the appropriate fee for an Initial "Q" access authorization will be assessed before the conduct of investigation.

* * * * *

Dated at Rockville, Maryland, this 30th day of July 2012.

For the Nuclear Regulatory Commission.

Cindy Bladey,

Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2012–18934 Filed 8–2–12; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 235

[Regulation II; Docket No. R–1404]

RIN 7100–AD 63

Debit Card Interchange Fees and Routing

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Final rule.

SUMMARY: The Board has amended the provisions in Regulation II (Debit Card Interchange Fees and Routing) that govern adjustments to debit card interchange transaction fees to make an allowance for fraud-prevention costs incurred by issuers. The amendments permit an issuer to receive or charge an amount of no more than 1 cent per transaction (the same amount currently permitted) in addition to its interchange transaction fee if the issuer develops and implements policies and procedures that are reasonably designed to take effective steps to reduce the occurrence of, and costs to all parties from, fraudulent electronic debit transactions. The amendments set forth fraud-prevention aspects that an issuer's policies and procedures must address and require an issuer to review its policies and procedures at least annually, and update them as necessary in light of their effectiveness, cost-effectiveness, and changes in the types of fraud, methods used to commit fraud, and available fraud-prevention methods. An issuer must notify its payment card networks annually that it complies with the Board's fraud-prevention standards. Finally, the amendments provide that an issuer that is substantially noncompliant with the Board's fraud-prevention standards is ineligible to receive or charge a fraud-prevention adjustment and set forth a timeframe within which an issuer must stop receiving or charging a fraud-prevention adjustment.

DATES: This rule is effective October 1, 2012.

FOR FURTHER INFORMATION CONTACT: Dena L. Milligan, Attorney (202/452–3900), Legal Division, or David Mills, Manager and Economist (202/530–6265), Division of Reserve Bank Operations and Payment Systems; for users of Telecommunications Device for the Deaf (TDD) only, contact (202/263–4869); Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Section 920 of the Electronic Fund Transfer Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') (Pub. L. 111–203, 124 Stat. 1376 (2010)), was enacted on July 21, 2010. Section 1075 of the Dodd-Frank Act amends the Electronic Fund Transfer Act (''EFTA'') (15 U.S.C. 1693 *et seq.*) by adding a new section 920 regarding debit card interchange transaction fees and rules for payment card transactions.

Section 920 of the EFTA provides that, effective July 21, 2011, the amount of any interchange transaction fee that an issuer receives or charges with respect to an electronic debit transaction must be reasonable and proportional to the cost incurred by the issuer with respect to the transaction.[1] This section requires the Board to establish standards for assessing whether an interchange transaction fee is reasonable and proportional to the cost incurred by the issuer with respect to the transaction and requires the Board to establish rules prohibiting network exclusivity on debit cards and issuer and network inhibitions on merchant transaction routing choice. The Board's final rule (Regulation II, Debit Card Interchange Fees and Routing) implementing standards for assessing whether interchange transaction fees meet the requirements of Section 920(a) and establishing rules regarding network exclusivity and routing choice required by Section 920(b) became effective October 1, 2011, although issuers had until April 1, 2012, or later to comply

[1] An ''electronic debit transaction'' means the use of a debit card (including a general-use prepaid card) as a form of payment. EFTA Section 920(c)(5); 12 CFR 235.2(h). For purposes of Regulation II, the term does not include transactions initiated at automated teller machines (ATM).

with the network exclusivity provisions.[2]

Under EFTA Section 920(a)(5), the Board may allow for an adjustment to the amount of an interchange transaction fee received or charged by an issuer if (1) such adjustment is reasonably necessary to make allowance for costs incurred by the issuer in preventing fraud in relation to electronic debit card transactions involving that issuer, and (2) the issuer complies with fraud-prevention standards established by the Board. Those standards must be designed to ensure that any adjustment is limited to the reasonably necessary fraud-prevention allowance described in clause (1) above; takes into account any fraud-related reimbursements (including amounts from chargebacks) received from consumers, merchants, or payment card networks in relation to electronic debit transactions involving the issuer; and requires issuers to take effective steps to reduce the occurrence of, and costs from, fraud in relation to electronic debit transactions, including through the development and implementation of cost-effective fraud-prevention technology.

In issuing the standards and prescribing regulations for the adjustment, EFTA Section 920(a)(5) requires the Board to consider (1) the nature, type, and occurrence of fraud in electronic debit transactions; (2) the extent to which the occurrence of fraud depends on whether the authentication in an electronic debit transaction is based on a signature, personal identification number (PIN), or other means; (3) the available and economical means by which fraud on electronic debit transactions may be reduced; (4) the fraud-prevention and data-security costs expended by each party involved in the electronic debit transactions (including consumers, persons who accept debit cards as a form of payment, financial institutions, retailers, and payment card networks); (5) the costs of fraudulent transactions absorbed by each party involved in such transactions (including consumers, persons who accept debit cards as a form of payment, financial institutions, retailers, and payment card networks); (6) the extent to which interchange transaction fees have in the past reduced or increased incentives for parties involved in electronic debit transactions to reduce fraud on such transactions; and (7) such other factors as the Board considers appropriate.

II. Proposed Rule, Interim Final Rule, and Comments

A. Proposed Rule

In December 2010, the Board requested comment on two approaches to a framework for the fraud-prevention adjustment to the interchange transaction fee standards: a technology-specific approach and a non-prescriptive approach. The technology-specific approach would allow an issuer to recover some or all of its costs incurred for implementing major innovations that would likely result in substantial reductions in total, industry-wide fraud losses. Under this approach, the Board would identify paradigm-shifting technologies that would reduce debit card fraud in a cost-effective manner. The alternative approach would establish more general standards that an issuer must meet to be eligible to receive an adjustment for fraud-prevention costs.[3]

In general, commenters did not agree about which approach to pursue, but commenters generally opposed the Board's mandating use of specific technologies. Most merchants generally favored a paradigm-shifting approach where issuers would be eligible for a fraud-prevention adjustment only for implementing technologies that reduced fraudulent transactions to a level materially below the level for PIN transactions. By contrast, issuers of all sizes and payment card networks preferred the non-prescriptive approach that would provide issuers with flexibility to tailor their fraud-prevention activities to address most effectively the risks they face and changing fraud patterns. Issuer commenters also opposed a fraud-prevention adjustment only for particular authentication methods, noting that an adjustment favoring a particular authentication method may not provide sufficient incentives to invest in other potentially more effective authentication methods.[4] The Board considered these comments in the development of an interim final rule.

B. Interim Final Rule

In June 2011, the Board adopted a non-prescriptive approach to the fraud-prevention standards, set forth in 12 CFR 235.4, as an interim final rule, issued in connection with its final rule implementing other provisions of EFTA Section 920.[5] The interim final rule allows an issuer to receive or charge an additional amount of no more than 1 cent per transaction to the interchange fee permitted under § 235.3 if the issuer satisfies the Board's fraud-prevention standards. Those standards require an issuer to develop and implement policies and procedures reasonably designed to (i) identify and prevent fraudulent electronic debit transactions; (ii) monitor the incidence of, reimbursements received for, and losses incurred from fraudulent electronic debit transactions; (iii) respond appropriately to suspicious electronic debit transactions so as to limit the fraud losses that may occur and prevent the occurrence of future fraudulent electronic debit transactions; and (iv) secure debit card and cardholder data. In addition, an issuer must review its fraud-prevention policies and procedures at least annually, and update them as necessary to address changes in the prevalence and nature of fraudulent electronic debit transactions and the available methods of detecting, preventing, and mitigating fraud. The interim final rule provides that if an issuer meets these standards and wishes to receive the adjustment, it must annually certify its compliance with the Board's fraud-prevention standards to the payment card networks in which the issuer participates. The Board requested comment on all aspects of the interim final rule.

C. Summary of Comments on Interim Final Rule

The Board received 42 comments on the interim final rule from debit card issuers, depository institution trade associations, payment card networks, merchants, merchant trade associations, a card-payment processor, technology companies, a member of Congress, individuals, and public interest groups.

1. Overview of Comments Received

The comments received generally focused on the following aspects of the interim final rule: (1) The amount of the adjustment; (2) the non-prescriptive standards in the interim final rule; and (3) the issuer-certification process. These comments are summarized below and are described in more detail in the Section-By-Section Analysis.

[2] 76 FR 43394, 43394 (Jul. 20, 2011). Regulation II is set forth in 12 CFR part 235. Regulation II defines an interchange transaction fee (or "interchange fee") to mean any fee established, charged, or received by a payment card network and paid by a merchant or acquirer for the purpose of compensating an issuer for its involvement in an electronic debit transaction. 12 CFR 235.2(j).

[3] 75 FR 81722, 81740–43 (Dec. 28, 2010).

[4] The comments received by the Board in response to the proposal are described in more detail in the **Federal Register** notice announcing the interim final rule. *See* 76 FR 43478, 43480–86 (Jul. 20, 2011).

[5] The final rule implementing other provisions in Regulation II is published in 76 FR 43394 (Jul. 20, 2011).

Fraud-prevention adjustment amount. Most issuers and their trade associations, payment card networks, a public interest group, and a technology company supported permitting a fraud-prevention adjustment to the amount of an interchange transaction fee an issuer may receive or charge but believed the fraud-prevention adjustment amount in the interim final rule to be too low. Commenters that supported a higher adjustment amount did so for several reasons, including encouraging innovation and investment in fraud-prevention activities; maintaining consumer and merchant confidence in the security of electronic debit transactions; and reducing potential adverse effects on exempt issuers that have higher per-transaction fraud-prevention costs than nonexempt issuers. These commenters suggested that the Board could increase the adjustment amount by expanding the costs used in determining the adjustment amount; setting the adjustment amount to the fraud-prevention amount at the cost of the issuer at the 80th percentile (as with the interchange fee standard in § 235.3) rather than at the median issuer's cost; including an additional *ad valorem* component to the adjustment; and not capping the adjustment amount. Commenters suggested including costs such as fraud-prevention research and development costs, data-security costs, fraud-related customer inquiry costs, and exempt issuer costs.

By contrast, merchants and their trade associations asserted that the fraud-prevention adjustment amount in the interim final rule is too high. In general, these commenters argued that the fraud-prevention amount in the interim final rule does not take into consideration the fraud-prevention costs of merchants and other parties to electronic debit transactions, for example, by deducting merchants' costs from issuers' costs. Several of these commenters recommended that, in setting the adjustment amount, the Board include only activities that are demonstrably effective and cost-effective, and one commenter recommended that the Board exclude costs of activities to *detect* and *mitigate* fraudulent electronic debit transactions.

Approach to fraud-prevention standards. Debit card issuers, their trade associations, and payment card networks overwhelmingly supported the non-prescriptive framework for the fraud-prevention standards largely as set forth in the interim final rule for several reasons.[6] These reasons included providing better incentives to invest in fraud prevention, retaining flexibility for each issuer to respond effectively to the dynamic fraud environment, diversifying fraud-prevention technologies employed throughout the industry, and limiting public information about issuers' fraud-prevention activities, which, commenters argued, could benefit fraudsters. In addition, several commenters opposed a technology-specific adjustment, arguing that the Board does not have the expertise to identify the most effective and commercially feasible fraud-prevention technologies and that such an approach could result in underinvestment in new, and potentially more effective, fraud-prevention technologies that are not identified in the standards.

By contrast, most merchants and merchant trade associations, a public interest group, and a member of Congress opposed the fraud-prevention standards as set forth in the interim final rule because the standards do not include specific metrics to measure the effectiveness and cost-effectiveness of an issuer's fraud-prevention activities. Several of these commenters argued that fraud-prevention standards that lack such a metric are inconsistent with EFTA 920(a)(5). A number of these commenters supported a proposal made by a coalition of merchants. This proposal suggested metrics for measuring the effectiveness and cost-effectiveness of fraud-prevention activities that would assess whether the fraud-prevention technology results in a fraud rate materially lower than that associated with PIN transactions and whether the cost of implementing a technology is less than the amount of fraud losses eliminated by its use.

In contrast to the other commenters, several technology companies supported the specification of particular fraud-prevention technologies in the Board's standards.

Issuer certification. The Board received several comments about the certification process in § 235.4(c). Many commenters opposed the ''certification'' requirement in the interim final rule because they believed it improperly delegates assessment of an issuer's compliance from an issuer's primary supervisor to an issuer or payment card network. Other commenters supported the certification requirement as described in the interim final rule or requested clarification about the role of payment card networks in the certification process. Commenters also disagreed as to whether the Board should specify a uniform certification process and reporting period. In addition, one payment card network supported a so-called ''cure period'' for issuers to come into compliance with the Board's fraud-prevention standards after a deficiency finding and a 30-day time period for networks to change the status of an issuer once a network is notified of an issuer's noncompliance with the Board's standards.

2. Consultation With Other Agencies

EFTA Section 920(a)(4)(C) directs the Board to consult, as appropriate, with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Administrator of the Small Business Administration, and the Director of the Bureau of Consumer Financial Protection in the development of the interchange fee standards. Board staff consulted with staff from these agencies in development of a final rule on standards for receiving or charging a fraud-prevention adjustment.

III. Statutory Considerations

EFTA Section 920(a)(5) requires the Board to consider several different factors in prescribing regulations related to the fraud-prevention adjustment. This section discusses each of those factors.

Nature, type, and occurrence of fraud. The Board's survey of debit card issuers and payment card networks provided information about the nature, type, and occurrence of fraud in electronic debit transactions.[7] From the card issuer and network surveys of 2009 data, the Board estimates that industry-wide fraud losses to all parties to debit card transactions were approximately $1.34 billion in 2009.[8] Based on data provided by covered issuers, about 0.04 percent of purchase transactions were fraudulent, with an average loss per purchase

[6] The Board received some comments suggesting more targeted clarifications to the rule text and commentary. These comments are discussed below in connection with the relevant rule or commentary section.

[7] The Board's ''2009 Interchange Revenue, Covered Issuer Cost, and Covered Issuer and Merchant Fraud Loss Related to Debit Card Transactions'' is available at *http://www.federalreserve.gov/paymentsystems/regii-data-collections.htm.*

[8] Unless otherwise noted, debit card transactions include transactions initiated using general-use prepaid cards. Industry-wide fraud losses were extrapolated from data reported in the issuer and network surveys conducted by the Board. Of the 89 issuers that responded to the issuer survey, 52 issuers provided data on fraud losses related to their debit card transactions. These issuers reported $726 million in fraud losses to all parties of card transactions and represented 54 percent of the total transactions reported by networks.

transaction of about 4 cents, or about 9 basis points of transaction value.[9]

The most commonly-reported and highest-value fraud types were counterfeit card fraud; mail, telephone, and Internet order (or ''card-not-present'') fraud; and lost and stolen card fraud.[10] Counterfeit card fraud represented 0.01 percent of all purchase transactions, with an average loss of 2 cents per transaction and 4 basis points of transaction value. Mail, telephone, and Internet order fraud also represented 0.01 percent of all purchase transactions with an average loss of 1 cent per transaction and 2 basis points of transaction value. Lost and stolen card fraud represented less than 0.01 percent of all purchase transactions with an average loss of 1 cent per transaction and 1 basis point of transaction value.

Extent to which the occurrence of fraud depends on authentication mechanism. The issuer survey data for 2009 also provided information about the extent to which the occurrence of fraud depends on whether the transaction was processed by a signature or a PIN network.[11] Of the approximately $1.34 billion estimated industry-wide fraud losses, about $1.11 billion of these losses arose from signature debit card transactions and about $181 million arose from PIN debit card transactions.[12] The higher losses for signature debit card transactions are attributable to both a higher rate of fraud and higher transaction volume for signature debit card transactions.[13] The data showed that about 0.06 percent of signature debit and 0.01 percent of PIN debit purchase transactions were reported as fraudulent. For signature debit, the average loss was 5 cents per transaction, and represented about 13 basis points of transaction value. For PIN debit, the average loss was 1 cent per transaction, and was about 3 basis points of transaction value. Thus, on a per-dollar basis, signature debit fraud losses were approximately 4 times PIN debit fraud losses.[14]

The different fraud loss rates for signature and PIN transactions reflect, in part, differences in the ease of committing fraud associated with the two card- and cardholder-authentication methods. A signature debit card transaction requires information that is typically contained on the card itself in order for card and cardholder authentication to take place. Therefore, a thief need only steal the card or information on the card in order to commit fraud.[15] By contrast, card- and cardholder-authentication of a PIN debit card transaction requires not only the card or information contained on the card, but also something only the cardholder should know, namely, the PIN. In the case of PIN transactions, a thief generally needs both the card, or information on the card, and the cardholder's PIN to commit fraud. Virtually all PIN debit transactions currently occur in a card-present environment, and virtually all transactions in card-not-present environments (i.e., Internet) are routed over signature debit networks. For Internet transactions, the cardholder typically does not authenticate the transaction with a signature, although an issuer or merchant may have other means of authenticating the cardholder or card, such as the use of a Card Verification Value (CVV) number or the input of cardholder information at the time of purchase.

Card issuers responding to the Board's survey reported that card-present fraud losses for signature debit transactions were over 3 times greater than the fraud loss value, in basis points, associated with PIN debit card-present transactions. Issuers also reported that fraud losses across all parties on transactions over signature debit networks were higher for card-not-present transactions than for card-present transactions.[16] On a transactions-weighted average basis, card-not-present fraud losses represented 17 basis points of the value of card-not-present signature debit transactions. Card-present fraud losses represented 11 basis points of the value of card-present signature debit transactions.

Available and economical means by which fraud may be reduced. The Board requested information about issuers' fraud-prevention activities and costs in its survey. Issuers identified several categories of activities used to detect, prevent, and mitigate fraudulent electronic debit transactions, including transaction monitoring; merchant blocking; card activation and authentication systems; PIN customization; system and application security measures, such as firewalls and virus protection software; and ongoing research and development focused on making an issuer's fraud-prevention practices more effective.

Based on reported information, the median issuer spent 1.8 cents per transaction on all fraud-prevention activities. The most commonly reported activity in the fraud-prevention section of the survey was transaction monitoring, which generally includes activities related to the authorization of a particular electronic debit transaction, such as the use of neural networks and automated fraud risk scoring systems that may lead to the denial of a suspicious transaction. At the median, issuers reported spending approximately 0.7 cents per transaction on transaction monitoring activity.[17] The costs associated with research and development, card-activation systems, PIN customization, merchant blocking, and card-authentication systems were all small when measured on a per-transaction basis, typically less than one-tenth of a cent each. For all data-security costs reported by issuers in the issuer card survey, the median was 0.1 cents.

Fraud-prevention costs expended by parties involved in electronic debit transactions. As discussed above, issuers incur costs for a variety of fraud-prevention activities. In addition, other

[9] Covered issuers are those issuers that, together with affiliates, have assets of $10 billion or more. *See* 12 CFR 235.5(a). The percent of purchase transactions that are fraudulent is the number of fraudulent transactions divided by the number of purchase transactions. The average loss per purchase transaction is the dollar amount of fraud losses divided by the number of purchase transactions. The average loss per purchase transaction in basis points is the dollar amount of fraud losses divided by the dollar amount of purchase transactions.

[10] Some issuers reported ATM fraud, which was excluded from fraud loss totals because an ATM transaction does not come under the definition of an ''electronic debit transaction.'' *See* 12 CFR 235.2(h).

[11] Transactions processed over a signature debit network are referred to sometimes as ''signature debit card transactions'' or ''signature debit transactions.'' Transactions processed over a PIN debit network are referred to sometimes as ''PIN debit card transactions'' or ''PIN debit transactions.''

[12] The sum of card program fraud losses does not equal the industry-wide fraud losses due to different sample sizes and rounding.

[13] In 2009, signature transactions accounted for 60 percent of electronic debit transaction volume and 59 percent of transaction value. PIN transactions accounted for 37 percent of electronic debit transaction volume and 39 percent of transaction value. The remainder of the transaction volume and value was attributable to prepaid card transactions, which could be either signature or PIN transactions. *See* 2009 Interchange Revenue, Covered Issuer Cost, and Covered Issuer and Merchant Fraud Loss Related to Debit Card transactions.

[14] The survey data did not break out prepaid card PIN transactions from prepaid card signature transactions. For all prepaid debit transactions, about 0.03 percent of purchase transactions were fraudulent; the average loss was 1 cent per transaction, and 4 basis points of transaction value.

[15] Among other things, information on the card includes the card number, the cardholder's name, and the cardholder's signature.

[16] In 2009, almost all card-not-present transactions were processed over signature networks.

[17] Transaction monitoring costs were included in the costs used as the basis for the interchange fee standard rather than the fraud-prevention adjustment. *See* 76 FR 43478, 43482–83 (Jul. 20, 2011).

parties involved in debit card transactions incur fraud-prevention costs. For example, some consumers routinely monitor their accounts for unauthorized debit card purchases, which could be measured as an opportunity cost of the consumers' time; however, the opportunity cost of consumers' time to monitor their account is difficult to put into monetary terms. Merchants and acquirers incur costs for fraud-prevention tools such as terminals that enable merchants to use various card- and cardholder-authentication mechanisms, address verification, geolocation services, and data-encryption technologies. In addition to services they may purchase from others, merchants may develop their own fraud-prevention tools. For example, many large Internet merchants implement extra security measures to verify the legitimacy of a purchase. Typically these checks occur between the time a transaction is authorized by the issuer and the product is shipped to the purchaser. In their comments on the proposed rule, several online merchants noted that they have developed sophisticated fraud-risk management systems that include both manual review and automated processes, which have reduced fraud rates to levels at or below card-present rates at other merchants. In addition to these investments, merchants also take steps to secure data and comply with Payment Card Industry Data Security Standards (PCI–DSS).[18] In their comments on the proposed rule and interim final rule, several merchants noted that merchants incur substantial costs for PCI–DSS compliance as well as other fraud-prevention activities.

Costs of fraudulent transactions absorbed by different parties involved in fraudulent transactions. Various laws and regulations allocate the costs of fraudulent electronic debit transactions among different parties to the transactions. For example, the Consumer Financial Protection Bureau's Regulation E limits a consumer's liability for unauthorized electronic fund transfers to $50 in certain circumstances.[19] In addition, payment card network rules implement a chargeback process to allocate loss between issuers and acquirers, either of which may, if permitted by network rules, pass on some or all of the loss to the cardholder or merchant. Typically, the allocation of fraud losses under network rules varies by the type of transaction, cardholder authentication method, and procedures followed at the point of sale, among other factors.

Using the issuer survey data for 2009, the Board estimated the cost of fraudulent transactions absorbed by different parties to debit card transactions. Based on the issuer survey responses, almost all of the reported fraud losses associated with debit card transactions fall on the issuers and merchants. In particular, across all types of transactions, 62 percent of reported fraud losses were borne by issuers and 38 percent were borne by merchants. The fraud loss borne by cardholders is low in dollar terms, but may also include costs associated with the time spent rectifying fraudulent transactions. Most issuers reported that they impose zero or very limited liability on cardholders, even where they would be permitted to impose some liability under the EFTA and Regulation E. Payment card networks and merchant acquirers also reported that they bore very limited fraud losses, indicating that merchant acquirers pass through fraud losses to merchants.

The distribution of fraud losses between issuers and merchants varies based on the authentication method used in a debit card transaction. Issuers and payment card networks reported that nearly all the fraud losses associated with PIN debit card transactions (96 percent) were borne by issuers. By contrast, reported fraud losses were distributed much more evenly between issuers and merchants for signature debit card transactions. Specifically, issuers and merchants bore 59 percent and 41 percent of signature debit fraud losses, respectively.[20]

The distribution of fraud losses also varies based on whether or not the card was present at the point of sale. According to the survey data, merchants assume approximately 74 percent of signature debit card fraud for card-not-present transactions, compared to 23 percent for card-present signature debit card fraud.

Extent to which interchange transaction fees have in the past affected fraud-prevention incentives. Issuers have a strong incentive to protect cardholders and reduce fraud independent of interchange fees received. Competition among issuers for cardholders suggests that protecting their cardholders from fraud is good business practice for issuers. Higher interchange revenues may have allowed issuers to offset both their fraud losses and fraud-prevention costs and fund innovation on fraud-prevention tools and activities. Merchant commenters stated that, historically, the higher interchange revenue for signature debit relative to PIN debit has encouraged issuers to promote the use of signature debit over PIN debit, even though signature debit has substantially higher rates of fraud.

IV. Summary of Final Rule

The Board has considered all comments received and has adopted a final rule for the fraud-prevention adjustment to the amount of an interchange transaction fee that an issuer may receive or charge. The final rule permits an issuer that satisfies the Board's fraud-prevention standards to receive or charge an amount of no more than 1 cent per transaction in addition to any interchange transaction fee it receives or charges in accordance with § 235.3, the same amount as permitted in the interim final rule. The final rule emphasizes the statutory requirements by establishing fraud-prevention standards that require an issuer to develop and implement policies and procedures reasonably designed to take effective steps to reduce the occurrence of, and costs to all parties from, fraudulent electronic debit transactions, including through the development and implementation of cost-effective fraud-prevention technology. An issuer's policies and procedures must address (1) methods to identify and prevent fraudulent electronic debit transactions; (2) monitoring of the volume and value of its fraudulent electronic debit transactions; (3) appropriate responses to suspicious electronic debit transactions in a manner designed to limit the costs to all parties from and prevent the occurrence of future fraudulent electronic debit transactions; (4) methods to secure debit card and cardholder data; and (5) such other factors as the issuer considers appropriate.

The final rule requires an issuer to review its fraud-prevention policies and procedures, and their implementation, at least annually, and update them as necessary in light of (i) their effectiveness in reducing the occurrence of, and cost to all parties from, fraudulent electronic debit transactions involving the issuer; (ii) their cost-effectiveness; and (iii) changes in the types of fraud, methods used to commit

[18] The Payment Card Industry (PCI) Security Standards Council was founded in 2006 by five card networks—Visa, Inc., MasterCard Worldwide, Discover Financial Services, American Express, and JCB International. These card brands share equally in the governance of the organization, which is responsible for development and management of PCI Data Security Standards (PCI–DSS). PCI–DSS is a set of security standards that all payment system participants, including merchants and processors, are required to meet in order to participate in payment card systems.

[19] *See* 12 CFR 1005.6.

[20] For prepaid card transactions, issuers bore two-thirds and merchants bore one-third of fraud losses.

fraud, and available methods for detecting and preventing fraudulent electronic debit transactions that the issuer identifies from (A) its own experience or information; (B) information provided to the issuer by its payment card networks, law enforcement agencies, and fraud-monitoring groups in which the issuer participates; and (C) applicable supervisory guidance.

To be eligible to receive or charge a fraud-prevention adjustment, an issuer must annually notify its payment card networks that it complies with the Board's fraud-prevention standards. Finally, if an issuer is substantially noncompliant with the Board's fraud-prevention standards, as determined by the issuer or the agency with responsibility for enforcing the issuer's compliance with Regulation II, the issuer must notify its payment card networks that it is no longer eligible to receive or charge a fraud-prevention adjustment no later than 10 days after the date of the issuer's determination or notification from the agency and must stop receiving or charging the fraud-prevention adjustment no later than 30 days after notifying its networks.

The Board made various changes throughout § 235.4, and accompanying commentary, in response to comments and additional information available to it. The final rule is explained more fully below.

V. Section-By-Section Analysis

Section 235.4(a) Adjustment Amount

A. Summary of Interim Final Rule

Section 235.4(a) of interim final rule permits an issuer to increase the amount of the interchange fee it may receive or charge under § 235.3 by no more than 1 cent if the issuer complies with the Board's fraud-prevention standards in § 235.4(b) of the interim final rule. The adjustment amount is the same irrespective of authentication method, transaction type, or issuer.

The Board surveyed issuers regarding their total cost incurred in 2009 for fraud-prevention and data-security activities, as well as for research and development activities related to an issuer's fraud-prevention program. The Board also asked issuers to report the costs associated with the following: card-activation systems, PIN customization, merchant blocking, transaction monitoring, specialized authorization services, cardholder-authentication systems, card-authentication systems, data-access controls, and data encryption. The Board also invited issuers to report other fraud-prevention and data-security activities, and the costs incurred from those activities.

The interim final rule included costs related to activities used by issuers to ''detect, prevent, and mitigate'' fraudulent electronic debit transactions, as reported by issuers in the Board survey.[21] For example, the interim final rule included issuer costs related to authenticating the card and cardholder (such as PIN management and card-authentication technologies embedded in the card), providing alerts to cardholders about suspicious electronic debit transactions, receiving and processing reports of lost and stolen debit cards, reissuing debit cards used or suspected to have been used to make fraudulent electronic debit transactions, tracking and sharing information with payment card networks about compromised debit cards, monitoring compromised card databases, processing fraud claims and disputes of cardholders, activating cards, securing data systems, encrypting data, and ongoing research and development activities. Costs that were not included as part of the fraud-prevention adjustment included the cost of due diligence at account opening, the cost of routine mailings of newly issued or reissued cards, and the cost of fraud losses and any other costs allowed under the base interchange fee standard.

The adjustment amount in the interim final rule corresponds to the reported fraud-prevention costs, excluding those fraud-prevention costs included in the interchange fee standards in § 253.3, of the issuer at the median of the survey respondents. The median issuer's 2009 per-transaction fraud-prevention cost reported to the Board was 1.8 cents. The costs associated with research and development, card-activation systems, PIN customization, merchant blocking, and card-authentication systems were all small when measured on a per-transaction basis, typically less than one-tenth of a cent each. For all data-security costs reported by issuers in the card issuer survey, the median was 0.1 cents.

In setting the interchange fee standard in § 235.3, the Board included costs of transaction-monitoring systems that are integral to the authorization of a transaction. Transaction monitoring systems assist in the authorization process by providing information to the issuer before the issuer decides to approve or decline the transaction. Because these costs are already included for all covered issuers as a basis for establishing the interchange fee standards, the Board excluded them in determining the fraud-prevention adjustment amount. The median issuer's transactions-monitoring cost is 0.7 cents per transaction. The fraud-prevention adjustment of 1 cent represents the difference between the median issuer's fraud-prevention cost of 1.8 cents per transaction less the median issuer's transaction-monitoring cost of 0.7 cents, rounded to the nearest cent.

B. Fraud-Prevention Costs Included in the Adjustment

1. Comments Received

In general, issuers and networks encouraged the Board to include costs of a broad set of fraud-prevention activities. In particular, these commenters recommended that the Board include in the calculation of the adjustment costs related to routine account monitoring, customer notifications, routine and non-routine card issuance and reissuance, name and address verification, chargeback costs, research and development of new fraud-prevention technologies, data security, card-activation systems, neural networks, transaction scoring, PIN customization, merchant blocking, other software systems, and lost revenue due to customers not having access to their debit card while awaiting reissuance. Some commenters encouraged the Board to include, in particular, the costs of activities undertaken in response to merchant data breaches.

Issuers also suggested that the Board include the costs of cardholder inquiries related to fraud, including providing payment transaction clarity so that customers are able to identify merchants listed on their statements. These commenters asserted that fraudulent transactions almost always involve a cardholder inquiry and that responding to cardholder inquiries is a fundamental and an economical means of preventing fraud as it permits issuers to gather information about lost and stolen cards, which is necessary to make decisions regarding appropriate responses to prevent fraud in connection with such cards. These commenters also noted that time and expense associated with cardholder inquiries is quantifiable and that the Board should try to determine the portion of cardholder inquiry costs related to fraud prevention.

A number of issuer commenters also encouraged the Board to base the fraud-prevention adjustment amount on the fraud-prevention costs of issuers that are exempt from the interchange fee standards in § 253.3 and the fraud-

[21] 76 FR 43478, 43481 (Jul. 20, 2011).

prevention adjustment in § 235.4.[22] Trade groups representing small issuers were concerned that the interchange fee standards, including the fraud-prevention adjustment, will become the *de facto* interchange fee level across the industry and that small issuers will suffer disproportionately because they tend to have higher per-transaction fraud-prevention costs.

Merchants, on the other hand, argued that the Board included too many fraud-prevention costs. One commenter asserted that including costs to detect and mitigate fraud goes beyond ''preventing fraud.'' Additionally, merchants argued that the Board included costs of activities that have not been proven to prevent fraud, such as PIN customization (which one commenter argued makes PINs easier to guess) and research and development. Another commenter suggested that the Board more precisely delineate between activities that prevent fraud and those that do not.

Most merchant and merchant group commenters also asserted that the Board failed to take into account merchant's fraud-prevention costs, as required by EFTA Section 920(a)(5)(B). Several of these merchant commenters encouraged the Board to offset the adjustment amount by merchants' fraud-prevention costs or by the amount issuers recoup from other parties to the fraudulent electronic debit transaction through chargebacks or other means. One commenter argued that the desire to avoid or minimize the administrative burden associated with surveying merchants is not a sufficient reason for not measuring merchant costs. Another commenter argued that, by not considering specific merchants' fraud-prevention costs, merchants that have mostly card-not-present transactions essentially subsidize fraud prevention for the rest of the network, because those merchants tend to invest more in fraud prevention (to deal with higher rates of fraud in the card-not-present environment) than merchants that have mostly card-present transactions. One merchant commenter suggested that the Board take merchant costs into account by prohibiting issuers from imposing any fraud loss costs or PCI–DSS (or similar costs) on merchants if the fraud relates to transactions that qualify for the fraud-prevention adjustment.

2. Final Rule

Section 920(a)(5)(A)(i) of the EFTA permits the Board to allow an adjustment to the amount of an interchange fee that an issuer may receive or charge if ''such adjustment is reasonably necessary to make allowance for costs incurred by the issuer in preventing fraud in relation to electronic debit transactions involving that issuer.'' Fraud prevention involves a broad range of activities in which an issuer may engage before, during, or after an electronic debit transaction. Fraud-prevention activities include activities to detect fraudulent transactions. Detecting possible fraud during the authorization process, for example, can lead to actions such as denying a transaction or contacting the cardholder to verify the legitimacy of a previously authorized transaction. In this way, detecting possible fraudulent electronic debit transactions can prevent the fraud from happening. Similarly, issuers can take steps once fraud is discovered to mitigate the loss associated with the fraudulent activity. For example, an issuer may place an alert on a debit card indicating that the card or account information may have been compromised or cancel a compromised card and issue a new card to the cardholder in order to prevent future fraudulent transactions using the card. Thus, although the initial fraudulent transaction(s) may not have been prevented, an issuer can prevent additional fraud loss by taking such steps. Therefore, the Board has determined that activities that detect and mitigate fraudulent electronic debit transactions contribute to preventing fraud and that the costs of such activities are appropriate to include for purposes of the fraud-prevention adjustment.

Costs associated with research and development of new fraud-prevention technologies, card reissuance due to fraudulent activity, data security, card activation, and merchant blocking are all examples of costs that are incurred to detect and prevent fraudulent electronic debit transactions. Therefore, the Board has included the costs of these activities in setting the fraud-prevention adjustment amount to the extent the issuers reported these costs in response to the survey on 2009 costs. As in the interim final rule, the Board has determined to exclude from the adjustment amount any costs included in the interchange fee standards in § 253.3. Thus, the costs of transaction monitoring activities such as the use of neural networks and transactions scoring systems that assist in the authorization process by providing information to the issuer before the issuer decides to approve or decline the transaction were not considered.

Section 920(a)(5) allows the Board to permit an adjustment to make allowance for costs incurred by the issuer in preventing fraud in relation to electronic debit transactions. Accordingly, the Board did not include costs incurred to prevent fraud to a cardholder's transaction account through means other than fraudulent electronic debit transactions, or costs incurred to prevent fraud in connection with other payment methods such as credit cards. For example, name and address verification used in opening a checking account is an excluded activity because it involves preventing fraud with respect to the entire account relationship and is performed whether or not a debit card is issued as a means of making payments from the account. Similarly, the costs of activities employed solely to prevent fraudulent credit card transactions are not included. To the extent an issuer engages in an activity or activities to prevent both fraudulent credit card and debit card transactions (e.g., securing data across all of its card programs), issuers were instructed to allocate such joint costs in the issuer survey based on the relative proportion of the cost of the activity that was tied to debit card transactions, and only that proportion of costs was included in determining the fraud-prevention adjustment.

Additionally, fraud losses, including ATM losses, and the lost revenue due to customers' inability to use their debit cards while awaiting reissuance are not costs incurred to prevent fraudulent electronic debit transactions and are excluded. Similarly, costs of purchasing fraud-loss insurance or recovering losses also are excluded as these are not costs incurred to prevent fraudulent electronic debit transactions.

Fraud-prevention costs of exempt issuers. EFTA Section 920(a)(6)(A) provides an exemption from EFTA Section 920(a) for any issuer that, together with its affiliates, has assets of less than $10 billion. EFTA, however, does not provide the Board with specific authority to require networks to implement these exemptions in any particular way. The Board recognizes the concerns raised by small issuers that market forces could lead to a convergence of the interchange fee levels of exempt and nonexempt issuers and that small issuers could suffer disproportionately because they tend to have higher per-transaction fraud-prevention costs. Nonetheless, the Board's interchange fee standard, including the fraud-prevention adjustment, does not itself limit the

[22] Institutions that have, together with their affiliates, assets of less than $10 billion are exempt from the interchange fee standards. 12 CFR 235.5(a).

amount of interchange fees small issuers may receive or charge. Moreover, the Board recognizes that requesting that small issuers record and report their costs associated with authorizing, clearing, and settling electronic debit transactions and the costs associated with fraud prevention and data security would impose administrative burden on these entities. Therefore, the Board has determined not to include in the adjustment the fraud-prevention costs incurred by small issuers. As noted in the preamble to the Board's final rule implementing other provisions of EFTA Section 920, the Board is monitoring the effectiveness of the exemption for small issuers and notes that, in the fourth quarter of 2011, the first quarter during which the interchange fee standards went into effect, nearly all payment card networks offered small issuers a higher interchange fee than that set forth in the standards and that the average interchange fee for small issuers is about the same as it was for all issuers in 2009.[23]

Fraud-prevention costs incurred by other parties. EFTA Section 920(a)(5)(B)(ii) requires the Board to consider the fraud-prevention and data-security costs expended by each party involved in electronic debit transactions. The Board recognizes that all parties to electronic debit transactions, including merchants, incur fraud-prevention costs. For example, both merchants and issuers incur costs to comply with PCI–DSS and network rules related to fraud prevention. Moreover, certain merchants, such as Internet merchants, have developed customized approaches to prevent fraud and secure customer data in response to the particular fraud risks faced in their sales environments.

The Board has given consideration to, and taken into account, the fraud-prevention costs of other parties by setting the adjustment based on the costs of the median issuer (as opposed to the interchange fee standards in § 253.3, which were set at the 80th percentile issuer).[24] This lower amount is intended, in part, to reduce the adjustment as a way to recognize the fraud-prevention and data-security costs of merchants and parallels the *ad valorem* component of the base interchange fee standard (5 basis points multiplied by the transaction value), which was set at the median issuer's per-transaction fraud losses. Further, as discussed in connection with the Board's fraud-prevention standards in § 235.4(b), the Board also is requiring issuers to take into account whether, and to what extent, fraud-prevention technologies implemented by an issuer are likely to impose costs on other parties. Requiring an issuer to take into account the costs borne by other parties in these ways obviates the need to impose a burdensome survey on merchants and other parties about their fraud-prevention costs.

C. Adjustment Amount

1. Comments Received

The maximum permissible fraud-prevention adjustment amount in the interim final rule is 1 cent. In general, issuers, depository industry trade associations, and payment card networks supported increasing the adjustment amount and asserted that the adjustment amount in the interim final rule would discourage innovation and investment in fraud-prevention activities, particularly in technology requiring substantial upfront investment. Issuers also argued that the 1-cent adjustment amount would undermine the goal of protecting cardholder financial information. Another commenter stated that an insufficient fraud-prevention adjustment could lead to an increase in declined transactions at the point of sale as issuers become more conservative in transaction authorizations. Another issuer commenter believed that the fraud-prevention adjustment disproportionately shifts the burden on issuers to implement fraud-prevention measures without reasonable compensation.

Several issuers suggested setting the adjustment amount based on the costs of the issuer at the 80th percentile, consistent with the interchange fee standards in § 235.3. Issuer commenters stated that the Board provided no explanation for setting the adjustment at the median while the interchange fee standard was set at the 80th percentile of issuers' reported costs or for why the fraud-prevention activities of issuers with costs above the median were not viewed as cost-effective.

A few issuers suggested incorporating an *ad valorem* component because issuers often target their fraud-prevention investments at large-value transactions. One issuer suggested that an *ad valorem* component also could vary based on the type of merchant in order to compensate issuers for fraud-prevention costs associated with riskier merchants.

Other comments from issuers suggested other manners in which the fraud-prevention amount could vary. Specifically, one issuer suggested increasing the adjustment amount for those issuers with higher-than-average fraud losses because such issuers will both absorb more fraud losses and incur more costs to prevent and mitigate fraud. Another issuer suggested imposing a higher fraud-prevention adjustment on merchants that are not PCI–DSS compliant or to set the fraud-prevention adjustment amount as a percentage of interchange fee revenue.[25] One issuer group suggested varying the fraud-prevention adjustment based on the charge-back rate of the merchant involved in the transaction.

One technology company suggested that issuers receive an additional amount for adopting specific fraud-prevention technologies such as biometric facial recognition software or other authentication methods not yet prevalent in the industry.

In general, merchants and their associations urged the Board to adopt a lower adjustment amount. Some merchant groups opposed the use of the data collected from issuers to determine the amount of the adjustment, arguing that the survey was flawed. These commenters argued that the Board did not reveal results from the survey until it published the interim final rule, that only a small subset of covered issuers responded, and that there was no independent verification. One merchant commenter supported the adjustment amount in recognition of the fact that issuers ultimately are subject to complying with the Board's fraud-prevention standards, but opposed the Board increasing the adjustment amount higher than 1 cent. One merchant questioned whether a fraud-prevention adjustment was necessary given the amount an issuer could receive or charge under the base interchange fee standard.

2. Final Rule

The Board has considered the comments and has determined to retain the 1-cent fraud-prevention adjustment amount that is permitted in the interim final rule. As mentioned above, the Board initially set the adjustment amount at the fraud-prevention cost of the median issuer based on 2009 fraud-prevention costs reported by issuers in response to the Board's 2010 survey, minus those fraud-prevention costs that are already part of the interchange fee standards in § 253.3. The Board chose to

[23] 76 FR 43394, 43436 (Jul. 20, 2011). See *http://www.federalreserve.gov/paymentsystems/regii-average-interchange-fee.htm.*

[24] 76 FR 43394, 43433–34 (Jul. 20, 2011).

[25] This commenter suggested that the percentage be set at 19 percent, which the commenter estimated to be issuers' historic fraud-prevention costs as a percentage of historic interchange fee revenue.

set the adjustment based on the median cost to balance the fraud-prevention and data-security costs incurred by issuers and those incurred by merchants, some of which are incurred due to the fraud-prevention methods selected by issuers. This consideration and approach parallels the approach taken with respect to the *ad valorem* component of the base interchange fee standard. The *ad valorem* component, which accounts for fraud losses incurred by issuers, was set at the median issuer's fraud losses (i.e., 5 basis points multiplied by the transaction value). In setting the *ad valorem* component, the Board explicitly recognized that both issuers and merchants incur fraud losses.[26]

The Board has considered the comments suggesting an *ad valorem* component and has determined not to include such a component in the fraud-prevention adjustment amount. An *ad valorem* component is more appropriate for measuring fraud losses, for which there is a direct correlation between transaction value and the amount of the loss, than when measuring fraud-prevention costs, which may, but do not necessarily, vary with the value of a transaction. The Board notes that the 1-cent adjustment does not limit a payment card network's ability to vary the overall interchange fee rate based on the type of merchant, for any of the aforementioned reasons, so long as an issuer does not receive interchange fees, including the fraud-prevention adjustment, greater than permitted in Regulation II.

The Board has also determined not to permit issuers to receive or charge an adjustment above the 1-cent amount for adopting certain new authentication methods. As noted below in connection with § 235.4(b), the Board has taken a non-prescriptive approach to allow for flexibility in using a variety of methods to prevent fraudulent electronic debit transactions.

As previously noted, the Board is using the fraud-prevention cost data as reported by issuers for 2009 in determining the maximum fraud-prevention adjustment amount permitted in Regulation II. Since that time, the Board has surveyed issuers that are not exempt from the interchange fee standards for their data for calendar year 2011. At the time of this final rule, the Board is still processing and analyzing the 2011 data. The Board will take into account data from the 2011 survey and future surveys when considering any future revisions to the fraud-prevention adjustment.

[26] 76 FR 43394, 43434 (Jul. 20, 2011).

D. Application to All Transactions

1. Comments Received

The interim final rule permits an issuer to receive or charge the fraud-prevention amount for all types of electronic debit transactions. Several merchant commenters encouraged the Board to permit an adjustment only for PIN-based transactions, due to the lower fraud rates of PIN-based debit compared to signature-based debit. Other merchant commenters suggested the Board permit an adjustment only for authentication methods that have fraud rates demonstratively lower than those for PIN transactions. One individual suggested that the Board provide greater disincentives, such as a negative adjustment, for less secure technologies and asserted that doing so was consistent with the statutory directive to consider the extent to which the occurrence of fraud depended on the authentication method.

Issuers and networks supported applying the adjustment to all debit card transactions. These commenters argued that not all authentication methods are available for all transactions. One consequence of this, they argued, is that lower fraud rates and losses for PIN may be due to the fact that signature is the only method available for Internet transactions and that PIN fraud, unlike signature fraud, often manifests itself as ATM fraud, which the Board did not take into account. Some of these commenters also argued that limiting the adjustment to PIN transactions would create disincentives to invest in signature and other non-PIN based fraud prevention. Authentication technology providers also supported not limiting the adjustment to authentication methods that exist and are used widely today.

2. Final Rule

The Board has considered the comments and has determined that an eligible issuer may receive or charge a fraud-prevention adjustment for all electronic debit transactions irrespective of the authentication method used for the transaction. As recognized in the interim final rule, limiting the adjustment to only a subset of authentication methods, or only those available today, may not provide issuers with sufficient flexibility to develop other methods of authentication that may be more effective than today's alternatives and may not require a PIN. Limiting the transactions eligible for a fraud-prevention adjustment also may reduce the incentives for issuers to improve fraud-prevention techniques for authentication methods that, for a variety of reasons, experience higher fraud rates. Further, because issuers are less likely to receive a higher interchange fee for signature-based transactions than in the past, the Board believes that issuers' incentives to encourage cardholders to use their signature rather than their PIN to authenticate transactions at the point of sale will diminish.

Section 235.4(b)(1) Issuer Fraud-Prevention Standards

A. Proposed Rule and Interim Final Rule

The Board's 2010 proposed rule did not contain a specific proposal for a fraud-prevention adjustment to the interchange fee standards. Instead, as discussed above, the Board requested comment on two general approaches to an adjustment: a technology-specific approach, which would permit an issuer to recover costs for major innovations identified by the Board as likely to result in substantial reductions in fraud losses, and a non-prescriptive approach, which would involve more general standards for an issuer to satisfy without the prescription of specific technologies.[27] With respect to that initial proposal, commenters generally opposed the Board mandating specific technologies for many reasons, including that a technology-specific approach would not necessarily be more effective than an approach that involves a variety of technologies, practices, and methods and that a technology-specific approach could deter investment in new technologies.

Issuers, depository institution trade associations, and payment card networks preferred the non-prescriptive approach because that approach would maintain issuer flexibility to respond to existing and emerging fraud risks and to do so in a timely manner. Merchants supported an approach that provided incentives to issuers and networks to switch from the current methods and technologies to more effective (''paradigm shifting'') fraud-prevention technologies. One merchant group's suggestion, supported by many other merchant commenters, proposed an approach under which any technologies issuers wanted to offer to merchants must undergo an application and approval process managed by the Board before the issuer would be eligible to receive the fraud-prevention adjustment. This merchant group suggested that, as part of the application and approval process, an issuer must

[27] For a more detailed description of the two approaches proposed by the Board, see 75 FR 81722, 81742–43 (Dec. 28, 2010).

demonstrate that the technology reduces fraud to a level materially lower than that associated with PIN debit transactions.[28]

The Board adopted the non-prescriptive approach to fraud-prevention standards in the interim final rule. The Board determined that the dynamic nature of the debit card fraud environment necessitates standards that permit issuers to identify the best methods to detect, prevent, and mitigate fraud losses for the size and scope of their debit card programs and to respond to frequent changes in fraud patterns. In addition, specifying and limiting the set of technologies for which issuers recover their costs may weaken the long-term effectiveness of the specified technologies. The reasons for selecting the non-prescriptive approach for the interim final rule are set forth more fully in the **Federal Register** notice announcing the interim final rule.[29]

Section 235.4(b)(1) of the interim final rule requires an issuer, in order to be eligible to receive a fraud-prevention adjustment, to develop and implement policies and procedures reasonably designed to: (1) Identify and prevent fraudulent electronic debit transactions; (2) monitor the incidence of, reimbursements received for, and losses incurred from fraudulent electronic debit transactions; (3) respond appropriately to suspicious electronic debit transactions so as to limit the fraud losses that may occur and prevent the occurrence of future fraudulent electronic debit transactions; and (4) secure debit card and cardholder data. Procedures could include practices, activities, methods, or technologies that are used to implement and make effective an institution's fraud-prevention policies. The commentary to § 235.4(b) discusses the types of fraud that an issuer's policies and procedures should address, which includes the unauthorized use of a debit card (*see* interim final rule comment 4(b)–2). The commentary to the interim final rule also provides examples of practices that may be part of an issuer's policies and procedures that are reasonably designed to achieve each of the fraud-prevention goals in § 235.4(b)(1).[30] The commentary to the interim final rule, and changes thereto, are discussed below more fully in connection with the applicable fraud-prevention objective set forth in § 235.4(b).

B. Comments Received

Issuers and networks overwhelmingly supported the non-prescriptive framework and standards in § 235.4(b). Issuers and networks asserted that the non-prescriptive approach would provide incentives to prevent fraud and invest in new fraud-prevention technologies, while also providing flexibility for each issuer to determine its optimal fraud-prevention solutions (including non-technology based solutions) and enabling issuers, networks, and acquirers to compete based on fraud-prevention tools. Issuers and networks opposed a technology-specific approach, which they argued would lock the industry into particular technologies, give fraudsters advance notice of fraud-prevention methods, slow the implementation of new technology, and result in an inefficient allocation of resources by discouraging new investments in other technologies. Moreover, issuers and networks did not believe that the government was better positioned than industry participants to select the most effective and commercially feasible fraud-prevention technology.

Merchants opposed both specifying particular fraud-prevention technologies in the rule (although supported Board-involvement in approving eligible technologies) and the standards as set forth in the interim final rule. Many merchants opposed the standards in the interim final rule because they believed that the standards, as drafted, would permit issuers to qualify for an adjustment by adopting existing fraud-prevention technologies, which the merchant commenters believed to be ineffective at preventing fraud. In addition, one merchant believed that the standards were too vague and may inadvertently lead to issuers adopting policies and procedures that are inconsistent with providing economical means of reducing fraud. Merchants restated their support for the paradigm-shifting approach suggested in response to the proposed rule in which an issuer would be eligible for the fraud-prevention adjustment only if the issuer adopted a technology that reduced fraud to levels that are materially lower than the levels experienced with PIN debit, and only after the issuer documented the technology's effectiveness and cost-effectiveness to the Board.[31] The approach proposed by merchants also would require the Board to request public comment on the effectiveness and cost-effectiveness of fraud-prevention technologies and formally approve particular technologies prior to an issuer being able to receive a fraud-prevention adjustment for transactions that use the technology. One merchant commenter supported an alternative approach under which issuers, not networks, would offer technologies to merchants and merchants would determine which issuers' solutions to implement based on the solution's cost and effectiveness.

Issuers widely supported the Board's standards in the interim final rule and argued that they should be eligible for the adjustment without demonstrating actual reductions in fraud because fraud may be caused by factors outside of the issuer's control. By contrast, merchants and their trade groups believed the standards to be inconsistent with EFTA Section 920(a)(5)'s requirements. Specifically, merchants argued that the standards should require an issuer to demonstrate quantifiable reductions in the incidence of fraud prior to receiving a fraud-prevention adjustment. One merchant commenter argued that requiring issuers' policies and procedures to be ''reasonably designed'' to achieve the Board's objectives is not equivalent to requiring issuers to take ''effective'' steps to prevent fraud, which is the requirement in EFTA Section 920(a)(5).[32]

Merchant commenters, as well as a member of Congress, encouraged the Board to adopt metrics-based standards to ensure that issuers receive the fraud-prevention adjustment only if they reduce fraud losses or the occurrence of fraud to specified levels, for example, at or below the industry fraud levels for PIN debit transactions. This approach, the commenters argued, would ensure that the market has proper incentives to adopt effective fraud-prevention technology.

Merchants also argued that the Board's standards were inconsistent with EFTA Section 920(a)(5)'s requirement that issuers develop and implement cost-effective fraud-prevention technology. Merchants argued that the Board's standards failed to demonstrate the cost-effectiveness of fraud-prevention measures. One merchant group believed that the cost-

[28] *See* comment letter on the proposed rule from the Merchants Payments Coalition and comment letter on the interim final rule from the Merchants Payments Coalition.

[29] 76 FR 43394, 43478 (Jul. 20, 2011).

[30] *See* interim final rule comments 4(b)(1)(i) through 4(b)(1)(iv) in Appendix A to 12 CFR part 235.

[31] One commenter was indifferent between the two approaches provided Board does not prescribe how merchants must implement fraud-prevention technologies.

[32] One commenter was concerned that the rule does not appear to require that the issuer actually adhere to the policies and procedures prior to receiving an adjustment. The interim final rule requires that an issuer implement the policies and procedures in addition to developing the policies and procedures.

effective requirement could be satisfied only if the adjustment is based on issuer-specific fraud reduction and cost. By contrast, one issuer argued that whether or not a fraud-prevention activity is ''cost-effective'' may not be apparent at the outset, because new fraud-prevention activities must be monitored over time to assess cost-effectiveness. This issuer suggested that the Board continue gathering additional information about issuers' costs for new fraud-prevention activity.

Finally, merchants argued that the Board's standards do not require an issuer receiving the adjustment to demonstrate that it has made any investments in fraud-prevention activities that reduce fraud.

C. Non-Prescriptive Standards

The Board has considered the comments and has adopted fraud-prevention standards in the final rule that largely follow the non-prescriptive approach set forth in the interim final rule. The Board has revised § 235.4(b)(1) to provide that, in order to be eligible for a fraud-prevention adjustment to the amount of any interchange fee received or charged in accordance with § 235.3, an issuer must develop and implement policies and procedures reasonably designed to take effective steps to reduce the occurrence of, and costs to all parties from, fraudulent electronic debit transactions, including through the development and implementation of cost-effective fraud-prevention technologies. New § 235.4(b)(2) will continue to require an issuer's policies and procedures to address fraud-prevention objectives similar to those in the interim final rule (discussed further below), but the Board is expanding the scope of those policies and procedures to permit issuers to consider factors other than those explicitly listed, if appropriate.

After considering the comments received, the Board has determined that the final rule should not prescribe specific technologies that an issuer must implement in order to be eligible to receive an adjustment. The dynamic nature of the debit card fraud environment and the variation in issuer debit card portfolios, customer base, and transaction-processing arrangements requires standards that permit issuers to determine the best methods to detect and prevent fraudulent transactions, and mitigate fraud losses from those transactions, as well as to respond to the frequent changes in industry fraud types and methods, and available fraud-prevention methods. Standards that incorporate a technology-specific approach would not provide issuers with sufficient flexibility to design and modify policies and procedures that best meet a particular issuer's needs and that most effectively reduce fraud losses to all parties involved in the transactions.

Similarly, standards that restrict eligible fraud-prevention technologies to those that an issuer has demonstrated to be effective and that have been subject to a Board approval process would not provide sufficient flexibility to issuers. Moreover, because existing fraud-prevention technologies are implemented as part of broader fraud-prevention programs, requiring issuers to isolate and measure the effectiveness of a particular fraud-prevention technology would be impractical.

Prescribing one eligible technology or a limited set of eligible technologies also could inhibit investment in new, ''non-eligible'' technologies (i.e., those for which effectiveness has not yet been demonstrated because they are not implemented in the marketplace), which ultimately could become more effective than ''eligible'' technologies. Specifically prescribing eligible fraud-prevention technologies also would provide fraudsters with information on the fraud-prevention technologies prevalent in the industry, which could make those technologies less effective over time.

Moreover, even the most effective fraud-prevention technologies issuers could implement would not prevent all fraudulent electronic debit transactions. This fact underscores the need for a fraud-prevention program that also involves non-technology-based policies and procedures (such as notifying customers of potentially fraudulent transactions) that complement technology-based fraud-prevention solutions.

D. Fraudulent Electronic Debit Transactions

In its proposed rule, the Board did not include a definition of ''fraud'' or ''fraudulent electronic debit transaction,'' but suggested that fraud in the debit card context should be defined as ''the use of a debit card (or information associated with a debit card) by a person, other than the cardholder, to obtain goods, services, or cash without authority for such use.'' [33] The Board noted that this definition was derived from the EFTA's definition of ''unauthorized electronic fund transfer.'' [34] After considering the comments received on the proposed rule, the Board determined that fraud is broader than unauthorized use and that whether a transaction is fraudulent depends on the facts and circumstances.[35] Accordingly, the Board did not include a regulatory definition of ''fraudulent electronic debit transaction'' in the interim final rule. Instead, the Board provided three examples in the interim final rule's comment 4(b)–2 of the types of fraud that an issuer's policies and procedures should address: (1) A person uses a stolen debit card to make an unauthorized purchase; (2) a merchant uses cardholder information from a previous transaction to make a subsequent, unauthorized transaction; and (3) a hacker obtains card information and uses that information to make an unauthorized purchase. The Board requested comment on whether the rule should include a definition of ''fraud'' or ''fraudulent electronic debit transaction,'' and if so, what would be an appropriate definition.

Commenters were divided as to whether the Board should define ''fraud'' or ''fraudulent electronic debit transaction'' in the regulatory text. Some issuers opposed defining either term because fraud is constantly changing and defining the term in the regulatory text would provide issuers with less flexibility to adapt their fraud-prevention programs to changing fraud. Other issuers opposed including a definition arguing that what is fraud is a judicial concept that should not be defined in the regulatory text. In general, commenters that supported including a definition of ''fraud'' or ''fraudulent electronic debit transaction'' appeared to do so as a means to either limit or expand the types of fraud-prevention activities an issuer's policies and procedures should address.[36]

Commenters that supported including a definition of ''fraud'' or ''fraudulent electronic debit transaction'' in the regulatory text were divided as to how the Board should define any such term. One merchant commenter suggested that the definition be limited to the unauthorized use of the debit card in order to exclude transactions by fraudulent merchants and fraudulent

[33] *See* 75 FR 81722, 81740 (Dec. 28, 2010).

[34] 15 U.S.C. 1693a(11).

[35] In announcing the interim final rule the Board noted that fraud could include, for example, a situation where a cardholder authorizes a transaction, but either the merchant is fraudulent and does not deliver the expected goods or services or the cardholder fraudulently alleges that he or she never received the goods or services. *See* 76 FR 43478, 43485 (Jul. 20, 2011).

[36] One issuer suggested that any definition of ''fraud'' or ''fraudulent electronic debit transaction'' be silent on any authentication method that must be used so that issuers have flexibility in preventing fraud.

cardholders, such as those who legitimately own the card but are using it to commit fraud. One issuer suggested defining ''fraudulent electronic debit transaction'' as including both the unauthorized use of a debit card from which the cardholder receives no benefit and the use of a debit card by a cardholder, or person acting in concert with a cardholder, with fraudulent intent. Some issuers suggested that the definition include ATM fraud losses because often these losses are a result of security breaches at the point of sale. One depository institution trade group, while not commenting explicitly on the appropriateness of a regulatory definition, opposed the commentary's examples of fraudulent debit card transactions, because the commenter believed that by including the examples, the Board was suggesting that issuers were the appropriate party to prevent the fraud in each example, even though the merchant may be in the best position to prevent fraud in the examples provided.

The final rule does not include a regulatory definition of either ''fraud'' or ''fraudulent electronic debit transaction.'' The Board continues to believe that which transactions are considered fraudulent will be determined based on the facts and circumstances and may evolve over time. The Board also continues to believe that fraudulent electronic debit transactions should not be limited to the ''unauthorized'' use of a debit card, as that term is used elsewhere in the EFTA, because all types of fraud impose costs on system participants. Accordingly, an issuer's policies and procedures should be designed to reduce the occurrence of, and costs to all parties from, all types of fraud and not merely the unauthorized use of a debit card.

The Board, however, has made clarifying changes to interim final rule comment 4(b)–2, which is redesignated as comment 4(b)(1)–1 (hereinafter referred to as comment 4(b)(1)–1). In the interim final rule, the comment provided that the listed examples of fraud are types of fraud that could be ''effectively addressed by the issuer, as the entity with the direct relationship with the cardholder and that authorizes the transaction.'' The Board recognizes that in some instances the issuer may be able to use its direct relationship with the cardholder to prevent these types of fraud (*e.g.,* through comparing the unauthorized transaction to its cardholder's typical transaction pattern). Although an issuer may be unable to effectively address all of these types of fraud in all situations, an issuer should be able to develop and implement policies and procedures designed to detect and prevent fraudulent transactions of the types listed. For example, an issuer could develop and implement policies and procedures to deactivate a card upon notice that the card has been stolen. Therefore, the Board is removing from comment 4(b)(1)–1 the statement that the examples correspond to the types of fraud that an issuer can prevent. The Board also has revised that comment to clarify that the types of fraud an issuer's policies and procedures should address are not limited to those included in the examples. The Board also made other minor editorial changes to this comment.

E. Policies and Procedures Designed To Take Effective Steps

Section 920(a)(5) of the EFTA mandates that the Board's fraud-prevention standards require an issuer to take effective steps to reduce the occurrence of, and costs from, fraud in relation to electronic debit transactions, including through the development and implementation of cost-effective fraud-prevention technologies. In assessing whether an issuer is taking effective steps to reduce fraudulent electronic debit transactions, the Board does not believe that Section 920(a)(5) requires that the steps an issuer takes prevent all fraud. Moreover, the Board does not believe, as some merchant commenters argued, that an issuer be required to demonstrate that a particular fraud-prevention measure directly led to a reduction in fraudulent electronic debit transactions before the cost of that measure is included in the fraud-prevention adjustment. Isolating the effectiveness of a particular fraud-prevention measure is virtually impossible due to the numerous fraud-prevention methods and technologies implemented by an issuer and the fact that the effectiveness of a particular measure may not be evident until a year or more after implementation. In addition, an issuer's incidence of fraudulent electronic debit transactions may fluctuate for various reasons, including factors outside the issuer's control (e.g., a data breach at a large merchant processor).

EFTA Section 920(a)(5) requires that an issuer take effective steps to reduce fraudulent electronic debit transactions, without any reference to the size of the reduction. The language of EFTA Section 920(a)(5) does not compel the Board to impose a maximum permissible level of fraudulent electronic debit transactions for an issuer to be eligible to receive a fraud-prevention adjustment. In addition, selecting a benchmark fraud level would not necessarily ensure that issuers continue to take effective steps to reduce fraudulent transactions due to the variety of sales channels and evolving fraud-prevention technologies. An issuer may not have incentives to develop or invest in new and potentially more effective fraud-prevention technologies for sales channels that experience fraud levels below the selected benchmark level or if the issuer experiences fraud at a level below the selected benchmark. Moreover, deeming an issuer to be eligible for an adjustment if the issuer's fraud rate is below some industry rate would not necessarily satisfy the requirement that the Board's standards require an issuer to take effective steps to reduce the occurrence of, and costs to all parties from, fraudulent electronic debit transactions involving that issuer. For example, an issuer with a fraud rate significantly below the benchmark may be able to qualify for a fraud-prevention adjustment even if the steps that issuer is taking are no longer effective in *reducing* the occurrence of, and costs from, fraud in relation to electronic debit transactions involving that issuer.

In addition, requiring issuers to maintain fraud below a benchmark level, particularly one based on technology that may not be available widely for all point-of-sale channels, could have adverse consequences for consumers. Cardholders may not always be able to use lower-fraud fraud-prevention methods (such as PIN) in all point-of-sales channels.[37] Issuers may, for example, set more restrictive authorization rules for transactions in the sales channels for which the benchmarked cardholder-authentication technology is not available.

The final rule permits an issuer to receive the fraud-prevention adjustment if it develops and implements policies and procedures reasonably designed to take effective steps to reduce the occurrence of, and costs to all parties from, fraudulent electronic debit transactions and if those policies and procedures address the fraud-prevention aspects in revised § 235.4(b)(2). This approach recognizes that, at the outset, an issuer cannot predict with certainty that any particular policies and procedures will effectively prevent fraud in relation to electronic debit transactions. The Board believes that providing specific factors that issuers

[37] For example, while the Board understands that technology is developing to allow PIN debit transactions for Internet transactions, this technology is not widely used.

must address in their policies and procedures, but providing flexibility in how those policies and procedures may be implemented to address those factors, over time will allow for more effective fraud prevention. This approach permits issuers to adjust their practices based on new fraud-prevention technologies and practices, new patterns of fraud, changes to the size of their debit card programs, and changes in how their customers use debit cards. (*See* discussion below of § 235.4(b)(2) and commentary.) Under the final rule, an issuer must be able to demonstrate that its policies and procedures are reasonably designed to take effective steps to reduce fraudulent electronic debit transactions.

The Board has added new comment 4(b)(1)–2 to clarify that an issuer's policies and procedures must be designed to reduce fraud, where cost-effective, across all types of electronic debit transactions in which its cardholders engage.[38] An issuer may enable multiple types of card-authentication methods on its debit cards (e.g., a chip or a code embedded in the magnetic strip) as well as permit multiple cardholder-authentication methods (e.g., a signature or a PIN). Accordingly, the Board believes that an issuer should consider whether its fraud-prevention policies and procedures are effective for each method used to authenticate the card and the cardholder. In addition, the effectiveness of the card- and cardholder-authentication methods an issuer has enabled on its debit cards likely will vary based on the sales channel in which the debit card is used. For example, in a card-not-present environment (e.g., the Internet), a chip or a code embedded in the magnetic strip may not be used to authenticate the card. Therefore, new comment 4(b)–2 provides that an issuer should consider the effectiveness of its fraud-prevention policies and procedures for different sales channels for which the card is used (e.g., card-present and card-not-present).

The Board has not adopted the language in interim final rule comment 4(b)(1)(i)–2 requiring an issuer to consider practices to encourage its cardholders to use the materially more effective authentication method and to consider methods for reducing fraud for the less effective authentication method. Since October 1, 2011, when the Board's interchange fee standards became effective, the differential in interchange fee revenue across networks supporting different authentication methods largely has been eliminated for issuers that are subject to the interchange fee standards. Accordingly, issuers no longer have the incentive to steer cardholders to one type of authentication method over another. Issuers, however, will continue to be required to review the effectiveness of each of their authentication methods as part of the required review of their fraud-prevention policies and procedures.

Relatedly, the Board requested comment on whether the Board's standards should require an issuer to assess whether its customer rewards or similar programs provide inappropriate incentives to use an authentication method that is demonstrably less effective in preventing fraud. A few issuers opposed requiring issuers to assess customer rewards policies because doing so was outside the Board's authority and unnecessary. Specifically, these issuers believed that the interchange fee standards in § 235.3 likely would reduce the prevalence of reward programs. In addition, issuers argued that they consider a variety of factors when determining whether to offer rewards programs and expressed confusion as to what would constitute an ''inappropriate incentive.'' One merchant trade group supported prohibiting issuers from receiving a fraud-prevention adjustment if they provide incentives to use a high-fraud authentication method, and one consumer group supported a requirement on issuers to assess whether their rewards programs are encouraging the use of less secure fraud-prevention technologies.

For reasons similar to the determination not to adopt the language in interim final rule comment 4(b)(1)(i)–2, the Board has neither imposed a specific requirement that issuers assess whether their rewards programs provide incentives to cardholders to use higher-fraud authentication methods nor prohibited issuers from receiving a fraud-prevention adjustment due to their use of rewards and other incentives. Issuers offer rewards programs to cardholders for a variety of reasons, and, to the extent rewards programs were based on differentials in interchange fees across networks, § 235.3 effectively has largely eliminated a covered issuer's incentive to offer rewards for transactions over one network. Accordingly, the potential fraud-prevention benefit from explicitly requiring issuers to assess whether cardholder rewards or similar incentive programs provide an inappropriate incentive to use higher-fraud authentication methods is significantly outweighed by the added burden that would be imposed on issuers.

EFTA Section 920(a)(5) also provides that an issuer must take effective steps to reduce ''costs from'' fraudulent electronic debit transactions.[39] EFTA Section 920(a)(5)(A)(i)(II) is silent as to which parties' costs the Board's standards must ensure that an issuer take effective steps to reduce. EFTA Section 920(a)(5)(B)(ii), however, explicitly requires the Board to consider the costs of fraudulent transactions absorbed by each party involved in such transactions. As a result of various laws, regulations, and payment card network rules (discussed above) that allocate the costs of fraudulent electronic debit transactions among different parties to the fraudulent transactions, issuers, acquirers, and merchants typically all absorb losses from fraudulent electronic debit transactions.[40] The Board believes that an issuer should take effective steps to reduce costs from fraudulent transactions that are incurred by all parties to such transactions, and not merely steps that reduce the issuer's own fraud losses. Accordingly, the Board is providing in revised § 235.4(b) that an issuer must reasonably design its policies and procedures ''to take effective steps to reduce the occurrence of, *and costs to all parties from,* fraudulent electronic debit transactions'' (emphasis added).

New comment 4(b)–3 provides guidance on the reduction in the occurrence of, and costs to all parties from, fraudulent electronic debit transactions. A reduction in the occurrence of fraudulent electronic debit transactions can be measured by determining whether there is a reduction in the number of an issuer's electronic debit transactions that are fraudulent relative to the issuer's total electronic debit transactions. The Board believes that measuring a reduction in the occurrence of fraudulent electronic debit transactions in relation to an issuer's total transactions is more appropriate than measuring the reduction in terms of the absolute number of fraudulent transactions. Measuring only the change in the number of an issuer's fraudulent electronic debit transactions would not, for example, account for an increase in the number of electronic debit transactions initiated by an issuer's cardholders. In addition, an issuer must implement policies and procedures that

[38] Comment 4(b)–5, discussed below, describes the cost-effective aspect in more detail.

[39] EFTA Section 920(a)(5)(A)(i)(II).

[40] Most issuers indicated that they impose zero liability on their cardholders for fraudulent transactions, and most acquirers reported limited fraud losses, indicating that merchant acquirers pass through fraud losses to merchants.

are reasonably designed to reduce the value of its electronic debit transactions that are fraudulent relative to non-fraudulent transactions. New comment 4(b)–3 emphasizes that an issuer's policies and procedures should be reasonably designed to reduce the costs of fraudulent transactions to all parties, irrespective of whether the issuer ultimately bears the fraud losses as a result of regulations or network rules.

New comment 4(b)–4 recognizes that the number and value of an issuer's fraudulent electronic debit transactions relative to non-fraudulent transactions may vary materially from year to year and that, in certain circumstances, an issuer's policies and procedures may be effective notwithstanding a relative increase in transactions that are fraudulent in a particular year. For example, a data breach at a merchant processor that exposes the data of a substantial portion of an issuer's cards and cardholders could result in the issuer having a relatively higher number of fraudulent transactions in one year than in the preceding year, even if the issuer had implemented the same or improved fraud-prevention policies and procedures. This could be a circumstance in which an issuer's policies and procedures may be effective notwithstanding a relative increase in transactions that are fraudulent.

Continuing increases in an issuer's fraudulent transactions relative to non-fraudulent transactions, however, would warrant further scrutiny as to the effectiveness of an issuer's policies and procedures. For example, instead of at a merchant processor, the data breach might occur at the issuer or the issuer's processor. As a result, an issuer may experience higher fraud rates in one year and, in the following years, the share of that issuer's transactions that are fraudulent may continue to increase. Further scrutiny would be warranted to determine, for example, whether the issuer's policies and procedures are designed to take effective steps to prevent fraudulent transactions as a direct result of the initial data breach and to prevent subsequent data breaches from occurring.

F. Development and Implementation of Cost-Effective Technologies

EFTA Section 920(a)(5) states that the Board's fraud-prevention standards must require an issuer to take effective steps to reduce the occurrence of, and costs from, fraudulent electronic debit transactions, including through the development and implementation of cost-effective fraud-prevention technologies. Some merchant commenters argued that the Board's standards in the interim final rule failed to require issuers to demonstrate the cost-effectiveness, particularly vis-à-vis merchants, of their fraud-prevention measures prior to receiving the fraud-prevention adjustment. One commenter believed that the Board's standards could not satisfy the cost-effective requirement in the statute unless the adjustment amount is based on issuer-specific fraud reduction and cost. By contrast, one issuer asserted that measuring the cost-effectiveness of a particular activity at the outset may not be possible because new fraud-prevention activities must be monitored over time to assess cost-effectiveness.[41]

EFTA Section 920 does not define the term ''cost-effective.'' Dictionaries, in general, define ''cost-effective'' as the quality of being economical in terms of the benefits, including goods or services received for the money spent.[42] Interpreting ''cost-effective'' as requiring a precise measurement of effectiveness of a particular technology vis-à-vis its cost to an issuer as well as merchants would necessitate, in addition to an issuer calculating its own implementation costs, the extremely burdensome and complex analyses of calculating the costs to merchants and others of implementing and using the fraud-prevention technology and isolating the amount of fraudulent electronic debit transactions prevented by a particular technology, rather than by other means. Moreover, the complexity of this analysis would be increased further if an issuer were required to demonstrate cost-effectiveness prior to implementing a new technology or else take the risk of investing in a new technology only to find afterwards that it could not demonstrate the technology's cost-effectiveness and, thus, not be eligible to receive a fraud-prevention adjustment.

An alternate interpretation of the cost-effectiveness requirement is that, instead of requiring an issuer to affirmatively demonstrate the cost-effectiveness of a particular fraud-prevention technology, the requirement acts as a limitation on the fraud-prevention methods the Board's standards may require issuers to develop and implement. Thus, the Board could not adopt standards that would require an issuer to develop and implement new fraud-prevention technologies the costs of which far exceed any expected benefit from adopting the technologies.[43]

EFTA Section 920(a)(5)(A)(ii) is silent as to which party's perspective is relevant for the cost-effectiveness of a particular technology. EFTA Section 920(a)(5)(B) requires the Board to consider, among other factors, the fraud-prevention and data-security costs expended by each party involved in electronic debit transactions. There are numerous fraud-prevention methods an issuer may use or adopt. Some of these fraud-prevention methods, such as the use of neural networks, do not impose costs on other parties to the transaction. Other fraud-prevention methods, such as card-authentication technology built into the card, impose costs on merchants that must ensure their point-of-sale terminals are compatible with the card-authentication technology embedded in the card. Therefore, the Board believes that it is appropriate, when assessing the cost-effectiveness of a particular fraud-prevention technology, for an issuer to consider whether and to what extent the fraud-prevention method it implements will impose costs on other parties. The Board recognizes, however, that an issuer may not have complete information about the costs that other parties may incur. Nonetheless, an issuer should consider the approximate magnitude of the costs imposed on other parties, even though an issuer may not have complete information about the extent of the costs imposed on other parties.

New comment 4(b)–5 clarifies that a consideration of the cost-effectiveness of a fraud-prevention technology involves considering the expected cost of a technology relative to the expected effectiveness of that technology in reducing fraud. This approach recognizes that an issuer likely will be unable to measure the issuer's actual cost and the actual effectiveness of a fraud-prevention technology, particularly if the technology is new, but will be able to form a reasonable expectation as to both the cost of and effectiveness of a given fraud-prevention technology. In calculating the expected cost of a particular fraud-prevention method, an issuer should consider both the expected initial implementation

[41] This commenter also suggested that the Board continue to gather information about the costs of new fraud-prevention activities.

[42] Merriam-Webster Dictionary, *available at http://www.merriam-webster.com;* American Heritage Dictionary, *available at http://ahdictionary.com.*

[43] As discussed above in connection with § 235.4(a), the Board has set the adjustment amount equal to the cost of the median issuer to give consideration to, and take into account, the fraud-prevention costs of other parties (as opposed to the interchange fee standards in § 253.3, which were set at the 80th percentile issuer) and to place additional cost discipline on issuers to ensure that their fraud-prevention activities are cost effective.

costs and the expected ongoing costs of using the fraud-prevention method.

New comment 4(b)–6 provides that an issuer need not develop fraud-prevention technologies itself to satisfy the standards in § 235.4(b), but may implement appropriate fraud-prevention technologies developed by a third party. Fraud-prevention technologies vary in their technological complexity, including the technological expertise and investment required for their development. Issuers—typically entities engaged in banking activities—often do not have the technological expertise to develop, or have opted not to specialize in the development of, complex fraud-prevention technologies. Instead, issuers often purchase fraud-prevention solutions (e.g., neural networks) developed by third parties. Although not developed by the issuer, these technologies nonetheless may be cost effective. Moreover, many issuers would not find it to be economical to devote resources to in-house research and development of all the fraud-prevention technologies they implement.

Section 235.4(b)(2) Required Elements of an Issuer's Policies and Procedures

Section 235.4(b)(1) of the interim final rule requires an issuer, in order to be eligible to charge or receive a fraud-prevention adjustment, to develop and implement policies and procedures reasonably designed to (i) identify and prevent fraudulent electronic debit transactions, (ii) monitor the incidence of, reimbursements received for, and losses incurred from fraudulent electronic debit transactions, (iii) respond appropriately to suspicious electronic debit transactions so as to limit the fraud losses that may occur and prevent the occurrence of future fraudulent electronic debit transactions, and (iv) secure debit card and cardholder data. The interim final rule's commentary to § 235.4(b)(1) provides additional detail on the types of policies and procedures considered reasonably designed to achieve the fraud-prevention objectives in § 235.4(b)(1)(i) through (iv).

In addition to the comments received on the overall framework of the fraud-prevention standards (discussed above), the Board received more targeted comments on the policies and procedures designed to achieve the specified fraud-prevention objectives. These comments are discussed below in connection with each fraud-prevention objective.

In the final rule, revised § 235.4(b)(1) more generally requires an issuer to develop and implement policies and procedures that are ''reasonably designed to take effective steps to reduce the occurrence of, and costs to all parties from, fraudulent electronic debit transactions.'' Section 235.4(b)(2), in turn, sets forth elements of a fraud-prevention program that an issuer's policies and procedures must address. The Board believes, for the reasons set forth below, that developing and implementing policies and procedures that address these specific elements are steps that are effective in reducing the occurrence of, and costs from, fraudulent electronic debit transactions. These required aspects of a fraud-prevention program are similar to the fraud-prevention objectives in interim final rule § 235.4(b)(1).

Several commenters emphasized that one of the benefits of a non-prescriptive approach to fraud-prevention is that such an approach provides an issuer with greater flexibility to tailor its fraud-prevention program to the size and scope of its debit card program and to ever-changing fraud-types and patterns. The Board agrees that a flexible approach to fraud prevention is preferable to a one-size-fits-all approach. Accordingly, the Board has determined to add new comment 4(b)(2)–1 that provides that an issuer may tailor its fraud-prevention policies and procedures to address its particular debit card program. Relevant considerations when tailoring its policies and procedures include the size of its debit card program, the types of transactions in which its cardholders commonly engage (*e.g.,* card-present or card-not-present), fraud types and methods experience by the issuer, and the cost of implementing new fraud-prevention methods in light of the expected reduction in fraud from implementing such new methods. Likewise, the Board recognizes that an issuer may determine that fraud-prevention factors other than those listed in §§ 235.4(b)(2)(i)–(iv) are appropriate for its policies and procedures to address. Accordingly, the Board has determined to revise § 235.4(b)(2) to provide that an issuer's policies and procedures also must address ''such other factors as the issuer considers appropriate.''

A. Section 235.4(b)(2)(i) Identify and Prevent Fraudulent Transactions

In interim final rule § 235.4(b)(1), the first fraud-prevention objective of an issuer's policies and procedures is identifying and preventing fraudulent electronic debit transactions. The commentary to interim final rule § 235.4(b)(1) provides that an issuer's policies and procedures should include activities to prevent, detect, and mitigate fraud even if the costs of the activities are not recoverable as part of the fraud-prevention adjustment. The commentary also provides examples of policies and procedures designed to identify and prevent fraudulent electronic debit transactions. For example, an issuer could use an automated mechanism to assess the risk that a particular electronic debit transaction is fraudulent during the authorization process. An issuer also could implement practices that support cardholder-reporting of lost or stolen cards or suspected incidences of fraud. The commentary also provides that an issuer could specify the use of particular technologies or methods to better authenticate the cardholder at the point of sale. Finally, the commentary provides that an issuer's policies and procedures should include an assessment of the effectiveness of the different authentication methods that the issuer enables its cardholders to use and that, if the issuer determines one method is more effective than the other, the issuer should consider practices to encourage its cardholders to use the more effective authentication method, as well as consider adopting new methods of authentication that are materially more effective than those currently available to its cardholders.

One commenter suggested that Board state in the commentary that an issuer should review the effectiveness of its authorization rules that govern automated fraud-detection mechanisms. Another commenter suggested that the Board add language encouraging issuers to specify the use of particular technologies or methods in order to authenticate the payment device and cardholder at the time of the transaction because there may be two authentication processes—one that identifies the card and one that identifies the cardholder.[44]

Section 235.4(b)(2)(i) of the final rule requires that an issuer's policies and procedures address ''methods to identify and prevent fraudulent electronic debit transactions.'' The Board has revised comment 4(b)(2)(i)–1.i (interim final rule comment 4(b)(1)(i)–2.iii) to include the concept of card authentication at the time of the transaction, as suggested by the commenter, in recognition of the fact

[44] The other comments the Board received on this provision and accompanying commentary focused primarily on the issuer's review of the authentication methods it makes available to its cardholders. As discussed above, the Board has moved the commentary paragraphs applicable to an issuer's review of its policies and procedures to the commentary to § 235.4(b)(1). Accordingly, these comments are discussed in connection with § 235.4(b)(1) and accompanying commentary.

that fraud may be in the form of unauthorized use of a legitimate debit card or unauthorized use of a counterfeit debit card. The Board believes that an issuer should implement policies and procedures designed to prevent both types of fraud. The Board also has revised comment 4(b)(2)(i)–1.i to clarify that an issuer may specify the use of particular technologies or methods only to the extent that doing so does not inhibit the ability of a merchant to direct the routing of electronic debit transactions for processing over any payment card network that may process such transactions (*see* § 235.7 and commentary thereto). In other words, an issuer may not specify the use of a particular technology if that technology is enabled for only one network, or two affiliated networks, on the debit card, but may specify the use of a particular technology that is available for at least two unaffiliated networks enabled on the card. This addition prevents potential conflicts with Regulation II's other requirements.

In addition, the Board has adopted comments 4(b)(2)(i)–1.ii and 4(b)(2)(i)–1.iii as set forth in interim final rule comments 4(b)(1)(i)–1.i and 4(b)(1)(i)–1.ii, respectively, and has made minor clarifying changes to comment 4(b)(2)(i)–1.iii. The Board has not revised the commentary to provide that an issuer review the effectiveness of any rules for its automated fraud-detection mechanisms, as suggested by a commenter. This review is encompassed in new § 235.4(b)(3), which requires an issuer to review its policies and procedures, and their implementation, in light of their effectiveness.

B. Section 235.4(b)(2)(ii) Monitoring the Volume and Value of its Fraudulent Transactions

Section 235.4(b)(1)(ii) of the interim final rule requires issuers to monitor the incidence of, reimbursements received for, and losses incurred from fraudulent electronic debit transactions. Under that section, an issuer's policies and procedures must be designed to monitor the types, number, and value of electronic debit transactions, as well as its and its cardholders' losses from fraudulent electronic debit transactions, fraud-related chargebacks to acquirers, and reimbursements from other parties (such as from fines assessed to merchants for noncompliance with Payment Card Industry Data Security Standards). (*See* interim final rule comment 4(b)(1)(ii)–1). The Board imposed this monitoring requirement on issuers as necessary in order for an issuer to inform its policies and procedures. The Board received one comment related to the monitoring requirement. This commenter expressed support for the standard's flexibility in requiring issuers to monitor the incidence of fraud. The final rule retains the requirements that the policies and procedures developed and implemented by an issuer address monitoring the volume and value of its fraudulent electronic debit transactions, as well as the types of fraudulent electronic debit transactions it experiences.

The Board has made minor, clarifying revisions to comment 4(b)(2)(ii)–1 (interim final rule comment 4(b)(1)(ii)–1). Specifically, the Board has revised this comment to clarify that the monitoring requirement is imposed on an issuer with respect to the number and value of the issuer's fraudulent electronic debit transactions, as opposed to the number and value of fraudulent transactions experienced across the industry. The Board also has revised comment 4(b)(2)(ii)–1 in recognition of the fact that an issuer may not be able to monitor the value of losses imposed on its cardholders by merchants. Rather, issuers must monitor the losses from fraudulent transactions that it passes on to its cardholders. Finally, the Board has revised comment 4(b)(2)(ii)–1 to emphasize that an issuer should establish procedures to retain fraud-related information necessary to perform its reviews under § 235.4(b)(3) and to retain and report information as required under § 235.8.

C. Section 235.4(b)(2)(iii) Appropriate Response to Suspicious Transactions

Section 235.4(b)(1)(iii) of the interim final rule requires an issuer to develop and implement policies and procedures reasonably designed to ''respond appropriately to suspicious electronic debit transactions so as to limit the fraud losses that may occur and prevent the occurrence of future fraudulent electronic debit transactions.'' Interim final rule comment 4(b)(1)(iii)–1 explains that whether an issuer's response to fraudulent or suspicious electronic debit transactions is appropriate depends on the circumstances and the risk of future fraudulent electronic debit transactions. The comment also provides examples of appropriate responses. Interim final rule comment 4(b)(1)(iii)–2 clarifies that an issuer's policies and procedures do not provide an appropriate response if they merely shift the loss to another party, other than the party that committed the fraud.

The Board received comments on this provision from two issuers. One issuer supported the Board's position that an ''appropriate'' response depends on the circumstances and suggested that the Board clarify that these ''circumstances'' include an issuer's debit card program, specific fraud experiences, and data analysis. Another issuer expressed concern that comment 4(b)(1)(iii)–2 could be construed in a manner that adversely affects the incentives and risks imposed by network rules (*e.g.,* the chargeback rules).

The final rule retains the requirement that an issuer's policies and procedures address appropriate responses to suspicious electronic debit transactions. The Board, however, has revised § 235.4(b)(2)(iii) (interim final rule § 235.4(b)(1)(iii)) to clarify that an issuer's response should be designed to limit potential costs to all parties from fraudulent electronic debit transactions. The Board has made changes to comment 4(b)(2)(iii)–1 (interim final rule comment § 235.4(b)(1)(iii)–1) to clarify that the issuer's assessment of the risk of future fraudulent electronic debit transactions is one example of the facts and circumstances that determines the appropriateness of the response.

Interim final rule comment 4(b)(1)(iii)–2 provides that merely shifting the loss to another party is not an appropriate response to a suspicious electronic debit transaction. One commenter expressed concern that this statement could adversely affect network rules that allocate fraud losses. Interim final rule comment 4(b)(1)(iii)–2 was intended to emphasize that an issuer's response should mitigate the issuer's fraud losses in addition to the fraud losses of other parties. The Board, however, does not believe that interim final rule comment 4(b)(1)(iii)–2 is necessary to provide guidance on the appropriateness of an issuer's response to suspicious transactions in light of the clarifications to revised § 235.4(b)(2)(iii). Accordingly, the Board has removed the comment.

D. Section 235.4(b)(1)(iv) Data Security

Section 235.4(b)(1)(iv) of the interim final rule requires an issuer to develop and implement policies and procedures reasonably designed to secure debit card and cardholder data. Interim final rule comment 4(b)(1)(iv) further explains that debit card and cardholder data should be secured during transaction processing, during storage by the issuer (or its service provider), and when carried on media by employees or agents of the issuer. That comment recognizes that this standard may be incorporated into an issuer's information security program required

by Section 501(b) of the Gramm-Leach-Bliley Act.[45]

One commenter suggested that the Board revise its commentary to require an issuer to secure debit card and cardholder data only when such data are transmitted by the issuer and not apply the requirement to situations where the issuer is receiving data, because the issuer cannot control the transmission of data from third parties. As set forth in the interim final rule, comment 4(b)(1)(iv) states that an issuer should secure debit card and cardholder data when the issuer or its service provider is the party transmitting or storing the data. Although the issuer may not have direct control over every piece of information transmitted by its service provider, the issuer should select a service provider that sufficiently secures data the service provider transmits that relates to the issuer's debit cards and cardholders' data. An issuer is not required to develop and implement policies and procedures that address the security of debit card and cardholder information when received and processed by third parties that are not acting as the issuer's agent. Accordingly, the Board has determined not to make any changes to § 235.4(b)(2)(iv) (interim final rule § 235.4(b)(1)(iv)) and the accompanying commentary as set forth in the interim final rule.

Section 235.4(b)(3) Review of Policies and Procedures

Section 235.4(b)(2) of the interim final rule requires an issuer to review its fraud-prevention policies and procedures at least annually and to update those policies and procedures as necessary to address changes in the prevalence and nature of fraudulent electronic debit transactions and available methods of detecting, preventing, and mitigating fraud. Interim final rule comment 4(b)(2) explains that an issuer may need to review and update its policies and procedures more frequently than once a year; an additional review could be necessary, for example, if there is a significant change in fraud types, fraud patterns, or fraud-prevention methods or technologies before an issuer's next-scheduled annual review. In addition, comment 4(b)(1)(i)–2 to the interim final rule provides that an issuer should assess of the effectiveness of the different authentication methods that the issuer enables its cardholders to use and that, if the issuer determines one method is more effective than the other, the issuer should consider practices to encourage its cardholders to use the more effective authentication method, as well as consider adopting new methods of authentication that are materially more effective than those currently available to its cardholders.

The Board received comments on both of these provisions related to an issuer's review of its policies and procedures. One issuer explicitly supported requiring issuers to review their fraud-prevention policies and procedures on an annual basis. This issuer also suggested that, rather than requiring additional reviews based on the undefined ''significant change'' in fraud or fraud patterns, an issuer should determine whether changes in fraud types, fraud patterns, or fraud-prevention technologies or methodologies have an impact on the issuer's policies and procedures that would require additional review of and update to its policies and procedures.

One issuer suggested that the Board revise the language in comment 4(b)(1)(i)–2 to the interim final rule to recognize that the effectiveness of an authentication method in preventing fraud is only one of many factors issuers consider in promoting a particular authentication method, and that other factors an issuer may consider include acceptance and cost. In addition, one issuer argued that whether a particular authentication method is ''materially more effective'' should be determined by each issuer and that issuers should not be required to adopt any specific authentication method.[46] By contrast, merchant commenters supported standards that would require issuers to promote the technology with the lowest rate of fraud, as opposed to requiring that an issuer ''consider'' promoting the lower-fraud technology.

Section 235.4(b)(3) of the final rule retains the requirement that an issuer review, at least annually, its fraud-prevention policies and procedures, and their implementation, and update them as necessary. The Board, however, has revised the review requirement to provide more guidance on the required elements of the reviews and when reviews and updates to an issuer's policies and procedures, and their implementation, are necessary.

Section 235.4(b)(3)'s review requirement is intended to ensure that an issuer continues to take effective steps to reduce fraudulent electronic debit transactions, including through the development and implementation of cost-effective technologies. Accordingly, the Board has revised the provision relating to an issuer's review to require an issuer to review its policies and procedures, and their implementation, in light of their effectiveness (§ 235.4(b)(3)(i)) and cost-effectiveness (§ 235.4(b)(3)(ii)). New comment 4(b)(3)–1.i provides that an issuer's assessment should consider whether its policies and procedures are reasonably designed to reduce the number and value of its fraudulent electronic debit transactions relative to its non-fraudulent electronic debit transactions and are cost effective.[47]

The Board has made additional revisions to the interim final rule's requirement that an issuer update its policies and procedures, as necessary, ''to address changes in the prevalence and nature of fraudulent electronic debit transactions and available methods of detecting, preventing, and mitigating fraud.'' One reason for adopting the non-prescriptive approach to fraud-prevention standards is to ensure that an issuer has sufficient flexibility to adjust its fraud-prevention methods in light of the rapidly changing nature of fraud and the availability of fraud-prevention methods. For this flexibility to be most beneficial and effective in preventing fraudulent electronic debit transactions, an issuer must update its policies and procedures in light of the changing nature of fraud and availability of fraud-prevention methods. The Board, however, believes that the most important source of information to an issuer about types and methods of fraud is the issuer's own experience and information. The Board also believes the additional burden on issuers of continuous open-ended monitoring of the types of fraud and methods used to commit fraud throughout the industry may exceed the benefit of this information to the issuers. To the extent an issuer experiences changes in fraud types and methods, it should identify them through its monitoring and update its policies and procedures, as necessary, in light of the subsequent identification from its own experience.

In addition to its own experience, an issuer may learn of changes in the types of fraud, methods used to commit fraud, and available methods for detecting and preventing fraud from other sources. Specifically, payment card networks may provide their issuers with information regarding common types

[45] *See* 15 U.S.C. 6805.

[46] Some issuers recommended that the Board provide more detail regarding the meaning of the phrase ''materially more effective.'' In light of the revisions to § 235.4(b)(1) and accompanying commentary, it is unnecessary to address those comments.

[47] Comments 4(b)(1)–2 through 4(b)(1)–6 provide additional guidance on effectiveness and cost-effectiveness.

and methods of fraudulent transactions based on the networks' monitoring of transactions or may provide an issuer with information on new fraud-prevention methods that are available for an issuer to enable on its cards. In addition, law enforcement agencies or fraud-monitoring groups in which the issuer participates may inform the issuer of changes in the nature of fraud and available methods of preventing fraud. Finally, an issuer may learn of changes in the nature of fraud and fraud-prevention methods from supervisory guidance. The Board believes that, at a minimum, an issuer should be expected to consider any changes in the types of fraud, methods used to commit fraud, and available methods to prevent fraudulent electronic debit transactions that it learns about from these sources. The Board, therefore, has revised § 235.4(b)(3) to specify the sources of information regarding the changing nature of fraud and available methods of preventing fraud that an issuer must consider in determining whether updates to its policies and procedures are necessary.

New comment 4(b)(3)–2 provides that an issuer may need to review its policies and procedures more frequently than on an annual basis based on information obtained from monitoring its fraudulent electronic debit transactions, changes in the types or methods of fraud, and available fraud-prevention methods. The revised comment eliminates the ''significant change'' trigger in the interim final rule and requires an issuer to determine whether more frequent review is necessary. The Board considered the comments received on this provision and determined that objectively defining ''significant change'' could inhibit an issuer from more frequently reviewing its policies and procedures. Each issuer will have unique fraud-prevention programs, and a change in debit card fraud, industry fraud types and methods, and available fraud-prevention methods may be ''significant'' for one issuer, but not another issuer. Therefore, the Board believes that an issuer will be in the best position to determine whether changes in its debit card fraud, industry trends in fraud types and methods, and available fraud-prevention methods necessitate a more-frequent-than-annual review of its fraud-prevention programs. An issuer's determination as to the necessity of more frequent reviews and updates is subject to supervisory review under § 235.9.

The Board has added new comment 4(b)(3)–3 to provide guidance on the interaction between an issuer's required fraud-prevention program reviews and updates and an issuer's eligibility to receive the fraud-prevention adjustment under § 235.4. The required review of an issuer's fraud-prevention policies and procedures, and their implementation, is intended to ensure that an issuer's policies and procedures continue to be reasonably designed to take effective steps to reduce the occurrence of, and costs to all parties from, fraudulent electronic debit transactions. The review requirements also ensure that an issuer is assessing its fraud-prevention policies and procedures against changing fraud trends and available fraud-prevention methods. The Board anticipates that updates to an issuer's fraud-prevention policies and procedures may be necessary, although the Board does not expect substantial updates to be necessary often.

An issuer could be deterred from making necessary updates to its policies and procedures if an issuer becomes ineligible to receive the fraud-prevention adjustment after merely determining that any updates to its fraud-prevention program are necessary. In fact, one of the effective steps that an issuer can take to prevent fraudulent electronic debit transactions, and reduce the losses from such transactions, is to revise its fraud-prevention policies and procedures to make them more effective. Therefore, the Board has added new comment 4(b)(3)–3 to provide that an issuer does not become ineligible to receive the fraud-prevention adjustment merely because it determines updates are necessary or appropriate. In order to remain eligible to receive or charge a fraud–prevention adjustment under § 235.4, however, an issuer should develop and implement such updates as soon as reasonably practicable in light of the circumstances. For example, an issuer may determine that it should enable new card-authentication methods, and such new card-authentication methods require the reissuance of cards. Such an issuer should issue the new cards as soon as reasonably practicable in light of the process for ordering new cards and distributing them to cardholders. This process could take longer than, for example, improving algorithms on a neural network program it uses.

Section 235.4(c) Notification

Section 235.4(c) of the interim final rule provides that, in order to be eligible to receive or charge a fraud-prevention adjustment, an issuer that satisfies the standards set forth in § 235.4(b) must certify its compliance to its payment card networks on an annual basis. The interim final rule does not establish a process for this certification and, instead, leaves it up to the payment card networks to develop their own processes for identifying issuers eligible for the adjustment. Interim final rule comment 4(c)–1.

The Board received several comments on the certification provision. Merchants and their trade groups generally opposed the certification provision because they believed that the issuers and networks would be the ultimate judges of whether an issuer's policies and procedures satisfy the Board's standards. One commenter expressed concern that placing the compliance determination with the network would lead each network to favor its own fraud-prevention technology. Commenters that opposed placing the compliance determination with issuers and networks suggested that, alternatively, issuers should be required to certify their compliance with the fraud-prevention standards to their regulator in order to ensure that issuers are receiving adjustments only when the issuer complies with the Board's standards. One commenter supported a network-certification requirement but only if such a requirement was limited to identifying which issuers have self-certified as complying with the Board's standards.

The Board also received comments on whether the Board should establish a uniform certification process, assuming the Board required some certification. Some issuers opposed establishing a uniform certification process in support of allowing industry participants to develop the process. These issuers argued that industry-established processes would enable more consistency with the network-established processes for identifying issuers that are exempt and not exempt from the interchange fee standard. One commenter thought a network-established process was appropriate because networks currently are able to ensure compliance with the network's fraud-prevention standards. By contrast, other commenters representing issuers supported the Board establishing a consistent certification process across networks to ensure that all issuers are treated fairly, provided that the process is sufficiently flexible to support operational and system differences across networks. Other commenters recommended that the Board establish a uniform certification process that would allow consumers and merchants to have access to compliance filings.

The final rule requires an issuer to inform its payment card networks, on an annual basis, of its compliance with the rule's fraud-prevention standards in

§ 235.4(b) before the issuer may receive or charge a fraud-prevention adjustment. The Board has, however, revised § 235.4(c) to refer to this requirement as a ''notification'' requirement instead of a ''certification'' requirement, as in the interim final rule. Based on the comments received, the term ''certification'' connoted a more official and final determination by the issuer and payment card networks of an issuer's compliance than the Board intended. Compliance with the fraud-prevention standards in § 235.4(b), like compliance with all other provisions of Regulation II, is subject to administrative enforcement in accordance with § 235.9. Accordingly, the Federal agency with responsibility for enforcing an issuer's compliance with Regulation II is the entity that ultimately determines an issuer's compliance with the Board's fraud-prevention standards. The Board believes that referring to the requirement as a ''notification'' more accurately conveys that the purpose of this requirement is to place an affirmative requirement on an issuer to inform networks of what the issuer has determined to be its compliance with the fraud-prevention standards.

The Board also did not establish a uniform notification process in its final rule. In issuing the final rule implementing the other provisions of EFTA Section 920, the Board determined not to establish a uniform certification process for issuers that were exempt from the interchange fee standards or that issued debit cards that were exempt from the interchange fee standards.[48] The Board continues to believe that payment card networks should have the flexibility to develop their own processes for identifying issuers that are eligible to receive a fraud-prevention adjustment.[49] The Board believes it is unnecessary to impose additional processes by rule that serve the same function as those already developed by payment card networks. The final rule, however, continues to specify that an issuer must notify its payment card networks of its compliance on an annual basis.

Section 235.4(d) Change in Status

The interim final rule does not explicitly address steps an issuer must take if it is found to be non-compliant with the Board's fraud-prevention standards by the Federal agency with responsibility for enforcing compliance with Regulation II. One network encouraged the Board to provide for a cure period in the event the Federal agency with responsibility to enforce an issuer's compliance under § 235.9 determined that a particular issuer was no longer eligible to receive a fraud-prevention adjustment. This network suggested that the Board allow such an issuer 90 to 180 days to come into compliance after a finding of a deficiency. This network also supported providing networks 30 days advance notice prior to the date on which an issuer may no longer receive a fraud-prevention adjustment in order to allow the network to reprogram its systems.

The Board has added new § 235.4(d) to the final rule to address a change in the issuer's compliance status. EFTA Section 920(a)(5) provides that the Board may allow for a fraud-prevention adjustment to the permissible interchange fee only if an issuer complies with the Board's fraud-prevention standards. As recognized in new comment 4(b)(3)–3, in the course of reviewing its fraud-prevention policies and procedures, an issuer may determine that updates are necessary. Likewise, the agency with responsibility for enforcing an issuer's compliance with Regulation II under § 235.9 also may identify updates that are necessary for an issuer to continue to be eligible to receive or charge a fraud-prevention adjustment. Merely determining that updates to its policies and procedures are necessary does not render an issuer ineligible to receive or charge a fraud-prevention adjustment; the Board anticipates that issuers may need to update their policies and procedures regularly to ensure their continued effectiveness and cost-effectiveness.

The Board believes that if an issuer is in substantial non-compliance with the Board's fraud-prevention policies and procedures, the issuer should not be eligible to receive a fraud-prevention adjustment. Under the non-prescriptive approach adopted by the Board, there are likely to be varying degrees of deficiencies in an issuer's fraud-prevention policies and procedures. Whether the deficiencies constitute substantial non-compliance will depend on the facts and circumstances, including the severity of the deficiencies. For example, an issuer's policies and procedures may fail to address appropriate responses to suspicious transactions as required by § 235.4(b)(2)(iii). Another issuer's policies and procedures may address appropriate responses to suspicious transactions, but the manner in which the response is made may be less effective in light of recent changes to fraud types experienced by the issuer. Failure to address an entire category of fraud-prevention activity could be one circumstance in which an issuer is substantially non-compliant with the Board's fraud-prevention standards.

New § 235.4(d) provides that an issuer is not eligible to receive or charge a fraud-prevention adjustment if the issuer is substantially noncompliant with the Board's fraud-prevention standards in § 235.4(b). A finding of substantial noncompliance would be made by the issuer or the Federal agency with responsibility for enforcing an issuer's compliance with Regulation II under § 235.9. New § 235.4(d) also provides that an issuer found to be substantially noncompliant with the Board's standards must notify its payment card networks that it is no longer eligible to receive or charge a fraud-prevention adjustment no later than 10 days after determining or receiving notification from the appropriate agency under § 235.9 that the issuer is substantially noncompliant. In addition, the issuer must stop receiving and charging the fraud-prevention adjustment no later than 30 days after notifying its payment card networks. This is the amount of time that a network-commenter suggested as the minimum amount of time necessary for a network to reprogram its interchange fee schedules. The Board does not believe it is necessary to incorporate a cure period in the final rule because the need to regularly update an issuer's policies and procedures does not make the issuer ineligible to receive the fraud-prevention adjustment, assuming the updates are made on a timely basis. Moreover, the Board does not believe that issuers in substantial noncompliance with the Board's standards should be entitled to receive the fraud-prevention adjustment during a cure period.

In addition, the final rule does not specify the steps an issuer must take to become eligible to receive the fraud-prevention adjustment after it has come into compliance. A determination of substantial non-compliance will be made by the appropriate agency under § 235.9. The Board believes that it is appropriate for that agency to determine the steps an issuer must take to satisfy the agency that the issuer has remedied deficiencies in its fraud-prevention program.

[48] 76 FR 43394, 43437–38 (Jul. 20, 2011).

[49] This flexibility is similar to that which payment card networks have in establishing processes to determine the status of issuers that do not appear on the Board's list of exempt institutions with consolidated assets below $10 billion, issuers of debit cards issued pursuant to government-administered payment programs, and issuers of certain reloadable, general-use prepaid cards.

VI. EFTA 904(a) Economic Analysis

A. Statutory Requirement

Section 904(a)(2) of the EFTA requires the Board to prepare an economic analysis of the impact of the regulation that considers the costs and benefits to financial institutions, consumers, and other users of electronic fund transfers. The analysis must address the extent to which additional paperwork would be required, the effect upon competition in the provision of electronic fund transfer services among large and small financial institutions, and the availability of such services to different classes of consumers, particularly low income consumers.[50]

B. Cost/Benefit Analysis

The Section-by-Section Analysis above, as well as the Final Regulatory Flexibility Analysis and Paperwork Reduction Act analysis below, contain a more detailed discussion of the costs and benefits of various aspects of the proposal. This discussion is incorporated by reference in this section.

As permitted by Section 920(a)(5) of the EFTA, this final rule allows an issuer that is subject to the interchange fee standards to receive or charge an amount of no more than 1 cent per transaction in addition to its interchange transaction fee if the issuer develops and implements policies and procedures that are reasonably designed to take effective steps to reduce the occurrence of, and costs to all parties from, fraudulent electronic debit transactions.[51] The final rules sets forth fraud-prevention aspects that an issuer's policies and procedures must address and requires an issuer to review its policies and procedures at least annually, and update them as necessary in light of their effectiveness, cost-effectiveness, and changes in the types of fraud, methods used to commit fraud, and available fraud-prevention methods. An issuer must notify its payment card networks annually that it complies with the Board's fraud-prevention standards and must also notify its payment card networks that it is no longer eligible to receive or charge a fraud-prevention adjustment no later than 10 days of determining or receiving notification from the appropriate agency under § 235.9 that the issuer is substantially non-compliant with the Board's fraud-prevention standards. The issuer must stop receiving or charging the fraud-prevention adjustment no later than 30 days after notifying its networks.

1. Additional Paperwork

The collection of information required by this final rule is found in § 235.4 of Regulation II (12 CFR part 235). The new paperwork requirements of this final rule are discussed below in the Paperwork Reduction Act section, which contains a more detailed estimate for burden hours for being eligible to receive or charge the fraud-prevention adjustment. This final rule does not impose additional paperwork requirements related to the reporting to the Board required under § 235.8; issuers that do not qualify for the small issuer exemption (''covered issuers'') would be required to provide cost data to the Board independent of whether they qualify for the fraud-prevention adjustment. Covered issuers also would be required under § 235.8 to retain records that demonstrate compliance with the requirements of Regulation II for not less than five years after the end of the calendar year in which the electronic debit transaction occurred. If an issuer receives actual notice that it is subject to an investigation by an enforcement agency, the issuer must retain the records until final disposition of the matter. For smaller institutions that are not required to submit cost information to the Board under Regulation II, the regulation does not impose any reporting requirements.

2. Competition in the Provision of Services Among Financial Institutions

As required by EFTA Section 920(a)(6), Regulation II exempts small issuers (i.e., those issuers that, together with affiliates, have consolidated assets of less than $10 billion) from the interchange fee standards, as well as the provisions relating to the fraud-prevention standards and adjustment. Regulation II, however, does not mandate that payment card networks adopt a two-tier interchange fee structure in which exempt issuers receive higher interchange fees. Since the interchange fee provisions of Regulation II (including the 1-cent fraud-prevention adjustment) became effective on October 1, 2011, most payment card networks have offered a two-tier interchange fee structure in which exempt issuers receive higher average interchange fees than those received by non-exempt issuers.[52] The 1-cent adjustment in the final rule, which is already permitted under the interim final rule, is not likely to affect the continuation of a two-tier interchange fee structure.[53]

Some covered issuers may find that the additional cost of complying with the fraud-prevention standards are greater than the additional revenue generated from receiving the adjustment and so choose to not qualify for the adjustment. To the extent payment card networks provide the adjustment, covered issuers that qualify for the adjustment will likely experience an increase in their interchange revenue compared to covered issuers that do not qualify for the adjustment. In such a situation, covered issuers that do not qualify for the adjustment may need to adjust fees and account terms in response to the lower interchange revenue, whereas covered issuers that qualify may not. Under this scenario, consumers may shift their purchases of some financial services from covered issuers that do not qualify for the adjustment to exempt issuers or covered issuers that qualify for the adjustment in response to changes in fees and account terms at covered issuers that do not qualify for the adjustment. However, covered issuers that do not qualify for the adjustment and that have diversified product lines may look to retain customers by promoting alternative products not covered by the interchange fee standards, such as credit cards.

The competitive effects of any changes in fees or account terms across covered and exempt issuers due to the adjustment will depend on the degree of substitution among exempt issuers, covered issuers that qualify for the adjustment, and covered issuers that do not qualify for the adjustment. If the degree of substitutability of debit card and account services between covered issuers that qualify for the adjustment and covered issuers that do not qualify is large, then substantial shifts in the customer market share of each group of issuer may occur in response to less favorable changes in fees and account terms by issuers which do not qualify for the adjustment. Conversely, if

[50] This analysis considers the competition between ''covered issuers'' (*i.e.,* those that, together with affiliates, have assets of $10 billion or more) and ''exempt issuers'' (*i.e.,* those that, together with affiliates, have assets of less than $10 billion).

[51] The interchange fee standards provide that an issuer may not receive or charge an interchange transaction fee in excess of the sum of a 21-cent base component and 5 basis points of the transaction's value. Certain issuers and products are exempt from the interchange fee restrictions, including small issuers that, together with their affiliates, have less than $10 billion in assets; certain cards accessing government-administered payment programs; and certain reloadable general-use prepaid cards that are not marketed or labeled as a gift certificate or gift card. Payment card networks may, but are not required to, differentiate between interchange fees received by covered issuers and products versus exempt issuers and products.

[52] See *http://www.federalreserve.gov/paymentsystems/regii-average-interchange-fee.htm.*

[53] See 76 FR 43394, 43463–64 for an analysis of the provision of two-tier interchange fee structure on the competition in the provision of services among financial institutions.

substitution between covered issuers that qualify for the adjustment and covered issuers that do not is low, then any changes in fees and account terms may generate small shifts in customer market shares across covered issuers.

As the previous analysis suggests, the effect on competition among covered and exempt financial institutions will depend on a number of factors, including the extent to which payment card networks retain two-tier fee structures, the differentials in interchange fees across tiers in such structures, the product and service lines offered by covered and exempt financial institutions, and the substitutability of products and services across covered and exempt financial institutions. As noted above, most debit card networks have implemented two-tier fee structures. There is, however, no requirement that the networks continue to do so, and the level of interchange fees that will prevail in the long term is not known and will depend on market dynamics. Prior economic research suggests that competition between large and small depository institutions is weaker than competition within either group of institutions, likely because these institutions serve different customer bases.[54] For example, large institutions have tended to attract customers who desire expansive branch and ATM networks and a wide variety of financial instruments. By contrast, smaller institutions often market themselves as offering more individualized, relationship-based service and customer support to consumers and small businesses. This research suggests that substitution effects in response to changes in fees or account terms are stronger between depository institutions of similar sizes than across depository institutions of different sizes. Therefore, there may be greater substitution away from covered issuers that do not qualify for the adjustment to covered issuers that do qualify for the adjustment because most covered issuers are large, but less substitution away from covered issuers that do not qualify to exempt issuers (which are mostly small).

C. Availability of Services to Different Classes of Consumers

The ultimate effect of the final rule on consumers will depend on the behavior of various participants in the debit card market. Specifically, the effect of the rule on any individual consumer will depend on a variety of factors, including the consumer's current payment behavior (e.g., cash user or debit card user), changes in the consumer's payment behavior, the competitiveness of the merchants from which the consumer makes purchases, changes in merchant payment method acceptance, and changes in the behavior of banks.

For low-income consumers, to the extent that fees and other account terms become more attractive as a result of the issuer receiving the adjustment, some low-income consumers may be more willing or more able to obtain debit cards and related deposit accounts. Similarly, more attractive fees and account terms may cause certain low-income consumers who previously did not hold debit cards and deposit accounts to use those products. At the same time, however, low-income consumers who currently use cash for purchases may face higher prices at the point of sale if retailers that they frequent set higher prices to reflect higher costs of debit card transactions because of the adjustment. Therefore, the net effect on low-income consumers will depend on various factors, including each consumer's payment and purchase behavior, as well as market responses to the rule.

D. Conclusion

EFTA Section 904(a)(3) provides that ''to the extent practicable, the Board shall demonstrate that the consumer protections of the proposed regulations outweigh the compliance costs imposed upon consumers and financial institutions.'' Based on the analysis above and in the Section-by-Section Analysis, the Board cannot, at this time, determine whether the benefits to consumers exceed the possible costs to financial institutions. The overall effects of the final rule on financial institutions and on consumers are dependent on a variety of factors, and the Board cannot predict the market response to the final rule.

VII. Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis (RFA) was included in the interim final rule in accordance with Section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA). The Board incorporated by reference the final RFA analysis published with the other provisions of the Board's Regulation II. The final analysis applicable to the other provisions of Regulation II applied to the regulation as a whole, including the fraud-prevention adjustment adopted in the interim final rule.

The RFA requires an agency to prepare a final regulatory flexibility analysis (FRFA) unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The Board believes it is possible, but unlikely, that the fraud-prevention provisions in Regulation II will have a direct, significant economic impact on a substantial number of small entities.[55] Nonetheless, the Board has prepared the following FRFA pursuant to the RFA.

1. *Statement of the need for, and objectives of, the final rule.* EFTA Section 920 requires the Board to establish standards for assessing whether an interchange transaction fee received or charged by an issuer is reasonable and proportional to the cost incurred by the issuer with respect to the transaction. EFTA Section 920 authorizes the Board to allow for an adjustment to the amount of an interchange transaction fee received or charged by an issuer if (1) such adjustment is reasonably necessary to make an allowance for costs incurred by the issuer in preventing fraud in relation to electronic debit transactions involving that issuer, and (2) the issuer complies with fraud-prevention standards established by the Board. The final rule is intended to provide issuers with additional incentives to engage in activities that prevent fraud in relation to electronic debit transactions, and require issuers wishing to receive the adjustment to develop and implement fraud-prevention policies and procedures.

2. *Summary of significant issues raised by public comments in response to the Board's IRFA, the Board's assessment of such issues, and a statement of any changes made as a result of such comments.* The Board did not receive any comments explicitly about the final RFA included in the interim final rule. Commenters,

[54] *See, e.g.,* Robert Adams, Kenneth Brevoort, and Elizabeth Kiser, ''Who Competes with Whom? The Case of Depository Institutions,'' *Journal of Industrial Economics,* March 2007, v. 55, iss. 1, pp. 141–67; Andrew M. Cohen and Michael J Mazzeo, ''Market Structure and Competition among Retail Depository Institutions,'' *Review of Economics and Statistics,* February 2007, v. 89, iss. 1, pp. 60–74; and Timothy H. Hannan and Robin A. Prager, ''The Profitability of Small Single-Market Banks in an Era of Multi-market Banking,'' *Journal of Banking and Finance,* February 2009, v. 33, iss. 2, pp. 263–71.

[55] In addition, the final rule could have an indirect impact on small merchants due to the increased interchange fee small merchants may pay as a result of some covered issuers receiving or charging the 1-cent fraud-prevention adjustment. The size of this indirect impact, however, is difficult to predict and will depend on the number of debit card transactions performed by small merchants that are subject to the interchange fee standards, the pricing structures that acquirers offer to small merchants, and the fraud-prevention methods adopted by issuers.

however, discussed the proposed rule's impact on small entities, particularly small issuers. EFTA Section 920(a)(6)(A) and § 235.5(a) exempt from the interchange fee restrictions any issuer that, together with its affiliates, has assets of less than $10 billion. Consequently, like Regulation II's other provisions governing interchange fees, the provisions related to the fraud-prevention adjustment to the interchange fee restrictions do not directly affect small issuers. Commenters, however, were concerned that the small issuer exemption would not be effective in practice if payment card networks do not implement two-tier fee structures.

As mentioned above and in the preamble to the Board's final rule implementing the other provisions of EFTA Section 920, the Board is monitoring the effectiveness of the exemption for small issuers. The Board also publishes annual lists of institutions above and below the small issuer exemption asset threshold in order to reduce the administrative burden associated with identifying small issuers that qualify for the exemption. Based on information reported to the Board by payment card networks, the average interchange fee received by exempt issuers in the fourth quarter of 2011, following the implementation of the interchange fee standard, was about the same as the amount they received in 2009.

3. *Description and estimate of small entities affected by the final rule.* This final rule applies directly to financial institutions that, together with affiliates, have assets of $10 billion or more. A financial institution generally is considered small if it has assets of $175 million or less.[56] Therefore, this final rule does not directly affect small entities.

4. *Projected reporting, recordkeeping, and other compliance requirements.* The Board's final rule does not apply to small entities and, therefore, in general, does not impose compliance requirements on small entities.[57]

5. *Steps taken to minimize the economic impact on small entities; significant alternatives.* In its proposed rule, the Board requested comment on any approaches, other than the proposed alternatives, that would reduce the burden on all entities, including small entities. As noted above, the Board will publish lists of institutions above and below the small issuer exemption asset threshold to facilitate the implementation of two-tier interchange fee structures (including the fraud-prevention adjustment) by payment card networks. In addition, the Board plans to publish annually information regarding the average interchange fees received by exempt issuers and covered issuers in each payment card network; this information may assist exempt issuers in determining the networks in which they wish to participate.

VIII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501—3521; 5 CFR Part 1320 Appendix A.1), the Board has reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OMB control number will be assigned.

On July 20, 2011, notice of the interim final rule was published in the **Federal Register** (76 FR 43478). The Board invited comment on (1) whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility; (2) the accuracy of the Board's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. The comment period for the interim final rule expired on September 30, 2011. No comments were received specifically addressing the paperwork burden estimates. One commenter, however, stated that it was difficult to determine whether the Board's estimate of 40 hours to review an issuer's policies and procedures was adequate in light of the fact that the compliance burden could increase in the future should the standards become more specific. The Board is restating its burden estimates from the interim final rule to reflect updates to the respondent count and to include burden estimates for the disclosure requirement under § 235.4(d), change in status.

The final rule contains requirements subject to the PRA. The collection of information required by this final rule is found in § 235.4 of Regulation II (12 CFR part 235). Under the final rule, if an issuer meets standards set forth by the Board, it may receive or charge an adjustment of no more than 1 cent per transaction to any interchange transaction fee it receives or charges in accordance with § 235.3.

To be eligible to receive the fraud-prevention adjustment under § 235.4(a)(1), an issuer must develop and implement policies and procedures reasonably designed to take effective steps to reduce the occurrence of, and costs to all parties from, fraudulent electronic debit transactions, including through the development and implementation of cost-effective fraud-prevention technology. An issuer's policies and procedures must address (1) methods to identify and prevent fraudulent electronic debit transactions; (2) monitoring of the volume and value of its fraudulent electronic debit transactions; (3) appropriate responses to suspicious electronic debit transactions in a manner designed to limit the costs to all parties from and prevent the occurrence of future fraudulent electronic debit transactions; (4) methods to secure debit card and cardholder data; and (5) such other factors as the issuer considers appropriate.

An issuer must review its fraud-prevention policies and procedures, and their implementation, at least annually, and update them as necessary in light of (i) their effectiveness in reducing the occurrence of, and cost to all parties from, fraudulent electronic debit transactions involving the issuer; (ii) their cost-effectiveness; and (iii) changes in the types of fraud, methods used to commit fraud, and available methods of detecting and preventing fraudulent electronic debit transactions that the issuer identifies from (A) its own experience or information; (B) information provided to the issuer by its payment card networks, law enforcement agencies, and fraud-monitoring groups in which the issuer participates; and (C) applicable supervisory guidance. Finally, an issuer must notify the payment card networks in which the issuer participates, on an annual basis, of its compliance with the Board's standards, as well as of its substantial noncompliance, as determined by the issuer or Federal agency with responsibility for enforcing the issuer's compliance with Regulation II. The final rule will be effective on October 1, 2012.

[56] U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

[57] There may be some small financial institutions that have very large affiliates such that the institution does not qualify for the small issuer exemption.

The final rule will apply to issuers that, together with their affiliates, have consolidated assets of $10 billion or more. The Board estimates that there are as many as 564 chartered issuers required to comply with the recordkeeping and reporting provisions under § 235.4.[58]

The Board estimates that the 564 issuers will take, on average, 160 hours (one month) to develop and implement policies and train appropriate staff to comply with the recordkeeping provisions under § 235.4. This one-time annual PRA burden is estimated to be 90,240 hours. On a continuing basis, the Board estimates issuers will take, on average, 40 hours (one business week) annually to review its fraud prevention policies and procedures, updating them as necessary, and estimates the annual PRA burden to be 22,560 hours. The Board estimates 564 issuers will take, on average, 30 minutes to comply with the disclosure provision under § 235.4(c) (annual notification), and estimates the annual reporting burden to be 282 hours. Lastly, the Board estimates 564 issuers will take, on average, 30 minutes to comply with the disclosure requirement under § 235.4(d) (change in status), and estimates the annual reporting burden to be 283 hours. The total annual PRA burden for this information collection is estimated to be 113,364 hours.

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551 Paperwork Reduction Project (Docket # R–1404), Washington, DC 20503.

IX. Use of "Plain Language"

Section 722 of the Gramm-Leach-Bliley Act of 1999 (12 U.S.C. 4809) requires the Board to use "plain language" in all final rules published after January 1, 2000. The Board has sought to present this final rule in a simple and straight forward manner. The Board received no comments on whether the interim final rule was clearly stated and effectively organized, or on how the Board might make the text of the rule easier to understand.

[58] For purposes of the PRA, the Board is estimating the burden for entities currently regulated by the Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and National Credit Union Administration (collectively, the "Federal financial regulatory agencies"). Such entities may include, among others, State member banks, national banks, insured nonmember banks, savings associations, and Federally-chartered credit unions.

List of Subjects in 12 CFR Part 235

Banks, banking, Debit card routing, Electronic debit transactions, and Interchange transaction fees.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Title 12, Chapter II of the Code of Federal Regulations as follows:

PART 235—DEBIT CARD INTERCHANGE FEES AND ROUTING

■ 1. The authority citation for part 235 continues to read as follows:

Authority: 15 U.S.C. 1693o–2.

■ 2. Revise § 235.4 to read as follows:

§ 235.4 Fraud-prevention adjustment.

(a) *In general.* Subject to paragraph (b) of this section, an issuer may receive or charge an amount of no more than 1 cent per transaction in addition to any interchange transaction fee it receives or charges in accordance with § 235.3.

(b) *Issuer standards.* (1) To be eligible to receive or charge the fraud-prevention adjustment in paragraph (a) of this section, an issuer must develop and implement policies and procedures reasonably designed to take effective steps to reduce the occurrence of, and costs to all parties from, fraudulent electronic debit transactions, including through the development and implementation of cost-effective fraud-prevention technology.

(2) An issuer's policies and procedures must address—

(i) Methods to identify and prevent fraudulent electronic debit transactions;

(ii) Monitoring of the volume and value of its fraudulent electronic debit transactions;

(iii) Appropriate responses to suspicious electronic debit transactions in a manner designed to limit the costs to all parties from and prevent the occurrence of future fraudulent electronic debit transactions;

(iv) Methods to secure debit card and cardholder data; and

(v) Such other factors as the issuer considers appropriate.

(3) An issuer must review, at least annually, its fraud-prevention policies and procedures, and their implementation and update them as necessary in light of—

(i) Their effectiveness in reducing the occurrence of, and cost to all parties from, fraudulent electronic debit transactions involving the issuer;

(ii) Their cost-effectiveness; and

(iii) Changes in the types of fraud, methods used to commit fraud, and available methods for detecting and preventing fraudulent electronic debit transactions that the issuer identifies from—

(A) Its own experience or information;

(B) Information provided to the issuer by its payment card networks, law enforcement agencies, and fraud-monitoring groups in which the issuer participates; and

(C) Applicable supervisory guidance.

(c) *Notification.* To be eligible to receive or charge a fraud-prevention adjustment, an issuer must annually notify its payment card networks that it complies with the standards in paragraph (b) of this section.

(d) *Change in Status.* An issuer is not eligible to receive or charge a fraud-prevention adjustment if the issuer is substantially non-compliant with the standards set forth in paragraph (b) of this section, as determined by the issuer or the appropriate agency under § 235.9. Such an issuer must notify its payment card networks that it is no longer eligible to receive or charge a fraud-prevention adjustment no later than 10 days after determining or receiving notification from the appropriate agency under § 235.9 that the issuer is substantially non-compliant with the standards set forth in paragraph (b) of this section. The issuer must stop receiving and charging the fraud-prevention adjustment no later than 30 days after notifying its payment card networks.

■ 3. In Appendix A to part 235, revise Section 235.4 to read as follows:

Appendix A to Part 235—Official Board Commentary on Regulation II

* * * * *

Section 235.4 Fraud-prevention adjustment

4(a) *[Reserved]*

4(b)(1) *Issuer standards*

1. An issuer's policies and procedures should address fraud related to debit card use by unauthorized persons. Examples of use by unauthorized persons include, but are not limited to, the following:

i. A thief steals a cardholder's wallet and uses the debit card to purchase goods, without the authority of the cardholder.

ii. A cardholder makes a purchase at a merchant. Subsequently, the merchant's employee uses information from the debit card to initiate a subsequent transaction, without the authority of the cardholder.

iii. A hacker steals cardholder account information from the issuer or a merchant processor and uses the stolen information to make unauthorized card-not-present purchases or to create a counterfeit card to make unauthorized card-present purchases.

2. An issuer's policies and procedures must be designed to reduce fraud, where cost effective, across all types of electronic debit transactions in which its cardholders engage.

Therefore, an issuer should consider whether its policies and procedures are effective for each method used to authenticate the card (*e.g.,* a chip or a code embedded in the magnetic stripe) and the cardholder (*e.g.,* a signature or a PIN), and for different sales channels (e.g., card-present and card-not-present).

3. An issuer's policies and procedures must be designed to take effective steps to reduce both the occurrence of and costs to all parties from fraudulent electronic debit transactions. An issuer should take steps reasonably designed to reduce the number and value of its fraudulent electronic debit transactions relative to its non-fraudulent electronic debit transactions. These steps should reduce the costs from fraudulent transactions to all parties, not merely the issuer. For example, an issuer should take steps to reduce the number and value of its fraudulent electronic debit transactions relative to its non-fraudulent transactions whether or not it bears the fraud losses as a result of regulations or network rules.

4. For any given issuer, the number and value of fraudulent electronic debit transactions relative to non-fraudulent transactions may vary materially from year to year. Therefore, in certain circumstances, an issuer's policies and procedures may be effective notwithstanding a relative increase in the transactions that are fraudulent in a particular year. However, continuing increases in the share of fraudulent transactions would warrant further scrutiny.

5. In determining which fraud-prevention technologies to implement or retain, an issuer must consider the cost-effectiveness of the technology, that is, the expected cost of the technology relative to its expected effectiveness in controlling fraud. In evaluating the cost of a particular technology, an issuer should consider whether and to what extent other parties will incur costs to implement the technology, even though an issuer may not have complete information about the costs that may be incurred by other parties, such as the cost of new merchant terminals. In evaluating the costs, an issuer should consider both initial implementation costs and ongoing costs of using the fraud-prevention method.

6. An issuer need not develop fraud-prevention technologies itself to satisfy the standards in § 235.4(b). An issuer may implement fraud-prevention technologies that have been developed by a third party that the issuer has determined are appropriate under its own policies and procedures.

Paragraph 4(b)(2) *Elements of fraud-prevention policies and procedures.*

1. *In general.* An issuer may tailor its policies and procedures to address its particular debit card program, including the size of the program, the types of transactions in which its cardholders commonly engage, fraud types and methods experienced by the issuer, and the cost of implementing new fraud-prevention methods in light of the expected fraud reduction.

Paragraph 4(b)(2)(i). *Methods to identify and prevent fraudulent debit card transactions.*

1. *In general.* Examples of policies and procedures reasonably designed to identify and prevent fraudulent electronic debit transactions include the following:

i. Practices to help determine whether a card is authentic and whether the user is authorized to use the card at the time of a transaction. For example, an issuer may specify the use of particular authentication technologies or methods, such as dynamic data, to better authenticate a card and cardholder at the time of the transaction, to the extent doing so does not inhibit the ability of a merchant to direct the routing of electronic debit transactions for processing over any payment card network that may process such transactions. (*See* § 235.7 and commentary thereto.)

ii. An automated mechanism to assess the risk that a particular electronic debit transaction is fraudulent during the authorization process (*i.e.,* before the issuer approves or declines an authorization request). For example, an issuer may use neural networks to identify transactions that present increased risk of fraud. As a result of this analysis, the issuer may decide to decline to authorize these transactions. An issuer may not be able to determine whether a given transaction in isolation is fraudulent at the time of authorization, and therefore may have implemented policies and procedures that monitor sets of transactions initiated with a cardholder's debit card. For example, an issuer could compare a set of transactions initiated with the card to a customer's typical transactions in order to determine whether a transaction is likely to be fraudulent. Similarly, an issuer could compare a set of transactions initiated with a debit card and common fraud patterns in order to determine whether a transaction or future transaction is likely to be fraudulent.

iii. Practices to support reporting of lost and stolen cards or suspected incidences of fraud by cardholders or other parties to a transaction. As an example, an issuer may promote customer awareness by providing text alerts of transactions in order to detect fraudulent transactions in a timely manner. An issuer may also report debit cards suspected of being fraudulent to their networks for inclusion in a database of potentially compromised cards.

Paragraph 4(b)(2)(ii). *Monitoring of the issuer's volume and value of fraudulent electronic debit transactions.*

1. Tracking its fraudulent electronic debit transactions over time enables an issuer to assess whether its policies and procedures are effective. Accordingly, an issuer must include policies and procedures designed to monitor trends in the number and value of its fraudulent electronic debit transactions. An effective monitoring program would include tracking issuer losses from fraudulent electronic debit transactions, fraud-related chargebacks to acquirers, losses passed on to cardholders, and any other reimbursements from other parties. Other reimbursements could include payments made to issuers as a result of fines assessed to merchants for noncompliance with Payment Card Industry (PCI) Data Security Standards or other industry standards. An issuer should also establish procedures to track fraud-related information necessary to perform its reviews under § 235.4(b)(3) and to retain and report information as required under § 235.8.

Paragraph 4(b)(2)(iii). *Appropriate responses to suspicious electronic debit transactions.*

1. An issuer may identify transactions that it suspects to be fraudulent after it has authorized or settled the transaction. For example, a cardholder may inform the issuer that the cardholder did not initiate a transaction or transactions, or the issuer may learn of a fraudulent transaction or possibly compromised debit cards from the network, the acquirer, or other parties. An issuer must implement policies and procedures designed to provide an appropriate response once an issuer has identified suspicious transactions to reduce the occurrence of future fraudulent electronic debit transactions and the costs associated with such transactions. The appropriate response may differ depending on the facts and circumstances, including the issuer's assessment of the risk of future fraudulent electronic debit transactions. For example, in some circumstances, it may be sufficient for an issuer to monitor more closely the account with the suspicious transactions. In other circumstances, it may be necessary to contact the cardholder to verify a transaction, reissue a card, or close an account. An appropriate response may also require coordination with industry organizations, law enforcement agencies, and other parties, such as payment card networks, merchants, and issuer or merchant processors.

Paragraph 4(b)(2)(iv). *Methods to secure debit card and cardholder data.*

1. An issuer must implement policies and procedures designed to secure debit card and cardholder data. These policies and procedures should apply to data that are transmitted by the issuer (or its service provider) during transaction processing, that are stored by the issuer (or its service provider), and that are carried on media (*e.g.,* laptops, transportable data storage devices) by employees or agents of the issuer. This standard may be incorporated into an issuer's information security program, as required by Section 501(b) of the Gramm-Leach-Bliley Act.

Paragraph 4(b)(3) *Review of and updates to policies and procedures.*

1. i. An issuer's assessment of the effectiveness of its policies and procedures should consider whether they are reasonably designed to reduce the number and value of fraudulent electronic debit transactions relative to non-fraudulent electronic debit transactions and are cost effective. (*See* comment 4(b)(1)–3 and comment 4(b)(1)–5).

ii. An issuer must also assess its policies and procedures in light of changes in fraud types (*e.g.,* the use of counterfeit cards, lost or stolen cards) and methods (*e.g.,* common purchase patterns indicating possible fraudulent behavior), as well as changes in the available methods of detecting and preventing fraudulent electronic debit transactions (*e.g.,* transaction monitoring, authentication methods) as part of its periodic review of its policies and procedures. An issuer's review of its policies and procedures must consider information from the issuer's own experience and that the

issuer otherwise identified itself; information from payment card networks, law enforcement agencies, and fraud-monitoring groups in which the issuer participates; and supervisory guidance. For example, an issuer should consider warnings and alerts it receives from payment card networks regarding compromised cards and data breaches.

2. An issuer should review its policies and procedures and their implementation more frequently than annually if the issuer determines that more frequent review is appropriate based on information obtained from monitoring its fraudulent electronic debit transactions, changes in the types or methods of fraud, or available methods of detecting and preventing fraudulent electronic debit transactions. (*See* § 235.4(b)(1)(ii) and commentary thereto.)

3. In light of an issuer's review of its policies and procedures, and their implementation, the issuer may determine that updates to its policies and procedures, and their implementation, are necessary. Merely determining that updates are necessary does not render an issuer ineligible to receive or charge the fraud-prevention adjustment. To remain eligible to receive or charge a fraud-prevention adjustment, however, an issuer should develop and implement such updates as soon as reasonably practicable, in light of the facts and circumstances.

4(c) *Notification.*

1. Payment card networks that plan to allow issuers to receive or charge a fraud-prevention adjustment can develop processes for identifying issuers eligible for this adjustment. Each issuer that wants to be eligible to receive or charge a fraud-prevention adjustment must notify annually the payment card networks in which it participates of its compliance through the networks' processes.

* * * * *

Dated: July 27, 2012.

By order of the Board of Governors of the Federal Reserve System.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–18726 Filed 8–2–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0829; Airspace Docket No. 11–ASW–9]

Amendment of Class E Airspace; Sweetwater, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Sweetwater, TX. Additional controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Avenger Field Airport. The airport's geographic coordinates are adjusted and the airport name changed. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective date: 0901 UTC, November 15, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

SUPPLEMENTARY INFORMATION:

History

On May 21, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace for the Sweetwater, TX, area, creating additional controlled airspace at Avenger Field Airport (77 FR 29917) Docket No. FAA–2011–0829. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Avenger Field Airport (formerly Avenger Field), Sweetwater, TX. This action is necessary for the safety and management of IFR operations at the airport. Geographic coordinates of the airport are updated to coincide with the FAA's aeronautical database.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Avenger Field Airport, Sweetwater, TX.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

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

* * * * *

ASW TX E5 Sweetwater, TX [Amended]

Sweetwater, Avenger Field Airport, TX
(Lat. 32°28′03″ N., long. 100°28′00″ W.)
Sweetwater RBN
(Lat. 32°27′42″ N., long. 100°27′56″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Avenger Field Airport, and within 2.5 miles each side of the 348° bearing from the Sweetwater RBN extending from the 6.6-mile radius to 7.4 miles north of the airport, and within 2 miles each side of the 174° bearing from the airport extending from the 6.6-mile radius to 12 miles south of the airport.

Issued in Fort Worth, Texas, on July 25, 2012.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2012–18921 Filed 8–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1110; Airspace Docket No. 11–AGL–21]

Amendment of Class E Airspace; Battle Creek, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Battle Creek, MI. Additional controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at W.K. Kellogg Airport. The airport's geographic coordinates also are adjusted. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, November 15, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

SUPPLEMENTARY INFORMATION:

History

On May 21, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace for the Battle Creek, MI, area, creating additional controlled airspace at W.K. Kellogg Airport (77 FR 29918) Docket No. FAA–2011–1110. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at W.K. Kellogg Airport, Battle Creek, MI. This action is necessary for the safety and management of IFR operations at the airport. Geographic coordinates are updated to coincide with the FAA's aeronautical database.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at W.K. Kellogg Airport, Battle Creek, MI.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air)

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

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

* * * * *

AGL MI E5 Battle Creek, MI [Amended]

Battle Creek, W.K. Kellogg Airport, MI
(Lat. 42°18′23″ N., long. 85°15′00″ W.)
BATOL LOM/NDB
(Lat. 42°21′43″ N., long. 85°11′04″ W.)
Battle Creek ILS Localizer

(Lat. 42°17′37″ N., long. 85°16′07″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of W.K. Kellogg Airport, and within 4 miles each side of the 222° bearing from the airport extending from the 7-mile radius to 11.7 miles southwest of the airport, and within 4 miles each side of the 049° bearing from the airport extending from the 7-mile radius to 10.9 miles northeast of the airport, and within 2 miles each side of the 126° bearing from the airport extending from the 7-mile radius to 11.1 miles southeast of the airport, and within 7 miles northwest and 4.4 miles southeast of the Battle Creek ILS localizer northeast course extending from the 7-mile radius to 10.4 miles northeast of the BATOL LOM/NDB.

Issued in Fort Worth, Texas, on July 25, 2012.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2012–18911 Filed 8–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0391; Airspace Docket No. 12–AGL–2]

Amendment of Class E Airspace; Lemmon, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Lemmon, SD. Additional controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Lemmon Municipal Airport. The airport's geographic coordinates also are adjusted. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective date: 0901 UTC, November 15, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

SUPPLEMENTARY INFORMATION:

History

On May 21, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace for the Lemmon, SD, area, creating additional controlled airspace at Lemmon Municipal Airport (77 FR 29920) Docket No. FAA–2012–0391. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Lemmon Municipal Airport, Lemmon, SD. This action is necessary for the safety and management of IFR operations at the airport. Geographic coordinates are updated to coincide with the FAA's aeronautical database.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Lemmon Municipal Airport, Lemmon, SD.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

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

* * * * *

AGL SD E5 Lemmon, SD [Amended]

Lemmon Municipal Airport, SD

(Lat. 45°55′06″ N., long. 102°06′20″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Lemmon Municipal Airport; and that airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 46°10′00″ N., on the east by V–169, on the south by lat. 45°33′00″ N., and on the west by V–491, northbound to lat. 45°45′00″, thence eastbound to lat. 45°45′00″ N., long. 102°09′00″ W., thence northwest bound to lat. 46°10′00″ N., long. 102°34′00″ W.;, and within a 30-mile radius of lat. 45°47′29″ N., long. 101°51′13″ W.

Issued in Fort Worth, Texas, on July 25, 2012.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2012–18923 Filed 8–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket No. USCG–2011–0551]

Special Local Regulation and Safety Zone; America's Cup Sailing Events, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of the 2012 program calendar for the on-water activities associated with the ''2012 America's Cup World Series'' regatta scheduled for August 21–26, 2012, on the waters of San Francisco Bay adjacent to the City of San Francisco waterfront in the vicinity of the Golden Gate Bridge and Alcatraz Island.

DATES: This notice of availability is effective on August 3, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0551 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0551 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Lieutenant DeCarol Davis, Coast Guard Sector San Francisco, U.S. Coast Guard; telephone (415) 399–7443, email *DeCarol.A.Davis@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Coast Guard established a special local regulation and a safety zone for the sailing regattas being conducted on the waters of San Francisco Bay associated with the 34th America's Cup sailing events taking place adjacent to the City of San Francisco waterfront in the vicinity of the Golden Gate Bridge and Alcatraz Island. The special local regulation and safety zone regulate the on-water activities associated with the ''2012 America's Cup World Series'' regatta scheduled for August 21–26, 2012, and will temporarily restrict vessel traffic in a portion of the San Francisco Bay, prohibit vessels not participating in the America's Cup sailing events from entering the designated race area, and create a temporary safety zone around racing vessels (77 FR 41902, July 17, 2012).

This notice announces the availability of the 2012 program calendar referenced in the rulemaking published in association with the ''2012 America's Cup World Series'' regattas. This program calendar is available in the docket, as indicated in the **ADDRESSES** section, and includes the dates and times that event programming is expected to occur.

The Coast Guard may enforce the special local regulation and safety zone as early as noon on any program day. In general, however, the Coast Guard anticipates beginning enforcement approximately one hour before the first scheduled event on each program day, and ending enforcement as soon as possible after the last event on each program day. The Coast Guard will use a Broadcast Notice to Mariners to indicate when the zone is being enforced and when enforcement has ended and normal vessel operations may occur.

This notice is issued under the authority of 5 U.S.C. 552(a) and 33 CFR 1.05–1.

Dated: July 16, 2012.

Jay W. Jewess,

Captain, U.S. Coast Guard, Acting Captain of the Port San Francisco.

[FR Doc. 2012–18840 Filed 8–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0719]

Drawbridge Operation Regulation; Inner Harbor Navigational Canal, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the US 90 (Danzinger) Bridge across the Inner Harbor Navigational Canal, mile 3.1, at New Orleans, LA. The deviation is necessary to replace the wire rope lifting cables, and for the rehabilitation of most electrical motors and components, most mechanical components and the operator house. This deviation allows the bridge to remain closed to navigation for 48 consecutive hours in late August and for 30 consecutive days in September and October.

DATES: This deviation is effective from 6 p.m. on Monday, August 27, 2012 until 11:59 p.m. on Saturday, October 6, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0719 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0719 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email David Frank, Bridge Administration Branch, Coast Guard; telephone 504–671–2128, email *David.M.Frank@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Louisiana Department of Transportation and Development has requested a temporary deviation from the operating schedule of the US 90 (Danzinger) Bridge across the Inner Harbor Navigational Canal, mile 3.1, at New Orleans, LA. The vertical clearance of the bridge in the closed-to-navigation position is 50 feet above Mean High Water, elevation 5.0 feet Mean Sea Level.

In accordance with 33 CFR 117.458(b), the draw of the US90 (Danzinger) Bridge, mile 3.1, shall open on signal, except that, from 8 p.m. to 7 a.m. the draw shall open on signal if at least four hours notice is given, and the draw need not be opened from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday. This deviation allows the bridge to remain closed to navigation for 48 consecutive hours from 6 p.m. on Monday, August 27,

2012 until 6 p.m. on Wednesday, August 29, 2012 and for 30 consecutive days from 12:01 a.m. on Friday, September 7, 2012 until 11:59 p.m. on Saturday, October 6, 2012.

The closure is necessary to replace the wire rope lifting cables, and for the rehabilitation of most electrical motors and components, most mechanical components and the operator house. This maintenance is essential for the continued operation of the bridge. Notices will be published in the Eighth Coast Guard District Local Notice to Mariners and will be broadcast via the Coast Guard Broadcast Notice to Mariners System.

Navigation on the waterway consists of commercial and recreational vessels and sailboats and small tugs with and without tows. An alternate route is available via the Rigolets or Chef Menteur Pass. Vessels with vertical clearance requirements of less than 50 feet above Mean High Water may pass under the bridge while in the closed-to-navigation position.

Due to prior experience and coordination with waterway users, it has been determined that this closure will not have a significant effect on vessels that use the waterway.

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

Dated: July 24, 2012.

David M. Frank,

Bridge Administrator.

[FR Doc. 2012–18992 Filed 8–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0678]

Drawbridge Operation Regulations; Mystic River, Mystic, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Route 1 Bridge across the Mystic River, mile 2.8, at Mystic, Connecticut. The deviation is necessary to facilitate bridge rehabilitation repairs at the bridge. Under this deviation the bridge may remain in the closed position November through April.

DATES: This deviation is effective from November 1, 2012 through April 15, 2013.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0678 and are available online at *www.regulations.gov*, inserting USCG–2012–0678 in the ''Keyword'' and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ms. Judy K. Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 668–7165, *judy.k.leung-yee@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Route 1 Bridge across the Mystic River at mile 2.8, has a vertical clearance of 4 feet at mean high water and 7 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.211.

The normal waterway users are predominantly recreational craft of various sizes.

The Coast Guard issued two previous temporary deviations, (75 FR 78163) effective from December 2, 2010 through April 15, 2011 and (76 FR 70348) effective from December 1, 2011 through April 15, 2012, to facilitate this major bridge rehabilitation project that allowed the Route 1 Bridge to remain closed during the winter months when the bridge rarely opens. Both previous temporary deviations achieved successful results without any problems or complaints from the mariners that normally transit the Mystic River.

The owner of the bridge, Connecticut Department of Transportation, has requested a third temporary deviation from the regulations to allow the bridge to remain in the closed position to complete rehabilitation repairs at the bridge.

Under this temporary deviation the Route 1 Bridge may remain in the closed position from November 1, 2012 through April 15, 2013, to facilitate completion of bridge rehabilitation repairs. Vessels that can pass under the bridge in the closed position may do so at any time.

The bridge has received few requests to open during this time period during the past three years. The waterway users were advised of the requested bridge closure and no objections were received.

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

Dated: July 25, 2012.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2012–19001 Filed 8–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0652]

Drawbridge Operation Regulation; Bayou Boeuf, Amelia, LA

AGENCY: Coast Guard, DHS.

ACTION: Delay of effective date for temporary deviation from regulations.

SUMMARY: The Coast Guard is modifying the effective date of a published temporary deviation from the operating schedule that governs the Burlington Northern Santa Fe (BNSF) Railway Company swing span bridge across Bayou Boeuf, mile 10.2, at Amelia, St. Mary Parish, Louisiana. The modification of the date is necessary due to a delay in the scheduled arrival of repair equipment. The deviation is necessary to complete scheduled repairs necessitated by a bridge allision. This deviation allows the bridge to remain in the closed-to-navigation position for sixteen consecutive hours.

DATES: This deviation is effective from 7 a.m. through 11 p.m. on Thursday, September 13, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0652 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0652 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Jim Wetherington, Bridge Branch Office, Coast Guard; telephone 504–671–2128, email *james.r.wetherington@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: On July 20, 2012, the Coast published a notice of temporary deviation from regulations in the **Federal Register** (77 FR 42637). The BNSF Railway Company requested this temporary deviation from the operating schedule of the swing span railroad bridge across Bayou Boeuf, mile 10.2, at Amelia, St. Mary Parish, Louisiana, for August 16, 2012, to perform repairs necessitated by an allision. Due to delay in production and delivery of repair equipment, the BNSF Railway requested a modification to the effective date from August 16, 2012 to September 13, 2012. The bridge provides no vertical clearance in the closed-to-navigation position.

Notices will be published in the Eighth Coast Guard District Local Notice to Mariners and will be broadcast via the Coast Guard Broadcast Notice to Mariners System.

In accordance with 33 CFR 117.5, the bridge currently opens on signal for the passage of vessels. This deviation allows the vertical lift span of the bridge to remain in the closed-to-navigation position from 7 a.m. through 11 p.m. on Thursday, September 13, 2012.

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

Dated: July 24, 2012.

David M. Frank,

Bridge Administrator, Eighth Coast Guard District.

[FR Doc. 2012–18997 Filed 8–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0634]

RIN 1625–AAOO

Safety Zone; Gulf Intracoastal Waterway, Mile Marker 35.2 to Mile Marker 35.5, West of Harvey Locks, Bank to Bank, Lafourche Parish, Larose, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is re-establishing a temporary safety zone in the Gulf Intracoastal Waterway, Mile Marker 35.2 to Mile Marker 35.5, west of Harvey Locks, bank to bank, Larose, Lafourche Parish, LA. This Safety Zone is needed to protect the general public, vessels and tows from destruction, loss or injury due to the installation of a new sheetpile floodwall on the waterward side of the existing Larose floodwall and construction of a new rip-rap barge impact barrier on the Gulf Intracoastal Waterway side of the new floodwall.

DATES: This rule is effective August 3, 2012 through January 1, 2013. This rule is enforceable with actual notice on July 1, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0634]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Ensign (ENS) Nicholas Jones, Coast Guard; telephone 985–857–8507 ext. 232, email *Nicholas.B.Jones@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. This rule re-establishes a safety zone necessary to protect life and property from hazards associated with the ongoing floodwall repair and construction project. The Coast Guard established the initial safety zone for this project in a Temporary Final Rule on January 25, 2012 at docket USCG–2011–1128 (77 FR 3609) to be enforced through June 30, 2012. The floodwall repair and construction project are still ongoing and this safety zone is needed immediately to ensure there is no gap in providing the necessary safety measures to protect personnel, general public, vessel and tows, and mariners from hazards associated with the ongoing floodwall repair and construction process. Publishing a NPRM would unnecessarily delay the effective date for this rule which would be contrary to the public interest. Delaying this project for the NPRM process would also interfere with the contractually imposed timeline for repair of the floodwall.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date for this temporary rule to provide a full 30 days notice is contrary to protect persons and vessels from potential safety hazards associated with the floodwall repair and construction project.

B. Basis and Purpose

The Coast Guard is reestablishing the safety zone in the Gulf Intracoastal Waterway, Mile Marker 35.2 to Mile Marker 35.5, bank to bank, West of Harvey Locks. The U.S. Army Corps of Engineers contracted installation of a new sheetpile floodwall on the waterward side of the existing Larose Floodwall and construction of a new rip-rap barge impact barrier on the waterward side of the new floodwall. This construction and repair project is

now scheduled to continue through January 1, 2013.

The Coast Guard determined that reestablishing the temporary safety zone is needed during these operations. The legal basis and authorities for this rulemaking establishing a safety zone are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

The purpose of this safety zone is to protect life and property during the continued construction of the floodwall in Larose in the vicinity of GIWW Mile Marker 35.2 to Mile Marker 35.5. This construction project poses significant safety hazards to both vessels and mariners operating in the vicinity of GIWW Mile Maker 35.2 to Mile Marker 35.5.

C. Discussion of Rule

The Coast Guard is reestablishing a temporary Safety Zone in the Gulf Intracoastal Waterway, Mile Marker 35.2–35.5, bank to bank, West of Harvey locks. The temporary Safety Zone will continue through January 1, 2013. Vessels and tows shall transit at slowest safe speed to minimize wake and, after leaving the slowest safe speed zone, proceed with caution to minimize interference with construction activities.

All work on the project is scheduled to be complete by January 1, 2013.

Continuing through January 1, 2013, two barges will be staged on the south side of the waterway at all times but will remain clear of the main channel limit. The COTP Morgan City or a designated representative will inform the public through Broadcast Notice to Mariners of changes in the effective and enforcement periods for the safety zone. This rule is enforceable with actual notice on July 1, 2012. Mariners can contact the contractor via VHF–FM channel 69.

Mariners shall transit at their slowest safe speed to minimize wake and proceed with caution while passing through the construction area.

Charts: 11355.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

This rule creates a safety zone implementing slowest safe speed to minimize wake. Vessels will be allowed to enter and transit through the area. Advance notifications to the marine community regarding this safety zone and any restrictions or closures related to the floodwall repair and construction project will be made through Broadcast Notice to Mariners and Local Notice to Mariners. The impacts on routine navigation are expected to be minimal.

2. Impact on Small Entities

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit through the Safety Zone through January 1, 2013. This Safety Zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The zone is limited in size, is of short duration and vessel traffic are allowed to transit through the safety zone at slowest safe speed.

If you are a small business entity and are significantly affected by this regulation, please contact ENS Nicholas Jones, Marine Safety Unit Houma, at (985) 857–8507 ext. 232.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34) (g.), of the Instruction. This rule will be in effect until January 1, 2013, but is not expected to result in any significant adverse environmental impact as described in NEPA.

An environmental analysis checklist and a categorical exclusion determination will be provided and made available at the docket as indicated in the **ADDRESSES** section.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary § 165.T08–0634 is added to read as follows:

§ 165.T08–0634 Safety Zone; Gulf Intracoastal Waterway, Mile Marker 35.2–35.5, West of Harvey Locks, bank to bank, Lafourche Parish, Larose, LA.

(a) *Location.* Gulf Intracoastal Waterway, Mile Marker 35.2 to Mile Marker 35.5, West of Harvey Locks, bank to bank, Lafourche Parish, Larose, LA.

(b) *Effective date.* This rule is effective August 3, 2012 through January 1, 2013 and enforceable with actual notice on July 1, 2012.

(c) *Periods of Enforcement.* This rule will be enforced July 1, 2012 thru January 1, 2013. The Captain of the Port Morgan City or a designated representative will inform the public through Broadcast Notice to Mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

(d) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into this zone should be at slowest safe speed to minimize wake through the duration of this rule. During waterway closures entry into this zone is prohibited unless authorized by the Captain of the Port Morgan City.

(2) Mariners shall transit from Mile Marker 35.2 to Mile Marker 35.5 and pass at slowest safe speed to minimize wake.

(3) Mariners should contact the attendant tug on VHF–FM Channel 69 prior to arrival at the construction site for information regarding available horizontal clearance and passing instructions.

(4) All persons and vessels shall comply with the instructions of the Captain of the Port Morgan City and designated on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(5) Advance notification of any anticipated waterway closures will be made through Broadcast Notice to Mariners and Local Notice to Mariners. During a closure, vessels requiring entry into or passage through the Safety Zone must request permission from the Captain of the Port Morgan City, or a designated representative and passage will be considered on a case-by-case basis. They may be contacted on VHF Channel 11, 13, or 16, or by telephone at (985) 380–5370.

Dated: June 29, 2012.

J.C. Burton,

Captain, U.S. Coast Guard, Captain of the Port Morgan City, Louisiana.

[FR Doc. 2012–19009 Filed 8–2–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 1, 9, 150, 164, 178, 179, 700, 712, 716, 720, 723, 725, 761, 763, 766, 795, 796, and 799

[EPA–HQ–OPPT–2010–0629; FRL–8846–7]

Technical Corrections to Organizational Names, Addresses, and OMB Control Numbers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document contains minor amendments to regulations under the Federal Insecticide, Fungicide (FIFRA), and Rodenticide Act, the Federal Food, Drug, and Cosmetic Act (FFDCA), and the Toxic Substances Control Act (TSCA). These amendments will make EPA's regulations more accurate and user friendly with regard to the name of the EPA office that administers these statutes and various Agency addresses.

DATES: This rule is effective August 3, 2012.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2010–0629, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone

number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Jonah H. Richmond, Regulatory Coordination Staff (7101M), Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–0210; email address: *richmond.jonah@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

This action is directed to the public in general. Since this action may apply to anyone, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Why are these amendments issued as a final rule?

Section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 533(b)(3)(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. EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment. These changes update the organizational name of the EPA office responsible for administration of FIFRA, FFDCA section 408, and TSCA, and correct various Agency addresses. Notice and public comment on such changes is unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 533(b)(3)(B).

III. Statutory and Executive Order Reviews

This final rule implements technical corrections and does not otherwise impose or change any requirements. As such, this action does not require review by OMB under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). Nor does it impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action will not have substantial direct effects on State or Tribal governments, on the relationship between the Federal Government and States or Indian tribes, or on the distribution of power and responsibilities between the Federal Government and States or Indian tribes. As such, it will not have any ''federalism implications'' as described by Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10,1999) or ''tribal implications'' as described by Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note), environmental justice-related issues that would require consideration under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994), or otherwise involve anything that would have any adverse effect on the supply, distribution, or use of energy that would require consideration under Executive Order 13211, entitled ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

In addition, since this action is not subject to notice-and-comment requirements under the APA or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

IV. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Parts 1, 9, 150, 164, 178, 179, 700, 712, 716, 720, 723, 725, 761, 763, 766, 795, 796, and 799

Environmental protection, Administrative practice and procedure.

Dated: July 20, 2012.

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, 40 CFR chapter I is amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 552.

■ 2. Revise § 1.43 to read as follows:

§ 1.43 Office of Chemical Safety and Pollution Prevention.

The Assistant Administrator, Office of Chemical Safety and Pollution Prevention (OCSPP), serves as the principal adviser to the Administrator in matters pertaining to assessment and regulation of pesticides and toxic substances and is responsible for managing the Agency's pesticides and toxic substances programs under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); the Toxic Substances Control Act (TSCA); the Pollution Prevention Act (PPA); and portions of several other statutes. The Assistant Administrator has responsibility for establishing Agency strategies for implementation and integration of the pesticides and the toxic substances programs under applicable Federal statutes; developing and operating Agency programs and policies for assessment and control of pesticides and toxic substances; developing recommendations for Agency priorities for research, monitoring, regulatory, and information-gathering activities relating to pesticides and toxic substances; developing scientific, technical, economic, and social databases for the conduct of hazard assessments and evaluations in support of toxic substances and pesticides activities; providing toxic substances and pesticides program guidance to EPA Regional Offices and monitoring, evaluating, and assessing pesticides and toxic substances program operations in EPA Headquarters and Regional Offices.

(a) *Office of Pesticide Programs.* The Office of Pesticide Programs (OPP), under the management of a Director and Deputy Director are responsible to the Assistant Administrator for leadership

of the overall pesticide activities of the Agency under the authority of FIFRA, FFDCA, and portions of several other statutes. Responsibilities include the development of strategic plans for the control of the national environmental pesticide situation. Such plans are implemented by OPP, other EPA components, other Federal agencies, or by State, local, and private sectors. OPP is also responsible for establishment of tolerance levels for pesticide residues which occur in or on food; registration and reregistration of pesticides; special review of pesticides suspected of posing unreasonable risks to human health or the environment; monitoring of pesticide residue levels in food, humans, and non-target fish and wildlife; preparation of pesticide registration guidelines; development of standards for the registration and reregistration of pesticide products; provision of program policy direction to technical and manpower training activities in the pesticides area; development of research needs and monitoring requirements for the pesticide program and related areas; review of impact statements dealing with pesticides; providing operational guidance to EPA Regional Offices; and carrying out of assigned international activities.

(b) *Office of Pollution Prevention and Toxics.* The Office of Pollution Prevention and Toxics (OPPT), under the management of a Director and Deputy Director is responsible to the Assistant Administrator for those activities of the Agency mandated by TSCA, PPA, and portions of several other statutes. The Director is responsible for developing and operating Agency programs and policies for new and existing chemicals. In each of these areas, the Director is responsible for information collection and coordination; data development; health, environmental, and economic assessment; and negotiated or regulatory control actions. The Director provides operational guidance to EPA Regional Offices, reviews and evaluates toxic substances activities at EPA Headquarters and Regional Offices; coordinates TSCA activities with other EPA offices and Federal and State agencies, and conducts the export notification required by TSCA and provides information to importers. The Director is responsible for developing policies and procedures for the coordination and integration of Agency and Federal activities concerning toxic substances. The Director is also responsible for coordinating communication with the industrial community, environmental groups, and other interested parties on matters relating to the implementation of TSCA; providing technical support to international activities managed by the Office of International Activities; and managing the joint planning of toxic research and development under the auspices of the Pesticides/Toxic Substances Research Committee.

(c) *Office of Science Coordination and Policy.* The Office of Science Coordination and Policy (OSCP) provides coordination, leadership, peer review, and synthesis of science and science policy within OCSPP. OSCP provides guidance to assure sound scientific decisions are made regarding safe pesticide and chemical management through the leadership of the Scientific Advisory Panel (SAP). OSCP also coordinates emerging exposure and hazard assessment topics such as endocrine disruptors and biotechnology.

PART 9—[AMENDED]

■ 3. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671, 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 4. In § 9.1, the table is amended by revising the entries, ''162.153'' and ''Part 166'' under the undesignated center headings indicated.

These revisions read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
State Registration of Pesticide Products	
162.153	2070–0182
* * * * *	
Exemption of Federal and State Agencies for Use of Pesticides Under Emergency Conditions	
Part 166	2070–0182
* * * * *	

* * * * *

PART 150—[AMENDED]

■ 5. The authority citation for part 150 continues to read as follows:

Authority: Reorganization Plan No. 3 of 1970 (5 U.S.C. App.).

■ 6. Revise § 150.17 to read as follows:

§ 150.17 Addresses for the Office of Pesticide Programs.

The official addresses, unless otherwise noted, are as follows:

(a) *Applications, correspondence, and non-docket materials*—(1) *United States Postal Service mailing address.* Office of Pesticide Programs (7510P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

(2) *Hand/courier delivery address.* Office of Pesticide Programs, Environmental Protection Agency, 2777 S. Crystal Dr., Arlington, VA 22202–4501. This is not a mailing address. You must make arrangements with the person receiving your delivery.

(b) *Office of Pesticide Programs Regulatory Public Docket (OPP Docket)*—(1) *Electronic docket address.* Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov.* Although listed in the docket index at regulations.gov, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only at the OPP Docket.

(2) *Physical location.* Environmental Protection Agency Docket Center (EPA/DC), Environmental Protection Agency, EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. This is not a mailing address. For instructions on visiting the docket, go to *http://www.epa.gov/dockets/contacts.htm.*

(3) *United States Postal Service mailing address.* Office of Pesticide Programs Regulatory Public Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

(4) *Hand/courier delivery.* For hand/courier delivery or to make special arrangements for deliveries of boxed

information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

PART 164—[AMENDED]

■ 7. The authority citation for part 164 continues to read as follows:

Authority: 7 U.S.C. 136d.

■ 8. In § 164.2, revise in paragraph (l)(2) the last sentence and paragraph (s) to read as follows:

§ 164.2 Definitions.

* * * * *

(l) * * *

(2) * * * Such judicial officer shall not be employed by the Office of Chemical Safety and Pollution Prevention or have any connection with the preparation or presentation of evidence for a hearing.

* * * * *

(s) The term *Respondent* means the Assistant Administrator of the Office of Chemical Safety and Pollution Prevention.

* * * * *

PART 178—[AMENDED]

■ 9. The authority citation for part 178 continues to read as follows:

Authority: 21 U.S.C. 346a, 371(a); Reorg. Plan No. 3 of 1970.

■ 10. In § 178.3, revise the term ''Assistant Administrator'' to read as follows:

§ 178.3 Definitions.

* * * * *

Assistant Administrator means the Agency's Assistant Administrator for Chemical Safety and Pollution Prevention, or any officer or employee of the Agency's Office of Chemical Safety and Pollution Prevention to whom the Assistant Administrator delegates the authority to perform functions under this part.

* * * * *

PART 179—[AMENDED]

■ 11. The authority citation for part 179 continues to read as follows:

Authority: 21 U.S.C. 346a, 371(a); Reorg. Plan No. 3 of 1970.

■ 12. In § 179.3, remove the definition of ''OPPTS,'' revise the definition of ''Assistant Administrator,'' and add in alphabetical order the definition of ''OCSPP'' to read as follows:

§ 179.3 Definitions.

* * * * *

Assistant Administrator means the Agency's Assistant Administrator for Chemical Safety and Pollution Prevention, or any officer or employee of the Agency's Office of Chemical Safety and Pollution Prevention to whom the Assistant Administrator has delegated the authority to perform functions under this part.

* * * * *

OCSPP means the Agency's Office of Chemical Safety and Pollution Prevention.

* * * * *

§§ 179.24, 179.42, 179.83, and 179.117 [Amended]

■ 13. In §§ 179.24(b)(1) through (3), 179.42(a), 179.83(a)(2) through (4) and (b) introductory text, and 179.117(a), remove the acronym ''OPPTS'' and add in its place the acronym ''OCSPP'' everywhere it appears.

PART 700—[AMENDED]

■ 14. The authority citation for part 700 continues to read as follows:

Authority: 15 U.S.C. 2625 and 2665, 44 U.S.C. 3504.

■ 15. Add new subpart A, consisting of § 700.17, to read as follows:

Subpart A—Addresses

§ 700.17 Addresses for the Office of Pollution Prevention and Toxics.

The official addresses, unless otherwise noted, are as follows:

(a) *Correspondence and non-docket materials*—(1) *United States Postal Service mailing address.* Office of Pollution Prevention and Toxics (7401M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

(2) *Hand/courier delivery address.* Office of Pollution Prevention and Toxics, Environmental Protection Agency, EPA East Bldg., 1201 Constitution Ave. NW., Washington, DC 20004. This is not a mailing address. You must make arrangements with the person receiving your delivery.

(b) *Office of Pollution Prevention and Toxics Docket (OPPT Docket)*—(1) *Electronic docket address.* Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov.* Although listed in the docket index at regulations.gov, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only at the OPPT Docket.

(2) *Physical location.* Environmental Protection Agency Docket Center (EPA/DC), Environmental Protection Agency, EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The telephone number for the OPPT Docket is (202) 566–0280. This is not a mailing address. For instructions on visiting the docket, go to *http://www.epa.gov/dockets/contacts.htm.*

(3) *United States Postal Service mailing address.* Document Control Office (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

(4) *Hand/courier delivery address.* Document Control Office, Office of Pollution Prevention and Toxics, Environmental Protection Agency, EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. Deliveries are only accepted between 8:30 a.m. and 4 p.m., and special arrangements should be made for deliveries of boxed information. The telephone number for the Document Control Office is (202) 564–8930.

PART 712—[AMENDED]

■ 16. The authority citation for part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

§ 712.30 [Amended]

■ 17. In § 712.30(c)(1), remove the phrase ''Prevention, Pesticides and Toxic Substances'' and add in its place ''Chemical Safety and Pollution Prevention.''

PART 716—[AMENDED]

■ 18. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

§ 716.105 [Amended]

■ 19. In § 716.105(c), remove the phrase ''Prevention, Pesticides and Toxic Substances'' and add in its place ''Chemical Safety and Pollution Prevention.''

PART 720—[AMENDED]

■ 20. The authority citation for part 720 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2613.

■ 21. In § 720.95, revise the last sentence of the section to read as follows:

§ 720.95 Public file.

* * * Publically available docket materials are available at the addresses in § 700.17(b)(1) and (2) of this chapter.

PART 723—[AMENDED]

■ 22. The authority citation for part 723 continues to read as follows:

Authority: 15 U.S.C. 2604.

§ 723.50 [Amended]

■ 23. In § 723.50(h)(2)(i)(A), remove the phrase ''the Office of Prevention, Pesticides, and Toxic Substances'' and add in its place ''Chemical Safety and Pollution Prevention.''

PART 725—[AMENDED]

■ 24. The authority citation for part 725 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, 2613, and 2625.

§ 725.67 [Amended]

■ 25. In § 725.67(b)(1), remove the phrase ''Prevention, Pesticides and Toxic Substances'' and add in its place ''Chemical Safety and Pollution Prevention.''

■ 26. In § 725.95, revise the last sentence of the section to read as follows:

§ 725.95 Public file.

* * * Publically available docket materials are available at the addresses in § 700.17(b)(1) and (2) of this chapter.

PART 761—[AMENDED]

■ 27. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

§ 761.30 [Amended]

■ 28. In § 761.30(i)(1)(iii)(A)(*1*), remove the phrase ''Office of Prevention, Pesticides, and Toxic Substances'' and add in its place ''Office of Pollution Prevention and Toxics.''

PART 763—[AMENDED]

■ 29. The authority citation for part 763 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607(c), 2643, and 2646.

■ 30. In § 763.90, revise the third sentence in paragraph (i)(5) to read as follows:

§ 763.90 Response actions.

* * * * *

(i) * * *

(5) * * * The method is available at the addresses in § 700.17(b)(1) and (2) of this chapter. * * *

* * * * *

PART 766—[AMENDED]

■ 31. The authority citation for part 766 continues to read as follows:

Authority: 15 U.S.C. 2603 and 2607.

■ 32. In § 766.12, revise the last sentence of the section to read as follows:

§ 766.12 Testing guidelines.

* * * Publicly available docket materials are available at the addresses in § 700.17(b)(1) and (2) of this chapter.

PART 795—[AMENDED]

■ 33. The authority citation for part 795 continues to read as follows:

Authority: 15 U.S.C. 2603.

■ 34. In § 795.232, revise the eleventh sentence of paragraph (c)(2)(i) to read as follows:

§ 795.232 Inhalation and dermal pharmacokinetics of commercial hexane.

* * * * *

(c) * * *

(2) * * *

(i) * * * Copies are available at the addresses in § 700.17(b)(1) and (2) of this chapter. * * *

* * * * *

PART 796—[AMENDED]

■ 35. The authority citation for part 796 continues to read as follows:

Authority: 15 U.S.C. 2603.

§§ 796.1950 and 796.3500 [Amended]

■ 36. In §§ 796.1950(b)(2)(i) and 796.3500(b)(1)(ii), remove the phrase ''Non-Confidential Information Center (NCIC) (7407), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, Room B–607 NEM, 401 M St. SW., Washington, DC 20460, between the hours of 12 p.m. and 4 p.m. weekdays excluding legal holidays'' and add in its place ''Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Room E–543B, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.''

PART 799—[AMENDED]

■ 37. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

§§ 799.2155 and 799.4360 [Amended]

■ 38. In §§ 799.2155(a)(1) and 799.4360(d)(7)(i)(B), remove the phrase ''Non-Confidential Information Center (NCIC) (7407), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, Room B–607 NEM, 401 M St. SW., Washington, DC 20460, between the hours of 12 p.m. and 4 p.m. weekdays excluding legal holidays'' and add in its place ''Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.''

■ 39. In § 799.6755, revise the last sentence of paragraph (f) introductory text to read as follows:

§ 799.6755 TSCA partition coefficient (*n*-octanol/water), shake flask method.

* * * * *

(f) * * * These references are available at the addresses in § 700.17(b)(1) and (2) of this chapter.

* * * * *

■ 40. In § 799.6756, revise the last sentence of paragraph (e) introductory text to read as follows:

§ 799.6756 TSCA partition coefficient (*n*-octanol/water), generator column method.

* * * * *

(e) * * * These references are available at the addresses in § 700.17(b)(1) and (2) of this chapter.

* * * * *

■ 41. In § 799.6784, revise the last sentence of paragraph (f) introductory text to read as follows:

§ 799.6784 TSCA water solubility: Column elution method; shake flask method.

* * * * *

(f) * * * These references are available at the addresses in § 700.17(b)(1) and (2) of this chapter.

* * * * *

■ 42. In § 799.6786:

■ i. Remove the acronym ''OPPTS'' and add in its place the acronym ''OCSPP'' in paragraph (b)(3)(ii).

■ ii. Revise the last sentence of paragraph (e) introductory text to read as follows:

§ 799.6786 TSCA water solubility: Generator column method.

* * * * *

(e) * * * These references are available at the addresses in § 700.17(b)(1) and (2) of this chapter.

* * * * *

■ 43. In § 799.9110, revise the last sentence of paragraph (f) introductory text to read as follows:

§ 799.9110 TSCA acute oral toxicity.

* * * * *

(f) * * * These references are available at the addresses in § 700.17(b)(1) and (2) of this chapter.

* * * * *

■ 44. In § 799.9120, revise the last sentence of paragraph (f) introductory text to read as follows:

§ 799.9120 TSCA acute dermal toxicity.

* * * * *

(f) * * * These references are available at the addresses in § 700.17(b)(1) and (2) of this chapter.

* * * * *

■ 45. In § 799.9130, revise the last sentence of paragraph (g) introductory text to read as follows:

§ 799.9130 TSCA acute inhalation toxicity.

* * * * *

(g) * * * These references are available at the addresses in § 700.17(b)(1) and (2) of this chapter.

* * * * *

■ 46. In § 799.9305, revise the last sentence of paragraph (h) introductory text to read as follows:

§ 799.9305 TSCA Repeated dose 28-day oral toxicity study in rodents.

* * * * *

(h) * * * These references are available at the addresses in § 700.17(b)(1) and (2) of this chapter.

* * * * *

■ 47. In § 799.9310, revise the last sentence of paragraph (h) introductory text to read as follows:

§ 799.9310 TSCA 90-day oral toxicity in rodents.

* * * * *

(h) * * * These references are available at the addresses in § 700.17(b)(1) and (2) of this chapter.

* * * * *

■ 48. In § 799.9325, revise the last sentence of paragraph (h) introductory text to read as follows:

§ 799.9325 TSCA 90-day dermal toxicity.

* * * * *

(h) * * * These references are available at the addresses in § 700.17(b)(1) and (2) of this chapter.

* * * * *

■ 49. In § 799.9346, revise the last sentence of paragraph (h) introductory text to read as follows:

§ 799.9346 TSCA 90-day inhalation toxicity.

* * * * *

(h) * * * These references are available at the addresses in § 700.17(b)(1) and (2) of this chapter.

* * * * *

■ 50. In § 799.9355, revise the last sentence of paragraph (h) introductory text to read as follows:

§ 799.9355 TSCA reproduction/developmental toxicity screening test.

* * * * *

(h) * * * These references are available at the addresses in § 700.17(b)(1) and (2) of this chapter.

* * * * *

■ 51. In § 799.9365, revise the last sentence of paragraph (h) introductory text to read as follows:

§ 799.9365 TSCA combined repeated dose toxicity study with the reproduction/developmental toxicity screening test.

* * * * *

(h) * * * These references are available at the addresses in § 700.17(b)(1) and (2) of this chapter.

* * * * *

■ 52. In § 799.9370, revise the last sentence of paragraph (h) introductory text to read as follows:

§ 799.9370 TSCA prenatal developmental toxicity.

* * * * *

(h) * * * These references are available at the addresses in § 700.17(b)(1) and (2) of this chapter.

* * * * *

■ 53. In § 799.9380, revise the last sentence of paragraph (g) introductory text to read as follows:

§ 799.9380 TSCA reproduction and fertility effects.

* * * * *

(g) * * * These references are available at the addresses in § 700.17(b)(1) and (2).

* * * * *

■ 54. In § 799.9410, revise the last sentence of paragraph (h) introductory text to read as follows:

§ 799.9410 TSCA chronic toxicity.

* * * * *

(h) * * * These references are available at the addresses in § 700.17(b)(1) and (2) of this chapter.

* * * * *

■ 55. In § 799.9420, revise the last sentence of paragraph (g) introductory text to read as follows:

§ 799.9420 TSCA carcinogenicity.

* * * * *

(g) * * * These references are available at the addresses in § 700.17(b)(1) and (2) of this chapter.

* * * * *

■ 56. In § 799.9430, revise the last sentence of paragraph (h) introductory text to read as follows:

§ 799.9430 TSCA combined chronic toxicity/carcinogenicity.

* * * * *

(h) * * * These references are available at the addresses in § 700.17(b)(1) and (2) of this chapter.

* * * * *

■ 57. In § 799.9537, revise the last sentence of paragraph (i) introductory text to read as follows:

§ 799.9537 TSCA in vitro mammalian chromosome aberration test.

* * * * *

(i) * * * These references are available at the addresses in § 700.17(b)(1) and (2) of this chapter.

* * * * *

■ 58. In § 799.9620, revise the last sentence of paragraph (g) introductory text to read as follows:

§ 799.9620 TSCA neurotoxicity screening battery.

* * * * *

(g) * * * These references are available at the addresses in § 700.17(b)(1) and (2) of this chapter.

* * * * *

■ 59. In § 799.9630, revise the last sentence of paragraph (f) introductory text to read as follows:

§ 799.9630 TSCA developmental neurotoxicity.

* * * * *

(f) * * * These references are available at the addresses in § 700.17(b)(1) and (2) of this chapter.

* * * * *

■ 60. In § 799.9780, revise the last sentence of paragraph (j) introductory text to read as follows:

§ 799.9780 TSCA immunotoxicity.

* * * * *

(j) * * * These references are available at the addresses in § 700.17(b)(1) and (2) of this chapter.

* * * * *

§§ 799.9135, 799.9510, 799.9530, 799.9538, and 799.9539 [Amended]

■ 61. In §§ 799.9135(h) introductory text, 799.9510(g) introductory text, 799.9530(g) introductory text, 799.9538(g) introductory text, and 799.9539(g) introductory text, remove the phrase ''for inspection at the TSCA Nonconfidential Information Center, Rm. NE–B607, Environmental Protection Agency, 401 M St. SW., Washington, DC, 12 noon to 4 p.m., Monday through Friday, except legal holidays.'' and add in its place ''at the

addresses in § 700.17(b)(1) and (2) of this chapter.''

[FR Doc. 2012–18793 Filed 8–2–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2012–0233; FRL–9700–7]

Extension of Deadline for Promulgating Designations for the 2010 Primary Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of deadline for promulgating designations.

SUMMARY: The EPA is announcing that it is using its authority under the Clean Air Act (CAA) to extend by up to 1 year the deadline for promulgating initial area designations for the primary sulfur dioxide (SO_2) national ambient air quality standard (NAAQS) that was promulgated in June 2010. With this extension, the EPA is now required to complete initial designations for this NAAQS by June 3, 2013.

DATES: The new deadline for the EPA to promulgate designations for the 2010 primary SO_2 NAAQS is June 3, 2013.

FOR FURTHER INFORMATION CONTACT: For questions regarding this action, contact Rhonda Wright, Air Quality Policy Division, Office of Air Quality Planning and Standards, Mail Code C539–04, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: 919–541–1087; fax number: 919–541–0824; email address: *wright.rhonda@epa.gov.*

SUPPLEMENTARY INFORMATION: This preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
II. Background
A. Area Designation Requirements
B. Summary of Designations Guidance Provided in the Proposed and Final SO_2 NAAQS Preambles and in the March 2011 and September 2011 Memoranda
III. Extension of Deadline for Promulgating Designations for the 2010 NAAQS

I. General Information

A. Does this action apply to me?

Entities potentially affected by this action include state, local, and tribal governments that would participate in the initial area designation process for the 2010 SO_2 standard.

B. Where can I get a copy of this document and other related information?

The EPA has established a docket for designations for the 2010 SO_2 NAAQS under Docket ID No. EPA–HQ–OAR–2012–0233. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue NW, Washington, DC The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

An electronic copy of this document is also available at *www.epa.gov/so2designations.*

II. Background

A. Area Designation Requirements

On June 2, 2010, the EPA Administrator signed a notice of final rulemaking that revised the primary SO_2 NAAQS (75 FR 35520, published on June 22, 2010) after review of the existing two primary SO_2 standard promulgated on April 30, 1971 (36 FR 8187).[1] The EPA established the revised primary SO_2 NAAQS at 75 parts per billion (ppb) which is attained when the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations does not exceed 75 ppb. The EPA determined in that rulemaking that this is the level necessary to provide protection of public health with an adequate margin of safety, especially for children, the elderly and those with asthma. These groups are particularly susceptible to the health effects associated with breathing SO_2.

After the EPA establishes or revises a NAAQS pursuant to CAA section 109, the CAA directs the EPA and the states to begin taking steps to ensure that those NAAQS are met. The first step is to identify areas of the country that do or do not meet the new or revised NAAQS. This step is known as the initial area designations. Section 107(d)(1) of the CAA provides that, ''By such date as the Administrator may reasonably require, but not later than 1 year after promulgation of a new or revised NAAQS for any pollutant under section 109, the Governor of each state shall * * * submit to the Administrator a list of all areas (or portions thereof) in the state'' that designated those areas as nonattainment, attainment, or unclassifiable. The CAA defines an area as nonattainment if it is violating the NAAQS or if it is contributing to a violation in a nearby area. *See* CAA section 107(d)(1)(A)(i).

The CAA further provides, ''Upon promulgation or revision of a NAAQS, the Administrator shall promulgate the designations of all areas (or portions thereof) * * * as expeditiously as practicable, but in no case later than 2 years from the date of promulgation of the new or revised NAAQS. Such period may be extended for up to 1 year in the event the Administrator has insufficient information to promulgate the designations.'' *See* CAA section 107(d)(1)(B)(i).

After the states submit their recommendations, but no later than 120 days prior to promulgating designations, the EPA is required to notify a state of any intended modifications to the state's recommended designation. The state then has an opportunity to demonstrate why any proposed modification is inappropriate. Whether or not a state provides a recommendation, the EPA must promulgate the designation that the agency deems appropriate within two years of promulgation of the NAAQS (or within 3 years if the EPA extends the deadline).

For the June 2010 SO_2 NAAQS, the deadline for states to submit designation recommendations to the EPA for their areas was June 3, 2011. The EPA has been evaluating these recommendations and conducting additional analyses to determine whether it is necessary to modify any of the state recommendations. The EPA was originally intending to complete the initial designations for the 2010 SO_2 NAAQS on a 2-year schedule, by June 3, 2012. We explained this intent in the preambles to the notices of proposed and final rulemakings for the revised SO_2 NAAQS, and in subsequently issued guidance documents suggesting

[1] Although the notice was signed on June 2, 2010, it was not publicly distributed until the next day, June 3, 2010. The EPA generally regards ''promulgation'' for public notice purposes to mean signature of a final rule combined with its public dissemination. For purposes of CAA section 107(d)(1), therefore, which imposes deadlines tied to the promulgation of the NAAQS for states to submit designations recommendations and for the EPA to promulgate designations, the EPA interprets the promulgation date of the 2010 primary SO_2 NAAQS to be June 3, 2010.

how states could develop their designations recommendations and how they could develop and submit state implementation plans (SIPs) for attainment, maintenance and enforcement of the NAAQS. We received numerous comments in response to our guidance, including suggestions that we take the extra year allowed under the CAA to issue designations where insufficient information exists, and, for the reasons discussed below, we are persuaded that it is more reasonable to take extra time allowed in these circumstances, a year or less as appropriate, rather than to proceed with our prior intention to issue designations by June 3, 2012.

B. Summary of Designations Guidance Provided in the Proposed and Final SO_2 NAAQS Preambles and in the March 2011 and September 2011 Memoranda

We first explained our intentions for designations under the new SO_2 NAAQS in the preamble to the proposed NAAQS rule, published in the **Federal Register** on December 8, 2009 (74 FR 64810). In the proposal, we explained that since the new SO_2 ambient monitoring network and any newly sited monitors would not be generating sufficient monitoring data in time to inform the EPA decisions on designations, even if the EPA took an extra year, we intended to issue initial area designations on a 2-year schedule, by June 2012, based on 3 years of complete, quality assured, certified air quality monitoring data from the pre-existing monitoring network (74 FR 64858). We then expected to base designations on air quality data from the years 2008–2010 or 2009–2011, using hourly reported data from existing monitors, and to designate as nonattainment any area with a monitor indicating a violation of the 1-hour SO_2 NAAQS, regardless of whether that monitor is located such that it could be counted towards meeting the proposed new network requirements (74 FR at 64859). The EPA further explained, however, that if the monitor indicates that the monitoring site meets the 1-hour SO_2 NAAQS, the EPA's designation decision would be made on a case-by-case basis, including possibly an unclassifiable designation due to the EPA being unable to determine, due to lack of data, whether the area is violating the NAAQS or is contributing to a violation in a nearby area (74 FR 64859).

In the published June 22, 2010, final NAAQS rulemaking preamble, partly in response to comments on the proposal, the EPA described a different intended approach to issuing initial area designations in order to make it more consistent with what we then described as our historical approach to implementing the prior SO_2 NAAQS (75 FR 35550). For designations, we indicated that approach would rely upon both monitoring data from the existing SO_2 network for the years 2008–2010, as well as any refined SO_2 dispersion modeling for sources that may have the potential to cause or contribute to a NAAQS violation, provided that it is recent and available (75 FR 35569). Under this approach, the EPA would designate as nonattainment an area that has monitoring or refined modeling results showing a NAAQS violation, and as attainment an area that has both monitoring data and appropriate modeling results showing no violations (75 FR 35569). In general, other areas, including those with SO_2 monitors showing no violations but without modeling showing no violations, the EPA would designate as unclassifiable (75 FR 35569). However, the EPA further explained that it anticipated making determinations of when monitoring alone could be appropriate to support a designation for a specific area on a case-by-case basis, informed by the area's factual record and after examining the historic treatment of the area with respect to prior SO_2 designations as well as whether the area is one in which monitoring would be the more appropriate technical tool for determining attainment of the 1-hour NAAQS (75 FR 35552).

The final NAAQS preamble also explained that the EPA received comments expressing concerns with the perceived burdens of implementing the proposed monitoring network as well as the sufficiency of its scope for purposes of identifying NAAQS violations (75 FR 35570). Some of these commenters suggested using modeling to determine the scope of monitoring requirements, or favored modeling over monitoring to determine attainment of the NAAQS (75 FR 35570). In response to these commenters, we explained our modified expectations at that time for issuing designations, as well as our intention to issue further modeling guidance (75 FR 35570). However, as we expected that it would take some time to issue guidance, and that modeling several hundred sources would represent a substantial burden, we clarified that we did not expect states to complete such modeling and incorporate their results in designations recommendations due in June 2011 (75 FR 35570). Rather, we expected states would generally submit designations recommendations of unclassifiable, and that most areas' informational records would be insufficient to support initial designations of either attainment or nonattainment (75 FR 35571).

In March 2011, the EPA then issued a memorandum, included in the docket for today's extension, providing non-binding guidance on designations for the 2010 primary SO_2 NAAQS, including modeling guidance (March 2011 Guidance). In this guidance, the EPA stated its intention at that time to promulgate initial designations for this standard within 2 years from the promulgation of the NAAQS (*i.e.,* by June 3, 2012). (March 2011 Guidance at pp. 1–2.) Under the CAA, states were to submit their primary SO_2 NAAQS designation recommendations to the EPA by June 3, 2011. The EPA stated in its guidance that if the EPA intends to modify any state's recommendation, the EPA will notify the state no later than 120 days prior to the EPA's action to promulgate designations (*i.e.,* by February 3, 2012, for designations then expected to be promulgated by June 3, 2012). The EPA again explained that in general, due to an expected absence of monitoring or modeling information showing whether areas were meeting or not meeting the revised NAAQS, most areas would likely be initially designated as unclassifiable (March 2011 Guidance at p. 2).

In this March 2011 Guidance, the EPA also discussed a suggested analytic approach that would use both air quality monitoring and modeling information (a ''hybrid'' modeling and monitoring approach) to determine if an area meets or does not meet the 2010 primary SO_2 NAAQS initially described in the preamble for the June 2010 primary SO_2 NAAQS. Under such an approach, areas would generally be designated as: (1) Nonattainment, where monitoring data or an appropriate modeling analysis or other appropriate information indicate a violation; (2) attainment, where there are no monitored violations and an appropriate modeling analysis or other appropriate information demonstrate no violations; or (3) unclassifiable, where there are no monitored violations and no appropriate modeling analysis or other appropriate information sufficient to support an alternate designation (March 2011 Guidance at pp. 3–5). The March 2011 Guidance also explained that given the currently limited network of SO_2 monitors and our expectation that states will not yet have completed appropriate modeling of all significant SO_2 sources, we anticipated that most areas of the country will be designated ''unclassifiable.''

In September 2011, the EPA issued a draft guidance document on SIP submissions for the 2010 primary SO_2 NAAQS (September 2011 Draft Guidance). The EPA published a notice of availability of this draft guidance in the **Federal Register** on October 3, 2011 (76 FR 61098). The EPA invited public comment on this draft document from October 3, 2011, to December 2, 2011 (76 FR 66925; October 28, 2011). This draft document includes guidance on how states could support future NAAQS attainment demonstrations in SIPs using a hybrid modeling and monitoring approach.

The EPA received several comments questioning the appropriateness of using the hybrid modeling and monitoring approach to demonstrate attainment of the SO_2 NAAQS. (*See* comments at Docket ID No. EPA–HQ–OAR–2010–1059.) Although the September 2011 Draft Guidance did not specifically address designations, commenters expressed their concerns regarding the hybrid approach both for initial designations purposes as well as for future SIP planning and attainment demonstration purposes. These concerns included, for example, industry sources and state regulators not having adequate time to conduct modeling to inform either designations recommendations that were due in June 2011 or SIP submissions due under the CAA in June 2013. Even in areas that may have monitored violations of the primary NAAQS, some commenters asserted uncertainty from where contributions to those violating ambient concentrations were coming.

Commenters claimed that the EPA's guidance to date did not sufficiently enable sources and states to fully identify nearby contributing areas or determine the boundaries of possible nonattainment areas. Consequently, these commenters urged the EPA to take the additional time allowed under the CAA in situations where available data is insufficient before issuing initial designations and use that additional time to further refine and improve the EPA's expected overall approach to implementing the 1-hour SO_2 NAAQS for both current conditions influencing initial designations and future conditions supporting SIP attainment demonstrations.

Subsequently, in April 2012, the EPA's Assistant Administrator for Air and Radiation sent letters to representatives of state and local government and tribal agencies that described the EPA's modified expectations regarding some SO_2 implementation aspects, and that reiterated the agency's intent to proceed with initial area designations as expeditiously as possible given available data. (*See sample letters at www.epa.gov/airquality/sulfurdioxide/implement.html.*) Then, in late May and early June 2012, the EPA held numerous meetings with environmental advocacy, state and local government, and industry stakeholders regarding the EPA's overall implementation approach to the 2010 primary SO_2 NAAQS, and in these discussions stakeholders repeated their concerns and suggestions regarding designations, including the recommendations to take the extra time allowed under CAA section 107 where insufficient data is available. In addition, the EPA has publicly distributed a ''white paper'' raising for discussion possible alternative implementation approaches to those that were presented in the September 2011 Draft Guidance. (*See ''White Paper'' at www.epa.gov/airquality/sulfurdioxide/implement.html.*) The EPA has recently received numerous comments on the ''white paper'' and on the stakeholder discussions, several of which also address designations and which recommend taking additional time to promulgate them. Some of these comments also suggest that the EPA should significantly revise the modeling guidance contained in the March 2011 Designations Guidance, to account for the 1-hour form of the 2010 SO_2 NAAQS, as some commenters believe that the current approved modeling protocol is not well suited for use in designations for the 1-hour NAAQS.

The EPA is still reviewing comments and has not yet determined whether to revise its overall approach for issuing initial designations. At the same time, the EPA has also received a notice of intent to sue from environmental advocacy stakeholders under CAA section 304(a)(2) for having missed the June 3, 2012, statutory deadline for issuing designations that applies in the absence of a determination by the EPA to take the extra year allowed under CAA section 107 based on insufficient data.

III. Extension of Deadline for Promulgating Designations for the 2010 NAAQS

In light of the comments received on the September 2011 Guidance, including those regarding the timing and approach for issuing initial area designations, and the subsequent comments received as part of the stakeholder outreach process in May and June 2012, the EPA acknowledges that it remains significantly uncertain what analytic approach sources, states, and the EPA will consistently and cooperatively use to make the determinations required under the CAA with respect to both current and future air quality. Because the issues involved, and the comments received on the draft guidance, relate to determinations of both the boundaries of areas currently meeting or not meeting the NAAQS and whether such areas will or will not meet the NAAQS in the future, the EPA agrees that it should make effective use of the additional time allowed under the CAA to promulgate designations. The EPA has insufficient data at this time to promulgate designations, including where it is necessary to identify nearby contributing areas and to determine boundaries of possible nonattainment areas, which the EPA cannot expect to definitively determine with full cooperation of stakeholders in advance of resolving outstanding issues and uncertainty regarding the most appropriate implementation approach, including determining whether an area meets or does not meet the new NAAQS. Therefore, the EPA concludes that it currently has insufficient information to promulgate designations by June 2012, and intends under these circumstances to take additional time, up to 1 additional year, allowed under the CAA for promulgating initial designations for the 2010 primary SO_2 NAAQS.

By taking the additional time, the EPA is now required under CAA section 107 to promulgate designations by June 3, 2013. The EPA expects to take additional time, as necessary, to appropriately assess designations. For some areas, EPA anticipates it will not be necessary to take the full additional year, and in those cases EPA will proceed sooner than June 2013. For example, the EPA intends to make its best effort to promulgate final designations for areas with monitored violations of the SO_2 NAAQS by the end of calendar year 2012, subject to being able to resolve issues related to nonattainment boundary determinations and contributions from nearby areas, rather than take until June 2013 for those areas. The EPA believes this deadline extension is appropriate because the continued uncertainty regarding the overall analytic approach to determining an area's compliance status affects not only the initial identification of nonattainment areas, but also the appropriate nonattainment area boundaries, which involves clearly identifying nearby areas that are (and are not) contributing to violations. The EPA expects to resolve these outstanding issues this year, and, once

resolved, will proceed expeditiously to complete the designations process.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: July 27, 2012.

Lisa P. Jackson,

Administrator.

[FR Doc. 2012–19043 Filed 8–2–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2011–0515, FRL 9666–8]

RIN 2040–AF38

Phosphorus Water Quality Standards for Florida Everglades

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a rule that identifies provisions of Florida's Water Quality Standards for Phosphorus in the Everglades Protection Area (Phosphorus Rule) and Florida's Amended Everglades Forever Act (EFA) that EPA has disapproved and that therefore are not applicable water quality standards for purposes of the Clean Water Act. EPA is promulgating this final rule following EPA's disapproval of these provisions and EPA's specific directions to the State of Florida to correct these deficiencies in the Phosphorus Rule and EFA. EPA's disapproval, specific directions to the State, and this rule implement two orders by the U.S. District Court for the Southern District of Florida.

DATES: This final rule is effective September 4, 2012. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of September 4, 2012.

ADDRESSES: An electronic version of the public docket is available through the EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.regulations.gov* to view public comments at Docket number EPA–HQ–OW–2011–0515, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Docket Facility. The Office of Water (OW) Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The OW Docket Center telephone number is 202–566–1744 and the Docket address is OW Docket, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Mario Sengco, Standards and Health Protection Division, Office of Science and Technology, Mail Code: 4305T, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 566–2676; email: *sengco.mario@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What entities may be affected by this rule?

Citizens concerned with water quality in Florida may be interested in this rulemaking. Entities discharging phosphorus to waters upstream of the Everglades Protection Area could be indirectly affected by the Phosphorus Rule and EFA, although not specifically by this rule because the rule merely publishes the text changes that reflect the prior disapproval by the EPA of certain provisions of the Phosphorus Rule and EFA. Any indirect affect to entities would be because the water quality standards contained in the State's regulation and statute are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits. With this in mind, categories and entities that ultimately may be indirectly affected include:

Category	Examples of potentially indirectly affected entities
Water Management Districts	Entities responsible for managing point source discharges near the Everglades Protection Area.
Nonpoint Source Contributors	Entities responsible for contributing nonpoint source runoff near the Everglades Protection Area.

This table is not intended to be exhaustive, but rather provides a guide for entities that may be affected indirectly by this action. This table lists the types of entities of which EPA is now aware that potentially could be indirectly affected by this action. Other types of entities not listed in the table could also be affected directly or indirectly. Any parties or entities conducting activities within watersheds of the Florida waters covered by this rule, or who rely on, depend upon, influence, or contribute to the water quality of the Everglades Protection Area, might be indirectly affected by this rule. To determine whether your facility or activities may be affected by this action, you should examine the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section, entitled **FOR FURTHER INFORMATION CONTACT**.

B. How do I get copies of this notice?

Docket. EPA has established an official public docket for this action under Docket ID No. EPA–HQ–OW–2011–0515. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. Publicly available docket materials are available electronically through *www.regulations.gov* and in hard copy at the EPA Docket Center Public Reading Room, open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the public Reading Room is (202) 566–1744 and the telephone number for the Water docket is (202) 566–2426.

Incorporation by reference. Documents that are being incorporated by reference through this rule may be found in the docket as described above, on EPA Web site established for this rulemaking at *http://water.epa.gov/lawsregs/rulesregs/floridaeverglades_index.cfm,* and through the National Archives and Records Administration (NARA) by sending a request by email to *fedreg.info@nara.gov,* or by mail to the following address: Office of the Federal Register (NF), The National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. For information on the availability

of this material at NARA, call 202–741–6030, or go to the following Web site *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.htm.*

II. Background

EPA is promulgating this rule to identify provisions of Florida's Water Quality Standards for Phosphorus in the Everglades Protection Area (Phosphorus Rule) and Florida's Amended Everglades Forever Act (EFA) that EPA has disapproved and that therefore are not applicable water quality standards for purposes of the Clean Water Act. EPA is promulgating this final rule following its disapproval of these provisions and EPA's specific directions to the State of Florida to correct these deficiencies in the Phosphorus Rule and EFA. EPA's disapproval and specific directions to the State implement two orders by the U.S. District Court for the Southern District of Florida. Pursuant to the Court's orders and consistent with Clean Water Act section 303(c), EPA provided the State a period of time to correct the deficiencies. The State has not corrected the deficiencies within that time period. Therefore, EPA is promulgating this rule. The rule incorporates by reference two documents that identify the specific provisions of Florida's Phosphorus Rule and EFA that are not applicable water quality standards for purposes of the Clean Water Act. The specific provisions that are not applicable water quality standards are indicated with ''strikeout'' text in the documents that are incorporated by reference into the Code of Federal Regulations.

A. Statutory and Regulatory Background

Section 303(c) (33 U.S.C. 1313) of the Clean Water Act (CWA) directs States, with oversight by EPA, to adopt water quality standards to protect the public health and welfare, enhance the quality of water and serve the purposes of the CWA. Under section 303, States are required to develop water quality standards for waters of the United States within the State. Section 303(c) and EPA's implementing regulations (40 CFR part 131) provide that water quality standards shall include designated uses of the water and water quality criteria necessary to protect those uses.

States must submit any new or revised water quality standards for EPA review and approval/disapproval. EPA must approve/disapprove any new or revised standards within 60–90 days. (Section 303(c)(3)). If EPA disapproves any standard, EPA is to specify the changes to meet the requirements of the CWA. If the changes are not adopted by the State, EPA is to promulgate standards to address the necessary changes in the State standards that EPA has disapproved. In this rulemaking, EPA is identifying the portions of Florida's standards that EPA disapproved and that, after EPA notification of necessary changes, the State has not adopted through changes in State publications.

B. Florida's Phosphorus Rule and Everglades Forever Act

1. Florida's Phosphorus Rule

In 2005, the Florida Department of Environmental Protection (FDEP) submitted to EPA for review pursuant to CWA section 303(c), provisions of Florida Administrative Code (''FAC'') 62–302.540 entitled ''Water Quality Standards for Phosphorus Within the Everglades Protection Area'' (Phosphorus Rule or Rule). The Rule established a numeric water quality criterion for phosphorus as well as implementing provisions for the numeric criterion within the Everglades Protection Area. In 2005 and 2006, EPA issued a series of decisions approving certain provisions of the Phosphorus Rule and concluding that other provisions were not new or revised water quality standards and did not require EPA approval or disapproval under CWA section 303(c).

2. Florida's Everglades Forever Act

The Florida Legislature enacted the Everglades Forever Act in 1994 to maintain and restore the ecosystem of the Everglades. See *Miccosukee Tribe of Indians* v. *United States,* 105 F.3d. 599, 601 (11th Cir. 1997). EPA subsequently reviewed and approved one section of the EFA (section 4(f)) as a new or revised water quality standard in 1999. The Legislature enacted amendments to the EFA in 2003. EPA reviewed the amendments and issued a decision in 2003 that the amendments were not new or revised water quality standards requiring EPA approval or disapproval under section 303(c) of the CWA.

C. Litigation and Subsequent EPA Actions

In consolidated litigation, environmental and Native American plaintiffs challenged (1) EPA's 2003 decision that the EFA amendments were not water quality standards and (2) EPA's 2005 and 2006 decisions regarding the Phosphorus Rule. In a July 29, 2008 decision, the U.S. District Court for the Southern District of Florida upheld in part and remanded in part EPA's decisions. *Miccosukee Tribe of Indians & Friends of the Everglades* v. *U.S. Environmental Protection Agency, Florida Department of Environmental Protection, et al.,* No. 04–21488–CIV–Gold/McAliley (S.D. Fla.). The Court upheld EPA's 2005 approval of the Phosphorus Rule's numeric phosphorus criterion and the ''four-part'' test for determining attainment of the criterion. The Court overturned (1) EPA's decision that certain implementing provisions of the Phosphorus Rule were not new or revised water quality standards, and (2) EPA's approval of other provisions of the Phosphorus Rule, finding EPA's approval to be arbitrary and capricious. The Court also rejected EPA's position that the legislative amendments to the EFA did not constitute new or revised water quality standards subject to EPA review (and approval or disapproval) under section 303(c) of the CWA. The Court remanded to EPA to take further action consistent with the Court's decision.

1. EPA's December 2009 Determination

On December 3, 2009, EPA issued a new Determination in response to the Court's remand. Consistent with the Court's 2008 decision, EPA disapproved certain amendments to the EFA. It is those disapproved provisions of the EFA that are, in part, the subject of this rulemaking. In addition, EPA reviewed the provisions of the Phosphorus Rule that the Court either found were new or revised standards or that the Court had held EPA's prior approval invalid. Consistent with the Court's decision, EPA disapproved certain provisions of the Phosphorus Rule in December of 2009 and those disapproved provisions also are reflected in this final rulemaking.

2. Court's April 14, 2010 Order

Plaintiffs challenged EPA's December 2009 Determination, alleging, in part, that EPA failed to (1) specify the changes that Florida must make to the Phosphorus Rule and EFA to bring them into compliance with the CWA and (2) commit to promulgate if the State fails to act. The Court, in an order dated April 14, 2010, remanded EPA's 2009 Determination and ordered EPA to issue an Amended Determination (AD) by September 3, 2010. *Miccosukee Tribe of Indians & Friends of the Everglades* v. *U.S. Environmental Protection Agency, Florida Department of Environmental Protection, et al.,* No. 04–21488–CIV–Gold/McAliley (April 14, 2010, S.D. Fla.) (Order). While the Court did not take issue with EPA's disapprovals, the Court nevertheless ordered that EPA's AD ''shall specifically direct the State of

Florida to correct deficiencies in the Amended EFA and Phosphorus Rule that have been invalidated,'' attaching copies of the Rule and EFA with strikeout markings indicating the exact language from the Rule and EFA that the EPA was to direct the State to correct. Order at 44. The Court ordered that in the AD, ''EPA shall require the State of Florida to commence and complete rulemaking for the Phosphorus Rule within 120 days from the date of the Amended Determination and shall require amendments to the Amended EFA to be enacted by July 1, 2011.'' Order at 44–45. The Court further ordered that ''[i]n the event the State of Florida fails to timely act, the EPA shall provide timely notice, and the EPA Administrator ''shall promulgate such standard[s]'' pursuant to 33 U.S.C. 1313(c).'' Order at 45. This rulemaking complies with that Court order.

3. EPA's September 3, 2010 Amended Determination

Consistent with the Court's April 14, 2010 Order, EPA prepared an Amended Determination (AD) dated September 3, 2010. The AD directed the State of Florida to correct deficiencies in the Phosphorus Rule and Amended EFA. The AD included as attachments copies of the Phosphorus Rule and EFA with strikeout markings indicating the language changes necessary to meet Clean Water Act requirements. EPA's AD stated that if FDEP has not finalized revisions by January 1, 2011 and the Legislature has not enacted amendments to the EFA by July 1, 2011, then EPA would initiate rulemaking to promulgate the necessary changes consistent with the Court's Order.

Although FDEP initiated a rulemaking, with a notice of rule development published on March 26, 2010, to adopt the necessary revisions to the Phosphorus Rule and the EFA amendments consistent with EPA's AD, the State rulemaking agencies did not complete that process on the Phosphorus Rule changes by January 1, 2011. Nor has the State completed its rulemaking process on the Phosphorus Rule since that date. The Florida Legislature also did not introduce or enact any amendments to the EFA consistent with EPA's AD. The Florida Legislature adjourned and did not reconvene prior to July 1, 2011. Therefore, EPA proceeded, consistent with the Court's Order and EPA's AD, to initiate this rulemaking process to promulgate the proposed federal rulemaking identifying the necessary changes to the Phosphorus Rule and EFA to meet Clean Water Act requirements.

III. EPA's Proposal and Public Comments Received

Proposed Rule: EPA's proposed rule identified those provisions in the Phosphorus Rule and Everglades Forever Act (EFA) that EPA had disapproved and therefore are not applicable water quality standards for purposes of the CWA. The provisions are those that EPA previously disapproved in December 2009 that the Court identified in its April 2010 Order, and that EPA subsequently identified in its September 2010 AD. EPA initiated this rulemaking to promulgate the necessary changes to the Phosphorus Rule and EFA, consistent with the April 2010 Order and EPA's AD, after the State failed to make changes to the regulation and statute, respectively, by specified dates.

For the purposes of codifying the changes, EPA proposed to incorporate by reference into the Code of Federal Regulations copies of the Phosphorus Rule and EFA with the strikeout markings, identifying the provisions and language that are not applicable water quality standards for purposes of the CWA. EPA explained that the approach of incorporation by reference was the most appropriate among the approaches that the Agency considered to correct the deficiencies in the State's regulation and statute. Therefore, copies of the two documents to be incorporated were placed in the rulemaking docket. In addition, EPA identified the specific provisions of the Phosphorus Rule and EFA that are not applicable water quality standards for purposes of the CWA in Tables 1 and 2 of the proposal.

EPA further explained in the proposal that the remaining provisions of the Phosphorus Rule and EFA either (1) had already been approved by EPA as new or revised water quality standards (i.e., are applicable water quality standards for the purposes of the CWA), or (2) are not water quality standards subject to EPA review and approval (or disapproval) under the Clean Water Act. Therefore, EPA did not propose to promulgate any of the remaining provisions that EPA had previously approved or that are not water quality standards.

For the convenience of the reader and to improve the readability of the two documents to be incorporated by reference, EPA included in its proposal a few minor text changes to the Phosphorus Rule and EFA in the docket. These changes were identified by underline. EPA included these few text changes in a submission filed with the Court and the Court subsequently indicated that it would modify its April 2010 to reflect these changes. EPA added text when deletion of the disapproved language rendered the remaining text difficult to understand. For example, in EFA section 10, EPA added text to restore language that existed prior to enactment of EFA amendments. In these sections, EPA did not propose to establish new or revised water quality standards with these text changes. Similarly, for ease of readability, the docket versions of the Phosphorus Rule and Amended Everglades Forever Act struck the definitions of ''optimization'' (which corresponded to regulatory language already disapproved) from sections 2(l) and 3(f), as discussed in the proposed rule preamble.

The public was given an opportunity to review the proposed rule and provide comments over a thirty-day period.

Comments: EPA received comments from eight separate commenters including the two litigants in the District Court case and other interested parties. A few commenters challenged EPA's authority to promulgate this rule, arguing that the Agency lacks legal authority to promulgate a rule after disapproval of water quality standards when the remaining approved water quality standards meet CWA requirements. EPA disagrees that it has no authority to promulgate water quality standards following disapproval. CWA section 303(c) does not specifically address the issue. It was reasonable and consistent with the CWA for EPA to promulgate this final rule that identifies only those provisions of Florida law that EPA has disapproved and that therefore are not applicable water quality standards for purposes of the Clean Water Act, where EPA concluded that the State should revise its existing standards to remove the disapproved provisions and the State failed to take such action. Otherwise, the provisions of the revised State water quality standards that EPA disapproved would remain applicable under State law. EPA's action will remove any potential for confusion and identify the provisions of State law that EPA has disapproved and that, therefore, are not in effect for federal CWA purposes.

To the extent EPA would be promulgating as federal regulations provisions of state water quality standards that EPA has approved (or provisions associated with approved water quality standards that are not themselves water quality standards), the CWA does not provide for such action. The CWA provides that when EPA approves a new or revised state water quality standard, ''such standard shall thereafter be the water quality standard

for the applicable waters of the State.'' CWA section 303(c)(3). Only if EPA disapproves a state water quality standard or makes a determination that a new or revised water quality standard is necessary to meet the requirements of the Clean Water Act under section 303(c)(4)(B) and the state fails to make the necessary changes, does the Act direct EPA to promulgate such water quality standards for navigable waters of the state. There are many provisions of the Phosphorus Rule that EPA approved. EPA does not believe it would be appropriate to promulgate those provisions as federal regulations.

Second, except for the disapproved provisions of the EFA amendments, EPA has not approved or disapproved the remaining provisions of the EFA (with one exception) as new or revised water quality standards under the Clean Water Act. Therefore, it would not be appropriate for EPA to promulgate such provisions as federal water quality standards.

Copies of the public comments and the EPA's responses can be found in the docket associated with this rulemaking (see instructions above under General Information).

Final Rule: EPA has made no changes to its proposal in this final rule. EPA believes that the incorporation by reference approach described in the proposed rule, as well as the content of the proposed rule, remain appropriate for promulgation.

For the convenience of persons reviewing this final rule, EPA has included copies of the Phosphorus Rule and Amended Everglades Forever Act in the docket that included the strikeout markings indicating the language that EPA identifies as not being applicable water quality standards for purposes of the CWA. The provisions of the Phosphorus Rule and EFA that are not applicable water quality standards for purposes of the CWA are summarized again here in Tables 1 and 2 below.

TABLE 1—62–302.540 PROVISIONS OF FLORIDA ADMINISTRATIVE CODE (F.A.C.) (WATER QUALITY STANDARDS FOR PHOSPHORUS WITHIN THE EVERGLADES PROTECTION AREA) THAT ARE NOT APPLICABLE WATER QUALITY STANDARDS FOR PURPOSES OF THE CLEAN WATER ACT

Section	Specific provision or language
(1)(a)	Entire paragraph.
(1)(b)(2)	Entire paragraph.
(2)(b)–(f)	Entire paragraphs and subparagraphs.
(2)(h)	Entire paragraph.
(2)(l)	Entire paragraph.
(3)(a)–(b)	Entire paragraphs.
(3)(f)	Entire paragraph.
(3)(h)	Entire paragraph.
(4)(d)(2)(c)	Sentence only, ''If these limits are not met, no action shall be required, provided that the net improvement or hydropattern restoration provisions of subsection (6) below are met.''
(5)(a)	Entire paragraph.
(5)(b)(2)–(3)	Entire paragraphs.
(5)(d)	Entire paragraph.
(6)(a)–(c)	Entire paragraphs and subparagraphs.

TABLE 2—PROVISIONS OF THE AMENDED EVERGLADES FOREVER ACT (FLORIDA STATUTE 373.4592) THAT ARE NOT APPLICABLE WATER QUALITY STANDARDS FOR PURPOSES OF THE CLEAN WATER ACT

Section	Specific provision or language
(2)(a)	Entire paragraph.
(2)(g)	Sentence 1, phrase ''and further described in the Long-Term Plan''.
(2)(j)	Entire paragraph.
(2)(l)	Entire paragraph.
(2)(p)	Entire paragraph.
(3)(b)–(e)	Entire paragraphs.
(4)(a)	Sentence 9, phrase ''design, construction, and implementation of the initial phase of the Long-Term Plan, including operation and maintenance, and research for the projects and strategies in the initial phase of the Long-Term Plan, and including.''
(4)(a)(4)	Sentence 1, phrase ''however, the district may modify this schedule to incorporate and accelerate enhancements to STA 3/4 as directed in the Long-Term Plan''.
(4)(a)(6)	Entire subparagraph.
(4)(e)(2)	Sentences 7, 8 and 9.
(4)(e)(3)	Sentence 3.
(10)	Sentence 1, phrase ''to implement the pre-2006 projects and strategies of the Long-Term Plan.''
	Sentence 1, phrase ''in all parts of the Everglades Protection Area''.
	Sentence 1, phrase ''and moderating provisions''.
(10)(a)	Entire paragraph.

IV. Statutory and Executive Order Reviews

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

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

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This action merely clarifies the water quality standards concerning the phosphorus rule and the Amended EFA statute that are not water quality standards for purposes of the CWA and does not impose any information collection burden on anyone.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

As a result of the disapproval action by EPA in December 2009, the Florida Department of Environmental Protection already needs to ensure that permits it issues do not implement the provisions identified in this rule because those provisions are not applicable water quality standards for purposes of the CWA. In doing so, the State will have a number of choices associated with permit writing. While Florida's implementation of the rule (and EPA's earlier disapprovals) might ultimately result in some new or revised permit conditions for some dischargers, including small entities, EPA's action today would not impose any of these as yet unknown requirements on small entities. Thus, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. This action merely clarifies the water quality standards concerning the Phosphorus Rule and the Amended EFA and does not impose any burden on anyone. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132 (Federalism)

This action does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely clarifies the water quality standards concerning the Phosphorus Rule and the Amended EFA and does not apply to any government other than the State of Florida.

F. Executive Order 13175

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000) because this is an action in which the EPA has no discretion, i.e., EPA is mandated by the Court to take this action. Thus, Executive Order 13175 does not apply to this action. Nonetheless, consistent with the findings of the Executive Order and in response to a request from the Miccosukee Tribe submitted during the public comment period, EPA did choose to confer with the Tribe.

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866 and because the Agency does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

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

This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. This action is not subject to E.O. 12898 because this action merely clarifies the water quality standards concerning the Phosphorus Rule and the Amended EFA.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective September 4, 2012.

List of Subjects in 40 CFR Part 131

Environmental protection, Incorporation by reference, Indians—lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: July 27, 2012.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, EPA amends 40 CFR part 131 as follows:

PART 131—WATER QUALITY STANDARDS

■ 1. The Authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—[Amended]

■ 2. Section 131.44 is added as follows:

§ 131.44 Florida.

(a) *Phosphorus Rule.* (1) The document entitled ''Florida Administrative Code, Chapter 62–302, Surface Water Quality Standards, Section 62–302.540, Water Quality Standards for Phosphorus Within the Everglades Protection Area, Amended May 25, 2005, as annotated by EPA'' (Phosphorus Rule), is incorporated by reference as described in paragraph (a)(2). EPA is not incorporating the full text of this document, but correcting specified portions of the Phosphorus Rule as directed by a federal district court as indicated by the strikeout markings. The EPA is only incorporating by reference these crossed-out portions in the Florida Administrative Code 62–302.540. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a). Copies of the document may be inspected and obtained from the docket associated with this rulemaking (Docket Number EPA–HQ–OW–2011–0515) at *http://www.regulations.gov* electronically, at EPA's Water Docket (Address: 1301 Constitution Avenue NW., EPA West, Room B102, Washington, DC 20460, telephone number: 202–566–2426), at the National Archives and Records Administration (NARA), and finally, on the EPA Web site associated with this rulemaking at *http://water.epa.gov/lawsregs/rulesregs/floridaeverglades_index.cfm.* For information on the availability of this material at NARA, call 202–741–6030, or go to the following Web site *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.htm.* EPA adopts and identifies the portions of the document that have strikeout markings as portions of the Phosphorus Rule that EPA disapproved on December 3, 2009, and that are not applicable water quality standards for the purposes of the Clean Water Act. Remaining portions of the Phosphorus Rule that EPA had previously approved are applicable water quality standards for the purposes of the Clean Water Act but are not codified as federal regulations.

(2) In the Phosphorus Rule, strike the following text:

(i) The entire paragraph (1)(a);

(ii) The entire paragraph (1)(b)(2);

(iii) The entire paragraph and subparagraphs (2)(b), (2)(c), (2)(d), (2)(e), (2)(e)(1), (2)(e)(2) and 2(f);

(iv) The entire paragraph (2)(h);

(v) The entire paragraph (2)(l);

(vi) The entire paragraphs (3)(a) and (3)(b);

(vii) The entire paragraph 3(f);

(viii) The entire paragraph (3)(h);

(ix) In (4)(d)(2)(c), the sentence, ''If these limits are not met, no action shall be required, provided that the net improvement or hydropattern restoration provisions of subsection (6) below are met.'';

(x) The entire paragraph (5)(a);

(xi) The entire paragraph (5)(b)(2) and (5)(b)(3);

(xii) The entire paragraph (5)(d);

(xiii) The entire paragraph (6), including subparagraphs (6)(a), (6)(a)(1), (6)(a)(1)(a), (6)(a)(1)(b), (6)(a)(2), (6)(a)(3), (6)(a)(4), (6)(a)(5), (6)(b), (6)(b)(1), (6)(b)(2), (6)(b)(3), and (6)(c).

(b) *Amended Everglades Forever Act.* (1) The document entitled ''Florida Statute, Title 28, Natural Resources; Conservation, Reclamation, and Use, Section 373.4592, Everglades improvement and management, effective July 1, 2008, also known as the ''Everglades Forever Act,'' as annotated by EPA'' is incorporated by reference as described in paragraph (b)(2). The EPA is not incorporating the full text of this document, but correcting specified portions of the statute as directed by the court as indicated by the strike out markings. The EPA is only incorporating by reference these crossed-out portions in the Florida Statute, the ''Everglades Forever Act.'' The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a). Copies of the document may be inspected and obtained from the docket associated with this rulemaking (Docket Number EPA–HQ–OW–2011–0515) at *http://www.regulations.gov* electronically, at EPA's Water Docket (Address: 1301 Constitution Avenue NW., EPA West, Room B102, Washington, DC 20460, telephone number: 202–566–2426), at the National Archives and Records Administration (NARA), and finally, on the EPA Web site associated with this rulemaking at *http://water.epa.gov/lawsregs/rulesregs/floridaeverglades_index.cfm.* For information on the availability of this material at NARA, call 202–741–6030, or go to the following Web site *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.htm.* EPA adopts and identifies the portions of the document that have strikeout markings as portions of the statute that EPA disapproved on December 3, 2009, and that are not applicable water quality standards for the purposes of the Clean Water Act. Remaining portions of the statute that EPA had previously approved are applicable water quality standards for the purposes of the Clean Water Act but are not codified as federal regulations.

(2) In the Everglades Forever Act, strike the following text:

(i) The entire paragraph (2)(a);

(ii) In paragraph (2)(g), the phrase, ''and further described in the Long-Term Plan.'';

(iii) The entire paragraph (2)(j);

(iv) The entire paragraph (2)(l);

(v) The entire paragraph (2)(p);

(vi) The entire paragraphs (3)(b), (3)(c), (3)(d) and (3)(e);

(vii) In sentence 9 of paragraph (4)(a), the phrase, ''design, construction, and implementation of the initial phase of the Long-Term Plan, including operation and maintenance, and research for the projects and strategies in the initial phase of the Long-Term Plan, and including'';

(viii) In sentence 1 of subparagraph (4)(a)(4), the phrase, ''however, the district may modify this schedule to incorporate and accelerate enhancements to STA 3/4 as directed in the Long-Term Plan;'';

(ix) The entire subparagraph (4)(a)(6);

(x) In subparagraph (4)(e)(2), the entire sentences 7, 8 and 9;

(xi) In subparagraph (4)(e)(3), the entire sentence 3;

(xii) In sentence 1 of paragraph (10), the phrase, ''to implement the pre-2006 projects and strategies of the Long-Term Plan'', the phrase, ''in all parts of the Everglades Protection Area'', and the phrase ''and moderating provisions'';

(xiii) The entire paragraph (10)(a).

(3) EPA is not incorporating the text annotations added by hand to the Everglades Forever Act. These text inserts are included only for the convenience of the reader and to improve the readability of the document.

[FR Doc. 2012–18872 Filed 8–2–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0563; FRL–9355–5]

Rimsulfuron; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of rimsulfuron in or on chicory roots and tops. Interregional Research Project No. 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 3, 2012. Objections and requests for hearings must be received on or before October 2, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–0563, is available at *http://www.regulations.gov* or at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Andrew Ertman, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–9367; email address: *ertman.andrew@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl*.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0563 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 2, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0563, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statue.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm*.

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of August 26, 2011 (76 FR 53372) (FRL–8884–9), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1E7883) by IR–4, 500 College Rd. East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.478 be amended by establishing tolerances for residues of the herbicide rimsulfuron, *N*-((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide, including its metabolites and degradates, in or on chicory, roots at 0.01 parts per million (ppm) and chicory, tops at 0.01 ppm. That notice referenced a summary of the petition prepared by DuPont, the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.''

Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for rimsulfuron including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with rimsulfuron follows.

In the **Federal Register** of January 25, 2012 (77 FR 3621) (FRL–9332–1), EPA published a final rule establishing tolerances residues of herbicide rimsulfuron, *N*-((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide, including its metabolites and degradates, in or on the caneberry subgroup 13–07A and the bushberry subgroup 13–07B. The human health risk assessment used to support this final rule (''Rimsulfuron. Human Health Risk Assessment for Proposed Section 3 Uses on Caneberry and Bushberry''), included not only the caneberrry and bushberry tolerances but tolerances for chicory roots and tops as well. Therefore, the aggregate risks for rimsulfuron for this action are not changed from those discussed in the January 25, 2012 **Federal Register**.

In that document the EPA concluded that there are no acute or cancer points of departure as well as no residential uses registered. EPA concluded that chronic exposure to rimsulfuron from food and water will utilize < 1% of the chronic population adjusted dose (cPAD) for children 1–2 years old, the population group receiving the greatest exposure. Therefore, EPA concluded that there is a reasonable certainty that no harm will result to the general population and to infants and children from aggregate exposure to rimsulfuron residues. Refer to the January 25, 2012 **Federal Register** document, available at *http://www.regulations.gov,* for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon those risk assessments and the findings made in the **Federal Register** document in support of this action.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (liquid chromatography with tandem mass spectroscopy (LC/MS/MS)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov*.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for rimsulfuron on chicory.

V. Conclusion

Therefore, tolerances are established for residues of rimsulfuron, *N*-((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide, including its metabolites and degradates, in or on chicory tops at 0.01 ppm and chicory roots at 0.01 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995

(NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 27, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.478 is amended by alphabetically adding the following entries to the table in paragraph (a) to read as follows:

§ 180.478 Rimsulfuron; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Chicory, roots	0.01
Chicory, tops	0.01
* * * * *	

* * * * *

[FR Doc. 2012–19062 Filed 8–2–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0421; FRL–9355–6]

Fluxapyroxad; Pesticide Tolerances Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA issued a final rule in the **Federal Register** of May 14, 2012, concerning the establishment of pesticide tolerances for the new fungicide active ingredient fluxapyroxad. Inadvertently, the terminology for the oilseed crop group and for dried plums was incorrect. This technical amendment is being issued to correct the terminology.

DATES: This final rule is effective August 3, 2012.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2010–0421; FRL–9355–6, is available either electronically through *http://www.regulations.gov* or in hard copy at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Olga Odiott, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–9369; email address: o*diott.olga@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What does this technical correction do?

In the **Federal Register** of May 14, 2012 (77 FR 28270) (FRL–9346–7), EPA issued a final rule establishing tolerances for the new fungicide active ingredient fluxapyroxad (40 CFR 180.666) in or on various commodities. Inadvertently, the commodity terminology for the oilseed crop group and for dried plums was incorrectly expressed. This document is being issued to correct the terminology for these commodities.

III. Why is this correction issued as a final rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(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 final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical amendment final without prior proposal and opportunity for comment, because this technical amendment only revises the terminology of two (2) commodities, with no other related changes to tolerance levels or any requirements of the final rule. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

IV. Do any of the statutory and Executive Order reviews apply to this action?

This technical amendment only revises the terminology of two commodities and does not otherwise change the original requirements of the final rule. As a technical amendment, this action is not subject to the statutory and Executive Order review requirements. For information about the statutory and Executive Order review requirements as they relate to the final rule, see Unit VI. in the **Federal Register** of May 14, 2012 (77 FR 28270) (FRL–9346–7).

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the

Federal Register. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Agricultural commodities, Pesticides and pest.

Dated: July 23, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.666, by removing the entries for ''Oilseeds, group 20'' and ''Plum, prune'' and adding in their place entries for ''Oilseeds, group 20 (except cottonseed)'' and ''Plum, prune, dried'' in the table to paragraph (a) to read as follows:

§ 180.666 Fluxapyroxad; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Oilseeds, group 20 (except cottonseed)	0.9
* * * * *	
Plum, prune, dried	3.0
* * * * *	

* * * * *

[FR Doc. 2012–18507 Filed 8–2–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 12–116; FCC 12–76]

Assessment and Collection of Regulatory Fees for Fiscal Year 2012

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission revises its Schedule of Regulatory Fees to recover an amount of $339,844,000 that Congress has required the Commission to collect for fiscal year 2012. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees under sections 9(b)(2) and 9(b)(3), respectively, for annual ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees.

DATES: Effective September 4, 2012.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (R&O), FCC 12–76, MD Docket No. 12–116, adopted on July 13, 2012 and released on July 19, 2012.

I. Procedural Matters

A. Final Paperwork Reduction Act

1. This *Report and Order* does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

B. Congressional Review Act Analysis

2. The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[1]

C. Final Regulatory Flexibility Analysis

3. As required by the Regulatory Flexibility Act of 1980 (''RFA''),[2] the Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA'') relating to this Report and Order. The FRFA is set forth in the section entitled Final Regulatory Flexibility Analysis.

II. Introduction and Summary

4. In this *Report and Order,* we conclude the process of assessing and collecting regulatory fees for Fiscal Year (''FY'') 2012 to collect $339,844,000 in regulatory fees for FY 2012. Section 9(a)(1) of the Communications Act of 1934, as amended (the ''Act'') directs the Commission to collect regulatory fees ''to recover the costs of * * * enforcement activities, policy and rulemaking activities, user information services, and international activities.''[3] Section 9(a)(2) stipulates that regulatory fees for the enumerated activities ''shall be collected only if, and only in the total amounts, required in Appropriation Acts,'' and must ''be established in amounts that will result in collection, during each fiscal year, of any amount that can reasonably be expected to equal the amount appropriated'' for the performance of the activities enumerated in section 9(a)(1) during that fiscal year. Since FY 2009, Congress has directed the Commission to assess and collect regulatory fees in an amount equal to the entire amount appropriated.[4] Congress appropriated $339,844,000 for the Commission in FY 2012,[5] and the regulatory fees established in this *FY 2012 Report and Order* are calculated so as to collect this entire amount.[6] In this annual regulatory fee proceeding, we retain many of the current methods, policies, and procedures for collecting section 9 regulatory fees adopted by the Commission in prior years. Consistent with our established practice, we intend to collect these regulatory fees during a September 2012 filing window in order to collect the required amount by the end of our fiscal year.[7]

5. In this *FY 2012 Report and Order,* we address the following issues: (1) Incorporating 2010 Census data into our broadcast population data, (2) assessing a regulatory fee for each broadcasting facility operating either in an analog or digital mode (but not both) for Low Power, Class A, and TV Translators/Boosters, (3) maintaining the FY 2012 Interstate Telecommunications Service Provider (ITSP) fee rate at the same level as in FY 2011, (4) using an online filing system for the filing of requests for a refund, waiver, fee reduction, or deferment of payment of an application or regulatory fee, (5) maintaining the Commercial Mobile Radio Service (''CMRS'') Messaging Service at the rate of $.08 per subscriber, and (6) the

[1] *See* 5 U.S.C. 801(a)(1)(A). The Congressional Review Act is contained in Title II, 251, of the CWAAA; *see* Public Law 104–121, Title II, 251, 110 Stat. 868.

[2] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''), Public Law 104–121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (''CWAAA'').

[3] 47 U.S.C. 159(a).

[4] Omnibus Appropriations Act of 2009, Public Law 111–8, 123 Stat. 524, 657 (2009).

[5] Consolidated Appropriations Act of 2012, Public Law 112–74, Div. C, Title V (December 23, 2011).

[6] In FY 2011, the Commission's collection target goal was $335,794,000, and it collected $342.04 million through September 30, 2011. Any over collection amount is unavailable for obligation pursuant to Public Law 112–74 (HR 2055), *Consolidated Appropriations Act of 2012,* page 124.

[7] The Commission also expects to release in the near future a *Notice of Proposed Rulemaking* that will propose to update our current cost allocation percentages and revise our cost allocation methodology. We expect to implement any changes that result from this rulemaking in FY 2013; they do not affect the fees set in this *FY 2012 Report and Order.*

Commission will continue to promote greater use of technology (and less use of paper) in improving its regulatory fee notification and collection processes. The resulting FY 2012 Schedule of Regulatory Fees appears in Table B.

III. Report and Order

6. In this *FY 2012 Report and Order,* we retain the same regulatory fee methodology used in FY 2011 and in prior fiscal years, with some adjustments to maintain the FY 2012 ITSP fee rate at the same level as in FY 2011. These adjustments are reflected in the ITSP fee rate, as well as in the fee rates of all remaining fee categories listed in Table B.

7. Since FY 1999, the Commission has allocated the amount appropriated by Congress across the various fee categories, and then divided these allocated amounts by the number of estimated payment units in each fee category to determine the unit fee.[8] As in prior years, for cases involving small multiyear fees (*e.g.,* licenses that are renewed over a multiyear term), we divided the allocated amounts by their respective estimated payment units, as well as by the term of the license (5-year or 10-year) to determine the unit fee, which was then rounded to be consistent with the requirements of section 9(b)(2)(B) of the Act. This process is illustrated in Table A and yields the FY 2012 regulatory fees shown in Table B.

TABLE A—CALCULATION OF FY 2012 REVENUE REQUIREMENTS AND PRO-RATA FEES

[Regulatory fees for the first ten categories below are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee category	FY 2012 Payment units	Years	FY 2011 Revenue estimate	Pro-rated FY 2012 revenue requirement	Computed new FY 2012 regulatory fee	Rounded new FY 2012 regulatory fee	Expected FY 2012 revenue
PLMRS (Exclusive Use)	1,400	10	480,000	501,024	36	35	490,000
PLMRS (Shared use)	15,000	10	2,120,000	2,397,759	16	15	2,250,000
Microwave	13,200	10	2,550,000	2,361,972	18	20	2,640,000
218–219 MHz (Formerly IVDS)	5	10	1,950	3,579	72	70	3,500
Marine (Ship)	6,550	10	670,000	787,324	12	10	655,000
GMRS	7,700	5	232,500	286,300	7	5	192,500
Aviation (Aircraft)	2,900	10	460,000	357,874	12	10	290,000
Marine (Coast)	285	10	132,500	143,150	50	50	142,500
Aviation (Ground)	900	10	165,000	143,150	16	15	135,000
Amateur Vanity Call Signs	14,300	10	207,320	214,725	1.50	1.50	214,500
AM Class A[4a]	61	1	257,400	250,512	4,107	4,100	250,100
AM Class B[4b]	1,471	1	3,057,875	3,113,508	2,117	2,125	3,125,875
AM Class C[4c]	869	1	1,078,650	1,109,411	1,277	1,275	1,107,975
AM Class D[4d]	1,541	1	3,642,325	3,686,107	2,392	2,400	3,698,400
FM Classes A, B1 & C3[4e]	3,055	1	7,629,300	7,759,664	2,548	2,550	7,764,750
FM Classes B, C, C0, C1 & C2[4f]	3,020	1	9,410,775	9,513,249	3,150	3,150	9,513,000
AM Construction Permits	65	1	44,100	35787	551	550	35,750
FM Construction Permits [1]	120	1	101,925	84,000	700	700	84,000
Satellite TV	125	1	166,250	178,937	1,431	1,425	178,125
Satellite TV Construction Permit	4	1	2,010	3,579	895	895	3,580
VHF Markets 1–10	22	1	1,692,500	1,761,769	80,080	80,075	1,761,650
VHF Markets 11–25	25	1	1,772,550	1,836,977	73,479	73,475	1,836,875
VHF Markets 26–50	38	1	1,457,100	1,512,153	39,793	39,800	1,512,400
VHF Markets 51–100	60	1	1,183,000	1,255,187	20,920	20,925	1,255,500
VHF Remaining Markets	137	1	774,700	798,915	5,831	5,825	798,025
VHF Construction Permits [1]	2	1	12,200	11,650	5,825	5,825	11,650
UHF Markets 1–10	109	1	3,915,450	3,854,222	35,360	35,350	3,853,150
UHF Markets 11–25	106	1	3,525,650	3,456,927	32,613	32,625	3,458,250
UHF Markets 26–50	135	1	3,016,800	2,958,639	21,916	21,925	2,959,875
UHF Markets 51–100	225	1	2,933,350	2,868,448	12,749	12,750	2,868,750
UHF Remaining Markets	247	1	864,600	847,308	3,430	3,425	845,975
UHF Construction Permits[1]	7	1	32,750	23,975	3,425	3,425	23,975
Broadcast Auxiliaries	24,800	1	268,500	286,300	12	10	248,000
LPTV/Translators/Boosters/Class A TV	3,732	1	1,424,765	1,431,498	384	385	1,436,820
CARS Stations	375	1	173,900	178,937	477	475	178,125
Cable TV Systems	62,200,000	1	58,962,000	59,228,227	0.9522	0.95	59,090,000
Interstate Telecommunication Service Providers	$39,700,000,000	1	148,125,000	148,875,000	0.003750	0.00375	148,875,000

[8] In many instances, the regulatory fee amount is a flat fee per licensee or regulatee. In some instances, the fee amount represents a per-unit fee (such as for International Bearer Circuits), a per-unit subscriber fee (such as for Cable, Commercial Mobile Radio Service (''CMRS'') Cellular/Mobile and CMRS Messaging), or a fee factor per revenue dollar (Interstate Telecommunications Service Provider (''ITSP'') fee). The payment unit is the measure upon which the fee is based, such as a licensee, regulatee, or subscriber fee.

TABLE A—CALCULATION OF FY 2012 REVENUE REQUIREMENTS AND PRO-RATA FEES—Continued

[Regulatory fees for the first ten categories below are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee category	FY 2012 Payment units	Years	FY 2011 Revenue estimate	Pro-rated FY 2012 revenue requirement	Computed new FY 2012 regulatory fee	Rounded new FY 2012 regulatory fee	Expected FY 2012 revenue
CMRS Mobile Services (Cellular/Public Mobile)	313,000,000	1	50,660,000	52,156,612	0.1666	0.17	53,210,000
CMRS Messaging Services	3,400,000	1	336,000	272,000	0.0800	0.080	272,000
BRS[2]	950	1	523,900	451,250	475	475	451,250
LMDS	475	1	161,200	225,625	475	475	225,625
Per 64 kbps Int'l Bearer Circuits Terrestrial (Common) & Satellite (Common & Non-Common)	4,452,315	1	1,136,518	1,153,787	.259	.26	1,157,602
Submarine Cable Providers (see chart in Appendix C)[3]	38.313	1	8,080,734	8,150,949	212,749	212,750	8,150,984
Earth Stations	3,250	1	875,875	894,686	275	275	893,750
Space Stations (Geostationary)	87	1	11,429,625	11,559,346	132,866	132,875	11,560,125
Space Stations (Non-Geostationary	6	1	850,500	858,899	143,150	143,150	858,900
****** Total Estimated Revenue to be Collected			336,599,047	339,840,896			340,568,811
****** Total Revenue Requirement			335,794,000	339,844,000			339,844,000
Difference			805,048	(3,104)			724,811

[1] The FM Construction Permit revenues and the VHF and UHF Construction Permit revenues were adjusted to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service. The reductions in the FM Construction Permit revenues are offset by increases in the revenue totals for FM radio stations. Similarly, reductions in the VHF and UHF Construction Permit revenues are offset by increases in the revenue totals for VHF and UHF television stations, respectively.

[2] MDS/MMDS category was renamed Broadband Radio Service (BRS). *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands,* Report & Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14169, para. 6 (2004).

[3] The chart at the end of Attachment C lists the submarine cable bearer circuit regulatory fees (common and non-common carrier basis) that resulted from the adoption of the following proceedings: *Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Second Report and Order (MD Docket No. 08–65, RM–11312), released March 24, 2009; and *Assessment and Collection of Regulatory Fees for Fiscal Year 2009 and Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Notice of Proposed Rulemaking and Order (MD Docket No. 09–65, MD Docket No. 08–65), released on May 14, 2009.

[4] The fee amounts listed in the column entitled ''Rounded New FY 2012 Regulatory Fee'' constitute a weighted average media regulatory fee by class of service. The actual FY 2012 regulatory fees for AM/FM radio station are listed on a grid located at the end of Table B.

TABLE B—FY 2012 SCHEDULE OF REGULATORY FEES

[Regulatory fees for the first eleven categories below are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee category	Annual regulatory fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	35
Microwave (per license) (47 CFR part 101)	20
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	70
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	50
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	15
PLMRS (Shared Use) (per license) (47 CFR part 90)	15
Aviation (Aircraft) (per station) (47 CFR part 87)	10
Aviation (Ground) (per license) (47 CFR part 87)	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.50
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.17
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 27)	475
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	475
AM Radio Construction Permits	550
FM Radio Construction Permits	700
TV (47 CFR part 73) VHF Commercial:	

TABLE B—FY 2012 SCHEDULE OF REGULATORY FEES—Continued

[Regulatory fees for the first eleven categories below are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee category	Annual regulatory fee (U.S. $'s)
Markets 1–10	80,075
Markets 11–25	73,475
Markets 26–50	39,800
Markets 51–100	20,925
Remaining Markets	5,825
Construction Permits	5,825
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10	35,350
Markets 11–25	32,625
Markets 26–50	21,925
Markets 51–100	12,750
Remaining Markets	3,425
Construction Permits	3,425
Satellite Television Stations (All Markets)	1,425
Construction Permits—Satellite Television Stations	895
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	385
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	475
Cable Television Systems (per subscriber) (47 CFR part 76)	.95
Interstate Telecommunication Service Providers (per revenue dollar)	.00375
Earth Stations (47 CFR part 25)	275
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	132,875
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	143,150
International Bearer Circuits—Terrestrial/Satellites (per 64KB circuit)	.26
International Bearer Circuits—Submarine Cable	See Table Below

FY 2012 SCHEDULE OF REGULATORY FEES (CONTINUED)

FY 2012 Radio station regulatory fees						
Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
< = 25,000	$725	$600	$550	$625	$700	$875
25,001–75,000	1,475	1,225	850	950	1,425	1,550
75,001–150,000	2,200	1,525	1,125	1,600	1,950	2,875
150,001–500,000	3,300	2,600	1,675	1,900	3,025	3,750
500,001–1,200,000	4,775	3,975	2,800	3,175	4,800	5,525
1,200,001–3,000,00	7,350	6,100	4,200	5,075	7,800	8,850
>3,000,000	8,825	7,325	5,325	6,350	9,950	11,500

FY 2012 SCHEDULE OF REGULATORY FEES

[International bearer circuits—submarine cable]

Submarine cable systems (capacity as of December 31, 2011)	Fee amount	Address
<2.5 Gbps	$13,300	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
2.5 Gbps or greater, but less than 5 Gbps	26,600	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
5 Gbps or greater, but less than 10 Gbps	53,200	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
10 Gbps or greater, but less than 20 Gbps	106,375	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
20 Gbps or greater	212,750	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

8. We then calculated the number of payment units subject to the fee. In some instances, Commission licensee databases were used in calculating payment units; in other instances, actual prior year payment records and/or industry and trade association projections were used (see Table C).[9] Where appropriate, we adjusted and rounded our final estimates to take into account factors that could affect the number of units for which a fee is paid.[10] Such factors include waivers and exemptions filed in FYs 2011 and 2012, as well as fluctuations in the number of licenses or station operators due to economic, technical, or other

[9] *See* Table C for a list of databases we consulted.

[10] The use of ''regulatee'' in this Order refers to any payor of regulatory fees.

reasons. Our estimated FY 2012 payment units, therefore, were adjusted to account for the variable factors relevant to each fee category. The fee rate may also have been rounded or adjusted slightly to reflect these variables.

TABLE C—Source of Payment Unit Estimates for FY 2012

In order to calculate individual service fees for FY 2012, we adjusted FY 2011 payment units for each service to more accurately reflect expected FY 2012 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee databases, actual prior year payment records and industry and trade association projections when available. The databases we consulted include our Universal Licensing System (''ULS''), International Bureau Filing System (''IBFS''), Consolidated Database System (''CDBS'') and Cable Operations and Licensing System (''COALS''), as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast.*

We sought verification for these estimates from multiple sources and, in all cases, we compared FY 2012 estimates with actual FY 2011 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated with sufficient accuracy. These include an unknown number of waivers and/or exemptions that may occur in FY 2012 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical, or other reasons. When we note, for example, that our estimated FY 2012 payment units are based on FY 2011 actual payment units, it does not necessarily mean that our FY 2012 projection is exactly the same number as in FY 2011. We have either rounded the FY 2012 number or adjusted it slightly to account for these variables.

TABLE C—SOURCES OF PAYMENT UNIT ESTIMATES FOR FY 2012

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, 218–219 MHz, Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (''WTB'') projections of new applications and renewals taking into consideration existing Commission licensee databases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Cellular/Mobile Services	Based on WTB projection reports, and FY 11 payment data.
CMRS Messaging Services	Based on WTB reports, and FY 11 payment data.
AM/FM Radio Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2011 payment units.
UHF/VHF Television Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2011 payment units.
AM/FM/TV Construction Permits	Based on CDBS data, adjusted for exemptions, and actual FY 2011 payment units.
LPTV, Translators and Boosters, Class A Television	Based on CDBS data, adjusted for exemptions, and actual FY 2011 payment units.
Broadcast Auxiliaries	Based on actual FY 2011 payment units.
BRS (formerly MDS/MMDS)	Based on WTB reports and actual FY 2011 payment units.
LMDS	Based on WTB reports and actual FY 2011 payment units.
Cable Television Relay Service (''CARS'') Stations	Based on data from Media Bureau's COALS database and actual FY 2011 payment units.
Cable Television System Subscribers	Based on publicly available data sources for estimated subscriber counts and actual FY 2011 payment units.
Interstate Telecommunication Service Providers	The Wireline Competition Bureau projected amount of calendar year 2011 revenues that will be reported on 2012 FCC Form 499–A worksheets due in April, 2012. Some of the projections are based on FCC Form 499–Q data for the four quarters of calendar year 2011.
Earth Stations	Based on International Bureau (''IB'') licensing data and actual FY 2011 payment units.
Space Stations (GSOs & NGSOs)	Based on IB data reports and actual FY 2011 payment units.
International Bearer Circuits	Based on IB reports and submissions by licensees.
Submarine Cable Licenses	Based on IB license information.

9. On May 4, 2012, we released the *FY 2012 Notice of Proposed Rulemaking*[11] to seek comment on the proposed FY 2012 regulatory fees. We received two comments and no reply comments (see Table D). We address the issues raised in our *FY 2012 Notice of Proposed Rulemaking* and the comments received below.

TABLE D—LIST OF COMMENTERS

Commenter	Abbreviated name
Critical Messaging Association	''CMA''.
The United States Telecom Association.	''USTA''.

A. Regulatory Fee Obligations for AM and FM Radio Stations

10. The fee methodology for AM and FM radio stations is based on a number of factors, including facility attributes (*e.g.* power, channel/frequency) and the population served by each station. The calculation of the population served is determined by applying current United States Census Bureau data to the station's technical and engineering data, as detailed in Table E. In FY 2012, the Commission will incorporate the results of the 2010 Census data into our broadcast population data, which could precipitate a change in population count for some radio stations. These

[11] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2012,* Notice of Proposed Rulemaking, 77 FR 29275 (May 17, 2012) (''*FY 2012 Regulatory Fees NPRM''*).

population counts, along with the station's class and type of service, are the basis for determining regulatory fees. We sought comment, but did not receive any on this issue. We conclude that the 2010 census data should be incorporated into our broadcast population data when determining regulatory fees.

TABLE E—FACTORS, MEASUREMENTS, AND CALCULATIONS THAT DETERMINE STATION SIGNAL CONTOURS AND ASSOCIATED POPULATION COVERAGES

AM Stations
For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (''RMS'') figure milliVolt per meter (mV/m) @ 1 km for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in §§ 73.150 and 73.152 of the Commission's rules.[12]Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3.[13] Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours was used to form a geographical polygon. Population counting was accomplished by determining which 2010 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.
FM Stations
The greater of the horizontal or vertical effective radiated power (''ERP'') (kW) and respective height above average terrain (''HAAT'') (m) combination was used. Where the antenna height above mean sea level (''HAMSL'') was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR 73.313 of the Commission's rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials.[14] The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2010 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

B. Regulatory Fee Obligations for Digital Low Power, Class A, and TV Translators/Boosters

11. The digital transition to full-service television stations was completed on June 12, 2009, but Low Power, Class A, and TV Translators/Boosters are not required to make the digital transition until September 1, 2015. Historically, we have only considered the digital transition in the context of regulatory fees applicable to full-service television stations. Consequently, the ''digital only'' exemption does not apply to Low Power, Class A, and TV Translator/Booster facilities. Because the digital transition in the Low Power, Class A, and TV Translator/Booster facilities is still voluntary, these facilities may transition from analog to digital service at varying times prior to September 1, 2015. During this period of transition, licensees of Low Power, Class A, and TV Translator/Booster facilities may be operating in analog mode, in digital mode, or in an analog and digital simulcast mode. We sought comment on how this should be reflected in the regulatory fees paid by licensees of these facilities, but we did not receive any comments in response. In the absence of comment, we conclude that a single fee will be assessed for each facility regardless of whether it transmits in analog or digital mode, digital mode, or simulcasting in both analog and digital modes. As more of these facilities convert to digital mode, the Commission will revisit how regulatory fees will be assessed.

C. Regulatory Fee Obligations of Interstate Telecommunications Service Providers

12. In our *FY 2011 Report and Order,* we assessed the Interstate Telecommunications Service Provider (''ITSP'') industry a regulatory fee of $.00375 per revenue dollar. This fee reflected the Commission's decision to limit the increase in ITSP regulatory fees in light of the continuing decrease in the revenue base upon which ITSP regulatory fees are calculated, and pending a more comprehensive rebalancing of ITSP fees as part of our reexamination of the factual and methodological predicates of our regulatory fee program. This reexamination will commence shortly. For that reason we proposed in our *FY 2012 Notice of Proposed Rulemaking* to assess FY 2012 ITSP regulatory fees at the same fee rate as in FY 2011, and to allocate the remaining revenue requirement across all other fee categories.[15]

13. We received one comment from the United States Telecom Association (''USTA''). USTA supports the Commission's effort to rebalance its regulatory fee structure, including updating the calculation of full-time equivalents (''FTEs'') and adjusting the way costs are currently allocated.[16] USTA also contends that today's separate communication platforms, *e.g.* wireless, cable, and wireline, are capable of providing similar communication services, and it is therefore critical for the Commission to establish fee parity among the providers utilizing these platforms.[17]

14. We have initiated a separate proceeding in which we are requesting comment on these and other issues.[18] Because we expect to use the comments that are received and other data in setting next year's regulatory fees, we will adopt our proposal to maintain the FY 2012 ITSP fee rate in the interim at the FY 2011 rate of .00375.

D. Improving Public Information on Waiver Requests and Decisions

15. In our *FY 2012 Notice of Proposed Rulemaking,* we sought comment on requiring regulatees filing a request for a refund, waiver, fee reduction, or

[12] 47 CFR 73.150 and 73.152.

[13] *See* Map of Estimated Effective Ground Conductivity in the United States, 47 CFR 73.190 Figure R3.

[14] 47 CFR 73.313.

[15] *See FY 2012 Regulatory Fees NPRM,* at para. 17.

[16] United States Telecom Association, at page 1.

[17] USTA at page 1–2.

[18] In the Matter of Procedures for Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2008, *Notice of Proposed Rulemaking*, FCC 12–77, MD Docket No. 12–201 (released on July 17, 2012).

deferment of payment of an application or regulatory fee to use an online filing system rather than submitting their requests in hardcopy format.[19] We believe that an online filing system will complement other existing online Commission systems already in place, such as the Broadcast Radio and Television Electronic Filing System (more commonly referred to as CDBS), the Cable Operations and Licensing System (COALS), and Consumer Complaint Forms. The resulting fee waiver filing system will include such documents as the filed request, any relevant supporting documentation, and the resulting decision. We also proposed to apply the provisions of section 0.459 to requests that electronically-filed material be withheld from public inspection.[20]

16. We received no comments on this issue. We will therefore adopt our proposal and require that all requests for refunds, waivers, fee reductions, or deferments of payment be filed using an online system. We direct the Office of Managing Director to take the necessary steps to assist regulatees in transitioning to electronic filing.

E. Commercial Mobile Radio Services (''CMRS'') Messaging Service

17. In response to our *FY 2012 Notice of Proposed Rulemaking,* the Commission received a comment from the Critical Messaging Association (''CMA'') regarding the CMRS messaging service regulatory fee category. CMA contends that even though the Commission has not acted on its *FY 2008 Further Notice of Proposed Rulemaking* to review, among other things, the CMRS messaging service fee category, the Commission should maintain the CMRS messaging fee at $.08 per subscriber as a minimum appropriate action to take in FY 2012.[21] As stated in paragraph 11, we anticipate revising our regulatory fee program in time to calculate FY 2013 fees. For that reason, and because we agree with CMA that the prevailing circumstances in FY 2003 still exist today,[22] we find it appropriate that the FY 2012 CMRS Messaging regulatory fee remain at a rate of $0.08 per subscriber.

F. Administrative and Operational Issues

18. In FY 2009, the Commission implemented several procedural changes that simplified the payment and reconciliation processes of regulatory fees. In FY 2012, the Commission will continue to promote greater use of technology (and less use of paper) in improving our regulatory fee notification and collection processes. We sought comment on how we might do this, but we received no specific comment in response. Accordingly, the Commission will continue its own efforts to promote greater efficiency in its regulatory fee notification and collection processes, subject to appropriate notice and comment.

19. In FY 2009, we instituted a mandatory filing requirement using the Commission's electronic filing and payment system (also known as ''Fee Filer'').[23] Regulatees filing their annual regulatory fee payments were required to begin the process by entering the Commission's Fee Filer system with a valid FCC Registration Number (''FRN'') and password.[24] This change, which required regulatees to use Fee Filer for the *filing* of annual regulatory fees, not the *payment* of such regulatory fees [25] was beneficial to both licensees and to the Commission. For licensees, the mandatory use of Fee Filer eliminates the need to manually complete and submit a hardcopy Form 159, and for the Commission, the data in electronic format makes it much easier to process payments efficiently and effectively. We sought comment on how to improve the mandatory use of Fee Filer for filing annual regulatory fees. We received no specific comments or reply comments on this issue. Accordingly, we will continue our own efforts to refine our fee filing and payment procedures, subject to appropriate notice and comment.

IV. Fee Collection Procedures

20. Included below are procedural items as well as our current payment and collection methods which we have revised over the past several years to expedite the processing of regulatory fee payments. We do not propose changes to these procedures. Rather, we include them here as a useful way of reminding regulatory fee payers and the public about these aspects of the annual regulatory fee collection process.

A. Public Notices and Fact Sheets

21. Each year we post public notices and fact sheets pertaining to regulatory fees on our Web site. These documents contain information about the payment due date and relevant regulatory fee payment procedures. We will continue to post this information on *http://transition.fcc.gov/fees/regfees.html*, rather than mailing it to regulatees.

B. Pre-Bill Notification and Collection of Regulatory Fees

22. In prior years, the Commission mailed pre-bills via surface mail to regulatees in select regulatory fee categories: ITSPs, Geostationary (''GSO'') and Non-Geostationary (''NGSO'') satellite space station licensees,[26] holders of Cable Television Relay Service (''CARS'') licenses, and Earth Station licensees.[27] The remaining regulatees did not receive pre-bills. In our *FY 2009 Report and Order,* the Commission decided to make the information contained in these pre-bills viewable in Fee Filer, rather than mailing pre-bills to licensees via surface mail.[28] We continued this practice in FY 2010 and FY 2011 by placing the pre-bill information on Fee Filer, where it could be accessed by regulatees through the Commission's Web site. Regulatees can also look to the Commission's Web site for information on upcoming events and deadlines relating to regulatory fees.

C. Assessment Notifications

1. Media Services Licensees

23. Beginning in FY 2003, we sent fee assessment notifications via surface mail to media services entities on a per-

[19] *See FY 2012 Regulatory Fees NPRM* at para. 18.

[20] Specifically, section 0.457(a)(2) through (g) describe, *inter alia,* how confidential material should be submitted electronically, what showings must be made to justify withholding electronically-submitted information from public inspection, and how the Commission will resolve confidentiality requests.

[21] The Critical Messaging Association at page 1.

[22] Beginning in FY 2003, the Commission maintained the paging regulatory fee rate at $.08 per subscriber, the same level as in FY 2002, and it has maintained this level of $.08 per subscriber for all subsequent years. *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order,* 18 FCC Rcd 15988 paras. 21–22 (2003) (*FY 2003 Report and Order*).

[23] *See Assessment and Collection of Regulatory Fees for Fiscal Year FY 2009,* Report and Order 24 FCC Rcd 10301 at paras. 20 and 21 (''*FY 2009 Report and Order*'').

[24] In order to do this, licensees must have a current and valid FRN address on file in the Commission's Registration System (CORES).

[25] Regulatees have different options when making a payment, including credit card, check, and wire transfer.

[26] Geostationary orbit space station (''GSO'') licensees received regulatory fee pre-bills for satellites that (1) were licensed by the Commission and operational on or before October 1 of the respective fiscal year; and (2) were not co-located with and technically identical to another operational satellite on that date (*i.e.,* were not functioning as a spare satellite). Non-geostationary orbit space station (''NGSO'') licensees received regulatory fee pre-bills for systems that were licensed by the Commission and operational on or before October 1 of the respective fiscal year.

[27] A pre-bill is considered an account receivable in the Commission's accounting system. Pre-bills reflect the amount owed and have a payment due date of the last day of the regulatory fee payment window. Consequently, if a pre-bill is not paid by the due date, it becomes delinquent and is subject to our debt collection procedures. *See also* 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910.

[28] *See FY 2009 Report and Order* at para. 24, 26.

facility basis.[29] These notifications provided the assessed fee amount for the facility in question, as well as the data attributes that determined the fee amount. We have since refined this initiative to be more electronic and paperless.[30] In our *FY 2010 Notice of Proposed Rulemaking,* we sought comment to discontinue mailing the media notifications beginning in FY 2011, relying instead on information on the Commission's Web site and the use of the Commission-authorized Web site at *www.fccfees.com.*[31] We received no comments or reply comments in FY 2010, and beginning in FY 2011, we discontinued the mailing of fee assessment notifications via surface mail to media service entities. In FY 2012, we will continue the practice of not mailing hardcopy notification assessment letters to media licensees.

2. CMRS Cellular and Mobile Services Assessments

24. We will continue to follow our current procedures for conveying CMRS subscriber counts to providers. We will mail an initial assessment letter to Commercial Mobile Radio Service (CMRS) providers using data from the Numbering Resource Utilization Forecast (''NRUF'') report that is based on ''assigned'' number counts that have been adjusted for porting to net Type 0 ports (''in'' and ''out'').[32] The letter will include a listing of the carrier's Operating Company Numbers (''OCNs'') upon which the assessment is based.[33] The letters will not include OCNs with their respective assigned number counts, but rather, an aggregate total of assigned numbers for each carrier.

25. A carrier wishing to revise its subscriber count can do so by accessing Fee Filer after receiving its initial CMRS assessment letter. Providers should follow the prompts in Fee Filer to record their subscriber revisions, along with any supporting documentation.[34] The Commission will then review the revised count and supporting documentation and either approve or disapprove the submission in Fee Filer. If the submission is disapproved, the Commission will contact the provider to afford the provider an opportunity to discuss its revised subscriber count and/or provide additional supporting documentation. If we receive no response or correction to the initial assessment letter, or we do not reverse our initial disapproval of the provider's revised count submission, we expect the fee payment to be based on the number of subscribers listed on the initial assessment letter. Once the timeframe for revision has passed, the subscriber counts are final and are the basis upon which CMRS regulatory fees are expected to be paid. Providers can also view their final subscriber counts online in Fee Filer. A final CMRS assessment letter will not be mailed out.

26. Because some carriers do not file the NRUF report, they may not receive an initial assessment letter. In these instances, the carriers should compute their fee payment using the standard methodology[35] that is currently in place for CMRS Wireless services (*e.g.,* compute their subscriber counts as of December 31, 2011), and submit their fee payment accordingly. Whether a carrier receives an assessment letter or not, the Commission reserves the right to audit the number of subscribers for which regulatory fees are paid. In the event that the Commission determines that the number of subscribers paid is inaccurate, the Commission will bill the carrier for the difference between what was paid and what should have been paid.

D. Streamlined Regulatory Fee Payment Process

1. Cable Television

27. The Commission will continue to permit cable television operators to base their regulatory fee payment on their company's aggregate year-end subscriber count, rather than requiring them to report cable subscriber counts on a per community unit identifier (''CUID'') basis. This significantly lessens the cable operators' burden in calculating and paying their regulatory fees.

2. CMRS Cellular and Mobile Providers

28. In FY 2006, we streamlined the CMRS payment process by eliminating the requirement for CMRS providers to identify their individual call signs when making their regulatory fee payment, instead allowing CMRS providers to pay their regulatory fees only at the aggregate subscriber level without having to identify their various call signs.[36] We will continue this practice in FY 2012. In FY 2007, we consolidated the CMRS cellular and CMRS mobile fee categories into one fee category with a single fee code, thereby eliminating the requirement for CMRS providers to separate their subscriber counts into CMRS cellular and CMRS mobile fee categories during the regulatory fee payment process. This consolidation of fee categories enabled the Commission to process payments more quickly and accurately. For FY 2012, we will continue this practice of combining the CMRS cellular and CMRS mobile fee categories into one regulatory fee category.

3. Interstate Telecommunications Service Providers

29. In FY 2007, we adopted a proposal to round lines 14 (total subject revenues) and 16 (total regulatory fee owed) on FCC Form 159–W worksheet to the nearest dollar. This revision enabled the Commission to process the ITSP regulatory fee payments more quickly because rounding was performed in a consistent manner, thereby eliminating processing issues. For FY 2012, we will continue to round lines 14 and 16 when calculating the FY 2012 ITSP fee obligation. In addition, we will continue the practice of not mailing out Form 159–W via surface mail.

E. Payment of Regulatory Fees

1. Lock Box Bank

30. All lock box payments to the Commission for FY 2012 will be processed by U.S. Bank, St. Louis, Missouri, and payable to the FCC. During the fee season for collecting FY 2012 regulatory fees, regulatees can pay their fees by credit card through Pay.gov,[37] by check, money order, or

[29] An assessment is a proposed statement of the amount of regulatory fees owed by an entity to the Commission (or proposed subscriber count to be ascribed for purposes of setting the entity's regulatory fee), but it is not entered into the Commission's accounting system as a current debt.

[30] Those refinements include providing licensees with a Commission-authorized Web site where they can update or correct any information concerning their facilities, and amend their fee-exempt status, if need be. The notifications also provide licensees with a telephone number to call in the event that they need customer assistance.

[31] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2010,* Report and Order, 25 FCC Rcd 9278 at para. 42 (2010) (''*FY 2010 Report and Order*'').

[32] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2005 and Assessment and Collection of Regulatory Fees for Fiscal Year 2004,* MD Docket Nos. 05–59 and 04–73, Report and Order on Reconsideration, 20 FCC Rcd 12259, 12264, paras. 38–44 (2005).

[33] *Id.*

[34] In the supporting documentation, the provider will need to state a reason for the change, such as a purchase or sale of a subsidiary, the date of the transaction, and any other pertinent information that will help to justify a reason for the change.

[35] *See, e.g.,* Federal Communications Commission, *Regulatory Fees Fact Sheet: What You Owe—Commercial Wireless Services for FY 2011* at 1 (rel. September 2011).

[36] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2006,* MD Docket No. 06–68, Report and Order, 21 FCC Rcd 8092, 8105, para. 48 (2006).

[37] In accordance with U.S. Treasury Financial Manual Announcement No. A–2012–02, the U.S. Treasury will reject credit card transactions greater than $49,999.99 from a single credit card in a single day. This includes online transactions conducted

debit card,[38] or by placing their credit card number on Form 159–E (Remittance Advice form) and mailing their fee and accompanying Form 159–E to the following address: Federal Communications Commission, Regulatory Fees, P.O. Box 979084, St. Louis, MO 63197–9000. Additional payment options and instructions are posted at *http://transition.fcc.gov/fees/regfees.html*.

2. Receiving Bank for Wire Payments

31. The receiving bank for all wire payments is the Federal Reserve Bank, New York, New York (TREAS NYC). When making a wire transfer, regulatees must fax a copy of their Fee Filer generated Form 159–E to U.S. Bank, St. Louis, Missouri at (314) 418–4232 at least one hour before initiating the wire transfer (but on the same business day) so as not to delay crediting their account. Regulatees should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer to allow sufficient time for the transfer to be initiated and completed before the deadline. Complete instructions for making wire payments are posted at *http://transition.fcc.gov/fees/wiretran.html*.

3. De Minimis Regulatory Fees

32. Regulatees whose total FY 2012 regulatory fee liability, including all categories of fees for which payment is due, is less than $10 are exempted from payment of FY 2012 regulatory fees.

4. Standard Fee Calculations and Payment Dates

33. The Commission will accept fee payments made in advance of the window for the payment of regulatory fees. The responsibility for payment of fees by service category is as follows:

• *Media Services:* Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2011 for AM/FM radio stations, VHF/UHF full service television stations, and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2011. In instances where a permit or license is transferred or assigned after October 1, 2011, responsibility for payment rests with the holder of the permit or license as of the fee due date.

• *Wireline (Common Carrier) Services:* Regulatory fees must be paid for authorizations that were granted on or before October 1, 2011. In instances where a permit or license is transferred or assigned after October 1, 2011, responsibility for payment rests with the holder of the permit or license as of the fee due date. We note that audio bridging service providers are included in this category.[39]

• *Wireless Services:* CMRS cellular, mobile, and messaging services (fees based on number of subscribers or telephone number count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2011. The number of subscribers, units, or telephone numbers on December 31, 2011 will be used as the basis from which to calculate the fee payment. In instances where a permit or license is transferred or assigned after October 1, 2011, responsibility for payment rests with the holder of the permit or license as of the fee due date.

• The first eleven regulatory fee categories in our Schedule of Regulatory Fees (see Table B) pay ''small multi-year wireless regulatory fees.'' Entities pay these regulatory fees in advance for the entire amount of their five-year or ten-year term of initial license, and only pay regulatory fees again when the license is renewed or a new license is obtained. We include these fee categories in our Schedule of Regulatory Fees to publicize our estimates of the number of ''small multi-year wireless'' licenses that will be renewed or newly obtained in FY 2012.

• *Multichannel Video Programming Distributor Services (cable television operators and CARS licensees):* Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2011.[40] Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2011. In instances where a permit or license is transferred or assigned after October 1, 2011, responsibility for payment rests with the holder of the permit or license as of the fee due date.

• *International Services:* Regulatory fees must be paid for earth stations, geostationary orbit space stations and non-geostationary orbit satellite systems that were licensed and operational on or before October 1, 2011. In instances where a permit or license is transferred or assigned after October 1, 2011, responsibility for payment rests with the holder of the permit or license as of the fee due date.

• *International Services: Submarine Cable Systems:* Regulatory fees for submarine cable systems are to be paid on a per cable landing license basis based on circuit capacity as of December 31, 2011. In instances where a license is transferred or assigned after October 1, 2011, responsibility for payment rests with the holder of the license as of the fee due date. For regulatory fee purposes, the allocation in FY 2012 will remain at 87.6 percent for submarine cable and 12.4 percent for satellite/terrestrial facilities.

• *International Services: Terrestrial and Satellite Services:* Finally, regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31, 2011 in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. ''Active circuits'' for these purposes include backup and redundant circuits as of December 31, 2011. Whether circuits are used

via Pay.gov, transactions conducted via other channels, and direct-over-the counter transactions made at a U.S. Government facility. Individual credit card transactions larger than the $49,999.99 limit may not be split into multiple transactions using the same credit card, whether or not the split transactions are assigned to multiple days. Splitting a transaction violates card network and Financial Management Service (FMS) rules. However, credit card transactions exceeding the daily limit may be split between two or more different credit cards. Other alternatives for transactions exceeding the $49,999.99 credit card limit include payment by check, electronic debit from your bank account, and wire transfer.

[38] In accordance with U.S. Treasury Financial Manual Announcement No. A–2012–02, the maximum dollar-value limit for debit card transactions will be eliminated. It should also be noted that only Visa and MasterCard branded debit cards are accepted by Pay.gov.

[39] Audio bridging services are toll teleconferencing services, and audio bridging service providers are required to contribute directly to the Universal Service Fund based on revenues from these services. On June 30, 2008, the Commission released the *InterCall Order,* in which the Commission stated that InterCall, Inc. and all similarly situated audio bridging service providers are required to contribute directly to the Universal Service Fund. *See Request for Review by InterCall, Inc. of Decision of Universal Service Administrator,* CC Docket No. 96–45, Order, 23 FCC Rcd 10731 (2008) (''*InterCall Order*'').

[40] Cable television system operators should compute their number of basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, *etc.*) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on ''a typical day in the last full week'' of December 2011, rather than on a count as of December 31, 2011.

specifically for voice or data is not relevant for purposes of determining that they are active circuits. In instances where a permit or license is transferred or assigned after October 1, 2011, responsibility for payment rests with the holder of the permit or license as of the fee due date. For regulatory fee purposes, the allocation in FY 2012 will remain at 87.6 percent for submarine cable and 12.4 percent for satellite/terrestrial facilities.

F. Enforcement

34. To be considered timely, regulatory fee payments must be received and stamped at the lockbox bank by the due date of regulatory fees. Section 9(c) of the Act requires us to impose a late payment penalty of 25 percent of the unpaid amount to be assessed on the first day following the deadline date for filing of these fees.[41] Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set forth in § 1.1910 of the Commission's Rules[42] and in the Debt Collection Improvement Act of 1996 (''DCIA'').[43] We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and § 1.1940(d) of the Commission's Rules.[44] These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In case of partial payments (underpayments) of regulatory fees, the payor will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner.

35. We will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made.[45] Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the entity responsible for paying the delinquent fee(s).

TABLE F—FY 2011 SCHEDULE OF REGULATORY FEES

[Regulatory fees for the first eleven fee categories below are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.]

Fee category	Annual regulatory fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	40
Microwave (per license) (47 CFR part 101)	25
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	65
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	50
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	20
PLMRS (Shared Use) (per license) (47 CFR part 90)	20
Aviation (Aircraft) (per station) (47 CFR part 87)	10
Aviation (Ground) (per license) (47 CFR part 87)	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.42
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.17
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 21)	310
Local Multipoint Distribution Service (per call sign) (47 CFR part 101)	310
AM Radio Construction Permits	490
FM Radio Construction Permits	675
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10	84,625
Markets 11–25	68,175
Markets 26–50	40,475
Markets 51–100	22,750
Remaining Markets	6,100
Construction Permits	6,100
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10	34,650
Markets 11–25	32,950
Markets 26–50	20,950
Markets 51–100	12,325
Remaining Markets	3,275
Construction Permits	3,275
Satellite Television Stations (All Markets)	1,250
Construction Permits—Satellite Television Stations	670
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	395
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	370
Cable Television Systems (per subscriber) (47 CFR part 76)	.93
Interstate Telecommunication Service Providers (per revenue dollar)	.00375

[41] 47 U.S.C. 159(c).

[42] *See* 47 CFR 1.1910.

[43] Delinquent debt owed to the Commission triggers application of the ''red light rule'' which requires offsets or holds on pending disbursements. 47 CFR 1.1910. In 2004, the Commission adopted rules implementing the requirements of the DCIA. *See Amendment of Parts 0 and 1 of the Commission's Rules,* MD Docket No. 02–339, Report and Order, 19 FCC Rcd 6540 (2004); 47 CFR part 1, subpart O, Collection of Claims Owed the United States.

[44] 47 CFR 1.1940(d).

[45] *See* 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910.

TABLE F—FY 2011 SCHEDULE OF REGULATORY FEES—Continued

[Regulatory fees for the first eleven fee categories below are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.]

Fee category	Annual regulatory fee (U.S. $'s)
Earth Stations (47 CFR part 25)	245
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	131,375
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	141,750
International Bearer Circuits—Terrestrial/Satellites (per 64KB circuit)	.35
International Bearer Circuits—Submarine Cable	See Table Below

FY 2011 SCHEDULE OF REGULATORY FEES (CONTINUED)

FY 2011 Radio Station Regulatory Fees

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=25,000	$700	$575	$525	$600	$675	$850
25,001–75,000	1,400	1,150	800	900	1,350	1,500
75,001–150,000	2,100	1,450	1,050	1,500	1,850	2,750
150,001–500,000	3,150	2,450	1,575	1,800	2,875	3,600
500,001–1,200,000	4,550	3,750	2,625	3,000	4,550	5,300
1,200,001–3,000,00	7,000	5,750	3,950	4,800	7,425	8,500
>3,000,000	8,400	6,900	5,000	6,000	9,450	11,050

FY 2011 SCHEDULE OF REGULATORY FEES

[International bearer circuits—submarine cable]

Submarine cable systems (capacity as of December 31, 2010)	Fee amount	Address
< 2.5 Gbps	$12,825	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
2.5 Gbps or greater, but less than 5 Gbps	25,650	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
5 Gbps or greater, but less than 10 Gbps	51,300	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
10 Gbps or greater, but less than 20 Gbps	102,625	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
20 Gbps or greater	205,225	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

Final Regulatory Flexibility Analysis

36. As required by the Regulatory Flexibility Act (''RFA''),[46] the Commission prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in its *Notice of Proposed Rulemaking* (NPRM) to determine the possible economic impact on small entities by the policies and rules proposed in its NPRM. Written public comments were sought on the FY 2012 fee proposal, including on the IRFA. This Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.[47]

I. Need for, and Objectives of, the Report and Order

37. This rulemaking proceeding was initiated by the Commission to revise its Schedule of Regulatory Fees to collect $339,844,000, the amount that Congress has required the Commission to recover in regulatory fees. This Report and Order revises the fee rates in its Schedule of Regulatory Fees to reflect changes in estimated unit counts, if any, and the amount required by the Commission to collect in regulatory fees. Pursuant to rules adopted in this Order, the FCC will collect these fees in September 2012 in a manner that is efficient (*e.g.* using the Commission's various electronic filing and payment systems) and without undue public burden (less reliability on paper transactions and more reliability on pre-loaded payment data).

38. Section 9(a)(1) of the Communications Act of 1934, as amended (the ''Act'') directs the Commission to collect regulatory fees ''to recover the costs of * * * enforcement activities, policy and rulemaking activities, user information services, and international activities.''[48] Section 9(a)(2) stipulates that regulatory fees for the enumerated activities ''shall be collected only if, and only in the total amounts, required in Appropriation Acts,'' and must ''be established in amounts that will result in collection, during each fiscal year, of any amount that can be reasonably be expected to equal the amount appropriated'' for the performance of the activities enumerated in section 9(a)(1) during that fiscal year. In this annual regulatory fee proceeding, we retain many of the current methods, policies, and procedures for collecting section 9 regulatory fees adopted by the Commission in prior years. Consistent with our established practice, we intend to collect these regulatory fees during a September 2012 filing window in order to collect the required amount by the end of our fiscal year.[49]

[46] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (''CWAAA''). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA'').

[47] 5 U.S.C. 604.

[48] 47 U.S.C. 159(a).

[49] The Commission also expects to release in the near future a *Notice of Proposed Rulemaking* that

Continued

39. In this *FY 2012 Report and Order,* we address the following issues: (1) Incorporating 2010 Census data into our broadcast population data, (2) assessing a regulatory fee for each broadcasting facility operating either in an analog or digital mode (but not both) for Low Power, Class A, and TV Translators/Boosters, (3) maintaining the FY 2012 Interstate Telecommunications Service Provider (ITSP) fee rate at the same level as in FY 2011, (4) using an online filing system for the filing of requests for a refund, waiver, fee reduction, or deferment of payment of an application or regulatory fee, and (5) maintaining the Commercial Mobile Radio Service (''CMRS'') Messaging Service at the rate of $.08 per subscriber.

• *Regulatory Fee Obligations for AM and FM Radio Stations:* The fee methodology for AM and FM radio stations is based on a number of factors, including facility attributes (*e.g.* power, channel/frequency) and the population served by each station. The calculation of the population served is determined by applying current United States Census Bureau data to the station's technical and engineering data, as detailed in Table E of this Report and Order. In FY 2012, the Commission will incorporate the results of the 2010 Census data into our broadcast population data, which could precipitate a change in population count for some radio stations. These population counts, along with the station's class and type of service, are the basis for determining regulatory fees.

• *Regulatory Fee Obligations for Digital Low Power, Class A, and TV Translators/Boosters:* The digital transition to full-service television stations was completed on June 12, 2009, but Low Power, Class A, and TV Translators/Boosters are not required to make the digital transition until September 1, 2015. Historically, we have only considered the digital transition in the context of regulatory fees applicable to full-service television stations. Consequently, the ''digital only'' exemption does not apply to Low Power, Class A, and TV Translator/Booster facilities. Because the digital transition in the Low Power, Class A, and TV Translator/Booster facilities is still voluntary, these facilities may transition from analog to digital service at varying times prior to September 1, 2015. During this period of transition, licensees of Low Power, Class A, and TV Translator/Booster facilities may be operating in analog mode, in digital mode, or in an analog and digital simulcast mode. In the absence of receiving any comments, we conclude that a single fee will be assessed for each facility regardless of whether it transmits in analog or digital mode, digital mode, or simulcasting in both analog and digital modes. As more of these facilities convert to digital mode, the Commission will revisit how regulatory fees will be assessed.

• *Regulatory Fee Obligations of Interstate Telecommunications Service Providers (ITSP):* In our *FY 2011 Report and Order,* we assessed the Interstate Telecommunications Service Provider (''ITSP'') industry a regulatory fee of $.00375 per revenue dollar. This fee reflected the Commission's decision to limit the increase in ITSP regulatory fees in light of the continuing decrease in the revenue base upon which ITSP regulatory fees are calculated, and pending a more comprehensive rebalancing of ITSP fees as part of our reexamination of the factual and methodological predicates of our regulatory fee program. This reexamination will commence shortly. In our *FY 2012 Notice of Proposed Rulemaking,* we proposed to assess FY 2012 ITSP regulatory fees at the same fee rate as in FY 2011, and to allocate the remaining revenue requirement across all other fee categories.[50] We received one comment in support of our proposal. Because we will initiate a separate proceeding in the near future to examine these and other issues and expect to utilize any new data or methodologies adopted in setting next year's regulatory fees, we conclude that in the interim the FY 2012 ITSP fee rate should be maintained at the FY 2011 rate of .00375.

• *Improving Public Information on Waiver Requests and Decisions:* In our *FY 2012 Notice of Proposed Rulemaking,* we sought comment on requiring regulatees filing a request for a refund, waiver, fee reduction, or deferment of payment of an application or regulatory fee to use an online filing system rather than submitting their requests in hardcopy format.[51] We believe that an online filing system will complement other existing online Commission systems already in place, such as the Broadcast Radio and Television Electronic Filing System (more commonly referred to as CDBS), the Cable Operations and Licensing System (COALS), and Consumer Complaint Forms. The resulting fee waiver filing system will include such documents as the filed request, any relevant supporting documentation, and the resulting decision. We also proposed to apply the provisions of section 0.459 to requests that electronically-filed material be withheld from public inspection.[52] We received no comments on this issue. We therefore adopt our proposal and require that all requests for refunds, waivers, fee reductions, or deferments of payment be filed using an online system. We direct the Office of Managing Director to take the necessary steps to assist regulatees in transitioning to electronic filing.

• *Commercial Mobile Radio Services (''CMRS'') Messaging Services:* In our *FY 2012 Notice of Proposed Rulemaking,* the Commission proposed to maintain the CMRS Messaging fee rate at $.08 per subscriber. We received one comment in support of our action. Because the prevailing circumstances that first initiated our action in FY 2003[53] still exists today, we find it appropriate that the FY 2012 CMRS Messaging regulatory fee remain at a rate of $0.08 per subscriber.

Administrative and Operational Issues: In FY 2009, we instituted a mandatory filing requirement using the Commission's electronic filing and payment system (also known as ''Fee Filer'').[54] Regulatees filing their annual regulatory fee payments were required to begin the process by entering the Commission's Fee Filer system with a valid FCC Registration Number (''FRN'') and password.[55] This change, which required regulatees to use Fee Filer for the filing of annual regulatory fees, not the payment of such regulatory fees[56] was beneficial to both licensees and to the Commission. For licensees, the

will propose to update our current cost allocation percentages and revise our cost allocation methodology. We expect to implement any changes that result from this rulemaking in FY 2013; they do not affect the fees set in this *FY 2012 Report and Order.*

[50] *See FY 2012 Regulatory Fees NPRM,* at para. 17.

[51] *See FY 2012 Regulatory Fees NPRM* at para. 18.

[52] Specifically, section 0.457(a) (2) through (g) describe, *inter alia,* how confidential material should be submitted electronically, what showings must be made to justify withholding electronically-submitted information from public inspection, and how the Commission will resolve confidentiality requests.

[53] Beginning in FY 2003, the Commission maintained the paging regulatory fee rate at $.08 per subscriber, the same level as in FY 2002, and it has maintained this level of $.08 per subscriber for all subsequent years. *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order,* 18 FCC Rcd 15988 paras. 21–22 (2003) (*FY 2003 Report and Order*).

[54] *See Assessment and Collection of Regulatory Fees for Fiscal Year FY 2009,* Report and Order 24, FCC Rcd 10301 at paras. 20 and 21 (''*FY 2009 Report and Order*'').

[55] In order to do this, licensees must have a current and valid FRN address on file in the Commission's Registration System (CORES).

[56] Regulatees have different options when making a payment, including credit card, check, and wire transfer.

mandatory use of Fee Filer eliminates the need to manually complete and submit a hardcopy Form 159, and for the Commission, the data in electronic format makes it much easier to process payments efficiently and effectively. We received no specific comment to our general inquiry. Accordingly, the Commission will continue its efforts to promote greater efficiency in its regulatory fee notification and collection processes, subject to appropriate notice and comment.

II. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

40. No parties have raised issues in response to the IRFA.

III. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

41. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[57] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[58] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[59] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[60]

42. *Small Businesses.* Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.[61]

43. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.*

Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards.[62] First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.[63] In addition, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[64] Nationwide, as of 2007, there were approximately 1,621,315 small organizations.[65] Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.''[66] Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States.[67] We estimate that, of this total, as many as 88, 506 entities may qualify as ''small governmental jurisdictions.''[68] Thus, we estimate that most governmental jurisdictions are small.

44. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[69] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.[70] Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.[71] Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the *NPRM.* Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small providers.[72]

45. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[73] Census Bureau data for 2007 show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities.[74] According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.[75] Of these 1,442 carriers, an estimated 1,256 have 1,500

[57] 5 U.S.C. 603(b)(3).

[58] 5 U.S.C. 601(6).

[59] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[60] 15 U.S.C. 632.

[61] *See* SBA, Office of Advocacy, ''Frequently Asked Questions,'' *http://web.sba.gov/faqs* (accessed Jan. 2009).

[62] *See* 5 U.S.C. 601(3)–(6).

[63] *See* SBA, Office of Advocacy, ''Frequently Asked Questions,'' *web.sba.gov/faqs* (last visited May 6,2011; figures are from 2009).

[64] 5 U.S.C. 601(4).

[65] Independent Sector, The New Nonprofit Almanac & Desk Reference (2010).

[66] 5 U.S.C. 601(5).

[67] U.S. Census Bureau, Statistical Abstract of the United States: 2011, Table 427 (2007)

[68] The 2007 U.S Census data for small governmental organizations indicate that there were 89, 476 ''Local Governments'' in 2007. (U.S. Census Bureau, Statistical Abstract of the United States 2011, Table 428.) The criterion by which the size of such local governments is determined to be small is a population of 50,000. However, since the Census Bureau does not specifically apply that criterion, it cannot be determined with precision how many of such local governmental organizations is small. Nonetheless, the inference seems reasonable that substantial number of these governmental organizations has a population of less than 50, 000. To look at Table 428 in conjunction with a related set of data in Table 429 in the Census's Statistical Abstract of the U.S., that inference is further supported by the fact that in both Tables, many entities that may well be small are included in the 89,476 local governmental organizations, e.g. county, municipal, township and town, school district and special district entities. Measured by a criterion of a population of 50,000 many specific sub-entities in this category seem more likely than larger county-level governmental organizations to have small populations. Accordingly, of the 89,746 small governmental organizations identified in the 2007 Census, the Commission estimates that a substantial majority is small. 68 13 CFR 121.201, NAICS code 517110.

[70] *See Trends in Telephone Service,* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (''*Trends in Telephone Service*'').

[71] *See id.*

[72] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[73] 13 CFR 121.201, NAICS code 517110.

[74] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[75] *See Trends in Telephone Service,* at tbl. 5.3.

or fewer employees and 186 have more than 1,500 employees.[76] In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.[77] In addition, 72 carriers have reported that they are Other Local Service Providers.[78] Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees.[79] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the *NPRM.*

46. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[80] Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.[81] Thus under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.[82] Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.[83] Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Notice.

47. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[84] Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000.[85] Thus under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data,[86] 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposed rules.

48. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[87] Census Bureau data for 2007 shows that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these PSPs can be considered small entities.[88] According to Commission data,[89] 657 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 653 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

49. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[90] Census Bureau data for 2007 shows that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities.[91] According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[92] Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.[93] Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the NPRM.

50. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[94] Census Bureau data for 2007 show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities.[95] According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and 2 have more than 1,500 employees.[96] Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed rules.

51. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[97] Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more

[76] *Id.*

[77] *Id.*

[78] *Id.*

[79] *Id.*

[80] 13 CFR 121.201, NAICS code 517911.

[81] *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=800&-ds_name=EC0751SSSZ5&-_lang=en.*

[82] *See Trends in Telephone Service,* at tbl. 5.3.

[83] *Id.*

[84] 13 CFR 121.201, NAICS code 517911.

[85] *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=800&-ds_name=EC0751SSSZ5&-_lang=en.*

[86] *Trends in Telephone Service,* at tbl. 5.3.

[87] 13 CFR 121.201, NAICS code 517110.

[88] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[89] *Trends in Telephone Service,* at tbl. 5.3.

[90] 13 CFR 121.201, NAICS code 517110.

[91] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[92] *See Trends in Telephone Service,* at tbl. 5.3.

[93] *Id.*

[94] 13 CFR 121.201, NAICS code 517110.

[95] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[96] *Trends in Telephone Service,* at tbl. 5.3.

[97] 13 CFR 121.201, NAICS code 517911.

than 1,000.[98] Thus under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.[99] Of these, all 193 have 1,500 or fewer employees and none have more than 1,500 employees.[100] Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the Notice.

52. *800 and 800-Like Service Subscribers.*[101] Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (''toll free'') subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[102] Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.[103] Thus under this category and the associated small business size standard, the majority of resellers in this classification can be considered small entities. To focus specifically on the number of subscribers than on those firms which make subscription service available, the most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.[104] According to our data for September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,888,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,860,000 or fewer small entity 800 subscribers; 5,888,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

53. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules.[105] The second has a size standard of $25 million or less in annual receipts.[106]

54. The category of Satellite Telecommunications ''comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' [107] Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year.[108] Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999.[109] Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

55. The second category, *i.e.* ''All Other Telecommunications'' comprises ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' [110] For this category, Census Bureau data for 2007 shows that there were a total of 2,383 firms that operated for the entire year.[111] Of this total, 2,347 firms had annual receipts of under $25 million and 12 firms had annual receipts of $25 million to $49, 999,999.[112] Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

56. *Wireless Telecommunications Carriers (except satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.[113] The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers. The size standard for that category is that a business is small if it has 1,500 or fewer employees.[114] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[115] For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year.[116] Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more.[117] Thus under this category and the associated small business size standard,, the Commission estimates that the majority of wireless telecommunications carriers (except

[98] *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=800&-ds_name=EC0751SSSZ5&-_lang=en.*

[99] *See Trends in Telephone Service,* at tbl. 5.3.

[100] *Id.*

[101] We include all toll-free number subscribers in this category, including those for 888 numbers.

[102] 13 CFR 121.201, NAICS code 517911.

[103] *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=800&-ds_name=EC0751SSSZ5&-_lang=en.*

[104] *Trends in Telephone Service,* at tbls. 18.4, 18.5, 18.6, 18.7.

[105] 13 CFR 121.201, NAICS code 517410.

[106] 13 CFR 121.201, NAICS code 517919.

[107] U.S. Census Bureau, 2007 NAICS Definitions, 517410 Satellite Telecommunications.

[108] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en.*

[109] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en.*

[110] *http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2007%20NAICS%20Search.*

[111] *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en.*

[112] *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en.*

[113] *http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517210&search=2007%20NAICS%20Search*

[114] 13 CFR 121.201, NAICS code 517210.

[115] 13 CFR 121.201, NAICS code 517210. The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[116] U.S. Census Bureau, Subject Series: Information, Table 5, ''Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210'' (issued Nov. 2010).

[117] *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''100 employees or more.''

satellite) are small entities that may be affected by our proposed action.[118]

57. *Licenses Assigned by Auctions.* Initially, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

58. *Paging Services.* Neither the SBA nor the FCC has developed a definition applicable exclusively to paging services. However, a variety of paging services is now categorized under Wireless Telecommunications Carriers (except satellite).[119] This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. Illustrative examples in the paging context include paging services, except satellite; two-way paging communications carriers, except satellite; and radio paging services communications carriers. The SBA has deemed a paging service in this category to be small if it has 1,500 or fewer employees.[120] For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year.[121] Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more.[122] Thus under this category and the associated small business size standard, the Commission estimates that the majority of paging services in the category of wireless telecommunications carriers (except satellite) are small entities that may be affected by our proposed action.[123]

59. In addition, in the Paging Second Report and Order, the Commission adopted a size standard for ''small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits.[124] A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[125] The SBA has approved this definition.[126] An initial auction of Metropolitan Economic Area (''MEA'') licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold.[127] Fifty-seven companies claiming small business status won 440 licenses.[128] A subsequent auction of MEA and Economic Area (''EA'') licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.[129] One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.[130] A fourth auction of 9,603 lower and upper band paging licenses was held in the year 2010. 29 bidders claiming small or very small business status won 3,016 licenses.

60. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (''WCS'') auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years.[131] The SBA approved these definitions.[132] The Commission conducted an auction of geographic area licenses in the WCS service in 1997. In the auction, seven bidders that qualified as very small business entities won 31 licenses, and one bidder that qualified as a small business entity won a license.

61. *1670–1675 MHz Services.* This service can be used for fixed and mobile uses, except aeronautical mobile.[133] An auction for one license in the 1670–1675 MHz band was conducted in 2003. The Commission defined a ''small business'' as an entity with attributable average annual gross revenues of not more than $40 million for the preceding three years, which would thus be eligible for a 15 percent discount on its winning bid for the 1670–1675 MHz band license. Further, the Commission defined a ''very small business'' as an entity with attributable average annual gross revenues of not more than $15 million for the preceding three years, which would thus be eligible to receive a 25 percent discount on its winning bid for the 1670–1675 MHz band license. The winning bidder was not a small entity.

62. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).[134] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[135] Census data for 2007 shows that there were 1,383 firms that operated that year.[136] Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100

[118] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en*

[119] U.S. Census Bureau, 2007 NAICS Definitions, ''517210 Wireless Telecommunications Categories (Except Satellite)''; *http://www.census.gov/naics/2007/def/ND517210.HTM#N517210.*

[120] U.S. Census Bureau, 2007 NAICS Definitions, ''517210 Wireless Telecommunications Categories (Except Satellite).''

[121] U.S. Census Bureau, Subject Series: Information, Table 5, ''Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210'' (issued Nov. 2010).

[122] *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''100 employees or more.''

[123] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[124] *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems,* Second Report and Order, 12 FCC Rcd 2732, 2811–2812, paras. 178–181 (''*Paging Second Report and Order*''); *see also Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems,* Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085–10088, paras. 98–107 (1999).

[125] *Paging Second Report and Order,* 12 FCC Rcd at 2811, para. 179.

[126] *See* Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau (''WTB''), FCC (Dec. 2, 1998) (''*Alvarez Letter 1998*'').

[127] *See ''929 and 931 MHz Paging Auction Closes,''* Public Notice, 15 FCC Rcd 4858 (WTB 2000).

[128] *See id.*

[129] *See ''Lower and Upper Paging Band Auction Closes,''* Public Notice, 16 FCC Rcd 21821 (WTB 2002).

[130] *See* ''Lower and Upper Paging Bands Auction Closes,'' Public Notice, 18 FCC Rcd 11154 (WTB 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

[131] *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS),* Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

[132] *See Alvarez Letter 1998.*

[133] 47 CFR 2.106; *see generally* 47 CFR 27.1–.70.

[134] 13 CFR 121.201, NAICS code 517210.

[135] *Id.*

[136] U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.*

employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. According to Trends in Telephone Service data, 434 carriers reported that they were engaged in wireless telephony.[137] Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.[138] Therefore, approximately half of these entities can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.[139] Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.[140] Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

63. *Broadband Personal Communications Service. Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a ''small business'' for C- and F-Block licenses as an entity that has average gross revenues of $40 million or less in the three previous years.[141] For F–Block licenses, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three years.[142] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[143] No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small and very small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks.[144] On April 15, 1999, the Commission completed the re-auction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22.[145] Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

64. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status.[146] Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses.[147] On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71.[148] Of the 14 winning bidders in that auction, six claimed small business status and won 18 licenses.[149] On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78.[150] Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.[151]

65. *Advanced Wireless Services.* In 2006, the Commission conducted its first auction of Advanced Wireless Services licenses in the 1710–1755 MHz and 2110–2155 MHz bands (''AWS–1''), designated as Auction 66.[152] For the AWS–1 bands, the Commission has defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million.[153] In 2006, the Commission conducted its first auction of AWS–1 licenses.[154] In that initial AWS–1 auction, 31 winning bidders identified themselves as very small businesses won 142 licenses.[155] Twenty-six of the winning bidders identified themselves as small businesses and won 73 licenses.[156] In a subsequent 2008 auction, the Commission offered 35 AWS–1 licenses.[157] Four winning bidders identified themselves as very small businesses, and three of the winning bidders identifying themselves as a small businesses, won five AWS–1 licenses.[158]

66. *Narrowband Personal Communications Services.* In 1994, the Commission conducted two auctions of Narrowband PCS licenses. For these auctions, the Commission defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40

[137] *Trends in Telephone Service,* at Table 5.3.

[138] *Id.*

[139] *See Trends in Telephone Service,* at tbl. 5.3.

[140] *See id.*

[141] *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap; Amendment of the Commission's Cellular/PCS Cross-Ownership Rule,* WT Docket No. 96–59, GN Docket No. 90–314, Report and Order, 11 FCC Rcd 7824, 7850–52 paras. 57–60 (1996) (''*PCS Report and Order*''); *see also* 47 CFR 24.720(b).

[142] *See PCS Report and Order,* 11 FCC Rcd at 7852 para. 60.

[143] *See Alvarez Letter 1998.*

[144] *See Broadband PCS, D, E and F Block Auction Closes,* Public Notice, Doc. No. 89838 (rel. Jan. 14, 1997).

[145] *See C, D, E, and F Block Broadband PCS Auction Closes,* Public Notice, 14 FCC Rcd 6688 (WTB 1999). Before Auction No. 22, the Commission established a very small standard for the C Block to match the standard used for F Block. *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees,* WT Docket No. 97–82, Fourth Report and Order, 13 FCC Rcd 15743, 15768 para. 46 (1998).

[146] *See C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,* Public Notice, 16 FCC Rcd 2339 (2001).

[147] *See Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58,* Public Notice, 20 FCC Rcd 3703 (2005).

[148] *See Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71,* Public Notice, 22 FCC Rcd 9247 (2007).

[149] *Id.*

[150] *See Auction of AWS–1 and Broadband PCS Licenses Closes; Winning Bidders Announced for Auction 78,* Public Notice, 23 FCC Rcd 12749 (WTB 2008).

[151] *Id.*

[152] *See* Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66, AU Docket No. 06–30, *Public Notice,* 21 FCC Rcd 4562 (2006) (''*Auction 66 Procedures Public Notice*'').

[153] *See* Service Rules for Advanced Wireless services in the 1.7 GHz and 2.1 GHz Bands, *Report and Order,* 18 FCC Rcd 25,162, App. B (2003), *modified by* Service Rules for Advanced Wireless Services In the 1.7 GHz and 2.1 GHz Bands, *Order on Reconsideration,* 20 FCC Rcd 14,058, App. C (2005).

[154] *See Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66,* AU Docket No. 06–30, Public Notice, 21 FCC Rcd 4562 (2006) (''*Auction 66 Procedures Public Notice*'').

[155] *See Auction of Advanced Wireless Services Licenses Closes; Winning Bidders Announced for Auction No. 66,* Public Notice, 21 FCC Rcd 10,521 (2006) (''*Auction 66 Closing Public Notice*'').

[156] *See id.*

[157] *See AWS–1 and Broadband PCS Procedures Public Notice,* 23 FCC Rcd at 7499. Auction 78 also included an auction of broadband PCS licenses.

[158] *See Auction of AWS–1 and Broadband PCS Licenses Closes, Winning Bidders Announced for Auction 78, Down Payments Due September 9, 2008, FCC Forms 601 and 602 Due September 9, 2008, Final Payments Due September 23, 2008, Ten-Day Petition to Deny Period,* Public Notice, 23 FCC Rcd 12,749 (2008).

million.[159] Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.[160] To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.*[161] A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million.[162] A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.[163] The SBA has approved these small business size standards.[164] A third auction of Narrowband PCS licenses was conducted in 2001. In that auction, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.[165] Three of the winning bidders claimed status as a small or very small entity and won 311 licenses.

67. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.[166] The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[167] A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[168] Additionally, the Lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (''MSA/RSA'') licenses—''entrepreneur''— which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[169] The SBA approved these small size standards.[170] An auction of 740 licenses was conducted in 2002 (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business, or entrepreneur status and won a total of 329 licenses.[171] A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses.[172] Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.[173] In 2005, the Commission completed an auction of 5 licenses in the lower 700 MHz band (Auction 60). All three winning bidders claimed small business status.

68. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.*[174] An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008.[175] Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty-three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.

69. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz licenses.[176] On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block.[177] The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

70. *700 MHz Guard Band Licenses.* In 2000, the Commission adopted the *700 MHz Guard Band Report and Order,* in which it established rules for the A and B block licenses in the Upper 700 MHz band, including size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits.[178] A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[179] Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than

[159] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding Narrowband PCS,* Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196, para. 46 (1994).

[160] *See* ''Announcing the High Bidders in the Auction of Ten Nationwide Narrowband PCS Licenses, Winning Bids Total $617,006,674,'' *Public Notice,* PNWL 94–004 (rel. Aug. 2, 1994); ''Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total $490,901,787,'' *Public Notice,* PNWL 94–27 (rel. Nov. 9, 1994).

[161] *Amendment of the Commission's Rules to Establish New Personal Communications Services,* Narrowband PCS, Second Report and Order and Second Further Notice of Proposed Rule Making, 15 FCC Rcd 10456, 10476, para. 40 (2000) (''*Narrowband PCS Second Report and Order*'').

[162] *Narrowband PCS Second Report and Order,* 15 FCC Rcd at 10476, para. 40.

[163] *Id.*

[164] *See Alvarez Letter 1998.*

[165] *See* ''Narrowband PCS Auction Closes,'' *Public Notice,* 16 FCC Rcd 18663 (WTB 2001).

[166] *See Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59),* Report and Order, 17 FCC Rcd 1022 (2002) (''*Channels 52–59 Report and Order*'').

[167] *See Channels 52–59 Report and Order,* 17 FCC Rcd at 1087–88, para. 172.

[168] *See id.*

[169] *See id,* 17 FCC Rcd at 1088, para. 173.

[170] *See* Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, WTB, FCC (Aug. 10, 1999) (''*Alvarez Letter 1999*'').

[171] *See* ''Lower 700 MHz Band Auction Closes,'' *Public Notice,* 17 FCC Rcd 17272 (WTB 2002).

[172] *See* Lower 700 MHz Band Auction Closes, *Public Notice,* 18 FCC Rcd 11873 (WTB 2003).

[173] *See id.*

[174] Service Rules for the 698–746, 747–762 and 777–792 MHz Band, WT Docket No. 06–150, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems,* CC Docket No. 94–102, *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephone, WT Docket No. 01–309, Biennial Regulatory Review—Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services,* WT Docket No. 03–264, *Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules,* WT Docket No. 06–169, *Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band,* PS Docket No. 06–229, *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010,* WT Docket No. 96–86, Second Report and Order, 22 FCC Rcd 15289 (2007) (''*700 MHz Second Report and Order*'').

[175] *See* Auction of 700 MHz Band Licenses Closes, *Public Notice,* 23 FCC Rcd 4572 (WTB 2008).

[176] *700 MHz Second Report and Order,* 22 FCC Rcd 15289.

[177] *See Auction of 700 MHz Band Licenses Closes,* Public Notice, 23 FCC Rcd 4572 (WTB 2008).

[178] *See Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules,* Second Report and Order, 15 FCC Rcd 5299 (2000) (''*700 MHz Guard Band Report and Order*'').

[179] *See 700 MHz Guard Band Report and Order,* 15 FCC Rcd at 5343, para. 108.

$15 million for the preceding three years.[180] SBA approval of these definitions is not required.[181] An auction of these licenses was conducted in 2000.[182] Of the 104 licenses auctioned, 96 licenses were won by nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses was held in 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[183]

71. *Specialized Mobile Radio.* The Commission adopted small business size standards for the purpose of determining eligibility for bidding credits in auctions of Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[184] The Commission defined a ''very small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $3 million for the preceding three years.[185] The SBA has approved these small business size standards for both the 800 MHz and 900 MHz SMR Service.[186] The first 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 licenses in the 900 MHz SMR band. In 2004, the Commission held a second auction of 900 MHz SMR licenses and three winning bidders identifying themselves as very small businesses won 7 licenses.[187] The auction of 800 MHz SMR licenses for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small or very small businesses under the $15 million size standard won 38 licenses for the upper 200 channels.[188] A second auction of 800 MHz SMR licenses was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.[189]

72. The auction of the 1,053 800 MHz SMR licenses for the General Category channels was conducted in 2000. Eleven bidders who won 108 licenses for the General Category channels in the 800 MHz SMR band qualified as small or very small businesses.[190] In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.[191] Of the 22 winning bidders, 19 claimed small or very small business status and won 129 licenses. Thus, combining all four auctions, 41 winning bidders for geographic licenses in the 800 MHz SMR band claimed to be small businesses.

73. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues not exceeding $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees.[192] We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

74. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable. The SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[193] For this service, the SBA uses the category of Wireless Telecommunications Carriers (except Satellite). Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.[194] Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

75. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service licenses are assigned by auction, where mutually exclusive applications are accepted. In the *220 MHz Third Report and Order,* the Commission adopted a small business size standard for defining ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits.[195] This small business standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[196] A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[197] The SBA has approved these small size standards.[198] Auctions of Phase II licenses commenced on and closed in

[180] *See id.*

[181] *See id.,* 15 FCC Rcd 5299, 5343, para. 108 n.246 (for the 746–764 MHz and 776–794 MHz bands, the Commission is exempt from 15 U.S.C. 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

[182] *See* ''700 MHz Guard Bands Auction Closes: Winning Bidders Announced,'' *Public Notice,* 15 FCC Rcd 18026 (2000).

[183] *See* ''700 MHz Guard Bands Auction Closes: Winning Bidders Announced,'' *Public Notice,* 16 FCC Rcd 4590 (WTB 2001).

[184] 47 CFR 90.810, 90.814(b), 90.912.

[185] 47 CFR 90.810, 90.814(b), 90.912.

[186] *See Alvarez Letter 1999.*

[187] *See* 900 MHz Specialized Mobile Radio Service Spectrum Auction Closes: Winning Bidders Announced,'' *Public Notice,* 19 FCC Rcd. 3921 (WTB 2004).

[188] *See* ''Correction to Public Notice DA 96–586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,' '' *Public Notice,* 18 FCC Rcd 18367 (WTB 1996).

[189] *See* ''Multi-Radio Service Auction Closes,'' *Public Notice,* 17 FCC Rcd 1446 (WTB 2002).

[190] *See* ''800 MHz Specialized Mobile Radio (SMR) Service General Category (851–854 MHz) and Upper Band (861–865 MHz) Auction Closes; Winning Bidders Announced,'' *Public Notice,* 15 FCC Rcd 17162 (2000).

[191] *See* ''800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced,'' *Public Notice,* 16 FCC Rcd 1736 (2000).

[192] *See generally* 13 CFR 121.201, NAICS code 517210.

[193] 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[194] U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.*

[195] *Amendment of Part 90 of the Commission's Rules to Provide For the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service,* Third Report and Order, 12 FCC Rcd 10943, 11068–70 paras. 291–295 (1997).

[196] *Id.* at 11068 para. 291.

[197] *Id.*

[198] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998 (*Alvarez to Phythyon Letter 1998).*

1998.[199] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: Three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.[200] Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[201] A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.[202] In 2007, the Commission conducted a fourth auction of the 220 MHz licenses, designated as Auction 72.[203] Auction 72, which offered 94 Phase II 220 MHz Service licenses, concluded in 2007.[204] In this auction, five winning bidders won a total of 76 licenses. Two winning bidders identified themselves as very small businesses won 56 of the 76 licenses. One of the winning bidders that identified themselves as a small business won 5 of the 76 licenses won.

76. *Private Land Mobile Radio (''PLMR'').* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.[205] The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.[206]

77. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

78. *Fixed Microwave Services.* Microwave services include common carrier,[207] private-operational fixed,[208] and broadcast auxiliary radio services.[209] They also include the Local Multipoint Distribution Service (''LMDS''),[210] the Digital Electronic Message Service (''DEMS''),[211] and the 24 GHz Service,[212] where licensees can choose between common carrier and non-common carrier status.[213] The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, the Commission will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.,* an entity with no more than 1,500 persons is considered small.[214] For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 shows that there were 1,383 firms that operated that year.[215] Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the number of firms does not necessarily track the number of licensees. The Commission estimates that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

79. *39 GHz Service.* The Commission adopted small business size standards for 39 GHz licenses. A ''small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million in the preceding three years.[216] A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues of not more than $15 million for the preceding three years.[217] The SBA has approved these small business size standards.[218] In 2000, the Commission conducted an auction of 2,173 39 GHz licenses. A total of 18 bidders who claimed small or very small business status won 849 licenses.

80. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (''LMDS'') is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.[219] The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous years.[220] An additional small business size standard for ''very small business'' was added as

[199] *See generally 220 MHz Service Auction Closes,* Public Notice, 14 FCC Rcd 605 (WTB 1998).

[200] *See FCC Announces It Is Prepared To Grant 654 Phase II 220 MHz Licenses After Final Payment Is Made,* Public Notice, 14 FCC Rcd 1085 (WTB 1999).

[201] *See Phase II 220 MHz Service Spectrum Auction Closes,* Public Notice, 14 FCC Rcd 11218 (WTB 1999).

[202] *See Multi-Radio Service Auction Closes,* Public Notice, 17 FCC Rcd 1446 (WTB 2002).

[203] *See* ''Auction of Phase II 220 MHz Service Spectrum Scheduled for June 20, 2007, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 72, *Public Notice,* 22 FCC Rcd 3404 (2007).

[204] *See Auction of Phase II 220 MHz Service Spectrum Licenses Closes, Winning Bidders Announced for Auction 72, Down Payments due July 18, 2007, FCC Forms 601 and 602 due July 18, 2007, Final Payments due August 1, 2007, Ten-Day Petition to Deny Period,* Public Notice, 22 FCC Rcd 11573 (2007).

[205] *See* 13 CFR 121.201, NAICS code 517210.

[206] *See generally* 13 CFR 121.201.

[207] *See* 47 CFR part 101, subparts C and I.

[208] *See id.* subparts C and H.

[209] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's rules. *See* 47 CFR part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[210] *See* 47 CFR part 101, subpart L.

[211] *See id.* subpart G.

[212] *See id.*

[213] *See* 47 CFR 101.533, 101.1017.

[214] 13 CFR 121.201, NAICS code 517210.

[215] U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.*

[216] *See Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands,* ET Docket No. 95–183, Report and Order, 12 FCC Rcd 18600 (1997).

[217] *Id.*

[218] *See* Letter from Aida Alvarez, Administrator, SBA, to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, WTB, FCC (Feb. 4, 1998); *see* Letter from Hector Barreto, Administrator, SBA, to Margaret Wiener, Chief, Auctions and Industry Analysis Division, WTB, FCC (Jan. 18, 2002).

[219] *See* Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, CC Docket No. 92–297, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689–90, para. 348 (1997) (''*LMDS Second Report and Order*'').

[220] *See* LMDS Second Report and Order, 12 FCC Rcd at 12689–90, para. 348.

an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three years.[221] The SBA has approved these small business size standards in the context of LMDS auctions.[222] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

81. *218–219 MHz Service.* The first auction of 218–219 MHz Service (previously referred to as the Interactive and Video Data Service or IVDS) licenses resulted in 170 entities winning licenses for 594 Metropolitan Statistical Areas (''MSAs'').[223] Of the 594 licenses, 557 were won by 167 entities qualifying as a small business. For that auction, the Commission defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[224] In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* the Commission revised its small business size standards for the 218–219 MHz Service and defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.[225] The Commission defined a ''very small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years.[226] The SBA has approved these definitions.[227]

82. *Location and Monitoring Service (''LMS'').* Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For auctions of LMS licenses, the Commission has defined a ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[228] A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $3 million.[229] These definitions have been approved by the SBA.[230] An auction of LMS licenses was conducted in 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

83. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[231] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (''BETRS'').[232] For purposes of its analysis of the Rural Radiotelephone Service, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except satellite),'' which is 1,500 or fewer employees.[233] Census data for 2007 shows that there were 1,383 firms that operated that year.[234] Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms in the Rural Radiotelephone Service can be considered small.

84. *Air-Ground Radiotelephone Service.*[235] The Commission has previously used the SBA's small business definition applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons.[236] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, we estimate that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 million.[237] A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[238] These definitions were approved by the SBA.[239] In 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction 65). The auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

85. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (''VHF'') marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except satellite),'' which is 1,500 or fewer employees.[240] Census data for 2007 shows that there were 1,383 firms that operated that year.[241] Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small

[221] *See id.*

[222] *See Alvarez to Phythyon Letter 1998.*

[223] *See ''Interactive Video and Data Service (IVDS) Applications Accepted for Filing,''* Public Notice, 9 FCC Rcd 6227 (1994).

[224] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* Fourth Report and Order, 9 FCC Rcd 2330 (1994).

[225] *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service,* Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999).

[226] *Id.*

[227] *See Alvarez to Phythyon Letter 1998.*

[228] *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems,* Second Report and Order, 13 FCC Rcd 15182, 15192, para. 20 (1998) (''*Automatic Vehicle Monitoring Systems Second Report and Order''*); *see also* 47 CFR 90.1103.

[229] *Automatic Vehicle Monitoring Systems Second Report and Order,* 13 FCC Rcd at 15192, para. 20; *see also* 47 CFR 90.1103.

[230] *See Alvarez Letter 1998.*

[231] The service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

[232] BETRS is defined in sections 22.757 and 22.759 of the Commission's rules, 47 CFR 22.757 and 22.759.

[233] 13 CFR 121.201, NAICS code 517210.

[234] U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), *http://factfinder.census.gov/servlet/IBQ Table?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.*

[235] The service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

[236] 13 CFR 121.201, NAICS codes 517210.

[237] *Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review—Amendment of Parts 1, 22, and 90 of the Commission's Rules, Amendment of Parts 1 and 22 of the Commission's Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service,* WT Docket Nos. 03–103 and 05–42, Order on Reconsideration and Report and Order, 20 FCC Rcd 19663, paras. 28–42 (2005).

[238] *Id.*

[239] *See* Letter from Hector V. Barreto, Administrator, SBA, to Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, WTB, FCC (Sept. 19, 2005).

[240] 13 CFR 121.201, NAICS code 517210.

[241] U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), *http://factfinder.census.gov/servlet/IBQ Table?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.*

business size standard, the majority of firms can be considered small.

86. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[242] There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that standard.[243] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[244] Census data for 2007 shows that there were 1,383 firms that operated that year.[245] Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

87. *Multiple Address Systems (''MAS'').* Entities using MAS spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. The Commission defines a small business for MAS licenses as an entity that has average gross revenues of less than $15 million in the preceding three years.[246] A very small business is defined as an entity that, together with its affiliates, has average gross revenues of not more than $3 million for the preceding three years.[247] The SBA has approved these definitions.[248] The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of March 5, 2010, there were over 11,500 MAS station authorizations. In 2001, an auction of 5,104 MAS licenses in 176 EAs was conducted.[249] Seven winning bidders claimed status as small or very small businesses and won 611 licenses. In 2005, the Commission completed an auction (Auction 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

88. With respect to entities that use, or seek to use, MAS spectrum to accommodate internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the small business size standard developed by the SBA would be more appropriate. The applicable size standard in this instance appears to be that of Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.[250] The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

89. *1.4 GHz Band Licensees.* The Commission conducted an auction of 64 1.4 GHz band licenses in the paired 1392–1395 MHz and 1432–1435 MHz bands, and in the unpaired 1390–1392 MHz band in 2007.[251] For these licenses, the Commission defined ''small business'' as an entity that, together with its affiliates and controlling interests, had average gross revenues not exceeding $40 million for the preceding three years, and a ''very small business'' as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years.[252] Neither of the two winning bidders claimed small business status.[253]

90. *Incumbent 24 GHz Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. For this service, the Commission uses the SBA small business size standard for the category ''Wireless Telecommunications Carriers (except satellite),'' which is 1,500 or fewer employees.[254] To gauge small business prevalence for these cable services we must, however, use the most current census data. Census data for 2007 shows that there were 1,383 firms that operated that year.[255] Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census' use of the classifications ''firms'' does not track the number of ''licenses''. The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent[256] and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

91. *Future 24 GHz Licensees.* With respect to new applicants for licenses in the 24 GHz band, for the purpose of determining eligibility for bidding credits, the Commission established three small business definitions. An ''entrepreneur'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $40 million.[257] A ''small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $15 million.[258] A ''very small business'' in the 24 GHz band is defined as an entity that, together with

[242] This service is governed by subpart I of part 22 of the Commission's rules. *See* 47 CFR 22.1001–22.1037.

[243] 13 CFR 121.201, NAICS code 517210.

[244] *Id.*

[245] U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), *http://factfinder.census.gov/servlet/IBQ Table?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.*

[246] *See Amendment of the Commission's Rules Regarding Multiple Address Systems,* Report and Order, 15 FCC Rcd 11956, 12008, para. 123 (2000).

[247] *Id.*

[248] *See Alvarez Letter 1999.*

[249] *See ''Multiple Address Systems Spectrum Auction Closes,''* Public Notice, 16 FCC Rcd 21011 (2001).

[250] *See* 13 CFR 121.201, NAICS code 517210.

[251] *See ''Auction of 1.4 GHz Band Licenses Scheduled for February 7, 2007,''* Public Notice, 21 FCC Rcd 12393 (WTB 2006); *''Auction of 1.4 GHz Band Licenses Closes; Winning Bidders Announced for Auction No. 69,''* Public Notice, 22 FCC Rcd 4714 (2007) (*''Auction No. 69 Closing PN''*).

[252] *Auction No. 69 Closing PN,* Attachment C.

[253] *See Auction No. 69 Closing PN.*

[254] 13 CFR 121.201, NAICS code 517210.

[255] U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), *http://factfinder.census.gov/servlet/IBQ Table?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.>*

[256] Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

[257] *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules To License Fixed Services at 24 GHz,* Report and Order, 15 FCC Rcd 16934, 16967 para. 77 (2000) (*''24 GHz Report and Order''*); *see also* 47 CFR 101.538(a)(3).

[258] *24 GHz Report and Order,* 15 FCC Rcd at 16967 para. 77; *see also* 47 CFR 101.538(a)(2).

controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[259] The SBA has approved these small business size standards.[260] In a 2004 auction of 24 GHz licenses, three winning bidders won seven licenses.[261] Two of the winning bidders were very small businesses that won five licenses.

92. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (''MDS'') and Multichannel Multipoint Distribution Service (''MMDS'') systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (''BRS'') and Educational Broadband Service (''EBS'') (previously referred to as the Instructional Television Fixed Service (''ITFS'').[262] In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three years.[263] The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.[264] After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.[265] The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) will receive a 35 percent discount on its winning bid.[266] Auction 86 concluded in 2009 with the sale of 61 licenses.[267] Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

93. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.[268] Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' [269] For these services, the Commission uses the SBA small business size standard for the category ''Wireless Telecommunications Carriers (except satellite),'' which is 1,500 or fewer employees.[270] To gauge small business prevalence for these cable services we must, however, use the most current Census data. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year.[271] Of this total, 939 firms employed 999 or fewer employees, and 16 firms employed 1,000 employees or more.[272] Thus, the majority of these firms can be considered small.

94. *Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' [273] The SBA has created the following small business size standard for Television Broadcasting firms: Those having $14 million or less in annual receipts.[274] The Commission has estimated the number of licensed commercial television stations to be 1,387.[275] In addition, according to Commission staff review of the BIA Advisory Services, LLC's *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues

[259] *24 GHz Report and Order,* 15 FCC Rcd at 16967 para. 77; *see also* 47 CFR 101.538(a)(1).

[260] *See* Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary M. Jackson, Assistant Administrator, SBA (July 28, 2000).

[261] *Auction of 24 GHz Service Spectrum Auction Closes, Winning Bidders Announced for Auction 56, Down Payments Due August 16, 2004, Final Payments Due August 30, 2004, Ten-Day Petition to Deny Period,* Public Notice, 19 FCC Rcd 14738 (2004).

[262] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* MM Docket No. 94–131, PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589, 9593 para. 7 (1995).

[263] 47 CFR 21.961(b)(1).

[264] 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard of 1,500 or fewer employees.

[265] *Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86,* Public Notice, 24 FCC Rcd 8277 (2009).

[266] *Id.* at 8296.

[267] *Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period,* Public Notice, 24 FCC Rcd 13572 (2009).

[268] The term ''small entity'' within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6). We do not collect annual revenue data on EBS licensees.

[269] U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers, (partial definition), *www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[270] 13 CFR 121.201, NAICS code 517210.

[271] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, Employment Size of Firms for the United States: 2007, NAICS code 5171102 (issued November 2010).

[272] *Id.*

[273] U.S. Census Bureau, 2007 NAICS Definitions, ''515120 Television Broadcasting'' (partial definition); *http://www.census.gov/naics/2007/def/ND515120.HTM#N515120.*

[274] 13 CFR 121.201, NAICS code 515120 (updated for inflation in 2010).

[275] *See FCC News Release,* ''Broadcast Station Totals as of December 31, 2011,'' dated January 6, 2012; *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-311837A1.pdf.*

of $14 million or less.[276] We therefore estimate that the majority of commercial television broadcasters are small entities.

95. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[277] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

96. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396.[278] These stations are non-profit, and therefore considered to be small entities.[279]

97. In addition, there are also 2,528 low power television stations, including Class A stations (LPTV).[280] Given the nature of these services, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

98. *Radio Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.''[281] The SBA has established a small business size standard for this category, which is: Such firms having $7 million or less in annual receipts.[282] According to Commission staff review of BIA Advisory Services, LLC's *Media Access Pro Radio Database* on March 28, 2012, about 10,759 (97%) of 11,102 commercial radio stations had revenues of $7 million or less. Therefore, the majority of such entities are small entities.

99. We note, however, that in assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included.[283] In addition, to be determined to be a ''small business,'' the entity may not be dominant in its field of operation.[284] We note that it is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

100. *Auxiliary, Special Broadcast and Other Program Distribution Services.* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[285]

101. The Commission estimates that there are approximately 6,099 FM translators and boosters.[286] The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business ($7.0 million for a radio station or $14.0 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a ''small business concern'' because they are not independently owned and operated.[287]

102. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.''[288] The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 1,383 firms that operated that year.[289] Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of such firms can be considered small.

103. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide.[290] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[291] In addition, under the

[276] We recognize that BIA's estimate differs slightly from the FCC total given *supra.*

[277] ''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.'' 13 CFR 21.103(a)(1).

[278] *See FCC News Release,* ''Broadcast Station Totals as of December 31, 2011,'' dated January 6, 2012; *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf.*

[279] *See generally* 5 U.S.C. 601(4), (6).

[280] *See FCC News Release,* ''Broadcast Station Totals as of December 31, 2011,'' dated January 6, 2012; *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf.*

[281] U.S. Census Bureau, 2007 NAICS Definitions, ''515112 Radio Stations''; *http://www.census.gov/naics/2007/def/ND515112.HTM#N515112.*

[282] 13 CFR 121.201, NAICS code 515112 (updated for inflation in 2010).

[283] ''Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.'' 13 CFR 121.103(a)(1) (an SBA regulation).

[284] 13 CFR 121.102(b) (an SBA regulation).

[285] 13 CFR 121.201, NAICS codes 515112 and 515120.

[286] *See FCC News Release,* ''Broadcast Station Totals as of December 31, 2011,'' dated January 6, 2012; *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf.*

[287] *See* 15 U.S.C. 632.

[288] U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers, (partial definition), *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110* (last visited Oct. 21, 2009).

[289] U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.*

[290] 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation,* Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

[291] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* ''Top 25 Cable/Satellite Operators,'' pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable*

Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers.[292] Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers.[293] Thus, under this second size standard, most cable systems are small.

104. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [294] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[295] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.[296] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[297] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

105. *Open Video Systems.* Open Video Service (OVS) systems provide subscription services.[298] The open video system (''OVS'') framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.[299] The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,[300] OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' [301] The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for the OVS service, the Commission relies on data currently available from the U.S. Census for the year 2007. According to that source, there were 3,188 firms that in 2007 were Wired Telecommunications Carriers. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with more than 1,000 employees. However, as to the latter 44 there is no data available that shows how many operated with more than 1,500 employees. Based on this data, the majority of these firms can be considered small.[302] In addition, we note that the Commission has certified some OVS operators, with some now providing service.[303] Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises.[304] The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities. The Commission further notes that it has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service.[305] Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

106. *Cable Television Relay Service.* The industry in which Cable Television Relay Services operate comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[306] The category designated by the SBA for this industry is ''Wired Telecommunications Carriers.'' [307] The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, Census data for 2007 shows 3,188 firms in this category.[308] Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. On this basis, the Commission estimates that a substantial majority of the providers of interconnected VoIP, non-

Factbook 2006, ''Ownership of Cable Systems in the United States,'' pages D–1805 to D–1857.

[292] 47 CFR 76.901(c).

[293] Warren Communications News, *Television & Cable Factbook 2008,* ''U.S. Cable Systems by Subscriber Size,'' page F–2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

[294] 47 U.S.C. 543(m)(2); *see* 47 CFR 76.901(f) & nn. 1–3.

[295] 47 CFR 76.901(f); *see* Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator,* DA 01–158 (Cable Services Bureau, Jan. 24, 2001).

[296] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* ''Top 25 Cable/Satellite Operators,'' pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006,* ''Ownership of Cable Systems in the United States,'' pages D–1805 to D–1857.

[297] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. *See* 47 CFR 76.909(b).

[298] *See* 47 U.S.C. 573.

[299] 47 U.S.C. 571(a)(3)–(4). *See 13th Annual Report,* 24 FCC Rcd at 606, para. 135.

[300] *See* 47 U.S.C. 573.

[301] U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers, *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[302] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[303] A list of OVS certifications may be found at *http://www.fcc.gov/mb/ovs/csovscer.html.*

[304] *See 13th Annual Report,* 24 FCC Rcd at 606–07 para. 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

[305] *See http://www.fcc.gov/mb/ovs/csovscer.html* (current as of February 2007).

[306] U.S. Census Bureau, 2007 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' (partial definition); *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[307] 13 CFR 121.201, NAICS code 517110.

[308] *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

interconnected VoIP, or both in this category, are small.[309]

107. *Multichannel Video Distribution and Data Service.* MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defines a very small business as an entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding three years.[310] These definitions were approved by the SBA.[311] On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses.[312] Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.[313]

108. *Amateur Radio Service.* These licensees are held by individuals in a noncommercial capacity; these licensees are not small entities.

109. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under Part 95 of our rules.[314] These services include Citizen Band Radio Service (''CB''), General Mobile Radio Service (''GMRS''), Radio Control Radio Service (''R/C''), Family Radio Service (''FRS''), Wireless Medical Telemetry Service (''WMTS''), Medical Implant Communications Service (''MICS''), Low Power Radio Service (''LPRS''), and Multi-Use Radio Service (''MURS'').[315] There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being proposed. Since all such entities are wireless, we apply the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which a small entity is defined as employing 1,500 or fewer persons.[316] Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by our action.

110. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[317] There are a total of approximately 127,540 licensees in these services. Governmental entities[318] as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.[319]

111. *Internet Service Providers. Internet Service Providers, Web Portals and Other Information Services.* In 2007, the SBA recognized two new small business economic census categories. They are (1) Internet Publishing and Broadcasting and Web Search Portals,[320] and (2) All Other Information Services.[321]

112. *Internet Service Providers.* The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (*e.g.,* cable and DSL ISPs), or over client-supplied telecommunications connections (*e.g.,* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers,[322] which has an SBA small business size standard of 1,500 or fewer employees.[323] These are also labeled ''broadband.'' The latter are within the

[309] *Id.* As noted in para. 18 above with regard to the distinction between manufacturers of equipment used to provide interconnected VoIP and manufactures of equipment to provide non-interconnected VoIP, our estimates of the number of the number of providers of non-interconnected VoIP (and the number of small entities within that group) are likely overstated because we could not draw in the data a distinction between such providers and those that provide interconnected VoIP. However, in the absence of more accurate data, we present these figures to provide as thorough an analysis of the impact on small entities as we can at this time.

[310] *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licenses and their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to provide A Fixed Service in the 12.2–12.7 GHz Band,* ET Docket No. 98–206, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, 9711, para. 252 (2002).

[311] *See* Letter from Hector V. Barreto, Administrator, U.S. Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, WTB, FCC (Feb. 13, 2002).

[312] *See* ''*Multichannel Video Distribution and Data Service Auction Closes,*'' Public Notice, 19 FCC Rcd 1834 (2004).

[313] *See* ''*Auction of Multichannel Video Distribution and Data Service Licenses Closes; Winning Bidders Announced for Auction No. 63,*'' Public Notice, 20 FCC Rcd 19807 (2005).

[314] 47 CFR part 90.

[315] The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by subpart D, subpart A, subpart C, subpart B, subpart H, subpart I, subpart G, and subpart J, respectively, of part 95 of the Commission's rules. *See generally* 47 CFR part 95.

[316] 13 CFR 121.201, NAICS Code 517210.

[317] With the exception of the special emergency service, these services are governed by subpart B of part 90 of the Commission's rules, 47 CFR 90.15–90.27. The police service includes approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service is presently comprised of approximately 41,000 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 state and local governments are licensed for highway maintenance service to provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service (''EMRS'') use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15–90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33–90.55.

[318] 47 CFR 1.1162.

[319] 5 U.S.C. 601(5).

[320] 13 CFR 121.201, NAICS code 519130 (establishing a $500,000 revenue ceiling).

[321] 13 CFR 121.201, NAICS code 519190 (establishing a $6.5 million revenue ceiling).

[322] U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers, *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[323] 13 CFR 121.201, NAICS code 517110.

category of All Other Telecommunications,[324] which has a size standard of annual receipts of $25 million or less.[325] These are labeled non-broadband.

113. The most current Economic Census data for all such firms are 2007 data, which are detailed specifically for ISPs within the categories above. For the first category, the data show that 396 firms operated for the entire year, of which 159 had nine or fewer employees.[326] For the second category, the data show that 1,682 firms operated for the entire year.[327] Of those, 1,675 had annual receipts below $25 million per year, and an additional two had receipts of between $25 million and $49,999,999. Consequently, we estimate that the majority of ISP firms are small entities.

114. *Internet Publishing and Broadcasting and Web Search Portals.* This industry comprises establishments primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals). The publishing and broadcasting establishments in this industry do not provide traditional (non-Internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the Internet exclusively. Establishments known as Web search portals often provide additional Internet services, such as email, connections to other Web sites, auctions, news, and other limited content, and serve as a home base for Internet users.[328] The SBA deems businesses in this industry with 500 or fewer employees small.[329] According to Census Bureau data for 2007, there were 2,705 firms that provided one or more of these services for that entire year. Of these, 2,682 operated with less than 500 employees and 13 operated with to 999 employees.[330] Consequently, we estimate the majority of these firms are small entities that may be affected by our proposed actions.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

115. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, and pay a regulatory fee based on the number of licenses or call signs.[331] In some instances, licensees or regulatees may decide to submit an FCC Form 159 Remittance Advice. Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499–A, Telecommunications Reporting Worksheet. Compliance with the fee schedule will require some regulatees to tabulate the number of units (*e.g.,* cellular telephones, pagers, cable TV subscribers) they have in service. Regulatees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to submit a regulatory fee payment, and it can be completed by the employees responsible for an entity's business records.

116. As discussed previously in this *Report and Order,* the Commission concluded in its FY 2009 regulatory fee cycle that regulatees filing their annual regulatory fee payments must begin the process by entering the Commission's Fee Filer system with a valid FRN and password. In some instances, it will be necessary to use a specific FRN and password that is linked to a particular regulatory fee bill. Going forward, the submission of hardcopy Form 159 documents will not be permitted for making a regulatory fee payment during the regulatory fee cycle. By requiring regulatees to use Fee Filer to begin the regulatory fee payment process, errors resulting from illegible handwriting on hardcopy Form 159's will be reduced, and the Commission will be able to create an electronic record of regulatee payment attributes that are more easily traceable than payments that were previously mailed in with a hardcopy Form 159.

117. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.[332] If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.[333] Further, in accordance with the DCIA, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.[334] Nonpayment of regulatory fees is a debt owed to the United States pursuant to 31 U.S.C. 3711 *et seq.,* and the DCIA. Appropriate enforcement measures, as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[335]

118. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.[336] However, timely submission of the required regulatory fee must accompany requests for

[324] U.S. Census Bureau, 2007 NAICS Definitions, ''517919 All Other Telecommunications,'' *http://www.census.gov/naics/2007/def/ND517919.HTM#N517919.*

[325] 13 CFR 121.201, NAICS code 517919 (updated for inflation in 2008).

[326] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, ''Establishment and Firm Size,'' NAICS code 5171103 (rel. Nov. 19, 2010) (employment size). The data show only two categories within the whole: The categories for 1–4 employees and for 5–9 employees.

[327] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, ''Establishment and Firm Size,'' NAICS code 5179191 (rel. Nov. 19, 2010) (receipts size).

[328] *http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=519130&search=2007%20NAICS%20Search*

[329] *http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf.*

[330] *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=1000&-ds_name=EC0751SSSZ5&-_lang=en.*

[331] *See* 47 CFR 1.1162 for the general exemptions from regulatory fees. *E.g.,* Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (*e.g.,* Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) Is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

[332] 47 CFR 1.1164.

[333] 47 CFR 1.1164(c).

[334] Public Law 104–134, 110 Stat. 1321 (1996).

[335] 31 U.S.C. 7701(c)(2)(B).

[336] 47 CFR 1.1166.

waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (*e.g.* where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the regulatee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

119. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[337]

120. In the *FY 2012 Regulatory Fee Notice of Proposed Rulemaking,* we sought comment on alternatives that might simplify our fee procedures or otherwise benefit filers, including small entities, while remaining consistent with our statutory responsibilities in this proceeding. For example, the Commission has considered creating bills for all fee categories so that payments that are received will liquidate more quickly, thereby reducing errors in processing and improving efficiency. The Commission has also considered ways to notify small entities electronically regarding regulatory fee updates. We received no comments specifically in response to the IRFA.

121. Several categories of licensees and regulatees are exempt from payment of regulatory fees, such as government entities, tribal nations, tax exempt (non-profit) entities, amateur radio operator licensees, and entities whose total sum owed in regulatory fees is less than $10. In addition, the Commission's waiver procedures also provide regulatees, including small entity regulatees, relief in exceptional circumstances such as financial hardship. We note that small entities in particular should be assisted by the Commission's electronic filing and payment system (''Fee Filer''), which pre-loads payment data to minimize the time spent by entities searching for payment information. The Commission's Fee Filer system also permits entities to make fee payment in a variety of ways, even on the due date of regulatory fees.

VI. Report to Congress

122. The Commission will send a copy of this Report and Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[338] In addition, the Commission will send a copy of this Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.[339]

VII. Ordering Clauses

123. Accordingly, *it is ordered* that, pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, and 303(r), this *Report and Order is hereby adopted.*

124. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order,* including the Final Regulatory Flexibility Analysis in Table F, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

List of Subjects in 47 CFR Part 1

Practice and procedures.

Federal Communications Commission.

Sheryl D. Todd,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), 309.

■ 2. Section 1.1152 is revised to read as follows:

§ 1.1152 Schedule of annual regulatory fees and filing locations for wireless radio services.

Exclusive use services (per license)	Fee amount [1]	Address
1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS) (47 CFR part 90):		
(a) New, Renew/Mod (FCC 601 & 159)	$35.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	35.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159)	35.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	35.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
220 MHz Nationwide:		
(a) New, Renew/Mod (FCC 601 & 159)	35.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	35.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159)	35.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	35.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
2. Microwave (47 CFR Pt. 101) (Private):		
(a) New, Renew/Mod (FCC 601 & 159)	20.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	20.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159)	20.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	20.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
3. 218–219 MHz Service:		
(a) New, Renew/Mod (FCC 601 & 159)	70.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	70.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.

[337] 5 U.S.C. 603.

[338] *See* 5 U.S.C. 801(a)(1)(A). The Congressional Review Act is contained in Title II, section 251, of the CWAAA; *see* Public Law 104–121, Title II, section 251, 110 Stat. 868.

[339] *See* 5 U.S.C. 604(b).

Exclusive use services (per license)	Fee amount [1]	Address
(c) Renewal Only (FCC 601 & 159)	70.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	70.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
4. Shared Use Services:		
Land Mobile (Frequencies Below 470 MHz—except 220 MHz):		
(a) New, Renew/Mod (FCC 601 & 159)	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159)	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
General Mobile Radio Service:		
(a) New, Renew/Mod (FCC 605 & 159)	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 605 & 159)	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
Rural Radio (Part 22):		
(a) New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159).	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) Renewal, Minor Renew/Mod (Electronic Filing) (FCC 601 & 159).	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
Marine Coast:		
(a) New Renewal/Mod (FCC 601 & 159)	50.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159).	50.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159)	50.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	50.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
Aviation Ground:		
(a) New, Renewal/Mod (FCC 601 & 159)	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159).	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159)	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(9) Renewal Only (Electronic Only) (FCC 601 & 159)	15.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
Marine Ship:		
(a) New, Renewal/Mod (FCC 605 & 159)	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renewal/Mod (Electronic Filing) (FCC 605 & 159).	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 605 & 159)	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
Aviation Aircraft:		
(a) New, Renew/Mod (FCC 605 & 159)	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 605 & 159)	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
5. Amateur Vanity Call Signs:		
(a) Initial or Renew (FCC 605 & 159)	1.50	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) Initial or Renew (Electronic Filing) (FCC 605 & 159)	1.50	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
6. CMRS Cellular/Mobile Services (per unit) (FCC 159)	[2] .17	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
7. CMRS Messaging Services (per unit) (FCC 159)	[3] .08	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
8. Broadband Radio Service (formerly MMDS and MDS)	475.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
9. Local Multipoint Distribution Service	475.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.

[1] Note that ''small fees'' are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table that is a small fee (categories 1 through 5) must be multiplied by the 5- or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. It should be further noted that application fees may also apply as detailed in section 1.1102 of this chapter.

[2] These are standard fees that are to be paid in accordance with section 1.1157(b) of this chapter.

[3] These are standard fees that are to be paid in accordance with section 1.1157(b) of this chapter.

■ 3. Section 1.1153 is revised to read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

	Fee amount	Address
Radio [AM and FM] (47 CFR part 73):		
1. *AM Class A:*		
< = 25,000 population	$725	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197–9000.
25,001–75,000 population	1,475	
75,001–150,000 population	2,200	
150,001–500,000 population	3,300	
500,001–1,200,000 population	4,775	
1,200,001–3,000,000 population	7,350	
>3,000,000 population	8,825	
2. *AM Class B:*		

	Fee amount	Address
< = 25,000 population	600	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197–9000.
25,001–75,000 population	1,225	
75,001–150,000 population	1,525	
150,001–500,000 population	2,600	
500,001–1,200,000 population	3,975	
1,200,001–3,000,000 population	6,100	
>3,000,000 population	7,325	
3. *AM Class C:*		
< = 25,000 population	550	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197–9000.
25,001–75,000 population	850	
75,001–150,000 population	1,125	
150,001–500,000 population	1,675	
500,001–1,200,000 population	2,800	
1,200,001–3,000,000 population	4,200	
>3,000,000 population	5,325	
4. *AM Class D:*		
< = 25,000 population	625	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197–9000.
25,001–75,000 population	950	
75,001–150,000 population	1,600	
150,001–500,000 population	1,900	
500,001–1,200,000 population	3,175	
1,200,001–3,000,000 population	5,075	
>3,000,000 population	6,350	
5. AM Construction Permit	550	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197–9000.
6. *FM Classes A, B1 and C3:*		
< = 25,000 population	700	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197–9000.
25,001–75,000 population	1,425	
75,001–150,000 population	1,950	
150,001–500,000 population	3,025	
500,001–1,200,000 population	4,800	
1,200,001–3,000,000 population	7,800	
>3,000,000 population	9,950	
7. *FM Classes B, C, C0, C1 and C2:*		
< = 25,000 population	875	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197–9000.
25,001–75,000 population	1,550	
75,001–150,000 population	2,875	
150,001–500,000 population	3,750	
500,001–1,200,000 population	5,525	
1,200,001–3,000,000 population	8,850	
>3,000,000 population	11,500	
8. FM Construction Permits	700	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197–9000.
TV (47 CFR, part 73) VHF Commercial:		
1. Markets 1 thru 10	80,075	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197–9000.
2. Markets 11 thru 25	73,475	
3. Markets 26 thru 50	39,800	
4. Markets 51 thru 100	20,925	
5. Remaining Markets	5,825	
6. Construction Permits	5,825	
UHF Commercial:		
1. Markets 1 thru 10	35,350	FCC, UHF Commercial, P.O. Box 979084, St. Louis, MO 63197–9000.
2. Markets 11 thru 25	32,625	
3. Markets 26 thru 50	21,925	
4. Markets 51 thru 100	12,750	
5. Remaining Markets	3,425	
6. Construction Permits	3,425	
Satellite UHF/VHF Commercial:		
1. All Markets	1,425	FCC Satellite TV, P.O. Box 979084, St. Louis, MO 63197–9000.
2. Construction Permits	895	
Low Power TV, Class A TV, TV/FM Translator, & TV/FM Booster (47 CFR part 74).	385	FCC, Low Power, P.O. Box 979084, St. Louis, MO 63197–9000.
Broadcast Auxiliary	10	FCC, Auxiliary, P.O. Box 979084, St. Louis, MO 63197–9000.

■ 4. Section 1.1154 is revised to read as follows:

§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.

	Fee amount	Address
Radio Facilities:		

	Fee amount	Address
1. Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159).	$20.00	FCC, P.O. Box 97097, St. Louis, MO 63197–9000.
Carriers:		
1. Interstate Telephone Service Providers (per interstate and international end-user revenues (see FCC Form 499–A)).	.00375	FCC, Carriers, P.O. Box 979084, St. Louis, MO 63197–9000.

■ 5. Section 1.1155 is revised to read as follows:

§ 1.1155 Schedule of regulatory fees and filing locations for cable television services.

	Fee amount	Address
1. Cable Television Relay Service	$475	FCC, Cable, P.O. Box 979084, St. Louis, MO 63197–9000.
2. Cable TV System (per subscriber)	.95	

■ 6. Section 1.1156 is revised to read as follows:

§ 1.1156 Schedule of regulatory fees and filing locations for international services.

(a) The following schedule applies for the listed services:

Fee category	Fee amount	Address
Space Stations (Geostationary Orbit)	$132,875	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
Space Stations (Non-Geostationary Orbit)	143,150	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
Earth Stations: Transmit/Receive & Transmit only (per authorization or registration).	275	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

(b)(1) *International Terrestrial and Satellite.* Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31 of the prior year in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. ''Active circuits'' for these purposes include backup and redundant circuits. In addition, whether circuits are used specifically for voice or data is not relevant in determining that they are active circuits.

(2) The fee amount, per active 64 KB circuit or equivalent will be determined for each fiscal year. Payment, if mailed, shall be sent to: FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

International Terrestrial and Satellite (capacity as of December 31, 2011)	Fee amount	Address
Terrestrial Common Carrier Satellite Common Carrier Satellite Non-Common Carrier.	$0.26 per 64 KB Circuit	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

(c) *Submarine cable.* Regulatory fees for submarine cable systems will be paid annually, per cable landing license, for all submarine cable systems operating as of December 31 of the prior year. The fee amount will be determined by the Commission for each fiscal year. Payment, if mailed, shall be sent to: FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

Submarine cable systems (capacity as of Dec. 31, 2011)	Fee amount	Address
<2.5 Gbps	$13,300	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000,
2.5 Gbps or greater, but less than 5 Gbps	26,600	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
5 Gbps or greater, but less than 10 Gbps	53,200	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
10 Gbps or greater, but less than 20 Gbps	106,375	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
20 Gbps or greater	212,750	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

[FR Doc. 2012–18661 Filed 8–2–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737–2141–02]

RIN 0648–XC142

Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the third seasonal apportionment of the Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 1, 2012, through 1200 hrs, A.l.t., September 1, 2012.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The third seasonal apportionment of the Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA is 400 metric tons (mt) as established by the final 2012 and 2013 harvest specifications for groundfish of the GOA (77 FR 15194, March 14, 2012), for the period 1200 hrs, A.l.t., July 1, 2012, through 1200 hrs, A.l.t., September 1, 2012. This apportionment is reduced to 208 mt after allocating 192 mt to vessels participating in cooperatives in the Central GOA Rockfish Program. Rockfish Program allocations are established annually once NMFS receives information about the vessel composition of each cooperative. The 2012 Central GOA Rockfish Program allocations are available at *http://www.alaskafisheries.noaa.gov/sustainablefisheries/rockfish/.*

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the third seasonal apportionment of the Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery include sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder. This closure does not apply to fishing by vessels participating in the cooperative fishery in the Rockfish Program for the Central GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the deep-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 27, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: July 30, 2012.

Lindsay Fullenkamp,

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

[FR Doc. 2012–19027 Filed 7–31–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 150
Friday, August 3, 2012

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2012–0001]

RIN 0579–AD67

Chrysanthemum White Rust Regulatory Status and Restrictions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: We are soliciting public comment on whether and how we should amend our process for responding to domestic chrysanthemum white rust (CWR) outbreaks and the importation of plant material that is a host of CWR. Domestically, CWR host plants must be surveyed and, if found to be infected with CWR, must undergo quarantine, destruction, treatment, or other sanitation measures called for in our National Management Plan. The importation of CWR host plants for planting from a number of countries and localities is currently prohibited to prevent the introduction of CWR into the United States. In addition, importation of cut flowers of CWR host plants from countries where CWR is known to occur is currently restricted. We are reevaluating our current regulatory strategy in order to improve the effectiveness and economic efficiency of our programs. After evaluating public comment on the issues presented in this document, we will determine whether to propose changes to our existing regulations.

DATES: We will consider all comments that we receive on or before October 2, 2012.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0001-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0001, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0001* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Evans-Goldner, National Program Manager, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 160, Riverdale, MD 20737; (301) 851–2286.

SUPPLEMENTARY INFORMATION:

Background

Puccinia horiana P. Henn. is a filamentous rust fungus and obligate parasite that is the causal agent of chrysanthemum white rust (CWR), an economically important disease in both field-grown and greenhouse-grown chrysanthemum plants, as well as cut flower production. APHIS considers *P. horiana* a quarantine pest. Reports of CWR occurrences within the United States trigger eradication protocols in accordance with the CWR National Management Plan for Eradication.[1] Currently, the regulations in 7 CFR 319.37–2(a) prohibit the entry into the United States of plants for planting that are hosts of CWR from all countries where CWR is known to occur, unless imported under the specific conditions of a departmental permit in 7 CFR 319.372(c). Under 7 CFR 319.37–5(c), importations of CWR host plants for planting imported from all other countries are required to be accompanied by a phytosanitary certificate with an additional declaration stating that the plants and place of production have been inspected and found free of the causal agent of CWR. Under § 319.37–7, imported host material that meets the conditions of § 319.37–5(c) must be grown under the conditions of a postentry quarantine growing agreement at an approved location for 6 months and be inspected by an inspector prior to being released from quarantine.

The regulations in 7 CFR 319.74 restrict the entry into the United States of cut flowers of CWR host plants from countries where CWR is known to occur. Consignments of cut flowers of CWR host plants imported from these countries must be accompanied by a phytosanitary certificate with an additional declaration stating that the place of production and the consignment have been inspected and found free of the causal agent of CWR.

Despite these regulations, detections of CWR within the United States continue to occur, leading to costly eradication measures that must be undertaken by both Federal and State agencies. In addition, many stakeholders no longer consider the causal agent of CWR to be a pest of quarantine significance due to its limited host range, its frequent detection within the United States, and the availability of treatment/control measures within countries where it is present, and have expressed interest in revisiting the regulatory status of CWR. For these reasons, the Animal and Plant Health Inspection Service (APHIS) is considering potential changes to our domestic CWR eradication program and the CWR import regulations in an effort to improve the effectiveness and economic efficiency of our programs.

We are publishing this advance notice of proposed rulemaking in order to request public comment as we reconsider our regulatory strategy for CWR. We are currently considering four options for the future of the CWR program. The options under consideration are:

1. Continuing to manage CWR as a quarantine pest with the objective of continuing to eradicate new infestations. This option would maintain the current status of CWR with no changes to the program.

2. Revising the current regulations to designate CWR as a regulated non-quarantine pest. A regulated non-quarantine pest is a pest whose presence in plants for planting affects the intended use of those plants with an

[1] The CWR National Management Plan for Eradication is available on the APHIS Web site at *http://www.aphis.usda.gov/plant_health/plant_pest_info/cwr/downloads/cwrplan.pdf.*

economically unacceptable impact and would therefore require regulation within the United States and on all similar plant material imported into the United States to ensure a low prevalence of CWR in production facilities. Designating CWR as a regulated non-quarantine pest would allow for the creation of a certification program for both domestic propagators and propagators in foreign countries who want to export cuttings of CWR hosts into the United States. This certification would provide a level of protection against the possible shipment of CWR infected cuttings from approved foreign facilities. Designating CWR as a regulated non-quarantine pest would mean discontinuing the current process for responding to domestic CWR outbreaks and the removal of CWR from our list of actionable quarantine pests.

3. No longer managing CWR as a quarantine pest whose presence requires an eradication-oriented response, but maintaining port of entry restrictions for chrysanthemums destined to those States where CWR is not present and where these States have established an official control program under the Federally Regulated State-Managed Phytosanitary Program. Any State wishing to establish an official control program would have to conduct a survey demonstrating that CWR does not already exist in the state, conduct periodic nursery inspections illustrating the continued absence of CWR in growing operations, and issue State level regulations which controls the importation of CWR host material into the State and allows for the eradication of CWR if detected within the State. Once a State's official control program is approved by APHIS, any potential host of CWR with that State as its intended final destination would be inspected at the U.S. port and refused entry into the State if CWR is found. However, potential CWR hosts arriving at ports, and destined for States which do not have an official control program for CWR, would not be inspected or regulated for CWR. Additional information regarding The Federally Recognized State Managed Phytosanitary Program is available on the APHIS Web site at *http://www.aphis.usda.gov/plant_health/plant_pest_info/frsmp/index.shtml.*

4. Completely removing CWR as a quarantine pest whose presence requires an eradication-oriented response, thus allowing propagators and growers to manage CWR as a quality pest of chrysanthemum without Federal restrictions requiring eradication of this pest.

We welcome comments on these options, particularly on the advantages and disadvantages of each option and the commenter's preferred option. If none of the options under consideration seem appropriate, we encourage the submission of new options or suggestions that we may have overlooked, as well as comments on the advantages of these new options or suggestions.

This action has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 30th day of July.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–19024 Filed 8–2–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0803; Directorate Identifier 2011–NM–214–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 an existing airworthiness directive (AD) that applies to all The Boeing Company Model 777–200, -200LR, -300, and -300ER series airplanes. The existing AD currently requires repetitive inspections for cracking of the elevator actuator fittings. Since we issued that AD, the manufacturer has developed a modification that was approved as an optional terminating action to the currently required repetitive inspections. We have been advised that the modification procedures include certain incorrect torque values. This proposed AD would require, for previously modified airplanes, repetitive inspections for movement of the fittings or fastener heads, and eventual replacement of certain bolts (including related investigative and corrective actions if necessary). For all airplanes, this replacement, with corrected torque values, would terminate the requirements of the AD. This proposed AD would also remove certain airplanes from the applicability. We are proposing this AD to detect and correct a cracked actuator fitting or incorrectly installed bolts to the actuator fitting, which could lead to the elevator becoming detached and unrestrained, and a consequent unacceptable flutter condition and loss of control of the airplane.

DATES: We must receive comments on this proposed AD by September 17, 2012.

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 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, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Melanie Violette, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 985057–3356; phone: 425–917–6422;

fax: 425–917–6590; email: *melanie.violette@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–2012–0803; Directorate Identifier 2011–NM–214–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 December 10, 2007, we issued AD 2007–26–05, Amendment 39–15307 (72 FR 71212, December 17, 2007), for all Boeing Model 777–200, –200LR, –300, and –300ER series airplanes. That AD requires initial and repetitive inspections for cracking of the elevator actuator fittings, and replacement of any cracked fitting with a new fitting. That AD resulted from a report of a cracked left elevator actuator fitting. We issued that AD to detect and correct a cracked actuator fitting, which could detach from the elevator and lead to an unrestrained elevator and an unacceptable flutter condition, and consequent loss of airplane control.

Actions Since Existing AD Was Issued

The preamble to AD 2007–26–05, Amendment 39–15307 (72 FR 71212, December 17, 2007), specifies that we consider the requirements ''interim action'' and that the manufacturer is developing a modification to address the unsafe condition. AD 2007–26–05 also explains that we might consider further rulemaking if a modification is developed, approved, and available. The manufacturer developed such a modification, which is specified in Boeing Alert Service Bulletin 777–55A0016, dated October 27, 2009. We issued an alternative method of compliance (AMOC) specifying that the optional accomplishment of the actions specified in Boeing Alert Service Bulletin 777–55A0016, dated October 27, 2009, terminate the requirements of AD 2007–26–05. Boeing Alert Service Bulletin 777–55A0016, dated October 27, 2009, however, specified incorrect torque values for the BACB30NR4K6 and BACB30NR4K7 bolts, which could recreate the original unsafe condition. We have thus determined that further rulemaking is necessary to address this potentially reintroduced unsafe condition.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011, which describes procedures for replacing the elevator actuator fitting assemblies with new assemblies, and torquing the bolts with correct torque values, which eliminates the need for the repetitive inspections required by AD 2007–26–05, Amendment 39–15307 (72 FR 71212, December 17, 2007).

Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011, also describes additional work for airplanes that were modified using Boeing Alert Service Bulletin 777–55A0016, dated October 27, 2009, which specified certain incorrect fastener torque values. For those airplanes that were modified using the incorrect torque values, Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011, also describes procedures for repetitive detailed inspections for movement of the fastener heads and the fittings along the spar web of the elevator actuator fitting assemblies, and eventual replacement of the 12 bolts common to the elevator actuator fitting and the spar web (including related investigative and corrective actions), which eliminates the need for the repetitive inspections. Related investigative actions include a detailed inspection for fitting damage, a detailed inspection of the composite spar web for damage, and an ultrasonic inspection for cracks, delaminations, and damage. Corrective actions include contacting Boeing and doing the repairs.

We also reviewed Boeing Service Bulletin 777–55A0015, Revision 3, dated November 24, 2009, which describes the same actions as Boeing Alert Service Bulletin 777–55A0015, dated April 19, 2007 (which was cited in AD 2007–26–05, Amendment 39–15307 (72 FR 71212, December 17, 2007), as the appropriate source of service information for the required actions), and adds an optional terminating action for certain inspection requirements using Boeing Alert Service Bulletin 777–55A0016, dated October 27, 2009.

Differences Between Proposed Rule and Service Bulletin

Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would retain all requirements of AD 2007–26–05, Amendment 39–15307 (72 FR 71212, December 17, 2007). This proposed AD would remove new production airplanes from the applicability. This proposed AD would also require accomplishing the actions specified in the service information described previously.

Change to Existing AD

This proposed AD would retain all requirements of AD 2007–26–05, Amendment 39–15307 (72 FR 71212, December 17, 2007). Since AD 2007–26–05 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifier has changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in existing AD 2007-26-05, Amendment 39-15307 (72 FR 71212, December 17, 2007))	Corresponding requirement in this proposed AD
Paragraph (f)	paragraph (g)

Costs of Compliance

We estimate that this proposed AD affects 139 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection (retained actions from AD 2007-26-05, Amendment 39-15307 (72 FR 71212, December 17, 2007)).	10 work-hours × $85 per hour = $850 per inspection cycle.	$0	$850 per inspection cycle.	$118,150 per inspection cycle.
Inspection (new proposed action)	14 work-hours × $85 per hour = $1,190 per inspection cycle.	$0	$1,190	Up to $165,410 per inspection cycle.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Fitting replacement	132 work-hours × $85 per hour = $11,220	$21,643	$32,863
Bolt replacement	105 work-hours × $85 per hour = $8,925	65	8,990

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 directive (AD) 2007–26–05, Amendment 39–15307 (72 FR 71212, December 17, 2007), and adding the following new AD:

The Boeing Company: Docket No. FAA–2012–0803; Directorate Identifier 2011–NM–214–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by September 17, 2012.

(b) Affected ADs

This AD supersedes AD 2007–26–05, Amendment 39–15307 (72 FR 71212, December 17, 2007).

(c) Applicability

This AD applies to The Boeing Company Model 777–200, –200LR, –300, and –300ER series airplanes; certificated in any category, as identified in Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Unsafe Condition

This AD was prompted by a report of a cracked left elevator actuator fitting, and the recent determination that certain incorrect torque values had been specified for an alternative method of compliance intended to terminate the requirements of the existing AD. We are issuing this AD to detect and correct a cracked actuator fitting or incorrectly installed bolts to the actuator fitting, which could lead to the elevator becoming detached and unrestrained, and a consequent unacceptable flutter condition and loss of control of the airplane.

(f) Compliance

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

(g) Retained Inspections and Corrective Actions With No Changes

This paragraph restates the inspections and corrective actions required by paragraph (f) of AD 2007–26–05, Amendment 39–15307 (72 FR 71212, December 17, 2007), with no changes.

(1) Do all inspections and actions described in paragraphs (g)(1) and (g)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–55A0015, dated April 19, 2007; or Boeing Alert Service Bulletin 777–55A0015, Revision 3, dated November 24, 2009. As of the effective date of this AD, Boeing Alert Service Bulletin 777–55A0015, Revision 3, dated November 24, 2009, must be used to accomplish the actions required by this paragraph. At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–55A0015,

dated April 19, 2007, except as provided by paragraph (g)(3) of this AD, do an initial dye penetrant or high-frequency eddy current (HFEC) inspection for cracking of the elevator actuator fittings, and, thereafter, do repetitive dye penetrant, HFEC, or detailed inspections at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–55A0015, dated April 19, 2007.

(2) Before further flight, replace any fitting found to be cracked during any inspection required by paragraph (g)(1) of this AD with a new fitting having the same part number, or an optional part number as identified in Boeing Alert Service Bulletin 777–55A0015, dated April 19, 2007; or Boeing Service Bulletin 777–55A0015, Revision 3, dated November 24, 2009. Thereafter, do initial and repetitive inspections of the replacement fitting at the time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–55A0015, dated April 19, 2007.

(3) Where Boeing Alert Service Bulletin 777–55A0015, dated April 19, 2007, specifies a compliance time after the date on that service bulletin, this AD requires compliance within the specified compliance time after January 22, 2008 (the effective date of AD 2007–26–05, Amendment 39–15307 (72 FR 71212, December 17, 2007)).

(h) New Additional Actions for Certain Airplanes

For airplanes on which the elevator actuator fitting assemblies have been replaced in accordance with and using the fastener torque values specified in Boeing Alert Service Bulletin 777–55A0016, dated October 27, 2009: Within 180 days after the effective date of this AD, do a detailed inspection of the elevator actuator fitting assemblies to detect discrepancies (including indications of fastener head movement, and fitting movement along the spar web), in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011.

(1) If no discrepancy is detected, do the actions specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD:

(i) Repeat the inspection thereafter at intervals not to exceed 90 days or 360 flight cycles, whichever occurs first, until the actions specified in paragraph (h)(1)(ii) are done.

(ii) Within 4,200 flight cycles or 750 days after the effective date of this AD, whichever occurs first, replace the 12 bolts common to the elevator actuator fitting and the spar web, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011, except as provided by paragraph (j) of this AD. Do all applicable related investigative and corrective actions before further flight. The replacement of all 12 bolts in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011, terminates the requirements of this AD for that fitting only.

(2) If any discrepancy is detected, before further flight, replace the 12 bolts common to the elevator actuator fitting and the spar web using new parts, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011, except as provided by paragraph (j) of this AD. Do all applicable related investigative and corrective actions before further flight. The replacement of all 12 bolts in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011, terminates the requirements of this AD for that fitting only.

(i) New Optional Replacement of Elevator Actuator Fitting Assembly

For airplanes on which the elevator actuator fitting assemblies have not been replaced in accordance with Boeing Alert Service Bulletin 777–55A0016, dated October 27, 2009: Replacement of these fitting assemblies with new parts, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011, except as provided by paragraph (j) of this AD, terminates the requirements of this AD.

(j) Exception

If any discrepancy or cracking is found during any inspection required by this AD, and Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011, specifies to contact Boeing for appropriate action: Before further flight, repair, using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(k) Credit for Previous Actions

(1) This paragraph provides credit for inspecting and replacing the elevator actuator fitting assemblies, as required by paragraphs (h) and (i) of this AD, if the replacement was performed before the effective date of this AD using Boeing Alert Service Bulletin 777–55A0016, dated October 27, 2009, and using the correct torque values as specified in Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011.

(2) This paragraph provides credit for inspecting and replacing actuator fittings, as required by paragraph (g) of this AD, if the inspection and replacement was performed before the effective date of this AD using the service bulletins specified in paragraphs (k)(2)(i) and (k)(2)(ii) of this AD and using the correct torque values as specified in Boeing Alert Service Bulletin 777–55A0016, Revision 1, dated August 25, 2011.

(i) Boeing Service Bulletin 777–55A0015, Revision 1, dated January 31, 2008.

(ii) Boeing Service Bulletin 777–55A0015, Revision 2, dated December 4, 2008.

(l) 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 for AD 2007–26–05, Amendment 39–15307 (72 FR 71212, December 17, 2007), are not approved as AMOCs for this AD.

(m) Related Information

(1) For more information about this AD, contact Melanie Violette, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 985057–3356; phone: 425–917–6422; fax: 425–917–6590; email: *melanie.violette@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, Washington 985057–3356. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on July 25, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–18882 Filed 8–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0804; Directorate Identifier 2012–NM–094–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 an existing airworthiness directive (AD)

that applies to certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes; and certain Model 757–200, –200PF, and –300 series airplanes. The existing AD currently requires replacing the control switches of the forward, aft, and nose cargo doors for certain airplanes, and replacing the control switches of cargo doors 1 and 2 for certain airplanes. Since we issued that AD, we have determined that additional airplanes are affected by the identified unsafe condition. This proposed AD would continue to require replacing the control switches of the forward, aft, and nose cargo doors of Model 747 airplanes; and the control switches of cargo doors 1 and 2 of Model 757 airplanes; this proposed AD also adds airplanes to the applicability and revises the initial compliance times. We are proposing this AD to prevent injuries to persons and damage to the airplane and equipment.

DATES: We must receive comments on this proposed AD by September 17, 2012.

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, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356. 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: Francis Smith, Aerospace Engineer, Cabin Safety & Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6457; fax: 425–917–6590; email: *francis.smith@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–2012–0804; Directorate Identifier 2012–NM–094–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 October 19, 2009, we issued AD 2009–22–08, Amendment 39–16059 (74 FR 55763, October 29, 2009), for certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes; and certain Model 757–200, –200PF, and –300 series airplanes. That AD requires replacing the control switches of the forward, aft, and nose cargo doors for certain airplanes, and replacing the control switches of cargo doors 1 and 2 for certain airplanes. That AD resulted from reports of problems associated with the uncommanded operation of cargo doors. We issued that AD to prevent injuries to persons and damage to the airplane and equipment.

Actions Since Existing AD Was Issued

Since we issued AD 2009–22–08, Amendment 39–16059 (74 FR 55763, October 29, 2009), we have determined that additional airplanes are affected by the identified unsafe condition.

Relevant Service Information

We reviewed Boeing Special Attention Service Bulletin 747–52–2286, Revision 1, dated October 28, 2010. This service bulletin describes procedures for replacing the control switches of the forward, aft, and nose cargo doors with new switches. This service bulletin also adds Group 3 airplanes, and also changes the compliance time for Groups 1 and 2 airplanes.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would retain all requirements of AD 2009–22–08, Amendment 39–16059 (74 FR 55763, October 29, 2009). This proposed AD would add Group 3 airplanes, as specified in Boeing Special Attention Service Bulletin 747–52–2286, Revision 1, dated October 28, 2010, and would change the compliance time for Groups 1 and 2 airplanes. This proposed AD would also require accomplishing the actions specified in the service information described previously.

Change to Existing AD

This proposed AD would retain all requirements of AD 2009–22–08, Amendment 39–16059 (74 FR 55763, October 29, 2009). Since AD 2009–22–08 was 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 AD 2009–22–08, Amendment 39-16059 (74 FR 55763, October 29, 2009)	Corresponding requirement in this proposed AD
paragraph (f)	paragraph (g)

Costs of Compliance

We estimate that this proposed AD affects 225 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Number of airplanes	Cost on U.S. operators
Replacement [retained from existing AD 2009–22–08, Amendment 39 16059 (74 FR 55763, October 29, 2009)].	Up to 5 work-hours × $85 per hour = $425.	$195	$620	221	$137,020
Replacement [new proposed action for added airplanes].	5 work-hours × $85 per hour = $425	195	620	4	2,480

According to the manufacturer, some of the costs of this proposed AD may 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 directive (AD) 2009–22–08, Amendment 39–16059 (74 FR 55763, October 29, 2009), and adding the following new AD:

The Boeing Company: Docket No. FAA–2012–0804; Directorate Identifier 2012–NM–094–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by September 17, 2012.

(b) Affected ADs

This AD supersedes AD 2009–22–08, Amendment 39–16059 (74 FR 55763, October 29, 2009).

(c) Applicability

This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 747–52–2286, Revision 1, dated October 28, 2010; and Model 757–200, -200PF, and -300 series airplanes, certificated in any category, as indentified in Boeing Special Attention Service Bulletin 757–52–0090, dated September 21, 2007.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 52, Doors.

(e) Unsafe Condition

This AD was prompted by reports of problems associated with the uncommanded operation of cargo doors. We are issuing this AD to prevent injuries to persons and damage to the airplane and equipment.

(f) Compliance

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

(g) Retained Replacement

This paragraph restates the requirements of paragraph (f) of AD 2009–22–08, Amendment 39–16059 (74 FR 55763, October 29, 2009), with revised compliance times and service information. Replace the control switches, as specified in paragraph (g)(1) or (g)(2) of this AD, as applicable. Repeat the replacements thereafter at intervals not to exceed 72 months.

(1) For Groups 1 and 2 Model 747 airplanes as identified in Boeing Special Attention Service Bulletin 747–52–2286, Revision 1, dated October 28, 2010: Within 24 months after December 3, 2009 (the effective date of AD 2009–22–08, Amendment 39–16059 (74 FR 55763, October 29, 2009)), or within 72 months from the date of issuance of the original certificate of airworthiness or the original export certificate of airworthiness, whichever occurs later, replace the control switches of the forward, aft, and nose cargo doors, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–52–2286, dated September 28, 2007; or Boeing Special Attention Service Bulletin 747–52–2286, Revision 1, dated October 28, 2010. As of the effective date of this AD, use only Boeing Special Attention Service Bulletin 747–52–2286, Revision 1, dated October 28, 2010, to do the actions specified in this paragraph.

(2) For Model 757 series airplanes: Within 24 months after December 3, 2009 (the effective date of AD 2009–22–08, Amendment 39–16059 (74 FR 55763, October 29, 2009)), replace the control switches of cargo doors 1 and 2, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–52–0090, dated September 21, 2007.

(h) New Replacement

For Group 3 airplanes, as identified in Boeing Special Attention Service Bulletin 747–52–2286, Revision 1, dated October 28, 2010: Within 72 months from the date of issuance of the original certificate of airworthiness or the original export certificate of airworthiness, or within 12

months after the effective date of this AD, whichever occurs later, replace the control switches of the forward, aft, and nose cargo doors, as applicable, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–52–2286, Revision 1, dated October 28, 2010. Repeat the replacements thereafter at intervals not to exceed 72 months.

(i) 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) AMOCs approved previously in accordance with AD 2009–22–08, Amendment 39–16059 (74 FR 55763, October 29, 2009), are approved as AMOCs for the corresponding provisions of this AD.

(j) Related Information

(1) For more information about this AD, contact Francis Smith, Aerospace Engineer, Cabin Safety & Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6457; fax: 425–917–6590; email: *francis.smith@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on July 26, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–19018 Filed 8–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

15 CFR Part 1400

[Docket No. 120517080–2284–03]

Petition for Inclusion of the Arab-American Community in the Groups Eligible for MBDA Services

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice of proposed rulemaking and request for comments; amendment.

SUMMARY: The Minority Business Development Administration publishes this notice to extend the date on which it plans to make its decision on a petition from the American-Arab Anti-Discrimination Committee requesting formal designation from July 30, 2012 to August 30, 2012.

FOR FURTHER INFORMATION CONTACT: For further information about this Notice, contact Josephine Arnold, Minority Business Development Agency, 1401 Constitution Avenue NW., Room 5053, Washington, DC 20230, (202) 482–2332.

SUPPLEMENTARY INFORMATION: On May 30, 2012, the Minority Business Development Agency (MBDA) published a notice of proposed rulemaking and request for comments regarding a petition received on January 11, 2012 from the American-Arab Anti-Discrimination Committee (ADC) requesting formal designation of Arab-Americans as a minority group that is socially or economically disadvantaged pursuant to 15 CFR Part 1400. The Notice included a thirty-day comment period that ended on June 29, 2012, but also stated that MBDA will make a decision on the petition no later than June 27, 2012. On June 12, 2012, MBDA published a notice in the **Federal Register** extending the date for making its decision to July 30, 2012. The Agency has determined that an additional thirty (30) day period for consideration of the issues addressed in the petition is necessary so that the agency can complete its independent review of the issues addressed in the petition and comments before making a decision. Therefore, the Agency has determined that the time in which it will make its decision on the petition will be no later than August 30, 2012. This extension will not prejudice the petitioner.

Minority Business Development Agency.

David Hinson,

National Director.

[FR Doc. 2012–18955 Filed 8–2–12; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–254–FOR; Docket ID OSM–2012–0012]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: We are announcing receipt of a proposed amendment to the Ohio regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Ohio's proposed amendment updates the Ohio Administrative Code (OAC) to address issues raised by OSM regarding consistency of Ohio's surface mining program with the final Federal rule relative to Ownership and Control, Permit and Application Information and Transfer, and Assignment or Sale of Permit Rights, which became effective December 3, 2007. The proposed amendment specifically alters the following regulations within the OAC: Definitions; Incorporation by reference; Permit applications, requirements for legal, financial, compliance, and related information; Permit applications, revisions, and renewals, and transfers, assignments, and sales of permit rights; Improvidently issued permits; and Enforcement and Individual civil penalties. By submittal of this proposed amendment, Ohio intends to revise its approved program pursuant to the additional flexibility afforded by the revised Federal regulations and SMCRA, as amended, to ensure Ohio's proposed regulatory provisions are no less effective than the corresponding regulations. This document provides the times and locations that the Ohio program and proposed amendment are available for public inspection, the comment period during which you may submit written comments on this amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on these amendments until

4:00 p.m., Eastern Standard Time (EST) September 4, 2012. If requested, we will hold a public hearing on the amendment on August 28, 2012. We will accept requests to speak at a hearing until 4:00 p.m., EST on August 20, 2012.

ADDRESSES: You may submit comments, identified by SATS No. OH–254–FOR by any of the following methods:

- *Mail/Hand Delivery:* Mr. Ben Owens, Acting Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 4605 Morse Road, Rm. 102, Columbus, Ohio 43230.
- *Fax:* (614) 416–2248.
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID OSM–2012–0012. 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 Ohio 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 the following locations:

Ben Owens, Acting Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 4605 Morse Road, Room 102, Columbus, OH 43230, Telephone: (614) 416– 2238, Email: *bowens@osmre.gov;*

Lanny E. Erdos, Chief, Division of Mineral Resources Management, Ohio Department of Natural Resources, 2045 Morse Road, Building H–2, Columbus, Ohio 43229–6693, Telephone: (614) 265–6893, Email: *Lanny.Erdos@dnr.state.oh.us,* Fax: (614) 265–7999.

FOR FURTHER INFORMATION CONTACT: Ben Owens, Acting Chief, Pittsburgh Field Division; Telephone: (614) 416–2238. Email: *bowens@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program
II. Description and Submission of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Ohio Program

Section 503(a) of 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.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Ohio program effective August 16, 1982. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Ohio program in the August 16, 1982, **Federal Register** (41 FR 34688). You can also find later actions concerning Ohio's program and program amendments at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Description and Submission of the Proposed Amendment

Following the approval of Federal rule, ''Ownership and Control; Permit and Application Information; Transfer, Assignment, or Sale of Permit Rights; Final Rule'' on December 7, 2007 (72 FR 68000). OSM performed a side-by-side comparison of Ohio's regulations to ensure the OAC provisions were no less effective than the Federal regulations. OSM and Ohio discussed the implementation of Ohio regulations and potential revisions. Ohio, in a letter dated September 25, 2009, (Administrative Record Number OH 2190–01) responded to the findings from the OSM side-by-side analysis, described Ohio's plan to address provisions that were determined to be less effective than the Federal regulations, and stated a proposed amendment would be submitted to OSM. By letter dated March 30, 2012, (Administrative Record Number OH 2190–01), Ohio sent OSM a request to approve six revised regulations. Key provisions of the proposed amendment add the definitions of ''knowingly,'' ''transfer, assignment, or sale of permit rights,'' and ''violation'' to the OAC; require enhanced identification of interests; a provision for a central repository documenting identification of interests; and alteration for the determination of an improvidently issued permit. The following is a summary of the revisions and additions to OAC:

1501:13–1–02. Definitions

Changes have been made to reflect the absence of ''knowing'' or ''knowingly'' from the OAC definition section. This term has been added to conform to the Federal definition defined in 30 CFR 701.5. Additionally, the proposed amendment alters the definition in other sections of the OAC. The thrust of the change is the substitution of the word ''individual'' formerly used by Ohio, to the usage of ''person'' as utilized in the Federal regulations.

Ohio has added the definition of ''[t]ransfer, assignment, or sale of permit rights'' to the definition section. Ohio's definition of this term contemplates any change of a permittee, including any fundamental legal change in the structure or nature of the permittee or a name change.

The definition of ''violation'' has been added for the purposes of the following OAC sections:

- Permit applications; requirements for legal, financial, compliance and related information;
- Review, public participation, and approval or disapproval of permit applications and permit terms and conditions; and
- Improvidently issued permits.

Violation is defined as any of the following:

- Written notification from a governmental agency identifying a failure to comply with applicable Federal or state law or regulations relative to environmental air or water protection;
- Noncompliance identified by the Chief of the Division of Mineral Resources Management, OSM, or a comparable authority, pursuant to the federal or state regulatory program. Notice of this noncompliance may be given via a notice of violation, cessation order, final order, bill or demand letter relative to a delinquent civil penalty; a bill or demand letter relative to delinquent reclamation fees or a performance security or bond forfeiture order.

The definition of ''violation notice'' has been altered to apply to the following OAC sections:

- Permit applications; requirements for legal, financial, compliance and related information;

• Review, public participation, and approval or disapproval of permit applications and permit terms and conditions; and

• Improvidently issued permits.

A violation notice is now defined as a written notification from a regulatory authority or other governmental entity of a violation, as defined in this section. This change reflects the language used to define this term in 30 CFR 701.5.

1501:13–14–02. Enforcement

Section (A)(8) has been revised to require any permittee, within thirty days of the issuance of a cessation order, to provide accurate and current identification of interest information as defined in the Permit applications; requirements for legal, financial compliance and related information sections of the OAC. Formatting changes were made to reflect changes in numbering.

1501: 13–14–06 Individual Civil Penalties

Revisions were made to remove the definition of ''knowingly'' from this section. Consequently, formatting changes were required to account for the elimination of this definition.

1501: 13–4–03. Permit Applications; Requirements for Legal, Financial, Compliance and Related Information

Grammar and formatting changes are present that do not alter the meaning or intent of the OAC as previously structured. Multiple changes have been made to incorporate all inclusive gender reference.

In addition, sections (B)(2) and (3) have been altered to require submission of addresses for all owners of record, holders of record of any leasehold interests, and any purchasers of record of the property to be mined. Previously this requirement did not require address submission. The alteration expands the requirements for providing addresses in order to encompass all aspects of interest.

This section is further revised to require submission of data when a departure or change of an individual named in a permit application occurs.

Section (C)(1) requires violation history relative to an operator be provided in the permit application. Previously, the applicant was the only individual required to submit this information.

Section (C)(2) requires date of suspension, revocation, or forfeiture.

Section (C)(3) also adds a provision requiring all applications to include a listing of any cessation order or notice of violation in instances when the abatement period has not expired.

Section (C)(4) requires a certification by the Federal or state regulatory authority issuing the notice of violation or cessation order confirming the violation has been abated or corrected is required. This provision does not interfere with the requirement in (C)(4)(f) that all violations and cessation orders having an expired abatement period must still provide information as to the action taken to abate or correct the violation or cessation order.

Under (C)(4) the addition of ''Central file for identity information,'' allows applicants or permittees to provide requisite information in a streamlined method whereby all information required in the Permit applications, revisions and renewals and transfers, assignments and sales of permit rights provisions, as outlined in OAC sections 1501:13–4–06 and 1501:13–5–01, are submitted to the Chief of the Division of Mineral Resources Management and are applicable to all permits held by that applicant or permittee. These items will be maintained in a central file for reference in the event of any subsequent submission. To participate, applicants or permittees must submit a sworn or affirmed oath, in writing, verifying all the information is accurate and complete. The central file will be maintained for reference, eliminating the need to provide identity information in each application. The file will be available for public review upon request. This information shall be maintained and updated.

In the event a permittee or applicant has an established central file, certification shall be made that the file is accurate and complete when submitting permit applications, revisions, renewals, transfers, assignments, and sales of permits rights in accordance with 1501:13–4–06. Upon submission, the permittee shall submit a certification, provided by the Chief of the Division of Mineral Resources Management swearing or affirming the information is accurate, complete, and updated. This must be in the form of a written oath. Any information that is missing, as required by the provisions set forth herein, must be submitted and accompanied by a written oath as described relative to providing an affirmation of a complete information repository.

Throughout the regulations reference to the proposed central repository for identification information is referenced and incorporated.

1501:13–4–06. Permit Applications Revisions, and Renewals, and Transfers, Assignments and Sales of Rights

The amendment proposes to alter Section (I) by adding a provision requiring notification within 30 days of any addition, departure or change in the structure. This must be done in writing and must include any person's name, address, telephone number, title, and relationship to the applicant, including percentage of ownership, interest and position within the organizational structure. Information detailing commencement and departure are also required.

1501:13–5–02. Improvidently Issued Permits

Pursuant to the proposed amendments, should the Chief of the Division of Mineral Resources Management have reason to believe a coal mining and reclamation permit was improvidently issued, then he or she shall make a preliminary finding indicating improvident issuance if:

• A determination based on the permit eligibility, in effect at the time of issuance, indicates either:

(a) The permit should not have been issued due to an unabated or uncorrected violation or

(b) The permit was issued based on the presumption that a violation was in the process of being corrected;

• The violation remains unabated or uncorrected and the time frame for appeal is expired or a payment schedule, as approved, is not being complied with as ordered;

• Ownership or control existing at the time of issuance demonstrates a link to the violation and remains in effect, or if the link was severed, the permittee continues to be responsible for the violation.

Upon a preliminary finding of an improvidently issued permit, the Chief may serve the permittee with written notice establishing a prima facie case indicating the permit was improvidently issued. Within thirty days, the permittee may request an informal review and may provide evidence to the contrary.

Section (C) augments references to abatement of a violation by adding the term ''correction.''

Section (D) allows the Chief of the Division of Mineral Resources Management to suspend a permit as opposed to the previous regulation granting only the right to rescind the permit. Moreover, the proposed amendment provides that, upon a determination indicating the permit was improvidently issued, the Chief shall serve the permittee notice of the

proposed suspension and rescission which includes the reasons for the finding and stipulates within sixty days the permit will be suspended, or in one hundred and twenty days, the permit will be rescinded, unless the permittee submits rebuttal proof and the Chief finds:

- The previous determination was incorrect;
- The violation is under appeal and an initial judicial decision affirming the violation is absent;
- The violation is subject to an approved abatement, correction plan or payment schedule;
- Ownership or control is severed and no continuing responsibility is apportioned to permittee; or
- An appeal as to ownership or control exists and an initial judicial decision affirming such ownership or control is absent.

The proposed amendment eliminates previous provisions allowing automatic suspension within ninety days upon proper showing.

In the event the permit is deemed suspended or rescinded the Chief shall immediately order the cessation of coal mining and reclamation operations and post written notice of the cessation order at the Division of Mineral Resources Management District Office closest to the permit area.

1501: 13–1–14. Incorporation by Reference

The Web site provided in the proposed amendment updates the public to ensure access to federal regulation references. The revised Web site is *www.gpo.gov/fdsys/.*

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether Ohio's proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of Ohio's 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 (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 comments, you should be aware that your entire comments, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comments 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 August 20, 2012. 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 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 8, 2012.

Thomas D. Shope,

Regional Director, Appalachian Region.

[FR Doc. 2012–19049 Filed 8–2–12; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0571]

RIN 1625–AA00

Safety Zone; DeStefano Wedding Fireworks Display, Patchogue Bay, Patchogue, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the navigable waters of Patchogue Bay, in Patchogue, NY for the DeStefano family wedding fireworks display. This action is necessary to provide for the safety of life on navigable waters during the event. Entering into, transiting through, remaining, anchoring or mooring within this regulated area would be prohibited unless authorized by the Captain of the Port (COTP) Sector Long Island Sound.

DATES: Comments and related material must be received by the Coast Guard on or before September 4, 2012.

Requests for public meetings must be received by the Coast Guard on or before August 10, 2012.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Joseph Graun, Prevention Department, Coast Guard Sector Long Island Sound, (203) 468–4544, *Joseph.L.Graun@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP Captain of the Port
DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0571) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0571) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

This is a first time event with no regulatory history.

C. Basis and Purpose

The legal basis for this temporary rule is 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1 which collectively authorize the Coast Guard to define regulatory safety zones.

This temporary regulation is necessary to ensure the safety of vessels and spectators from hazards associated with fireworks display.

D. Discussion of Proposed Rule

This temporary rule proposes to establish a safety zone for the DeStefano family wedding fireworks display. This proposed regulated area includes all waters of Patchogue Bay within a 1000 foot radius of the fireworks barge located 1000 feet south of ''Lombardi's on The Bay'' restaurant in Patchogue, NY.

This rule will be effective from 8:30 p.m. on November 3, 2012 through 10:30 p.m. on November 4, 2012.

The fireworks display is scheduled to occur from 8:30 p.m. until 10:30 p.m. on November 3, 2012. If the event is cancelled due to inclement weather, then this regulation will be enforced from 8:30 p.m. until 10:30 p.m. on November 4, 2012.

Because spectator vessels are expected to congregate around the location of the fireworks display, this regulated area is necessary to protect both spectators and participants from the hazards created by unexpected pyrotechnics detonation, and burning debris. This proposed rule would temporarily establish a regulated area to restrict vessel movement around the location of the fireworks display to reduce the safety risks associated with it.

To aid the public in identifying the launch platform; fireworks barges used for this display will have a sign on their port and starboard side labeled ''FIREWORKS—STAY AWAY.'' This sign will consist of 10 inch high by 1.5 inch wide red lettering on a white background.

Public notifications will be made to the local maritime community prior to the event through the Local Notice to Mariners, and Broadcast Notice to Mariners.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The Coast Guard determined that this rulemaking would not be a significant regulatory action for the following reasons: The regulated area will be of limited duration and cover only a small portion of the navigable waterways. Also, mariners may request permission from the COTP Sector Long Island Sound or the designated representative to transit the zone.

Advanced public notifications will also be made to the local maritime community through the Local Notice to Mariners as well as Broadcast Notice to Mariners.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit, anchor or moor within the regulated area during the effective period. The temporary safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The regulated area will be of limited size and of short duration and mariners may request permission from the COTP Sector Long Island Sound or the designated representative to transit the zone. Notifications will be made to the maritime community through the Local Notice to Mariners and Broadcast Notice to Mariners well in advance of the event.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREA AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T01–0571 to read as follows:

§ 165.T01–0571 Safety Zones; DeStefano Wedding Fireworks Display, Patchogue Bay, Patchogue, NY.

(a) *Location.* The following area is a safety zone: All waters of Patchogue Bay within a 1,000-foot radius of the fireworks barge located off Patchogue, NY in approximate position 40°44′44.47″ N, 073°00′41.25″ W North American Datum 1983.

(b) *Notification.* Coast Guard Sector Long Island Sound will cause notifications to be made to the local maritime community through all appropriate means such as Local Notice to Mariners or Broadcast Notice to Mariners well in advance of the event.

(c) *Enforcement Period.* This rule will be enforced from 8:30 p.m. until 10:30 p.m. on November 3, 2012. If the event is postponed due to inclement weather, then this rule will be enforced from 8:30 p.m. until 10:30 p.m. on November 4, 2012.

(d) *Regulations.* The general regulations contained in 33 CFR 165.23 apply. During the enforcement period, entering into, transiting through, remaining, mooring or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port (COTP) or the designated representatives.

1. Definitions. The following definitions apply to this section:

i. *Designated Representative.* A ''*designated representative*'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the COTP, Sector Long Island Sound, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

ii. *Official Patrol Vessels.* Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Sector Long Island Sound.

iii. *Spectators.* All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

2. Vessel operators desiring to enter or operate within the regulated area should contact the COTP Sector Long Island Sound at 203–468–4401 (Sector LIS command center) or the designated representative via VHF channel 16 to obtain permission to do so.

3. Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated area during the effective dates and times, or dates and times as modified through the Local Notice to Mariners, unless authorized by COTP Sector Long Island Sound or designated representative.

4. Upon being hailed by a U.S. Coast Guard vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

5. The COTP Sector Long Island Sound or designated representative may delay or terminate any marine event in this subpart at any time it is deemed necessary to ensure the safety of life or property.

6. Fireworks barges used in this location will have a sign on their port and starboard side labeled ''FIREWORKS—STAY AWAY''. This sign will consist of 10 inch high by 1.5 inch wide red lettering on a white background.

Dated: July 20, 2012.

H.L. Najarian,

Commander, U.S. Coast Guard, Acting Captain of the Port Sector Long Island Sound.

[FR Doc. 2012–19003 Filed 8–2–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–1014; FRL–9708–7]

Approval and Promulgation of Implementation Plans; Kentucky; 110(a)(1) and (2) Infrastructure Requirements for the 1997 Annual and 2006 24-hour Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve in part, and conditionally approve in part, the State Implementation Plan (SIP) revisions, submitted by the Commonwealth of Kentucky through the Kentucky Energy and Environment Cabinet, Division for Air Quality (DAQ), as demonstrating that the Commonwealth meets the requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or Act) for the 1997 annual and 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). Kentucky certified that the Kentucky SIP contains provisions that ensure the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS are implemented, enforced, and maintained in Kentucky (hereafter referred to as ''infrastructure submission''). EPA is now taking three related actions on Kentucky DAQ's infrastructure submissions for the Commonwealth. First, EPA is proposing to determine that Kentucky DAQ's infrastructure submissions, provided to EPA on August 26, 2008, and July 17, 2012, satisfy certain required infrastructure elements for the 1997

annual and 2006 24-hour $PM_{2.5}$ NAAQS. Second, EPA is proposing to approve several Kentucky Revised Statutes (KRS) into the SIP to address element 110(a)(2)(E)(ii), that relates to state board requirements. Third, with respect to sections 110(a)(2)(C) and 110(a)(2)(J) as they relate to PSD requirements, EPA is proposing to conditionally approve the SIP submissions as meeting these requirements.

DATES: Written comments must be received on or before September 4, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–1014, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2010–1014,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2010–1014. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

On July 18, 1997 (62 FR 38652), EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter (μg/m³) based on a 3-year average of annual mean $PM_{2.5}$ concentrations. At that time, EPA also established a 24-hour NAAQS of 65 μg/m³. *See* 40 CFR 50.7. On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15.0 μg/m³ based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a new 24-hour NAAQS of 35 μg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations. By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised NAAQS. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs to EPA no later than July 2000 for the 1997 annual $PM_{2.5}$ NAAQS, no later than October 2009 for the 2006 24-hour $PM_{2.5}$ NAAQS.

On March 4, 2004, Earthjustice submitted a notice of intent to sue related to EPA's failure to issue findings of failure to submit related to the ''infrastructure'' requirements for the 1997 annual $PM_{2.5}$ NAAQS. On March 10, 2005, EPA entered into a consent decree with Earthjustice which required EPA, among other things, to complete a **Federal Register** notice announcing EPA's determinations pursuant to section 110(k)(1)(B) as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 $PM_{2.5}$ NAAQS by October 5, 2008. In accordance with the consent decree, EPA made completeness findings for each state based upon what the Agency received from each state for the 1997 $PM_{2.5}$ NAAQS as of October 3, 2008.

On October 22, 2008, EPA published a final rulemaking entitled ''Completeness Findings for Section 110(a) State Implementation Plans Pertaining to the Fine Particulate Matter ($PM_{2.5}$) NAAQS'' making a finding that each state had submitted or failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 $PM_{2.5}$ NAAQS (*see* 73 FR 62902). For those states that did receive findings, the findings of failure to submit for all or a portion of a state's implementation plan established a 24-month deadline for EPA to promulgate a federal implementation plan to

address the outstanding SIP elements unless, prior to that time, the affected states submitted, and EPA approved, the required SIPs. The findings that all or portions of a state's submission are complete established a 12-month deadline for EPA to take action upon the complete SIP elements in accordance with section 110(k).

Kentucky's infrastructure submissions were received by EPA on August 26, 2008, for the 1997 annual $PM_{2.5}$ NAAQS, and on July 17, 2012,[1] for the 2006 24-hour $PM_{2.5}$ NAAQS. The August 26, 2008, submission was determined to be complete on February 26, 2009. Kentucky was among other states that did not receive findings of failure to submit because it had provided a complete submission to EPA to address the infrastructure elements for the 1997 $PM_{2.5}$ NAAQS by October 3, 2008.

On July 6, 2011, WildEarth Guardians and Sierra Club filed an amended complaint related to EPA's failure to take action on the SIP revision related to the ''infrastructure'' requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. On October 20, 2011, EPA entered into a consent decree with WildEarth Guardians and Sierra Club which required EPA, among other things, to complete a **Federal Register** notice of the Agency's final action either approving, disapproving, or approving in part and disapproving in part the Kentucky 2006 24-hour $PM_{2.5}$ NAAQS Infrastructure SIP revision addressing the applicable requirements of sections 110(a)(2)(A)–(H), (J)–(M), except for section 110(a)(2)(C) the nonattainment area requirements and section 110(a)(2)(D)(i)(II) visibility requirements, by September 30, 2012. On July 20, 2011, EPA published a final rulemaking disapproving the interstate transport requirements for section 110(a)(2)(D)(i) for the 2006 24-hour $PM_{2.5}$ NAAQS for Kentucky. *See* 76 FR 43136.

Today's proposal addresses three related actions. First, EPA is proposing to determine that, as described in its infrastructure submissions, Kentucky's SIP meets the section 110(a)(2) infrastructure requirements for both the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS with the exception of elements 110(a)(2)(C) respecting nonattainment area and PSD requirements, 110(a)(2)(D)(i) respecting interstate transport, and 110(a)(2)(J) respecting PSD requirements. For the infrastructure elements except for 110(a)(2)(C), 110(a)(2)(D)(i) and 110(a)(2)(J), as noted above, EPA is proposing to determine that Kentucky's already approved SIP meets certain CAA requirements. Second, EPA is proposing to approve Kentucky's July 17, 2012, submission requesting approval of KRS Chapters 11A.020, 11A.030, 11A.040 224.10–020 and 224.10–100 into the SIP to address element 110(a)(2)(E)(ii). Third, with respect to elements 110(a)(2)(C) and 110(a)(2)(J) as they both relate to PSD requirements, EPA is proposing to conditionally approve these sub-elements.[2]

II. What elements are required under sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but 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 affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, some states may need to adopt language specific to the $PM_{2.5}$ NAAQS to ensure that they have adequate SIP provisions to implement the $PM_{2.5}$ NAAQS.

Section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are listed below[3] and in EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' and September 25, 2009, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards.''

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.[4]
- 110(a)(2)(D): Interstate transport.[5]
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.[6]
- 110(a)(2)(J): Consultation with government officials; public

[1] On July 17, 2012, Kentucky withdrew its September 8, 2009, 110(a)(1)–(2) infrastructure submission addressing the 8-hour ozone, $PM_{2.5}$ and Lead NAAQS. Kentucky replaced its September 8, 2009, 110(a)(1)–(2) infrastructure submission with a submission provided on July 17, 2012.

[2] As discussed below in Section IV of this proposed rule, EPA's proposed action to approve infrastructure elements 110(a)(2)(C) and 110(a)(2)(J) respecting PSD requirements, is contingent upon final approval of Kentucky's $PM_{2.5}$ NSR program.

[3] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) but does provide detail on how Kentucky's SIP addresses 110(a)(2)(C).

[4] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[5] Today's proposed rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 and 2006 $PM_{2.5}$ NAAQS. Interstate transport requirements were formerly addressed by Kentucky consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the DC Circuit Court of Appeals, without vacatur, back to EPA. *See North Carolina* v. *EPA,* 531 F.3d 896 (DC Cir. 2008). Prior to this remand, EPA took final action to approve Kentucky SIP revision, which was submitted to comply with CAIR. *See* 72 FR 56623 (October 4, 2007). In so doing, Kentucky CAIR SIP revision addressed the interstate transport provisions in section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ NAAQS. In response to the remand of CAIR, EPA has recently finalized a new rule to address the interstate transport of nitrogen oxides and sulfur oxides in the eastern United States. *See* 76 FR 48208 (August 8, 2011) (Transport Rule). That rule was recently stayed by the DC Circuit Court of Appeals. EPA's action on element 110(a)(2)(D)(i) will be addressed in a separate action.

[6] This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8–Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' and the September 25, 2009, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards,'' but as mentioned above is not relevant to today's proposed rulemaking.

notification; and PSD and visibility protection.

- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

III. Scope of Infrastructure SIPs

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on those infrastructure SIP submissions.[7] Those Commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction (SSM) at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions; and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (director's discretion). EPA notes that there are two other substantive issues for which EPA likewise stated in other proposals that it would address separately: (i) Existing provisions for minor source NSR programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (minor source NSR); and (ii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (NSR Reform). In light of the comments, EPA believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth. It is important to emphasize that EPA is taking the same position with respect to these four substantive issues in this action on the infrastructure SIPs for the 1997 and 2006 $PM_{2.5}$ NAAQS from Kentucky.

EPA intended the statements in the other proposals concerning these four issues merely to be informational and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a re-approval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit re-approval of any existing provisions that relate to these four substantive issues. EPA is reiterating that position in this action on the infrastructure SIP for Kentucky.

Unfortunately, the Commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issues in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements in those other proposals, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately from actions on infrastructure SIP submissions.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPs are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, NSR permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements

[7] *See* Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket #EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

for both authority and substantive provisions.[8] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[9]

Notwithstanding that section 110(a)(2) provides that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[10] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[11] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's implementation plans. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[12]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these ozone and $PM_{2.5}$ NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[13] Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.''[14] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.''[15] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.''[16] However, for the one exception to that general assumption (*i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS), EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each state

[8] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[9] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's implementation plan contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. *See* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase ''contribute significantly to nonattainment'').

[10] *See Id.,* 70 FR 25162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[11] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. *See* ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8–Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

[12] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[13] *See* ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I—X, dated October 2, 2007 (the ''2007 Guidance'').

[14] *Id.,* at page 2.

[15] *Id.,* at attachment A, page 1.

[16] *Id.,* at page 4. In retrospect, the concerns raised by the Commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

would work with its corresponding EPA regional office to refine the scope of a state's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the state's implementation plans for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS.[17] In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, but were germane to these SIP submissions for the 2006 $PM_{2.5}$ NAAQS (e.g., the requirements of section 110(a)(2)(D)(i) that EPA had bifurcated from the other infrastructure elements for those specific 1997 ozone and $PM_{2.5}$ NAAQS). Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance and the 2009 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in existing SIP provisions in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals for other states mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions. The same holds true for this action on the infrastructure SIPs for Kentucky.

EPA believes that this approach to the infrastructure SIP requirement is reasonable because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[18] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[19] Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[20]

IV. What is EPA's analysis of how Kentucky addressed the elements of sections 110(a)(1) and (2) ''infrastructure'' provisions?

Kentucky's infrastructure submissions address the provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A): *Emission limits and other control measures:* Kentucky's infrastructure submissions provide an overview of the provisions of the Kentucky Air Regulations relevant to air quality control regulations. Chapter 50—*General Administrative Procedures,* of the Kentucky Air Regulations generally authorizes the Kentucky Environmental and Public Protection Cabinet to adopt rules for the control of air pollution, including those necessary to obtain EPA approval under section 110 of the CAA and details the authority and means with which DAQ can require testing and emissions verification. Chapter 51—*Attainment and Maintenance of the National Ambient Air Quality Standards,* also includes references to rules adopted by Kentucky to control air pollution. Chapter 53—

[17] *See* ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24–Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T, Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I—X, dated September 25, 2009 (the ''2009 Guidance'').

[18] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21639 (April 18, 2011).

[19] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. *See* ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. *See* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[20] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). *See* 75 FR 42342, 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

Ambient Air Quality Standards, serves to establish the requirements for the prevention, abatement and control of air pollution. EPA has made the preliminary determination that the provisions contained in these regulations and Kentucky's practices are adequate to protect the $PM_{2.5}$ annual and 24-hour NAAQS in Kentucky.

In this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (September 20, 1999), and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having deficient SSM provisions to take steps to correct it as soon as possible.

Additionally, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. 110(a)(2)(B) *Ambient air quality monitoring/data system:* Chapter 50—*General Administrative Procedures,* and Chapter 53—*Ambient Air Quality Standards,* along with the Commonwealth's Network Description and Ambient Air Monitoring Network Plan, provide for an ambient air quality monitoring system in the State. Annually, EPA approves the ambient air monitoring network plan for the state agencies. On July 1, 2011, the Commonwealth of Kentucky submitted its plan to EPA. On October 20, 2011, EPA approved Kentucky's monitoring network plan. Kentucky's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2010–1014. EPA has made the preliminary determination that Kentucky's SIP and practices are adequate for the ambient air quality monitoring and data systems related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

3. 110(a)(2)(C) *Program for enforcement of control measures including review of proposed new sources:* Chapter 51—*Attainment and Maintenance of the National Ambient Air Quality Standards,* describes the permit requirements for new major sources or major modifications of existing sources in areas classified as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the CAA. This ensures that sources in areas attaining the NAAQS at the time of designations prevent any significant deterioration in air quality. Chapter 51 also sets the permitting requirements for areas in or around nonattainment areas. On July 3, 2012, Kentucky submitted a letter to EPA to provide the schedule to address outstanding requirements promulgated in the NSR $PM_{2.5}$ Rule related to the $PM_{2.5}$ standard for their PSD program and committing to providing the necessary SIP revision to address these NSR $PM_{2.5}$ Rule requirements.

Based on Kentucky's commitment, EPA is proposing to conditionally approve Kentucky's 110(a)(2)(C) infrastructure SIP consistent with section 110(k)(4) of the Act. EPA intends to move forward with finalizing the conditional approval consistent with section 110(k)(4) of the Act.

In this action, EPA is proposing to conditionally approve Kentucky's infrastructure SIP for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. EPA is not proposing to approve or disapprove the Commonwealth's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

EPA is proposing to conditionally approve element 110(a)(2)(C) based on the commitment of the Commonwealth to submit SIP revisions to address the $PM_{2.5}$ NSR requirements.

4. 110(a)(2)(D)(ii) *Interstate and International transport provisions:* In Chapter 51:017—*Prevention of Significant Deterioration of air quality,* Kentucky outlines how it will notify neighboring states of potential impacts from new or modified sources. Kentucky does not have any pending obligation under sections 115 and 126 of the CAA. EPA has made the preliminary determination that Kentucky's SIP and practices are adequate for insuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

5. 110(a)(2)(E) *Adequate resources:* Section 110(a)(2)(E) requires that each implementation plan provide (i) necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the State comply with the requirements respecting State Boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve Kentucky's SIP as meeting the requirements of sub-elements 110(a)(2)(E)(i), (ii) and (iii).

In support of EPA's proposal to approve elements 110(a)(2)(E)(i) and (iii), Kentucky DAQ's infrastructure submissions demonstrate that it is responsible for promulgating rules and regulations for the NAAQS, emissions standards general policies, a system of permits, fee schedules for the review of plans, and other planning needs. As evidence of the adequacy of Kentucky DAQ's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to Kentucky on March 14, 2012, outlining 105 grant commitments and current status of these commitments for fiscal year 2011. The letter EPA submitted to Kentucky can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2010–1014. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. There were no outstanding issues in relation to the SIP for fiscal year 2011, therefore, Kentucky's grants were finalized and closed out. EPA has made the preliminary determination that Kentucky has adequate resources for implementation of the 1997 annual

and 2006 24-hour $PM_{2.5}$ NAAQS. In addition, the requirements of 110(a)(2)(E)(i) and (iii) are met when EPA performs a completeness determination for each SIP submittal. This determination ensures that each submittal provides evidence that adequate personnel, funding, and legal authority under State Law has been used to carry out the state's implementation plan and related issues. Kentucky's authority is included in all prehearings and final SIP submittal packages for approval by EPA. EPA has made the preliminary determination that Kentucky has adequate resources for implementation of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

Section 110(a)(2)(E)(ii) requires that the Commonwealth comply with section 128 of the CAA. Section 128 requires that: (1) The majority of members of the state board or body which approves permits or enforcement orders represent the public interest and do not derive any significant portion of their income from persons subject to permitting or enforcement orders under the CAA; and (2) any potential conflicts of interest by such board or body, or the head of an executive agency with similar, powers be adequately disclosed. Kentucky's July 17, 2012, submission adequately demonstrated that Kentucky's SIP meets the applicable section 128 requirements pursuant to section 110(a)(2)(E)(ii). For purposes of section 128(a)(1), Kentucky has no boards or bodies with authority over air pollution permits or enforcement actions. Such matters are instead handled by the Director of Division for Air Quality. As such, a ''board or body'' is not responsible for approving permits or enforcement orders in Kentucky, and the requirements of section 128(a)(1) are not applicable. Regarding section 128(a)(2) (also applicable to the infrastructure SIP pursuant to section 110(a)(2)(E)(ii)), EPA is, through this notice, proposing to approve Kentucky's July 17, 2012, SIP revision requesting incorporation of KRS Chapters 11A.020, 11A.030, 11A.040 and Chapters 224.10–020 and 224.10–100 into the SIP to address sub-element 110(a)(2)(E)(ii). KRS Chapters:

11A.020. *Public servant prohibited from certain conduct—Exception—Disclosure of personal or private interest;*

11A.030. *Considerations in determination to abstain from action on official decision—Advisory opinion,*

11A.030. *Acts prohibited for public servant or officer—exception;*

224.10–020. *Department within the cabinet—Offices and divisions within the departments-Appointments,* and

224.10–100. *Powers and duties of cabinet,* require adequate disclosure of any potential conflicts of interest and meets the requirements of section 128(a)(2) of the Act. EPA has made the preliminary determination that, following final approval of these chapters in the SIP, Kentucky will have adequate resources for implementation of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

6. 110(a)(2)(F) *Stationary source monitoring system:* Chapter 50—*General Administrative Procedures* of the Kentucky Air Regulations describes how the major source and minor source emission inventory programs collect emission data throughout the Commonwealth and ensure the quality of such data. Additionally, Kentucky is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Kentucky made its latest update to the NEI on March 14, 2012. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html*. EPA has made the preliminary determination that Kentucky's SIP and practices are adequate for the stationary source monitoring systems related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

7. 110(a)(2)(G) *Emergency power:* Chapter 55—*Emergency Episodes* contains provisions for the identification of air pollution emergency episodes. Episode criteria and emissions reduction plans are also covered in this regulation. These criteria have previously been approved by EPA. On September 25, 2009, EPA released the guidance entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24–Hour Fine Particulate ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS).'' This guidance clarified that ''to address the section 110(a)(2)(G) element, states with air quality control regions identified as either Priority I, IA, or Priority II by the 'Prevention of Air Pollution Emergency Episodes' rule at 40 CFR 51.150, must develop emergency episode contingency plans.'' EPA's September 25, 2009, guidance also states that ''until the Agency finalized changes to the emergency episode regulation to establish for $PM_{2.5}$ specific levels for classifying areas as Priority I, IA, or II for $PM_{2.5,}$ and to establish a significant harm level (SHL) * * *,'' it recommends that states with a 24-Hour $PM_{2.5}$ concentration above 140 $\mu g/m^3$ (using the most recent three years of data) develop an emergency episode plan. For states where this level has not been exceeded, the state can certify that it has appropriate general emergency powers to address $PM_{2.5}$ related episodes, and that no specific emergency episode plans are needed at this time. On September 19, 2008, KYDAQ submitted a letter to EPA verifying that it is a Class III Priority Area and is exempt from adopting emergency episode plan for $PM_{2.5}$ NAAQS. Kentucky had not previously public noticed its certification submissions (including the September 19, 2008, letter) with regard to 110(a)(2)(G) for the $PM_{2.5}$ NAAQS. In May 2012, Kentucky public noticed its certification, and on July 17, 2012, submitted the public-noticed certification as a supplement to its original certification for element 110(a)(2)(G) for the $PM_{2.5}$ NAAQS. EPA has made the preliminary determination that Kentucky's SIP and practices are adequate for emergency powers related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

8. 110(a)(2)(H) *Future SIP revisions:* As previously discussed, DAQ is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS. Kentucky has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the PM NAAQS. Specific to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, Kentucky's submissions have included:

- December 3, 2008, Louisville, Huntington-Ashland and Cincinnati $PM_{2.5}$ Attainment Demonstrations;
- February 8, 2012, Huntington-Ashland 1997 Annual $PM_{2.5}$ Redesignation Request and Maintenance Plan;

• March 5, 2012, Louisville 1997 Annual $PM_{2.5}$ Redesignation Request and Maintenance Plan; and,

EPA has made the preliminary determination that Kentucky's SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

9. 110(a)(2)(J) (121 consultation) *Consultation with government officials:* Kentucky Air Regulations Chapter 50—*General Administrative Procedures* of the Kentucky Air Regulations and Chapter 51—*Attainment and Maintenance of the National Ambient Air Quality Standards* are responsible for consultation with government officials whose jurisdictions might be affected by SIP development activities. More specifically, Kentucky adopted state-wide consultation procedures for the implementation of transportation conformity which includes the consideration of the development of mobile inventories for SIP development. Required partners covered by Kentucky's consultation procedures include federal, state and local transportation and air quality agency officials. EPA approved Kentucky's consultation procedures on September 15, 2010 (75 FR 55988). Additionally, DAQ submitted a regional haze plan which outlines its consultation practices with Federal Land Managers. EPA has made the preliminary determination that Kentucky's SIP and practices adequately demonstrate consultation with government officials related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

10. 110(a)(2)(J) (127 public notification) *Public notification:* The Commonwealth's emergency episode provisions provide for notification to the public when the NAAQS, including the PM NAAQS, are exceeded. Additionally, the Commonwealth reports daily air quality information on its state Web site at: *http://air.ky.gov/Pages/AirQualityIndexMonitoring.aspx* to inform the public on the existing air quality within the Commonwealth. EPA has made the preliminary determination that Kentucky's SIP and practices adequately demonstrate the Commonwealth's ability to provide public notification related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

11. 110(a)(2)(J) (PSD)*PSD and visibility protection:* Kentucky demonstrates its authority to regulate new and modified sources of PM to assist in the protection of air quality in Kentucky. Chapter 51—*Attainment and Maintenance of the National Ambient Air Quality Standards,* describes the permit requirements for new major sources or major modifications of existing sources in areas classified as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the CAA. This ensures that sources in areas attaining the NAAQS at the time of designations prevent any significant deterioration in air quality. Chapter 51 also sets the permitting requirements for areas in or around nonattainment areas. As with infrastructure element 110(a)(2)(C), infrastructure element 110(a)(2)(J) Kentucky's SIP does not include provisions to meet all the requirements for NSR/PSD related to the $PM_{2.5}$ standard. As noted above on July 3, 2012, Kentucky submitted a letter to EPA providing a schedule to address outstanding requirements promulgated in the NSR $PM_{2.5}$ Rule related to the $PM_{2.5}$ standard for their PSD program and committing to providing the necessary SIP revision to address its NSR $PM_{2.5}$ Rule SIP deficiencies. As a result, EPA is proposing to conditionally approve Kentucky's infrastructure SIP with respect to element 110(a)(2)(J) in accordance with section 110(k)(4) of the Act. EPA intends to move forward with finalizing the conditional approval consistent with section 110(k)(4) of the Act.

With regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, EPA finds that there is no new visibility obligation ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. This would be the case even in the event a secondary $PM_{2.5}$ NAAQS for visibility is established, because this NAAQS would not affect visibility requirements under part C. EPA has made the preliminary determination that Kentucky's SIP and practices adequately demonstrate the Commonwealth's ability to implement PSD programs and to provide for visibility protection related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

12. 110(a)(2)(K) *Air quality and modeling/data:* Kentucky Air Regulations Chapter 50—*General Administrative Procedures,* provides Kentucky with the authority to conduct air quality modeling and report the results of such modeling to EPA. This regulation demonstrates that Kentucky has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA has made the preliminary determination that Kentucky's SIP and practices adequately demonstrate the Commonwealth's ability to provide for air quality and modeling, along with analysis of the associated data, related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

13. 110(a)(2)(L) *Permitting fees:* Kentucky addresses the review of construction permits as previously discussed in 110(a)(2)(C) above. Permitting fees are collected through the Commonwealth's title V fees program, which has been federally approved. EPA has made the preliminary determination that Kentucky's SIP and practices adequately provide for permitting fees related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

14. 110(a)(2)(M) *Consultation/participation by affected local entities:* DAQ coordinates with local governments affected by the SIP. Kentucky's SIP also includes a description of the public participation process for SIP development. Kentucky has consulted with local entities for the development of transportation conformity and has worked with the Federal Land Managers as a requirement of its regional haze rule. More specifically, Kentucky adopted State-wide consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development and the requirements that link transportation planning and air quality planning in nonattainment and maintenance areas. The state and local transportation agency officials are most directly impacted by transportation conformity requirements and have a requirement to have public involvement for their activities including the analysis which shows how they meet transportation conformity requirements. EPA approved Kentucky's consultation procedures in Chapter 50:066—*Conformity of transportation plans, programs, and projects (Amendment),* on April 21, 2010 (75 FR 20180). EPA has made the preliminary determination that Kentucky's SIP and practices adequately demonstrate consultation with affected local entities related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

V. Proposed Action

As described above, DAQ has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, and

September 25, 2009, guidance to ensure that the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS are implemented, enforced, and maintained in Kentucky. EPA is proposing to determine that Kentucky's infrastructure submissions, provided to EPA on August 26, 2008, and on July 17, 2012, addressed the required infrastructure elements for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS with the exceptions of elements (C) and (J) (as related to the PSD requirements of this element).

With respect to element 110(a)(2)(E)(ii), EPA is today proposing to determine that Kentucky's SIP satisfies this infrastructure element contingent upon EPA taking final action to approve Kentucky's July 17, 2012, submission requesting approval of KRS Chapters 11A.020, 11A.030, 11A.040, 224.10–020 and 224.10–100 into the SIP to address sub-element 110(a)(2)(E)(ii). Today's action is also proposing approval of KRS Chapters 11A.020, 11A.030, 11A.040, 224.10–020 and 224.10–100 into the SIP.

With respect to elements 110(a)(2)(C) and 110(a)(2)(J) relating to the PSD requirements, EPA is proposing to conditionally approve these requirements based upon the commitment made by Kentucky to submit the requisite SIP revision to address the Commonwealth's current NSR $PM_{2.5}$ Rule SIP deficiencies. Consistent with section 110(k)(4) of the CAA, if the Commonwealth fails to comply with its commitment, this proposed condition approval would automatically be treated as a disapproval of these elements.

VI. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 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 SIP is not approved to apply in Indian country located in the Commonwealth, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: July 20, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–19017 Filed 8–2–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0047; FRL–9707–3]

Partial Approval and Disapproval of Air Quality Implementation Plans; Nevada; Infrastructure Requirements for Ozone and Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove State Implementation Plan (SIP) revisions submitted by the State of Nevada to address the requirements of section 110(a)(1) and 110(a)(2) of the Clean Air Act (CAA) for the 1997 8-hour ozone national ambient air quality standards (NAAQS) and the 1997 and 2006 NAAQS for fine particulate matter ($PM_{2.5}$). Section 110(a) of the CAA requires that each State adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA. On February 1, 2008, February 26, 2008, September 15, 2009, and December 4, 2009 the Nevada Division of Environmental Protection (NDEP) submitted revisions to Nevada's SIP, which describe the State's provisions for implementing, maintaining, and enforcing the standards listed above. On July 5, 2012, NDEP submitted a supplement to these SIP revisions, including certain statutory and regulatory provisions. We encourage the State to submit a revised SIP to address the deficiencies identified in this proposal, and we stand ready to work with the State to develop a revised plan. We are taking comments on this proposal and plan to follow with a final action.

DATES: Written comments must be received on or before September 4, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R09–OAR–2011–0047, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: r9_airplanning@epa.gov.*
3. *Fax:* 415–947–3579.
4. *Mail or deliver:* Rory Mays (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Deliveries are only accepted during the Regional Office's normal hours of operation.

Instructions: All comments will be included in the public docket without

change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or email. *http://www.regulations.gov* is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Rory Mays, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 972–3227, *mays.rory@epa.gov.*

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

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I. Background

I.A. Statutory Framework

Section 110(a)(1) of the CAA requires each state to submit to EPA, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a primary or secondary NAAQS or any revision thereof, a SIP that provides for the ''implementation, maintenance, and enforcement'' of such NAAQS. EPA refers to these specific submissions as ''infrastructure'' SIPs because they are intended to address basic structural SIP requirements for new or revised NAAQS. The infrastructure SIP elements include:

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C): Program for enforcement of control measures and regulation of new and modified stationary sources.
- Section 110(a)(2)(D)(i): Interstate pollution transport.
- Section 110(a)(2)(D)(ii): Interstate and international pollution abatement.
- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local and regional government agencies.
- Section 110(a)(2)(F): Stationary source monitoring and reporting.
- Section 110(a)(2)(G): Emergency episodes.
- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(J): Consultation with government officials, public notification, and prevention of significant deterioration (PSD) and visibility protection.
- Section 110(a)(2)(K): Air quality modeling and submission of modeling data.
- Section 110(a)(2)(L): Permitting fees.
- Section 110(a)(2)(M): Consultation/participation by affected local entities.

Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) and are therefore not addressed in this action. These elements relate to part D of title I of the CAA, and submissions to satisfy them are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the same time nonattainment area plan requirements are due under section 172. The two elements are: (i) Section 110(a)(2)(C) to the extent it refers to permit programs required under part D (nonattainment New Source Review (NSR)), and (ii) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure elements related to the nonattainment NSR portion of section 110(a)(2)(C) or related to 110(a)(2)(I).

I.B. Regulatory History

On July 18, 1997, EPA issued a revised NAAQS for ozone [1] and a new NAAQS for fine particulate matter ($PM_{2.5}$).[2] EPA subsequently revised the 24-hour $PM_{2.5}$ NAAQS on September 21, 2006.[3] Each of these actions triggered a requirement for states to submit an infrastructure SIP to address the applicable requirements of section 110(a)(2) within three years of issuance of the new or revised NAAQS.

On March 10, 2005, EPA entered into a Consent Decree with EarthJustice that obligated EPA to make official findings in accordance with section 110(k)(1) of the CAA as to whether states had made required complete SIP submissions, pursuant to sections 110(a)(1) and 110(a)(2), by December 15, 2007 for the 1997 8-hour ozone NAAQS and by October 5, 2008 for the 1997 $PM_{2.5}$ NAAQS. EPA made such findings for the 1997 ozone NAAQS, as published on March 27, 2008 (73 FR 16205), and for the 1997 $PM_{2.5}$ NAAQS, as published on October 22, 2008 (73 FR 62902). For the 1997 ozone NAAQS, EPA found that Nevada had failed to make a complete submittal to address the requirements of section 110(a)(2).[4] For the 1997 $PM_{2.5}$ NAAQS, EPA found that Nevada had made a complete submittal to address the requirements of section 110(a)(2).

I.C. Scope of the Infrastructure SIP Evaluation

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context

[1] The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856).

[2] The annual $PM_{2.5}$ standard was set at 15 micrograms per cubic meter ($\mu g/m^3$), based on the 3-year average of annual arithmetic mean $PM_{2.5}$ concentrations from single or multiple community-oriented monitors and the 24-hour $PM_{2.5}$ standard was set at 65 $\mu g/m^3$, based on the 3-year average of the 98th percentile of 24-hour $PM_{2.5}$ concentrations at each population-oriented monitor within an area (62 FR 38652).

[3] The final rule revising the 24-hour NAAQS for $PM_{2.5}$ from 65 $\mu g/m^3$ to 35 $\mu g/m^3$ was published in the **Federal Register** on October 17, 2006 (71 FR 61144).

[4] Notwithstanding EPA's finding of failure to submit, footnote 2 of the findings notice noted that Nevada had submitted its infrastructure SIP for the 1997 ozone NAAQS on February 1, 2008. (*See* 73 FR 16205 at 16207).

of acting on those infrastructure SIP submissions.[5] Those commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''). EPA notes that there are two other substantive issues for which EPA likewise stated in other proposals that it would address the issues separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source NSR''); and (ii) existing provisions for Prevention of Significant Deterioration programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). In light of the comments, EPA believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth.

EPA intended the statements in other proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP-approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues.

Unfortunately, the commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issues in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements in those other proposals, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately from actions on infrastructure SIP submissions.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[6] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[7]

Notwithstanding that section 110(a)(2) provides that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[8] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Likewise, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections.[9] Finally, EPA

[5] *See,* Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5).

[6] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[7] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. *See, e.g.,* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25,162 (May 12, 2005)(defining, among other things, the phrase ''contribute significantly to nonattainment'').

[8] *See, e.g., Id.,* 70 FR 25,162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[9] For example, EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. *See,* ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006. In addition, EPA bifurcated the action on these ''interstate transport'' provisions within section 110(a)(2) and in most instances, substantive administrative

Continued

notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[10]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these ozone and $PM_{2.5}$ NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[11] Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.'' [12] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.'' [13] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.'' [14] For the one exception to that general assumption, however, *i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each State would work with its corresponding EPA regional office to refine the scope of a State's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State's SIP for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS.[15] In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, but were germane to these SIP submissions for the 2006 $PM_{2.5}$ NAAQS. Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance and the 2009 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in existing SIP provisions in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a comprehensive review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and

actions occurred on different tracks with different schedules.

[10] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[11] *See,* ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the ''2007 Guidance'').

[12] *Id.* at page 2.

[13] *Id.* at attachment A, page 1.

[14] *Id.* at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicate that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

[15] *See,* ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T, Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[16] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[17] Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[18]

II. The State's Submittals

On February 1, 2008, the Nevada Division of Environmental Protection (NDEP) submitted the ''CAA 110(a)(2)(A)–(M) Requirements in the Current Nevada State Implementation Plan (SIP) for 8-Hour Ozone'' to address the infrastructure SIP requirements for the 1997 ozone NAAQS (''2008 Ozone Submittal'').[19] On February 26, 2008, NDEP submitted the ''CAA 110(a)(2)(A)–(M) Requirements in the Current Nevada State Implementation Plan (SIP) for $PM_{2.5}$'' to address the infrastructure SIP requirements for the 1997 $PM_{2.5}$ NAAQS (''2008 $PM_{2.5}$ Submittal'').[20] On September 15, 2009, NDEP submitted the ''CAA 110(a)(2)(A)–(M) Requirements in the Current Nevada State Implementation Plan (SIP) for $PM_{2.5}$'' to address the infrastructure SIP requirements for the 2006 $PM_{2.5}$ NAAQS (''2009 $PM_{2.5}$ Submittal'').[21] Each of these three submittals included a cover letter from the NDEP Administrator to the Region IX Regional Administrator, a table listing the elements of CAA section 110(a)(2) followed by NDEP's discussion of the provisions in the existing Nevada SIP that address each element, and attachments that compile the State rules and statutes that are currently approved into the Nevada SIP.

On December 4, 2009, NDEP submitted the ''Current CAA 110(a)(2)(A)–(M) Requirements in the Washoe County Portion of the Nevada $PM_{2.5}$ SIP'' to address the infrastructure SIP requirements for the 2006 $PM_{2.5}$ NAAQS for the Washoe County portion of the State (''2009 $PM_{2.5}$ Supplement'').[22] Like the three earlier submittals, the 2009 $PM_{2.5}$ Supplement contained a table listing the elements of CAA section 110(a)(2) followed by Washoe County's discussion of the provisions in the existing (Washoe County portion of the) Nevada SIP that address each element, and attachments that include the Washoe County District Board of Health (DBOH) air pollution control regulations cited in the County's evaluation of the adequacy of the existing SIP for Washoe County in meeting the infrastructure SIP requirements for $PM_{2.5}$,[23] the PSD delegation agreement between the Washoe County District Health Department and EPA, and an Interlocal Agreement among the Washoe County District Board of Health, Washoe County, and the cities of Reno and Sparks concerning the Washoe County District Health Department.

On July 5, 2012, NDEP submitted ''Revisions to Nevada's Clean Air Act § 110(a)(2) State Implementation Plan Submittals; Parallel Processing Request'' to address certain infrastructure SIP requirements for the 1997 ozone, 1997 $PM_{2.5}$, and 2006 $PM_{2.5}$ NAAQS (''2012 Submittal'').[24] This submittal served as a supplement to the four prior ozone and $PM_{2.5}$ infrastructure SIP submittals and was submitted under the parallel processing mechanism provided by 40 CFR part 51, appendix V, Section 2.3. The 2012 Submittal includes a number of provisions, including statutes, regulations, and non-regulatory provisions, that are currently effective under State law but that have not been adopted specifically for submittal to EPA as SIP revisions under CAA section 110. NDEP also included unofficial copies of these provisions with a request for ''parallel processing''[25] and stated

[16] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. *See,* ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 76 FR 21,639 (April 18, 2011).

[17] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. *See,* ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82,536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. *See, e.g.,* 61 FR 38,664 (July 25, 1996) and 62 FR 34,641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67,062 (November 16, 2004) (corrections to California SIP); and 74 FR 57,051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[18] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). *See, e.g.,* 75 FR 42,342 at 42,344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4,540 (January 26, 2011) (final disapproval of such provisions).

[19] *See* letter dated February 1, 2008 from Leo M. Drozdoff, Administrator, NDEP, to Wayne Nastri, Regional Administrator, EPA Region 9.

[20] *See* letter dated February 26, 2008 from Leo M. Drozdoff, Administrator, NDEP, to Wayne Nastri, Regional Administrator, EPA Region 9.

[21] *See* letter dated September 15, 2009 from Leo M. Drozdoff, Administrator, NDEP, to Laura Yoshii, Acting Regional Administrator, EPA Region 9.

[22] *See* letter dated December 4, 2009 from Leo M. Drozdoff, Administrator, NDEP, to Laura Yoshii, Acting Regional Administrator, EPA Region 9.

[23] A small number of Washoe County regulations included as attachment B to the 2009 $PM_{2.5}$ Supplement have already been approved into the Nevada SIP (*e.g.,* the emergency episode provisions); most have not been approved. However, we understand that the submittal of the Washoe County regulations in attachment B was for information purposes, and that the specific Washoe County regulations submitted for approval into the SIP include only those submitted as part of NDEP's submittal dated July 5, 2012. We also understand attachment C to have been submitted for information purposes.

[24] *See* letter dated July 5, 2012 from Colleen Cripps, Administrator, NDEP, to Jared Blumenfeld, Regional Administrator, EPA Region 9. This SIP revision was also submitted to revise Nevada's infrastructure SIP submittal for the 2008 Lead (Pb) NAAQS, which was submitted on October 12, 2011. EPA will address the infrastructure SIP requirements for the 2008 Pb NAAQS in a separate rulemaking.

[25] Under EPA's ''parallel processing'' procedure, EPA proposes rulemaking action concurrently with the State's proposed rulemaking. If the State's proposed plan is changed, EPA will evaluate that subsequent change and may publish another notice

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its intention to open a public comment period on July 13, 2012, provide opportunity for a public hearing on August 15, 2012, and to submit these provisions as a formal SIP submittal by the end of August 2012.

NDEP did not provide notice and an opportunity for public comment or hearing prior to adoption and submittal of the 2008 Ozone Submittal, the 2008 $PM_{2.5}$ Submittal, the 2009 $PM_{2.5}$ Submittal, or the 2009 $PM_{2.5}$ Supplement in reliance on EPA guidance that indicated that, where a State was simply certifying that the existing SIP met the infrastructure requirements with respect to the new or revised NAAQS, no public process was required. EPA's views on this matter have changed, and we now recognize submittals by States in response to the requirements of CAA section 110(a)(1) do represent SIP submittals, even if they simply certify the existing SIP as sufficient.

As SIP revisions, such submittals require public notice, and opportunity for comment and hearing. We find, however, that, in this instance, because NDEP has provided notice, and opportunity to comment and hearing in connection with the 2012 Submittal, described above, and because NDEP's notice refers to the 2008 Ozone Submittal, the 2008 $PM_{2.5}$ Submittal, the 2009 $PM_{2.5}$ Submittal, and the 2009 $PM_{2.5}$ Supplement, in addition to the 2012 Submittal, NDEP will have met the procedural requirements for public participation under CAA section 110(a)(2) and 40 CFR 51.102 for all five infrastructure SIP submittals on which we are proposing action today when NDEP submits the related documentation to us with the 2012 Submittal.

We are proposing to act on all five submittals since they collectively address the infrastructure SIP requirements for the 1997 ozone, 1997 $PM_{2.5}$, and 2006 $PM_{2.5}$ NAAQS. We refer to them collectively herein as ''Nevada's Infrastructure SIP Submittals.''

of proposed rulemaking. If no significant change is made, EPA will publish a final rulemaking on the plan after responding to any submitted comments. Final rulemaking action by EPA will occur only after the plan has been fully adopted by Nevada and submitted formally to EPA for approval into the SIP. *See* 40 CFR part 51, appendix V, section 2.3. We note that because NDEP's rulemaking process here is for purposes of adopting the 2012 Submittal as a SIP revision under CAA section 110, including existing statutes and regulations (without revision) and updating non-regulatory provisions, we do not expect any significant changes between the proposed and final plans.

III. EPA's Evaluation and Proposed Action

EPA has evaluated Nevada's Infrastructure SIP Submittals and the existing provisions of the Nevada SIP for compliance with the CAA section 110(a) requirements for the 1997 ozone, 1997 $PM_{2.5}$, and 2006 $PM_{2.5}$ NAAQS. Our three Technical Support Documents (TSDs) contain more detailed evaluations and are available in the public docket for this rulemaking, which may be accessed online at *http://www.regulations.gov,* docket number EPA–R09–OAR–2011–0047. The three Technical Support Documents are as follows: (1) ''Overarching TSD'' for CAA sections 110(a)(2)(A) through (C), parts of (D) and (E), and (F) thru (M); (2) ''2006 $PM_{2.5}$ Transport TSD'' for CAA section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS; and (3) ''Section 128 TSD'' for CAA section 110(a)(2)(E)(ii), which addresses compliance with the conflict of interest requirements of CAA section 128. All proposals below apply to our evaluation of Nevada's infrastructure SIPs for the 1997 ozone, 1997 $PM_{2.5}$, and 2006 $PM_{2.5}$ NAAQS unless a specific distinction is made as to which of Nevada's five submittals or which of these three NAAQS a given proposal applies.

III.A. Proposed Approvals

Based upon our evaluation as presented in the TSDs, EPA proposes to approve Nevada's Infrastructure SIP Submittals with respect to the following infrastructure SIP requirements:

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C) (in part): Program for enforcement of control measures and regulation of new and modified stationary sources.
- Section 110(a)(2)(D)(i) (in part): Interstate pollution transport. (Please see our 2006 $PM_{2.5}$ Transport TSD for our evaluation of Nevada's 2009 $PM_{2.5}$ Submittal and 2009 $PM_{2.5}$ Supplement regarding interstate transport requirements of section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS.)
- Section 110(a)(2)(D)(ii) (in part): Interstate pollution abatement and international air pollution
- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local and regional government agencies. (Please see our Section 128 TSD for our evaluation of Nevada's Infrastructure SIP Submittals regarding the conflict of interest requirements of section 110(a)(2)(E)(ii).)
- Section 110(a)(2)(F) (in part): Stationary source monitoring and reporting.
- Section 110(a)(2)(G): Emergency episodes.
- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(J) (in part): Consultation with government officials, public notification, and prevention of significant deterioration (PSD) and visibility protection.
- Section 110(a)(2)(K) (in part): Air quality modeling and submission of modeling data.
- Section 110(a)(2)(L): Permitting fees.
- Section 110(a)(2)(M): Consultation/participation by affected local entities.

In connection with our proposed partial approval of Nevada's Infrastructure SIP Submittals, we are proposing to approve certain statutes, regulations, and other materials, that were included in the 2009 $PM_{2.5}$ Supplement and the 2012 Submittal to supplement the four earlier submittals.

First, with respect to section 110(a)(2)(E)(i) (*i.e.,* necessary assurances for adequate personnel, funding, and authority), EPA is proposing to approve an interlocal agreement among the Washoe County District Board of Health, Washoe County and the cities of Reno and Sparks concerning the Washoe County District Health Department, and a comprehensive revision to Section 12 (''Resources'') of the Nevada SIP. The interlocal agreement was submitted as attachment D to the 2009 $PM_{2.5}$ Supplement and the revision to Section 12 was submitted as attachment A to Nevada's 2012 Submittal. Nevada's revision to Section 12 (''Resources'') includes updated information concerning funding and personnel supporting the functions of the three air pollution control agencies administering CAA programs in Nevada: NDEP, Clark County Department of Air Quality, and Washoe County Health District's Air Quality Management Division (AQMD). If finalized as proposed, NDEP's 2012 revision to Section 12 will entirely replace the existing SIP version of Section 12, approved on May 31, 1972 (37 FR 10842), in the Nevada SIP.

Second, in connection with our proposed approval of Nevada's Infrastructure SIP Submittals with respect to section 110(a)(2)(E)(ii) (*i.e.,* State board conflict of interest requirements under CAA section 128), EPA is proposing to approve Nevada Revised Statutes (NRS) sections 232A.020, 281A.150, 281A.160, 281A.400, 281A.410, and 281A.420, as provided in Attachment B of Nevada's 2012 Submittal, into the Nevada SIP.

Third, in connection with our proposed approval of Nevada's Infrastructure SIP Submittals with respect to section 110(a)(2)(J) (in part) and (M), EPA is proposing to approve a comprehensive revision to Section 11 (''Intergovernmental Consultation'') of the Nevada SIP, which is included as Attachment D to Nevada's 2012 Submittal. Nevada's revision to Section 11 (''Intergovernmental Consultation'') includes updated information concerning consultation among the three air pollution control agencies administering CAA programs in Nevada (NDEP, Clark County Department of Air Quality, and Washoe County Health District's Air Quality Management Division) as well as regional planning and transportation agencies that also have certain air-quality-planning-related responsibilities. If finalized as proposed, NDEP's 2012 revision to Section 11 will entirely replace the existing SIP version of Section 11, approved on May 31, 1972 (37 FR 10842), in the Nevada SIP.

Nevada's 2012 revision to Section 11 (''Intergovernmental Consultation'') cites a number of statutes, two of which are included as exhibits to Section 11, NRS section 445B.503 (''Local air pollution control board in county whose population is 700,000 or more: Cooperation with regional planning coalition and regional transportation commission; prerequisites to adoption or amendment of plan, policy or program'') and NRS section 439.390 (''District board of health: Composition; qualifications of members''), that would be new to the SIP.[26] We have reviewed them and find them acceptable and are proposing to approve them in connection with our proposed approval of the 2012 revised Section 11 of the Nevada SIP.[27]

Fourth, in connection with our proposed approval of Nevada's Infrastructure SIP Submittals with respect to section 110(a)(2)(F)(ii) and (F)(iii), we note that EPA has proposed to approve three Nevada Administrative Code (NAC) sections cited by NDEP in its 2012 Submittal, NAC sections 445B.315(3), 445B.3368, and 445B.346, in a separate rulemaking (*see* 77 FR 38557, June 28, 2012). While we believe that the three cited NAC sections are generally supportive of the requirements of sections 110(a)(2)(F)(ii) and 110(a)(2)(F)(iii), we believe that the existing Nevada SIP, even without the three cited NAC sections, is adequate to meet the requirements of sections 110(a)(2)(F)(ii) and 110(a)(2)(F)(iii) with respect to sources under NDEP jurisdiction. See our Overarching TSD.

Fifth and last, in connection with our proposed approval of Nevada's Infrastructure SIP Submittals with respect to section 110(a)(2)(F), our proposed approval with respect to this element for the Washoe County portion of the SIP relies on final approval of four Washoe County rules, 030.218, 030.230, 030.235, and 030.970, that were included in the 2012 Submittal. We proposed approval of these four Washoe County rules in a separate rulemaking signed on July 19, 2012.[28]

III.B. Proposed Disapprovals

EPA proposes to disapprove Nevada's Infrastructure SIP Submittals with respect to the following infrastructure SIP requirements (details of the partial approvals and partial disapprovals are presented after this list):

- Section 110(a)(2)(C) (in part): Program for enforcement of control measures and regulation of new and modified stationary sources.
- Section 110(a)(2)(D)(i) (in part): Interstate pollution transport. (Please see our 2006 $PM_{2.5}$ Transport TSD for our evaluation of Nevada's 2009 $PM_{2.5}$ Submittal and 2009 $PM_{2.5}$ Supplement regarding interstate transport requirements of section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS.)
- Section 110(a)(2)(D)(ii) (in part): Interstate pollution abatement and international air pollution.
- Section 110(a)(2)(F) (in part): Stationary source monitoring and reporting.
- Section 110(a)(2)(J) (in part): Consultation with government officials, public notification, and prevention of significant deterioration (PSD) and visibility protection.
- Section 110(a)(2)(K) (in part): Air quality modeling and submission of modeling data.

As explained more fully in our Overarching TSD, we are proposing to disapprove Nevada's Infrastructure SIP Submittals for the NDEP and Washoe County portions of the SIP with respect to the permitting-related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), 110(a)(2)(J), and 110(a)(2)(K) because the Nevada SIP does not fully satisfy the statutory and regulatory requirements for Prevention of Significant Deterioration (PSD) permit programs under part C, title I of the Act. Both NDEP and Washoe County AQMD currently implement the Federal PSD program in 40 CFR 52.21 for all regulated NSR pollutants, pursuant to delegation agreements with EPA. See 40 CFR 52.1485.[29] Accordingly, although the Nevada SIP remains deficient with respect to PSD requirements in both the NDEP and Washoe County portions of the SIP, these deficiencies are adequately addressed in both areas by the Federal PSD program.

For Section 110(a)(2)(C), we propose to approve Nevada's Infrastructure SIP Submittals with respect to the requirement that the SIP include a program to provide for enforcement of the emissions limitations described in section 110(a)(2)(A). For the permitting-related requirements of section 110(a)(2)(C), we propose to approve the Clark County portion of the SIP, contingent on finalizing our proposed approval of Clark County's SIP revisions for the review of new or modified stationary sources,[30] and to disapprove the NDEP and Washoe County portions of the SIP, for the reasons discussed at

[26] NDEP included, in attachment B of the 2012 Submittal, certain statutes for inclusion in the Nevada SIP in support of the Infrastructure SIP Submittals. While both NRS 445B.503 and NRS 439.390 are included as exhibits to revised Section 11 (''Intergovernmental Consultation''), only the former is included in attachment B to the 2012 Submittal. We have assumed that the absence of NRS 439.390 in attachment B was inadvertent, and that NDEP intends NRS 439.390 to be included in the Nevada SIP, but we request confirmation from NDEP on this matter.

[27] In the 2012 Submittal, NDEP also included an updated version of a statute that is also cited in the revised Section 11 (''Intergovernmental Consultation'') but that is already approved into the SIP, NRS section 445B.500 (''Establishment and administration of program; contents of program; designation of air pollution control agency of county for purposes of federal act; powers and duties of local air pollution control board; notice of public hearings; delegation of authority to determine violations and levy administrative penalties; cities and smaller counties: regulation of certain electric plants prohibited''), approved at 71 FR 51766 (August 31, 2006). We have reviewed the updated version of NRS 445B.500 and note that the only changes relative to the existing SIP version of NRS 445B.500 relate to hearing boards, hearing officers, and school districts and, thus, are administrative in nature. As such, we propose herein to approve the updated version of NRS 445B.500 that was included in attachment B to the 2012 Submittal as a revision to the Nevada SIP.

[28] A copy of our separate, concurrent proposal is available in the docket for this action and online at *http://www.regulations.gov,* docket number EPA–R09–OAR–2011–0047.

[29] EPA fully delegated the implementation of the Federal PSD programs to NDEP on October 19, 2004 (''Agreement for Delegation of the Federal Prevention of Significant Deterioration (PSD) Program by the United States Environmental Protection Agency, Region 9 to the Nevada Division of Environmental Protection''), as updated on September 15, 2011, and to Washoe County (March 13, 2008 (''Agreement for Delegation of the Federal Prevention of Significant Deterioration (PSD) Program by the United States Environmental Protection Agency, Region 9 to the Washoe County District Health Department'').

[30] *See* EPA's proposal signed on July 13, 2012, and included in the docket of this infrastructure SIP proposal.

the start of section III.B of this notice and our Overarching TSD.

With respect to the requirements regarding interstate transport in CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS, we propose to partially approve and partially disapprove Nevada's 2009 $PM_{2.5}$ Submittal and 2009 $PM_{2.5}$ Supplement. We propose to partially disapprove the submission because it relies on irrelevant factors and lacks any technical analysis to support the State's conclusion with respect to interstate transport. We also propose to partially approve the submission, however, based on EPA's supplemental evaluation of relevant technical information, which supports a finding that emissions from Nevada do not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in any other state and that the existing Nevada SIP is, therefore, adequate to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. See our 2006 $PM_{2.5}$ Transport TSD.

For the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, EPA previously approved an interstate transport SIP submitted by Nevada as satisfying the requirements of CAA section 110(a)(D)(i)(I). *See* 72 FR 41629 (July 31, 2007).

For the requirement of CAA section 110(a)(2)(D)(i)(II) (regarding interference with other states' required measures to prevent significant deterioration of air quality), we propose to approve the Clark County portion of the SIP, and to disapprove the NDEP and Washoe County portions of the SIP, for the reasons discussed at the start of section III.B of this notice and our Overarching TSD. With respect to the requirement of CAA section 110(a)(2)(D)(i)(II) (regarding interference with other states' required measures to protect visibility), EPA previously approved Nevada's interstate transport SIP as satisfying this requirement for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS as part of EPA's action on Nevada's Regional Haze SIP. *See* 77 FR 17334 at 17339 (March 26, 2012). For purposes of the 2006 $PM_{2.5}$ NAAQS, we propose the same interpretations and conclusions that we proposed as part of EPA's proposed action on the Nevada Regional Haze SIP. *See* 76 FR 36450 at 36466, June 22, 2011. In other words, we propose to find that Nevada's SIP-approved Regional Haze Plan contains adequate provisions to protect visibility in other states, and therefore meets the visibility requirement of CAA section 110(a)(2)(D)(II) for the 2006 $PM_{2.5}$ NAAQS.[31]

With respect to the requirements of CAA section 110(a)(2)(D)(ii), EPA proposes to approve Nevada's Infrastructure SIP Submittals with respect to the Clark County portion of the Nevada SIP, contingent on finalizing EPA's proposed approval of Clark County's SIP revisions for the review of new or modified stationary sources, and to disapprove the SIP with respect to the NDEP and Washoe County portions of the Nevada SIP, for the reasons discussed at the start of section III.B of this notice and in our Overarching TSD.

For Section 110(a)(2)(F), we propose to approve the Clark County portion of the SIP, contingent on finalizing EPA's proposed approval of Clark County's SIP revisions for the review of new or modified stationary sources, for subsections 110(a)(2)(F)(i) and 110(a)(2)(F)(ii). See our Overarching TSD. We propose to disapprove subsection 110(a)(2)(F)(iii) for the Clark County portion of the SIP because Clark County has repealed its regulation, Section 24, that formerly addressed the correlation requirement of this subsection, without submitting a SIP revision to replace it. For the NDEP and Washoe County portions of the SIP, we propose to approve Nevada's Infrastructure SIP Submittals for all three subsections. Note, however, that our proposed approval of subsections 110(a)(2)(F)(ii) and 110(a)(2)(F)(iii) for the Washoe County portion of the SIP is contingent on finalizing EPA's proposed approval of Washoe County Air Quality Regulations 030.218, 030.230, 030.235, and 030.970. See our Overarching TSD.

For Section 110(a)(2)(J) we propose to approve Nevada's Infrastructure SIP Submittals as meeting the consultation, public notification, and visibility requirements of this section. Our proposed approval with respect to the consultation requirements of this section are contingent on finalizing EPA's proposed approval of certain provisions of Nevada's 2012 Submittal, as described in section III.A of this notice. For the permitting-related requirements of section 110(a)(2)(J), we propose to approve the Clark County portion of the SIP, contingent on finalizing EPA's proposed approval of Clark County's SIP revisions for the review of new or modified stationary sources, and to disapprove the NDEP and Washoe County portions of the SIP, for the reasons discussed at the start of section III.B of this notice and in our Overarching TSD.

For Section 110(a)(2)(K), we propose to approve the Clark County portion of the SIP contingent on finalizing EPA's proposed approval of Clark County's SIP revisions for the review of new or modified stationary sources. See our Overarching TSD. We propose to disapprove the NDEP and Washoe County portions of the SIP with respect to the permit modeling requirements of section 110(a)(2)(K), for the reasons discussed at the start of section III.B of this notice and our Overarching TSD.

EPA takes very seriously a proposal to disapprove a state plan, as we believe that it is preferable, and preferred in the provisions of the Clean Air Act, that these requirements be implemented through state plans. A state plan need not contain exactly the same provisions that EPA might require, but EPA must be able to find that the state plan is consistent with the requirements of the Act. Further, EPA's oversight role requires that it assure consistent implementation of Clean Air Act requirements by states across the country, even while acknowledging that individual decisions from source to source or state to state may not have identical outcomes. EPA believes these proposed disapprovals are the only path that is consistent with the Act at this time.

III.C. Alternative Proposed Disapprovals (Parallel Processing)

Several of our proposed approvals rely on Nevada's 2012 Submittal, which was made under the parallel processing mechanism provided by 40 CFR part 51, appendix V, Section 2.3. If Nevada is not able to submit the fully adopted SIP revision anticipated by its 2012 Submittal by the end of August 2012, as stated in the letter transmitting the 2012 Submittal, EPA must still take final action by September 30, 2012,

[31] Section IV.G.7 of the June 22, 2011 Regional Haze SIP proposal (*See* 76 FR 36450 at 36466) stated the following: ''Section 110(a)(2)(D)(i)(II) of the Act requires SIP revisions to contain adequate provisions to prohibit any source or other types of emission activity within the state from emitting any air pollutant in amounts that will interfere with another state's plan to protect visibility. Nevada submitted its SIP for Interstate Transport to EPA on February 7, 2007, which EPA approved and promulgated in the **Federal Register** on July 31, 2007 (70 FR 41629). In our **Federal Register** Notice, we deferred action on whether Nevada interferes with other states' plans to address regional visibility impairment caused by regional haze until we received Nevada's Regional Haze SIP. As explained in Section IV.D.2. of this notice, NDEP relied on the [Western Regional Air Partnership's] source apportionment modeling to demonstrate that Nevada's emissions are projected to have a minimal contribution to sulfate and nitrate extinction in each of 24 Class I areas in five adjacent states. Moreover, none of the neighboring western states have requested emission reductions from Nevada in order to meet their [reasonable progress goals]. Therefore, in proposing to approve Nevada's [Regional Haze] SIP, we are proposing to find that this plan revision contains adequate provisions to protect visibility in other states.''

consistent with the terms of the consent decree entered October 20, 2011 in *WildEarth Guardians* v. *EPA,* Case No. 3:11–cv–00190 and the settlement agreement entered November 30, 2011 in *Sierra Club et al* v. *Lisa Jackson,* Case No. 3:10–cv–04060–CRB, as amended. Therefore, as a contingency for such a case, we propose, in the alternative, to disapprove Nevada's Infrastructure SIP Submittals with respect to the following infrastructure SIP requirements.

For Section 110(a)(2)(E), in the absence of the anticipated SIP revisions, Nevada's 2008 Ozone Submittal, 2008 $PM_{2.5}$ Submittal, 2009 $PM_{2.5}$ Submittal, and 2009 $PM_{2.5}$ Supplement have not provided necessary assurances of adequate personnel and funding for Clark County DAQ and Washoe County AQMD to carry out the SIP, as required by section 110(a)(2)(E)(i).[32] More broadly, the SIP still contains outdated information in Section 12 (''Resources''), as approved on May 31, 1972 (37 FR 10842). On this basis, we propose, in the alternative, to disapprove Nevada's 2008 and 2009 Infrastructure SIP Submittals for the subsection 110(a)(2)(E)(i). Nonetheless, Nevada has provided necessary assurances of adequate legal authority to carry out the SIP at both the state and county levels. In other words, our proposed approval regarding the Nevada's legal authority for subsections 110(a)(2)(E)(i) and 110(a)(2)(E)(iii) do not rely on Nevada's 2012 Submittal.

With respect to CAA section 110(a)(2)(E)(ii), pertaining to conflict of interest requirements, absent receipt of the SIP revisions embodied by Nevada's 2012 Submittal—especially the Nevada Ethics in Government statutory provisions included in that submittal—we propose, in the alternative, to disapprove Nevada's 2008 and 2009 Infrastructure SIP Submittals as they do not address the various conflict of interest requirements.

Our proposed approval of subsections 110(a)(2)(F)(ii) and 110(a)(2)(F)(iii) for the Washoe County portion of the SIP are contingent upon finalizing EPA's proposed approval of four Washoe County regulations. Thus, absent receipt of these SIP revisions as embodied by Nevada's 2012 Submittal, we propose, in the alternative, to disapprove these two subsections for the Washoe County portion of the SIP because the local regulations supportive of these requirements are currently not in the SIP.

Lastly, in the absence of the SIP revisions anticipated by Nevada's 2012 Submittal, Nevada's formal submittals (*i.e.,* the 2008 Ozone Submittal, 2008 $PM_{2.5}$ Submittal, 2009 $PM_{2.5}$ Submittal, and 2009 $PM_{2.5}$ Supplement) have not met the consultation requirements of sections 110(a)(2)(J) and 110(a)(2)(M).[33] These four submittals highlight provisions for notification and opportunity for comment in connection with rulemaking and issuing permits and make a commitment to maintain a process of consultation.

However, sections 110(a)(2)(J) and 110(a)(2)(M) address more than just rulemaking or permits, although such consultation may be relevant as part of the process for consultation required under CAA section 121. Moreover, a commitment to maintain an acceptable process of consultation is not a substitute for the identification of the process itself as part of the Nevada SIP. More broadly, the SIP still contains outdated information in Section 11 (''Intergovernmental Relations''), as approved on May 31, 1972 (37 FR 10842). While the Nevada SIP does have a number of statutes that authorize the state and counties to cooperate with local governments (*see, e.g.,* NRS 445B.210, 445B.220, 445B.235, and 445B.500), such cooperation is optional and similarly not a substitute for a process for consultation that exists as part of the SIP. On this basis, we propose, in the alternative, to disapprove Nevada's 2008 and 2009 Infrastructure SIP Submittals with respect to the consultation requirements of section 110(a)(2)(J) and section 110(a)(2)(M).

III.D. Alternative Proposed Disapprovals (Clark County NSR)

Several proposed approvals for the Clark County portion of the SIP rely on EPA finalizing its proposal of July 13, 2012 on Clark County's NSR program revisions. If EPA is unable to finalize the approvals embodied in that proposal, upon which our infrastructure SIP proposal relies (see our Overarching TSD for more details), EPA must still take final action by September 30, 2012, consistent with the terms of the consent decree entered October 20, 2011 in *WildEarth Guardians* v. *EPA,* Case No. 3:11–cv–00190 and the settlement agreement entered November 30, 2011 in *Sierra Club et al.* v. *Lisa Jackson,* Case No. 3:10–cv–04060–CRB, as amended. As a contingency for such a case, EPA proposes, in the alternative, to disapprove Nevada's Infrastructure SIP Submittals for the Clark County portion of the SIP with respect to the following infrastructure SIP requirements:

- Section 110(a)(2)(C), pertaining to the requirement for a program for the review of new or modified stationary sources, including the PSD requirements under CAA title 1, part C;
- Section 110(a)(2)(D)(i)(II), pertaining to interference with other states' required measures to prevent significant deterioration of air quality;
- Section 110(a)(2)(D)(ii), pertaining to notification of other states affected by new or modified stationary sources, as per section 126(a);
- Section 110(a)(2)(F)(i) and 110(a)(2)(F)(ii), pertaining to the installation, maintenance, and replacement of equipment to monitor emissions from stationary sources, and periodic reports on those emissions;
- Section 110(a)(2)(J), pertaining to CAA title 1, part C (relating to prevention of significant deterioration of air quality); and
- Section 110(a)(2)(K), pertaining to permit modeling.

III.E. Discussion of CAA SIP Revision Requirements

Section 110(l) of the Act prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the Act. All of the elements of Nevada's Infrastructure SIP Submittals that we are proposing to approve, as explained in our Overarching TSD and Section 128 TSD, would improve the SIP by replacing obsolete provisions and by providing new provisions addressing the resources, conflict of interest, stationary source monitoring, and consultation requirements of the CAA. We propose to determine that our approval of these elements of Nevada's Infrastructure SIP Submittals would comply with CAA section 110(l) because the proposed SIP revision would not interfere with the on-going process for ensuring that requirements for RFP and attainment of the NAAQS are met, and the submitted SIP revision

[32] In its 2008 and 2009 Infrastructure SIP Submittals, Nevada did not submit any information on personnel or funding for Clark County and did so for Washoe County only for the 2006 $PM_{2.5}$ NAAQS.

[33] In its 2008 and 2009 Infrastructure SIP Submittals, Nevada did not submit any information about consultation within Clark County. For Washoe County, the 2009 $PM_{2.5}$ Supplement included a copy of the ''Interlocal Agreement Concerning the Washoe County District Health Department'' as Attachment D. This agreement partially addresses the consultation requirements of CAA sections 110(a)(2)(J) and (M), since it defines membership and other aspects of the DBOH's operation such that Washoe County and the two incorporated cities (Reno and Sparks) each have two representatives on the seven-member DBOH. However, it is insufficient to address the consultation requirements of CAA section 121. For example, it does not identify a process to consult with Federal Land Managers having authority over Federal land affected by the County's air plans.

clarifies and updates the SIP. Our Overarching TSD and Section 128 TSD contain a more detailed discussion of our evaluation.

III.F. Consequences of Proposed Disapprovals

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of part D, title I of the CAA (CAA sections 171–193) or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP Call) starts a sanctions clock. Nevada's Infrastructure SIP Submittals were not submitted to meet either of these requirements. Therefore, any action we take to finalize the described partial disapprovals will not trigger mandatory sanctions under CAA section 179.

In addition, CAA section 110(c)(1) provides that EPA must promulgate a Federal Implementation Plan (FIP) within two years after finding that a State has failed to make a required submission or disapproving a State implementation plan submission in whole or in part, unless EPA approves a SIP revision correcting the deficiencies within that two-year period. With respect to our proposed partial approval and partial disapproval of Nevada's submissions related to interstate transport under CAA section 110(a)(2)(D)(i)(I), however, we propose to conclude that any FIP obligation resulting from finalization of the partial disapproval would be satisfied by our determination that there is no deficiency in the SIP to correct. Finalization of this proposed disapproval also would not require any further action on Nevada's part given EPA's conclusion that the SIP is adequate to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS.

IV. Statutory and Executive Order Reviews

IV.A. Executive Order 12866, Regulatory Planning and 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 the EO.

IV.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,* because this proposed partial approval and partial disapproval of SIP revisions under CAA section 110 will not in-and-of itself create any new information collection burdens but simply proposes to approve certain State requirements, and to disapprove certain other State requirements, for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

IV.C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this proposed action will not have a significant impact on a substantial number of small entities. This proposed rule does not impose any requirements or create impacts on small entities. This proposed partial SIP approval and partial SIP disapproval under CAA section 110 will not in-and-of itself create any new requirements but simply proposes to approve certain State requirements, and to disapprove certain other State requirements, for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

IV.D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. EPA has determined that the proposed partial approval and partial disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to approve certain pre-existing requirements, and to disapprove certain other pre-existing requirements, under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this proposed action.

IV.E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to approve certain State requirements, and to disapprove certain other State requirements, for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

IV.F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP on which EPA is proposing action would not 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. Thus, Executive Order 13175 does not apply to this proposed action.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This proposed action is not subject to EO 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed partial approval and partial disapproval under CAA section 110 will not in-and-of itself create any new regulations but simply proposes to approve certain State requirements, and to disapprove certain other State requirements, for inclusion into the SIP.

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

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

IV.I. National Technology Transfer and Advancement Act

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

The EPA believes that this proposed action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

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

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

EPA lacks the discretionary authority to address environmental justice in this proposed rulemaking.

List of Subjects in 40 CFR Part 52

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

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

Dated: July 20, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012–19015 Filed 8–2–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2011–0817; FRL–9712–5]

RIN 2060–AQ93

National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Notice of public hearing.

SUMMARY: The EPA has been requested to hold a public hearing on its proposed rule, ''National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants,'' which was published in the **Federal Register** on July 18, 2012. The EPA will hold the hearing on August 16, 2012, in Arlington, Texas.

DATES: The public hearing will be held on August 16, 2012. The Administrator will keep the record of the public hearing open for 30 days after completion of the hearing to provide an opportunity for submission or rebuttal and supplementary information. The date for submitting comments on the proposed rule is unchanged from August 17, 2012.

ADDRESSES: The hearing will be held at the Arlington Municipal Building in the City Council Chambers located at 101 W. Abram Street, Arlington, Texas 76010; Telephone: (817) 459–6122.

The public hearing will convene at 9:00 a.m. and will continue until 7:00 p.m. A lunch break is scheduled from 12:00 p.m. until 1:00 p.m. The EPA's Web site for the rulemaking, which includes the proposal and information about the hearing, can be found at: *http://www.epa.gov/ttn/atw/pcem/pcempg.html.*

FOR FURTHER INFORMATION CONTACT: If you would like to present oral testimony at the public hearing, please contact Ms. Pamela Garrett, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–01), Research Triangle Park, North Carolina 27711; telephone: (919) 541–7966; fax number: (919) 541–5450; email address: *garrett.pamela@epa.gov* (preferred method for registering). The last day to register to present oral testimony in advance will be Tuesday, August 14, 2012. If using email, please provide the following information: The time you wish to speak (morning or afternoon), name, affiliation, address, email address and telephone and fax numbers. Time slot preferences will be given in the order requests are received. Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk, although preferences on speaking times may not be able to be fulfilled. If you require the service of a translator or special accommodations such as audio description, please let us know at the time of registration.

Questions concerning the proposed rule (77 FR 42368, July 18, 2012) should be addressed to Ms. Sharon Nizich, Office of Air Quality Planning and Standards; Sector Policies and Programs Division, Minerals and Manufacturing Group (D243–04); Environmental Protection Agency; Research Triangle Park, North Carolina 27111; telephone number: (919) 541–2825; fax number: (919) 541–5450; email address: *nizich.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION:

Public hearing: The proposal for which the EPA is holding the public hearing was published in the **Federal Register** on July 18, 2012, and is available at: *http://www.gpo.gov/fdsys/pkg/FR-2012-07-18/pdf/2012-16166.pdf* and also in the docket identified below. The public hearing will provide interested parties the opportunity to present oral comments regarding the EPA's proposed standards, including

data, views or arguments concerning the proposal. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing.

Commenters should notify Ms. Garrett if they will need specific equipment or if there are other special needs related to providing comments at the public hearing. The EPA will provide equipment for commenters to make computerized slide presentations if we receive special requests in advance. Oral testimony will be limited to 5 minutes for each commenter. The EPA encourages commenters to submit to the docket a copy of their oral testimony electronically (via email or CD) or in hard copy form.

The public hearing schedule, including a list of speakers, will be posted on the EPA's Web site at: *http://www.epa.gov/ttn/atw/pcem/pcempg.html.* A verbatim transcript of the hearing and written statements will be included in the docket for the rulemaking. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule.

How can I get copies of this document and other related information?

The EPA has established a docket for the proposed rule, ''National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants'' under Docket ID No. EPA–HQ–OAR–2011–0817, available at *www.regulations.gov.*

List of Subjects in 40 CFR Parts 60 and 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 1, 2012.

Mary Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2012–19126 Filed 8–2–12; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 77, No. 150

Friday, August 3, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No APHIS–2012–0061]

Field Release of Aphelinus glycinis for the Biological Control of the Soybean Aphid in the Continental United States; Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that a draft environmental assessment has been prepared by the Animal and Plant Health Inspection Service relative to the proposed release of *Aphelinus glycinis* for the biological control of the soybean aphid, *Aphis glycines,* in the continental United States. We are making this environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before September 4, 2012.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS–2012–0061.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0061, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

The environmental assessment and any comments we receive may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS–2012–0061* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Shirley A. Wager-Page, Chief, Pest Permitting Branch, Registration, Identification, Permitting, and Plant Safeguarding, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 851–2323.

SUPPLEMENTARY INFORMATION:

Background

The soybean aphid, *Aphis glycinis,* which is native to Asia, was found in North America in 2000 and has since become a major pest in America. It infested 42 million acres alone in 2003, resulting in decreased soybean yields and greatly increased control costs. The soybean aphid has invaded most soybean production regions in North America, including numerous U.S. States and three Canadian Provinces.

The Animal and Plant Health Inspection Service (APHIS) is proposing to issue permits for the field release of the insect *Aphelinus glycinis* to reduce the severity of soybean damage from infestations of soybean aphid in the United States. Permitting the release of this parasite species is necessary to determine its impact on soybean aphid populations and its ability to survive in the target area.

APHIS' review and analysis of the potential environmental impacts associated with these proposed field tests are documented in detail in an environmental assessment entitled ''Field Release of *Aphelinus glycinis* for the Biological Control of the Soybean Aphid in the Continental United States'' (March 2012). We are making this environmental assessment available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the environmental assessment by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the environmental assessment when requesting copies.

The environmental assessment has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR part 1); and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 30th day of July 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–19026 Filed 8–2–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0060]

Availability of an Environmental Assessment for a Biological Control Agent for Hemlock Woolly Adelgid

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment relative to the release of *Symnus coniferarum* to control hemlock woolly adelgid. The environmental assessment considers the effects of, and alternatives to, the release of *Symnus coniferarum* into the eastern United States for use as a biological control agent to reduce the severity of hemlock woolly adelgid infestations. We are making the environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before September 4, 2012.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal: Go to http://www.regulations.gov/#!documentDetail;D=APHIS–2012–0060–0001.*

• Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2012–0060, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS–2012–0060* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Shirley A. Wager-Page, Chief, Pest Permitting Branch, Registration, Identification, Permitting, and Plant Safeguarding, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 851–2323.

SUPPLEMENTARY INFORMATION:

The Animal and Plant Health Inspection Service (APHIS) is proposing to issue permits for the release of *Scymnus coniferarum,* a native predaceous beetle from the western United States, into the eastern United States for use as a biological control agent to reduce the severity of hemlock woolly adelgid (*Adelges tsugae*) infestations on hemlock.

Hemlock woolly adelgid was accidentally introduced to the eastern United States from Asia. Although native to the western United States, in the eastern United States, hemlock woolly adelgid is a destructive pest of the eastern hemlock (*Tsuga canadensis*), where it causes needle loss, abortion of buds, and the eventual death of infested trees.

Four predatory beetles have been introduced to the eastern United States as biological controls of hemlock woolly adelgid with two of these considered established in the eastern United States. However, because hemlock woolly adelgid has a multigenerational lifestyle with multiple forms appearing at different times during the year, a group of natural predators similar to that found in areas in which it is native is needed in order to provide more efficient control. Therefore, APHIS is proposing to issue permits for the release of *S. coniferarum* into the eastern United States in order to reduce the severity and extent of hemlock woolly adelgid infestations.

The proposed biological control agent, *S. coniferarum,* is a small lady beetle about 2 millimeters long and covered in fine, short hairs. In the wild it feeds on all hemlock woolly adelgid stages except nymphs that are in diapause during the summer. Because the larvae of *S. coniferarum* primarily target the egg stage of the hemlock woolly adelgid in late spring to early summer, the release of *S. coniferarum* will provide a predator that the spring generation of hemlock woolly adelgid currently lacks in the eastern United States.

APHIS' review and analysis of the potential environmental effects associated with the proposed action are documented in detail in an environmental assessment (EA) entitled ''Release of the Predatory Beetle *Scymnus coniferarum* (Coleoptera: Coccinellidae), for Biological Control of the Hemlock Woolly Adelgid (*Adelges tsugae*) in the Eastern United States'' (February 2012). We are making the EA available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The EA may be viewed on the Regulations.gov Web site or in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this notice.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) APHIS= NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 30th day of July 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–19029 Filed 8–2–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0044]

National Poultry Improvement Plan; General Conference Committee Meeting and 41st Biennial Conference

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan (NPIP) and the NPIP's 41st Biennial Conference.

DATES: The General Conference Committee meeting will be held on September 25, 2012, from 12 p.m. to 4 p.m. The Biennial Conference will meet on September 26, 2012, from 8 a.m. to 5 p.m., and on September 27, 2012, from 8 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the Loews New Orleans Hotel, 300 Poydras Street, New Orleans, LA.

FOR FURTHER INFORMATION CONTACT: Dr. C. Stephen Roney, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, 1506 Klondike Road, Suite 300, Conyers, GA 30094–5173, (770) 922–3496.

SUPPLEMENTARY INFORMATION: The General Conference Committee (the Committee) of the National Poultry Improvement Plan (NPIP), representing cooperating State agencies and poultry industry members, serves an essential function by acting as a liaison between the poultry

industry and the Department in matters pertaining to poultry health. The Committee meets to discuss significant poultry health issues and makes recommendations to improve the NPIP program.

Topics for discussion at the upcoming meetings include:

1. Salmonella testing.
2. Technical Committee report.
3. Avian influenza.
4. USDA regulatory review.

The meetings will be open to the public. However, due to time constraints, the public will not be allowed to provide oral comments pertaining to the discussions during either of the meetings. Written statements on meeting topics may be filed with the Committee before or after the meeting by sending them to the person listed under **FOR FURTHER INFORMATION CONTACT**. Written statements may also be filed at the meeting. Please refer to Docket No.

APHIS–2012–0044 when submitting your statements.

If you require special accommodations, such as a sign language interpreter, please call or write the individual listed under **FOR FURTHER INFORMATION CONTACT**.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act (5 U.S.C. App. 2).

Done in Washington, DC, this 30th day of July 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–19025 Filed 8–2–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Chippewa National Forest Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Chippewa National Forest Resource Advisory Committee will meet in Walker, Minnesota. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review with the Chippewa National Forest Resource Advisory Committee members their roles and responsiblities, review project proposals and develop project priorities.

DATES: The meeting will be held Wednesday, August 29, 2012, 9:00 a.m.

ADDRESSES: The meeting will be held at Chase on the Lake, Meeting Room, 502 Cleveland Blvd. West, Walker, Minnesota 56484. Written comments should be sent to Chippewa National Forest RAC, 200 Ash Avenue NW., Cass Lake, MN 56633. Comments may also be sent via email to *ttisler@fs.fed.us*, or via facsimile to 218–335–8637.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Chippewa National Forest Supervisors Office. Please call ahead to 218–335–8600 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Todd Tisler, Forest Ecologist, Chippewa National Forest Forest Supervisor's Office, 218–335–8600.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accomodation for access to the facility or procedings may be made by contacting the person listed **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: review project proposals and develop project priorities. The agenda and any applicable documents may be previewed at *http://www.fs.usda.gov/chippewa*. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting.

Dated: July 27, 2012.

Darla Lenz,

Chippewa National Forest Supervisor.

[FR Doc. 2012–19010 Filed 8–2–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent to Seek Approval To Conduct an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek approval to conduct a new information collection, the 2013 Residue and Biomass Field Survey.

DATES: Comments on this notice must be received by October 2, 2012 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–NEW, 2013 Residue and Biomass Field Survey by any of the following methods:

- *Email: ombofficer@nass.usda.gov*. Include docket number and title above in the subject line of the message.
- *Fax:* (202) 720–6396
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336A, Mail Stop 2024, South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier: Hand deliver to:* David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336, South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Residue and Biomass Field Survey.

OMB Control Number: 0535—NEW.

Type of Request: Intent to Seek Approval to Conduct a new Information Collection: The National Agricultural Statistics Service (NASS) of the United States Department of Agriculture (USDA) will request approval from the Office of Management and Budget (OMB) for the Residue and Biomass Field Survey.

The Residue and Biomass Field Survey will use as a sampling universe fields in the South Fork watershed in central Iowa (Buckeye, IA). This study will investigate the effect crop residue removal has on soil and water quality. With the respondent's permission, measurements of crop residues will be compared with remote sensed data to measure crop residue cover and soil tillage intensity for the entire watershed. The survey will be conducted in several phases. The farm operator will only be involved in part of the survey. With the farmers permission the field enumerators will return several times during the growing season to measure and collect samples from the target areas.

The primary objectives of the National Agricultural Statistics Service are to prepare and issue State and national estimates of crop production, livestock production, economic statistics, and environmental statistics related to agriculture and to conduct the Census of Agriculture and it's follow-on surveys. This project is conducted as a cooperative effort with USDA's Agricultural Research Service (ARS).

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and

Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995).

NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E–Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33376.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average a total of 70 minutes per respondent for the complete survey cycle.

Annual Estimated Sample Size and Respondent Burden for 2013 - 2015

Survey	Sample Size	Freq	Responses				Non-response				Total Burden Hours
			Resp. Count	Freq x Count	Min./ Resp.	Burden Hours	Nonresp Count	Freq. x Count	Min./ Nonr.	Burden Hours	
Screening Phase in May	100	1	80	80	20	27	20	20	2	1	27
Field Measuremtnes in May/June 1/	80	1	25	25	0	0	55	55	0	0	0
Screening Phase in September	80	1	42	42	20	14	38	38	2	1	15
Harvest Sample crops 1/	80	1	42	42	0	0	38	38	0	0	0
Cropping Practices survey	80	1	42	42	30	21	38	38	2	1	22
Total	100		146	230		62				3	65

1/ The operator does not need to be present for the field visits (measurement and harvesting), so no respondent burden is associated with these phases of the survey.

Respondents: Farmers, ranchers, and farm managers in the South Fork Watershed in Central Iowa.

Estimated Number of Respondents: 100.

Estimated Total Annual Burden on Respondents: 65 hours.

Copies of this information collection and related instructions can be obtained without charge from the NASS OMB Clearance Officer, at (202) 720–2248.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, July 25, 2012.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2012–18952 Filed 8–2–12; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–57–2012]

Foreign-Trade Zone 43—Battle Creek, MI; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the City of Battle Creek, Michigan, grantee of FTZ 43, 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 general-purpose zone project. 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 filed on July 30, 2012.

FTZ 43 was approved by the Board on October 19, 1978 (Board Order 138, 43 FR 50233, 10–27–1978) and expanded on December 27, 1990 (Board Order 496, 56 FR 675, 1–8–1991); January 3, 1992 (Board Orders 554 and 555, 57 FR 1143, 1–10–1992); and, June 20, 1997 (Board Orders 897 and 898, 62 FR 36043–36044, 7–3–1997).

The current zone project includes the following sites: *Site 1* (1,710 acres)—Fort Custer Industrial Park, adjacent to W.K. Kellogg Airport, Battle Creek, Calhoun County; and, *Site 8* (.87 acres)—Silver Foam Distributing Company, 1609 Parnall Road, Jackson, Jackson County.

The grantee's proposed service area under the ASF would be Allegan, Barry, Berrien, Branch, Calhoun, Cass, Clinton, Eaton, Ingham, Ionia, Jackson, Kalamazoo, St. Joseph and Van Buren Counties, Michigan, 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 Battle Creek 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'' sites and existing Site 8 as a ''usage-driven'' site. The application would have no impact on FTZ 43's previously authorized subzones.

In accordance with the Board's regulations, Elizabeth Whiteman 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 October 2, 2012. Rebuttal comments in

response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 17, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: July 30, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–19061 Filed 8–2–12; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–58–2012]

Foreign-Trade Zone 37—Orange County, NY, Notification of Proposed Production Activity, Takasago International Corporation (Fragrances), Harriman, NY

Takasago International Corporation (Takasago) submitted a notification of proposed production activity for their facility located in Harriman, New York. The notification conforming to the requirements of the regulations of the Board (15 CFR 400.22) was received on July 26, 2012

The Takasago facility is located within Site 10 of FTZ 37. The facility is used for the manufacturing of fragrance compounds. Production under FTZ procedures could exempt Takasago from customs duty payments on the foreign status components used in export production. On its domestic sales, Takasago would be able to choose the duty rates during customs entry procedures that apply to fragrances (duty-free) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

Components and materials sourced from abroad include: Caryophyllene acetate; cooling agents; coolact; DH citronellol; DH citronellal; florasantol; hydroxycitronellal DMA; hedirosa; kovanol; 1aurinal; lemon oil; longozal; L-citrol; mercaptomenthone; meth-4-propyl-1, 3-oxathia; muscone; meth fenchol; thiogeraniol; verdone; furfural; heliotropine; meth caproate; terpene T ''SP''; thesaron; cis-jasmone; citronellol-L; trepanol; menthol; musk; oxalide; perilla oil; cyclohexyl lactone; hotact VBE; santalex T; heliotropyl acetate; ambretone; menthol-L synthetic flakes; citral natural; citronellyl formate; citronellyl tiglate; coniferan; fenchyl ALC; hindinol; isoproppoxy ether; isobornyl methyl ether; menthone; ionones and methylionones; orbitone; pinene; TH geranyl acetate; bornyl acetate; citronellal extra; dihydromyrcenol; fenchyl acetate; fenchyl alcohol; dimethyl dioxolan; isopropoxyethyl; lavender oil; limonene-L; levosandol; myrcene; methyl ionone gamma; nerol; nopyl acetate; phellandrene; terpinen-4-ol; tetrahydro myrcenol; terpinene; estragole; neryl acetate; suzaral; citronellyl nitrile; camphene; citronellal natural; geraniol; methyl dioxolan; citral; violet; isobornyl methyl ether; cypressan; terpinene gamma; cedanol; ambrinol; methyl ionone; and other aroma chemicals, mixtures of odiferous substances and essential oils (duty rate ranges from duty free to 7%).

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 September 12, 2012.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: July 30, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–19063 Filed 8–2–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Notice of Preliminary Results of Antidumping Duty Administrative Review, Preliminary No Shipment Determination and Preliminary Intent To Revoke Order, in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests by interested parties, the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on certain pasta (''pasta'') from Italy for the period of review (''POR'') July 1, 2010, through June 30, 2011. This review covers the following seven companies: Botticelli Mediterraneo S.a.r.l. (''Botticelli''), Fiamma Vesuviana S.r.L. (''Fiamma''), Industria Alimentare Filiberto Bianconi 1947 S.p.A. (''Filiberto''), Pastificio Fratelli Cellino, S.r.l. (''Fratelli''), Pastificio Attilio Mastromauro Granoro S.r.L. (''Granoro''), Rummo S.p.A. Molino e Pastificio and its affiliates (''Rummo''), and Pastificio Zaffiri (''Zaffiri''). We preliminarily find that Rummo, Filiberto, Fratelli, and Zaffiri sold subject merchandise at less than normal value (NV) (dumping). We further find that there were no exports of subject merchandise to the United States during the POR by Fiamma and Botticelli. Finally, in response to its request for revocation and because this would be the third year of no dumping by Granoro, we preliminarily intend to revoke the antidumping duty order with regard to Granoro. If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results.

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

FOR FURTHER INFORMATION CONTACT: Dennis McClure or George McMahon AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5973 or (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION

Background

On July 24, 1996, the Department published in the **Federal Register** the antidumping duty order on pasta from Italy.[1] On July 1, 2011, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain pasta from Italy.[2] Pursuant to requests from interested parties,[3] the Department published in the **Federal Register** the notice of initiation of this antidumping duty administrative review with respect to the following companies for the period July 1, 2010, through June 30, 2011: Botticelli, Fiamma, Filiberto, Labor S.r.L. (''Labor''), PAM. S.p.A. and its affiliate, Liguori Pastificio dal 1820 SpA (''PAM''), P.A.P. SNC Di Pazienza G.B. & C. (''P.A.P.''), Premiato Pastificio Afeltra S.r.L. (''Afeltra''), Pasta Lensi S.r.l. (''Lensi''), Zaffiri, Granoro,[4] Pastificio Di Martino Gaetano & F.lli SpA (''Di Martino''), Fratelli, Pastificio Lucio Garofalo S.p.A. (''Garofalo''), Pastificio Riscossa F.lli Mastromauro S.p.A. (''Riscossa''), Rummo, Rustichella d'Abruzzo S.p.A. (''Rustichella'') and Industria Alimentare Colavita, S.p.A. (''Indalco'').

On September 13, 2011, the Department announced its intention to select mandatory respondents based on U.S. Customs and Border Protection (''CBP'') data.[5] On October 3, 2011, the Department selected Garofalo and Rummo as mandatory respondents.[6] On October 5, 2011, Granoro requested that it be granted voluntary respondent treatment. On October 11, 2011, Garofalo withdrew its request for a review. On November 7, 2011, Granoro withdrew its request for a deferred review of certain pasta from Italy for the POR of June 1, 2009 to June 30, 2010. On October 19, 2011, and November 17, 2011, respectively, the Department published in the **Federal Register** notices of partial rescission of the administrative reviews with respect to Garofalo and with respect to the deferred review of Granoro.[7] On November 18, 2011, Lensi withdrew its request for a review. On November 21, 2011, Indalco and Labor withdrew their requests for a review. On November 22, 2011, Granoro timely submitted its Sections A–D Voluntary Questionnaire Response for the 2010–2011 review that remains active within the case deadlines established for the mandatory respondent, Rummo. On November 22, 2011, PAM, P.A.P., Riscossa, and Rustichella withdrew their requests for a review. On November 23, 2011, Afeltra and Di Martino withdrew their requests for a review. On December 12, 2011, the Department published in the **Federal Register** a notice of partial rescission of the administrative reviews with respect to Afeltra, Di Martino, Indalco, Labor, Lensi, PAM, P.A.P., Riscossa, and Rustichella.[8] The instant review continues with respect to Botticelli, Fiamma, Filiberto, Fratelli, Granoro, Rummo, and Zaffiri. As noted above, Rummo was selected as and remains a mandatory respondent. Pursuant to Granoro's November 22, 2011 request, the Department accepted Granoro as a voluntary respondent on December 12, 2011.[9]

Between October 2011 and June 2012, the Department issued its initial questionnaire[10] and supplemental questionnaires to each respondent, as applicable. The Department issued the section D questionnaire to Granoro and Rummo because we disregarded sales by these companies that were below the COP in the most recently completed administrative review of each respective company. We received responses to the Department's initial questionnaire on November 22, 2011 from Granoro. We received responses to the Department's initial questionnaire from Rummo on December 6, 2011 (Section A), and December 12, 2011 (Sections B–D). We issued section A, B, C, and D supplemental questionnaires to both Granoro and Rummo. We received Granoro's supplemental questionnaire responses in February and March 2012. We received Rummo's supplemental questionnaire responses in March, April, May, and June 2012.

On February 28, 2012, the Department fully extended the due date for the preliminary results of review from April 2, 2012, to July 30, 2012.[11]

The Department conducted the sales verification of Granoro from May 28, 2012, through June 1, 2012, in Bari, Italy. The Department conducted the cost verification of Granoro from May 21, 2012, through May 25, 2012, in Bari, Italy.

Verification

As provided in section 782(i) of the Act, we have verified information provided by Granoro. We conducted this verification using standard verification procedures including the examination of relevant sales and financial records and the selection and review of original documentation containing relevant information. Our verification results are outlined in the public version of our verification reports, which are on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available in the Central Records Unit, room 7046 of the main Department of Commerce building.

[1] *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy,* 61 FR 38547 (July 24, 1996).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 38609 (July 1, 2011).

[3] The petitioners include New World Pasta Company, Dakota Growers Pasta Company and American Italian Pasta Company (collectively, ''petitioners'').

[4] The Department notes that, on August 31, 2010, the Department deferred the 7/1/2009—6/30/2010 administrative review for Pastificio Attilio Mastromauro-Pasta Granoro S.R.L. for one year. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Initiation of Administrative Review,* 75 FR 53274 (August 31, 2010). We initiated this review one year later along with the 7/1/2010—6/30/2011 administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 53404, 53408 (August 26, 2011) (''*First Initiation Notice*''). The Department amended the Initiation of the instant review to include Industria Alimentare Colavita, S.p.A., because this company was inadvertently omitted from *First Initiation Notice. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part,* 76 FR 61076 (October 3, 2011).

[5] *See* Memorandum from Christopher Hargett to Melissa Skinner titled ''Customs and Border Protection Data for Selection of Respondents for Individual Review,'' dated September 13, 2011 (CBP Data Memo).

[6] *See* Memorandum from Christopher Hargett to Melissa Skinner titled ''Selection of Respondents for Individual Review,'' dated October 3, 2011.

[7] *See Certain Pasta from Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 64897 (October 19, 2011); *see* also *Certain Pasta from Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 71311 (November 17, 2011) (''*Granoro: Partial Rescission of Deferred Review*'').

[8] *See Certain Pasta from Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 77204 (December 12, 2011).

[9] *See* Memorandum from Dennis McClure to Melissa Skinner through James Terpstra, dated December 12, 2011, titled ''Treatment of Pastificio Attilio Mastromauro-Pasta Granoro S.r.L. as a Voluntary Respondent.''

[10] The antidumping duty questionnaire issued to respondents includes section A (*i.e.,* the section covering general information about the company) of the antidumping duty questionnaire, section B (*i.e.,* the section covering comparison market sales), section C (*i.e.,* the section covering U.S. sales), and section D (*i.e.,* the section covering the cost of production (''COP'') and constructed value (''CV'')).

[11] *See Certain Pasta From Italy: Extension of Time Limits for the Preliminary Results of Fifteenth Antidumping Duty Administrative Review,* 77 FR 12008 (February 28, 2012).

Preliminary Determination of No Reviewable Entries

On August 30, 2011, and September 6, 2011, Fiamma [12] and Botticelli,[13] respectively, reported to the Department that neither company had any exports, sales or entries of pasta subject to the antidumping order on pasta from Italy to the United States during the POR. The Department transmitted a ''No-Shipment Inquiry'' to CBP regarding Botticelli and Fiamma.[14] Pursuant to this inquiry, the Department received no notifications from CBP of any entries of subject merchandise from either company within the 10-day deadline. Accordingly, based on record evidence, we preliminarily determine that Botticelli and Fiamma had no reviewable entries during the POR.

Our past practice concerning no-shipment respondents was to rescind the administrative review if the respondent certified that it had no shipments and we confirmed the certified statement through an examination of CBP data.[15] We would then instruct CBP to liquidate any entries of merchandise produced by the respondent at the deposit rate in effect on the date of entry. However, in our May 6, 2003, ''automatic assessment'' clarification, we explained that, where respondents in an administrative review demonstrated that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (''*Assessment Policy Notice''*). Because ''as entered'' liquidation instructions do not alleviate the concerns which the *Assessment Policy Notice* was intended to address, instead of rescinding the review with respect to Botticelli and Fiamma, we find it appropriate to complete the review and issue liquidation instructions to CBP concerning entries for these companies following the final results of the review. If we continue to find that Botticelli and Fiamma had no reviewable transactions of subject merchandise in the final results, we will instruct CBP to liquidate any existing entries of merchandise produced by Botticelli and Fiamma but exported by other parties at the all-others rate.[16]

Targeted Dumping Allegations

The petitioners note that they conducted their own targeted dumping analysis of Granoro's and Rummo's U.S. sales using the Department's targeted dumping methodology as applied in *Steel Nails* and modified in *Wood Flooring.*[17] Based on their own analysis, the petitioners argue the Department should conduct a targeted dumping analysis and employ average-to-transaction comparisons without offsets should the Department find that the record supports its allegation of targeted dumping.[18] Granoro and Rummo did not comment on the targeted dumping allegations submitted by the petitioners.

For purposes of these preliminary results, the Department did not conduct a targeted dumping analysis. In calculating the preliminary weighted-average dumping margin, the Department applied the calculation methodology adopted in the *Final Modification for Reviews.*[19] In particular, the Department compared monthly, weighted-average export prices with monthly, weighted-average normal values, and granted offsets for negative comparison results in the calculation of the weighted-average dumping margins.[20] Application of this methodology in these preliminary results affords parties an opportunity to meaningfully comment on the Department's implementation of this recently adopted methodology in the context of this administrative review.

Scope of the Order

Imports covered by this order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, by Associazione Italiana per l'Agricoltura Biologica, by Codex S.r.L., by Bioagricert S.r.L., or by Instituto per la Certificazione Etica e Ambientale. Effective July 1, 2008, gluten free pasta is also excluded from this order. *See Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation, in Part,* 74 FR 41120 (August 14, 2009).

The merchandise subject to this order is currently classifiable under items 1902.19.20 and 1901.90.9095 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the *HTSUS* subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Notice of Intent To Revoke Order, in Part

On July 29, 2011, Granoro requested revocation of the order on pasta from Italy as it pertains to its sales. Pursuant to section 751(d)(1) of the Act, the Department ''may revoke, in whole or in part'' an antidumping duty order upon completion of a review. Although

[12] In its letter of August 30, 2011, Fiamma stated that ''Fiamma Vesuviana hereby informs the Department of Commerce that it had no exports, sales or entries of pasta subject to the antidumping order on pasta from Italy to the United States during the period of review, July 1, 2010 through June 30, 2011.''

[13] In its letter of September 6, 2011, Botticelli stated, ''Botticelli Mediterraneo further informs the Department of Commerce that it is located in Tunisia; that it produces and exports olive oil and is not involved in the production, distribution or sale of pasta in any way; and that it does not have any operations of any type in Italy.''

[14] No entries were reported in the data which the Department relied on for its selection of respondents. *See* CBP Memo (BPI document) and CBP Message numbers: 2165302 and 2165303, dated June 13, 2012.

[15] *See* 19 CFR 351.213(d)(3); *see also Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 41/2 Inches) From Japan: Final Results of Antidumping Duty Administrative Review,* 77 FR 27428, 27430 (May 10, 2012).

[16] *See, e.g., Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

[17] *See* The petitioners' Allegation of Targeted Dumping with respect to Granoro, dated April 20, 2012, at 1–8, and the petitioners' Allegation of Targeted Dumping with respect to Rummo, dated April 20, 2012, at 1–8, both (citing *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 33,977 (June 16, 2008) (''*Steel Nails''*), and accompany Issues and Decision Memorandum at Comment 8; *Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 76 FR 64318 (Oct. 18, 2011) (''*Wood Flooring''*), and accompanying Issues and Decision Memorandum at Comment 4).

[18] *See id.* at 5–9 and 6–9, respectively.

[19] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012) (''*Final Modification for Reviews''*).

[20] *See id.* at 8102.

Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is set forth at 19 CFR 351.222. Pursuant to 19 CFR 351.222(b)(2), the Department may revoke an antidumping duty order in part if it concludes that (A) an exporter or producer has sold the merchandise at not less than normal value for a period of at least three consecutive years, (B) the exporter or producer has agreed in writing to its immediate reinstatement in the order if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than normal value, and (C) the continued application of the antidumping duty order is no longer necessary to offset dumping. Section 351.222(b)(3) of the Department's regulations states that, in the case of an exporter that is not the producer of subject merchandise, the Department normally will revoke an order in part under 19 CFR 351.222(b)(2) only with respect to subject merchandise produced or supplied by those companies that supplied the exporter during the time period that formed the basis for revocation.

A request for revocation of an order in part for a company previously found dumping must address three elements. The company requesting the revocation must do so in writing and submit the following statements with the request: (1) The company's certification that it sold the subject merchandise at not less than normal value during the current review period and that, in the future, it will not sell at less than normal value; (2) the company's certification that, during each of the consecutive years forming the basis of the request, it sold the subject merchandise to the United States in commercial quantities; (3) the agreement to reinstatement in the order if the Department concludes that, subsequent to revocation, the company has sold the subject merchandise at less than normal value. *See* 19 CFR 351.222(e)(1). We preliminarily determine that the request dated July 29, 2011, from Granoro meets all of the criteria under 19 CFR 351.222(e)(1).

With regard to the criteria of 19 CFR 351.222(b)(2), our preliminary margin calculations show that Granoro sold pasta at not less than normal value during the current review period. *See* ''Preliminary Results of Reviews'' section below. In addition, it sold pasta at not less than normal value in the previous administrative review in which it was reviewed, including the intermediary period between the previous administrative review and this ongoing review. *See Certain Pasta from Italy: Notice of Final Results of the Thirteenth Antidumping Duty Administrative Review,* 75 FR 81212 (December 27, 2010). Based on our examination of the sales data submitted by Granoro, we preliminarily determine that Granoro sold the subject merchandise in the United States in commercial quantities in each of the consecutive years cited by Granoro to support its request for revocation. *See* Granoro's Sales Verification Report, dated July 9, 2012, at Exhibit SVE–10. Thus, we preliminarily find that the Granoro sold pasta at not less than normal value for the last three consecutive years and sold in commercial quantities all three years. Also, we preliminarily determine that application of the antidumping duty order to Granoro is no longer warranted for the following reasons: (1) The company sold pasta at not less than normal value for a period of at least three consecutive years; (2) the company has agreed to immediate reinstatement of the order if we find that it has resumed making sales at less than fair value; (3) the continued application of the order is not otherwise necessary to offset dumping.

Therefore, we preliminarily determine that Granoro qualifies for revocation from the order on pasta from Italy pursuant to 19 CFR 351.222(b)(2) and, thus, we preliminarily determine to revoke the order with respect to pasta from Italy exported and/or sold to the United States by Granoro. If our intent to revoke results in revocation of the order in part with respect to merchandise exported and/or sold by Granoro, the proposed effective date of the revocation is July 1, 2011.[21]

Product Comparisons

In accordance with section 771(16) of the Tariff Act of 1930, as amended (the Act), we first attempted to match contemporaneous sales of products sold by Granoro and Rummo in the United States and comparison markets that were identical with respect to the following characteristics: (1) Pasta shape; (2) wheat species; (3) milling form; (4) protein content; (5) additives; and (6) enrichment. In this review, the respondents did not report the protein content as indicated on the packaging of the finished pasta, but instead reported based on their internal production records. Therefore, we clarified in a supplemental questionnaire to the respondents that they were expected to report the protein content based on the protein content indicated on the packaging of the finished product. In our calculations we used the protein content indicated on the packaging of the finished product, as reported by the respondents in their supplemental questionnaire responses. When there were no sales of identical merchandise in the comparison market to compare with U.S. sales, we compared U.S. sales with the most similar product based on the characteristics listed above, in descending order of priority. When there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to CV, in accordance with section 773(a)(4) of the Act.

We made comparisons to weighted-average comparison market prices that were based on all sales which passed the cost-of-production test and on those sales which did not pass the cost-of-production test but were made at prices which were considered to have provided for the recovery of costs within a reasonable period of time. Specifically, in making our comparisons, if an identical home market model was reported, we made comparisons to monthly weighted-average home market prices that were based on all relevant sales during the contemporary month or, lacking such sales, to a previous or subsequent month in the shorter cost period (*see* ''Cost Averaging Methodology'' below). If there were no sales of an identical model available for comparison during the relevant months, we substituted the most similar above cost home market model. If there were no home market models with a difference in merchandise of less than twenty percent available, we used constructed value for comparison purposes. We calculated the weighted-average comparison market prices on a level of trade-specific basis.

For purposes of the preliminary results, where appropriate, we have calculated the adjustment for differences in merchandise based on the difference in the variable cost of

[21] The Department amended its regulations concerning the revocation of antidumping and countervailing duty orders in whole or in part, and the termination of suspended antidumping and countervailing duty investigations. Specifically, the Department's *Final Rule* eliminates the provision for revocation of an antidumping or countervailing duty order with respect to individual exporters or producers based on those individual exporters or producers having received antidumping rates of zero for three consecutive years, or countervailing duty rates of zero for five consecutive years. This *Final Rule* will apply to all reviews that are initiated on or after June 20, 2012, however, this provision regarding revocation does not apply to Granoro because the instant review was initiated prior to the aforementioned date. *See Modification to Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders,* 77 FR 29875 (May 21, 2012) (''*Final Rule*'').

manufacturing (''VCOM'') between each U.S. model and the most similar home market model selected for comparison.

Comparisons to Normal Value

To determine whether sales of certain pasta from Italy were made in the United States at prices below NV, we compared the export price (EP) or constructed export price (CEP) to the NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice. Pursuant to 19 CFR 351.414(c)(1) and (d), we compared the monthly weighted-average export price of U.S. transactions to the monthly weighted-average normal value of the comparable foreign like product where there were sales made in the ordinary course of trade.[22]

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. Pursuant to section 772(a) of the Act, we used the EP methodology when the merchandise was first sold by the producer or exporter outside the United States directly to the unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the first sale to the unaffiliated purchaser in the United States of the subject merchandise. *See* section 772(b) of the Act. We based EP and CEP on the packed prices charged to the first unaffiliated customer in the United States and the applicable terms of sale. When appropriate, we adjusted prices to reflect billing adjustments, rebates, and early payment discounts, quantity discounts, expenses recovered from customers, and commissions. In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including movement expenses incurred at the production facility, U.S. warehouse expense, inland freight, inland insurance, brokerage & handling, international freight, marine insurance, freight rebate revenue, and U.S. customs duties. With respect to Granoro, we capped the transportation recovery amounts by the amount of U.S. freight expenses, incurred on the subject merchandise, in accordance with our practice. *See Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 46584 (August 11, 2008), and accompanying Issues and Decision Memorandum (''2005–2007 OJ from Brazil'') at Comment 7.

In addition, when appropriate, we increased EP by an amount equal to the countervailing duty (''CVD'') rate attributed to export subsidies in the most recently completed CVD administrative review, in accordance with section 772(c)(1)(C) of the Act. For CEP, in accordance with section 772(d)(1) of the Act, when appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (cost of credit, warranty, and other direct selling expenses). These expenses also include certain indirect selling expenses incurred by unaffiliated U.S. commission agents.[23]

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that NV be based on the price of the foreign like product sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the export price or constructed export price. The statute contemplates that quantities (or value) normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States. To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B) of the Act, because Granoro and Rummo each had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for both Granoro and Rummo.

B. Arm's-Length Sales

Granoro reported that all of its sales to the Italian market are to unaffiliated customers; however, it made a few sales to employees and shareholders and coded such sales as affiliated sales. *See* Granoro's section B questionnaire response, dated November 22, 2011. In accordance with the Department's practice, we have excluded such sales from consideration when the sales did not pass our Arm's Length Test. *See* Preliminary Results Sales Analysis Memo—Granoro. Rummo reported that all of its sales to the Italian market are to unaffiliated customers.[24] In addition, Pasta Castiglione (''PC''), Rummo's affiliated producer, reported that it did not make any sales to affiliates in the foreign market.[25] Therefore, we did not apply the arm's length test with respect to Rummo's sales.

C. Cost of Production Analysis

In the most recently completed segment of the proceeding in which Granoro and Rummo participated, the Department determined that the aforementioned respondents sold the foreign like product at prices below the cost of producing the merchandise and, as a result, we excluded such sales from the calculation of normal value.[26] Therefore, pursuant to section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Granoro and Rummo's sales of the foreign like product under consideration for the determination of normal value in the instant review may have been made at prices below the COP as provided by section 773(b)(2)(A)(ii) of the Act and, therefore, outside of the ordinary course of trade. Pursuant to section 773(b)(1) of the Act, we have conducted a COP investigation of Granoro and Rummo's

[22] In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012). In particular, the Department compared monthly weighted-average export prices with monthly weighted-average normal values and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

[23] *See* Memorandum from Dennis McClure to James Terpstra, Program Manager, entitled ''Sales Analysis Memorandum for the Preliminary Results—Granoro'' (Preliminary Results Sales Analysis Memo—Granoro), dated concurrently with this notice; *see* also Memorandum from George McMahon to James Terpstra, Program Manager, entitled ''Sales Analysis Memorandum for the Preliminary Results—Rummo'' (Preliminary Results Sales Analysis Memo—Rummo), dated concurrently with this notice.

[24] *See* Rummo's Section B Questionnaire Response, dated December 12, 2011, at page B–9.

[25] *See* PC's Section A Questionnaire Response, dated December 5, 2011 at A–24.

[26] *See Certain Pasta From Italy: Notice of Amended Final Results of the Thirteenth Antidumping Duty Administrative Review,* 76 FR 6601 (February 7, 2011) (*Pasta Thirteenth Review*); *see also Certain Pasta from Italy: Notice of Final Results of the Tenth Administrative Review and Partial Rescission of Review,* 72 FR 70298 (December 11, 2007) (''*Pasta Tenth Review*'').

sales in the comparison market (sales below cost test) and required Granoro and Rummo to submit a response to Section D of the Department's questionnaire.

1. Cost Averaging Methodology

The Department's normal practice is to calculate an annual weighted-average cost for the POR.[27] However, we recognize that possible distortions may result if we use our normal annual-average cost method during a time of significant cost changes. In determining whether to deviate from our normal methodology of calculating an annual weighted-average cost, we evaluate the case-specific record evidence using two primary factors: (1) The change in the cost of manufacturing (''COM'') recognized by the respondent during the POR must be deemed significant; (2) the record evidence must indicate that sales during the shorter cost-averaging periods could be reasonably linked with the COP or constructed value during the same shorter cost-averaging periods.[28]

a. Significance of Cost Changes

In prior cases, we established 25 percent as the threshold (between the high- and low- quarter COM) for determining that the changes in COM are significant enough to warrant a departure from our standard annual-average cost approach.[29] In the instant case, record evidence shows that Granoro and Rummo experienced significant changes (*i.e.,* changes that exceeded 25 percent) between the high and low quarterly COM during the POR.[30] This change in COM is attributable primarily to the price volatility for semolina used in the production of pasta. *Id.*

b. Linkage Between Cost and Sales Information

Consistent with past precedent, because we found the changes in costs to be significant, we evaluated whether there is evidence of a linkage between the cost changes and the sales prices during the POR.[31] Absent a surcharge or other pricing mechanism, the Department may alternatively look for evidence of a pattern that changes in selling prices reasonably correlate to changes in unit costs.[32] To determine whether a reasonable correlation existed between the sales prices and underlying costs during the POR, we compared weighted-average quarterly prices to the corresponding quarterly COM for the control numbers with the highest volume of sales in the comparison market and in the United States. Our comparison revealed that sales and costs for Granoro and Rummo showed reasonable correlation. *See* Granoro Cost Calculation Memo at pages 2–3 and Rummo Cost Calculation Memo at pages 2–3. After reviewing this information and determining that changes in selling prices correlate reasonably to changes in unit costs, we preliminarily determine that there is linkage between Granoro's and Rummo's changing sales prices and costs during the POR.[33] We have preliminarily determined that a shorter cost period approach, based on a quarterly-average COP, is appropriate for Granoro and Rummo because we have found significant cost changes in COM as well as reasonable linkage between costs and sales prices.

2. Calculation of Cost of Production

Before making comparisons to normal value, we conducted a COP analysis of Granoro's and Rummo's sales pursuant to section 773(b)(3) of the Act to determine whether home market sales were made at prices below COP and that these costs were not recoverable within a reasonable period of time. For this analysis, the COP is based on a quarterly average COP rather than an annual average COP. *See* the ''Cost Averaging Methodology'' section, above, for further discussion. We calculated Granoro's and Rummo's quarterly COP on a product-specific basis, based on the sum of the Granoro's and Rummo's respective cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses, interest expenses, and the costs of all expenses incidental to packing the merchandise. We relied on the COP information submitted by both Granoro and Rummo except the following adjustments. With respect to Granoro, we corrected several errors noted during the cost verification, revised the reported semolina costs to differentiate for the protein content (the Department's fourth physical product characteristic), and we weight-averaged the per-unit costs for certain control numbers (CONNUMs). For further discussion of these adjustments, *see* Granoro Cost Calculation Memo. With respect to Rummo, we have revised Rummo's and Pasta Castiglioni's reported protein-specific quarterly semolina costs to correct errors discovered in the calculation of the quarterly average semolina purchase prices. We have also revised the semolina calculations to express and apply yield losses as a percentage rather than as a nominal value. We then calculated and applied a POR scrap offset for each company. *See* Rummo Cost Calculation Memo at 4–5. For control numbers for which there was no production during the POR or during a POR quarter we chose or calculated surrogates respectively.[34]

4. Cost Recovery Analysis

In accordance with sections 773(b)(1)(A) and (B) of the Act, for sales found to be made below cost, we examined whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. As stated in section 773(b)(2)(D) of the Act, prices are considered to provide for recovery of costs if such prices are above the weighted average per-unit COP for the period of investigation or review.

In light of the Court's directives in *SeAH Steel Corp.* v. *United States,* 704 F. Supp. 2d 1353 (Ct. Int'l Trade 2010), and *SeAH Steel Corporation* v. *United States,* 764 F. Supp. 2d 1322 (Ct. Int'l. Trade 2011) to use an unadjusted

[27] *See Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review,* 65 FR 77852 (December 13, 2000), and accompanying Issues and Decision Memorandum at Comment 18, and *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada,* 71 FR 3822 (January 24, 2006), and accompanying Issues and Decision Memorandum at Comment 5 (explaining the Department's practice of computing a single weighted-average cost for the entire period).

[28] *See Stainless Steel Sheet and Strip in Coils From Mexico: Final Results of Antidumping Duty Administrative Review,* 75 FR 6627 (February 10, 2010) (''*SSSS from Mexico''*), and accompanying Issues and Decision Memorandum at Comment 6 and *Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review,* 73 FR 75398 (December 11, 2008) (''*SSPC from Belgium''*), and accompanying Issues and Decision Memorandum at Comment 4.

[29] *See SSPC from Belgium,* and accompanying Issues and Decision Memorandum at Comment 4.

[30] *See* Memorandum from Sheikh Hannan to Neal M. Halper, Director of Office of Accounting, entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Granoro'' (''Granoro Cost Calculation Memo''), dated concurrently with this notice at 2; *see* also Memorandum from Heidi Schriefer to Neal M. Halper, Director of Office of Accounting, entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—the Rummo Group'' (''Rummo Cost Calculation Memo''), dated concurrently with this notice at 2.

[31] *See SSSS from Mexico,* and accompanying Issues and Decision Memorandum at Comment 6 and *SSPC from Belgium,* and accompanying Issues and Decision Memorandum at Comment 4.

[32] *See SSPC from Belgium,* and accompanying Issues and Decision Memorandum at Comment 4.

[33] *Id.; see also SSSS from Mexico,* and accompanying Issues and Decision Memorandum at Comment 6 and *SSPC from Belgium,* and accompanying Issues and Decision Memorandum at Comment 4.

[34] *See* Preliminary Sales Analysis Memorandum—Granoro and Preliminary Sales Analysis Memorandum—Rummo.

annual average cost for purposes of the cost recovery test, in the instant review we have used the approach to test for cost recovery when using a shorter cost period methodology.[35] Using the methodology adopted in *SPT from Turkey,* we calculated a control number specific weighted-average annual price using only those sales that were made below their quarterly COP, and compared the resulting weighted-average price to the annual weighted-average cost per control number. If the annual weighted-average price per control number was above the annual weighted-average cost per control number then we considered those sales to have provided for the recovery of costs and restored all such sales to the normal value pool of comparison-market sales available for comparison with U.S. sales. For further details regarding the cost recovery methodology and the application of our shorter-cost period methodology, *see* the Granoro Cost Calculation Memo at 1–2; *see* also the Rummo Cost Calculation Memo at 1–2.

5. Results of the Sales Below Cost Test

We found that for certain products, more than 20 percent of Granoro's and Rummo's home market sales were made at prices below COP and, in addition, these below cost sales were made within an extended period of time and in substantial quantities. In addition, pursuant to the cost recovery analysis described above, we found that these sales were at prices which did not permit the recovery of costs within a reasonable period of time. Therefore, we disregarded these sales from the calculation of normal value, in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on ex-works, free on board (''FOB'') or delivered prices to comparison market customers. We made deductions from the starting price, when appropriate, for discounts and rebates. We added expenses recovered from customers. We deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act. We also deducted home market movement expenses pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in circumstances of sale (''COS'') pursuant to section 773(a)(6)(C)(iii) of the Act. Specifically, we made adjustments to normal value for comparison to Granoro's and Rummo's EP transactions by deducting direct selling expenses incurred for home market sales (*i.e.,* credit expenses) and adding U.S. direct selling expenses (*i.e.,* credit expenses) and U.S. commissions. *See* section 773(a)(6)(C)(iii) of the Act, and 19 CFR 351.410(c). We also made adjustments for Granoro and Rummo, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other, the ''commission offset.'' Specifically, where commissions are incurred in one market, but not in the other, we will limit the amount of such allowance to the amount of either the selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the VCOM for the foreign like product and subject merchandise, using weighted-average costs.

Sales of pasta purchased by Granoro and Rummo from unaffiliated producers and resold in the comparison market were disregarded. *See* Preliminary Results Sales Analysis Memo—Granoro and Preliminary Results Sales Analysis Memo—Rummo.

E. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP and CEP sales, to the extent practicable. When there are no sales at the same LOT, we compare U.S. sales to comparison market sales at a different LOT. When NV is based on CV, the NV LOT is that of the sales from which we derive SG&A expenses and profit.

Pursuant to 19 CFR 351.412(c)(2), to determine whether comparison market sales were at a different LOT, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's-length affiliated) customers. The Department identifies the LOT based on: The starting price or constructed value (for normal value); the starting price (for EP sales); and the starting price, as adjusted under section 772(d) of the Act (for CEP sales). If the comparison-market sales were at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we will make an LOT adjustment under section 773(a)(7)(A) of the Act.

Finally, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the differences in LOT between NV and CEP affected price comparability, we will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731, 61732–33 (November 19, 1997).

Granoro indicated there was a single level of trade for all sales in both markets, and petitioners have not claimed that multiple levels of trade existed for Granoro. Granoro provided information regarding channels of distribution and selling activities performed for different categories of customers. *See* Granoro's November 22, 2011, section A response, at Exhibit 3. Granoro's chart of specific selling functions indicates the selling functions performed for sales in both markets are virtually identical, with no significant variation across the broader categories of sales process/marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services. For more details, *see* Preliminary Results Analysis Memorandum—Granoro. We have preliminarily determined there is one single level of trade for all sales in both the home market and the U.S. market and, therefore, that no basis exists for a level of trade adjustment.

Rummo reported that there was a single level of trade for its sales in the home market and claimed two levels of trade in the U.S. market. Rummo provided information regarding channels of distribution and selling activities performed for different categories of customers.[36] Rummo's and PC's [37] charts of specific selling functions indicate the selling functions performed for sales in both markets and demonstrates that there are significantly greater sales activities performed in the home market as compared to Rummo's

[35] *See Certain Welded Carbon Steel Pipe and Tube From Turkey; Notice of Final Results of Antidumping Duty Administrative Review,* 76 FR 76939 (December 9, 2011) (''*SPT From Turkey*'').

[36] *See* Rummo's and PC's December 5, 2011, section A response, at Exhibits A–3 and A–4.

[37] *See* PC's March 8, 2012 Supplemental response at page 33.

U.S. sales. We have preliminarily determined that these differences support a finding that the home market sales are made at a different and more advanced stage of marketing than the level of trade of Rummo's CEP sales. Accordingly, we have made a CEP offset to NV pursuant to section 773(a)(7)(B) of the Act.[38]

For a detailed description of our LOT methodology and a summary of company-specific LOT findings for these preliminary results, see our analysis contained in Preliminary Results Sales Analysis Memo—Granoro and Preliminary Results Sales Analysis Memo—Rummo.

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve Bank. *See* Preliminary Results Sales Analysis Memo—Granoro and Preliminary Results Sales Analysis Memo—Rummo.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average percentage margins exist for the period July 1, 2010, through June 30, 2011:

Manufacturer/exporter	Margin (percent) [39]
Granoro	0.00
Rummo	6.97
Review-Specific Average Rate [40].	
Applicable to the Following Companies: Filiberto, Fratelli, and Zaffiri	6.97

[39] The antidumping duty margins for Granoro and Rummo include an adjustment for the countervailing duty offset to account for the export subsidy portion of the countervailing duties applied to these companies, as defined in the field CVDU.

[40] This rate is a weight-average percentage margin calculated based on the two companies that were selected for individual review, excluding *de minimis* margins or margins based entirely on adverse facts available.

Public Comment

The Department intends to disclose the calculations performed for these preliminary results within five days of the date of publication of this notice to the parties of this proceeding, in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of this notice in the **Federal Register**. *See* 19 CFR 351.310(c). If a hearing is requested, the Department will notify interested parties of the hearing schedule.

Interested parties are invited to comment on the preliminary results of this review. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

Pursuant to 19 CFR 351.213(h), the Department intends to issue the final results of this review, including the results of our analysis of issues raised in any submitted written comments, within 120 days after publication of this notice.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.,* at or above 0.5 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. Pursuant to the *Final Modification for Reviews,* ''when a review is conducted applying the A–A {(average-to-average)} comparison methodology, and the weighted-average margin of dumping for the exporter or producer is determined to be zero or *de minimis,* no assessment rates will be calculated and the Department will instruct CBP to liquidate all imports from the exporter or producer without regard to antidumping duties, regardless of importer.'' [41] For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where appropriate, to calculate the entered value, we subtracted international movement expenses (*e.g.,* international freight) from the gross sales value.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these preliminary results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

To calculate the cash deposit rate, we divided the total dumping margin by the total net value of the sales during the review period. The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for companies subject to this review will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis,* no cash deposit will be required; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results for a review in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 15.45 percent, the all-others rate established in the LTFV investigation. *See Implementation of the Findings of the WTO Panel in US—Zeroing (EC): Notice of Determination Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders,* 72 FR 25261 (May 4, 2007). These cash deposit requirements, when imposed,

[38] The Department made a CEP offset to NV for Rummo in the most recent administrative review (2005–2006) in which Rummo was a mandatory respondent. *See Certain Pasta from Italy; Notice of Preliminary Results and Partial Rescission of Tenth Antidumping Duty Administrative Review,* 72 FR 44082 (August 7, 2007).

[41] *See Final Modification for Reviews,* 77 FR at 8107.

shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and increase the subsequent assessment of the antidumping duties by the amount of antidumping duties reimbursed.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: July 27, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–19057 Filed 8–2–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–820]

Certain Small Diameter Seamless Carbon and Alloy Standard, Line, and Pressure Pipe From Germany: Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 2, 2012, the Department of Commerce (the Department) initiated the third sunset review of the antidumping duty order on certain small diameter seamless carbon and alloy steel standard, line, and pressure pipe (seamless pipe) from Germany pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-Year (''Sunset'') Review,* 77 FR 19643 (April 2, 2012) (*Sunset Initiation*). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of a domestic interested party, and no response from a respondent interested party, the Department conducted an expedited (120-day) sunset review. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would likely lead to the continuation or recurrence of dumping. The magnitude of dumping likely to prevail if the order were revoked is identified in the ''Final Results of Review'' section of this notice.

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

FOR FURTHER INFORMATION CONTACT: Ericka Ukrow or Angelica Mendoza, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0405 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 2, 2012, the Department initiated the sunset review of the antidumping duty order on seamless pipe from Germany pursuant to section 751(c) of the Act. *See Sunset Initiation.* The Department received a notice of intent to participate from one domestic interested party, United States Steel Corporation (U.S. Steel), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested party claimed interested party status under section 771(9)(C) of the Act as a U.S. producer of a domestic like product. We received a complete substantive response from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i) on May 2, 2012. No respondent interested parties submitted responses. As a result of the timely filed, substantive response from the domestic interested party the Department conducted an expedited sunset review of the order, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

Scope of the Order

The scope of the order includes small diameter seamless carbon and alloy standard, line and pressure pipes (seamless pipes) produced to the ASTM A–335, ASTM A–106, ASTM A–53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of the order also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification.

For purposes of the order, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes.

The seamless pipes subject to the order are currently classifiable under subheadings 7304.19.10.20, 7304.19.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

The following information further defines the scope of the order, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials (ASTM) standard A–106 may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM

A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of the order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of the order. Therefore, seamless pipes meeting the physical description above, but not produced to the A–335, A–106, A–53, or API 5L standards shall be covered if used in a standard, line or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of the order.

Specifically excluded from the order are boiler tubing and mechanical tubing, if such products are not produced to A–335, A–106, A–53 or API 5L specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished oil country tubular goods (OCTG) are excluded from the scope of the order, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in the scope when used in standard, line or pressure applications. Finally, also excluded from the order are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in this case are addressed in the ''Issues and Decision Memorandum'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with this notice (Decision Memorandum), which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memorandum, which is on file electronically via IA ACCESS 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 Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic versions of the Decision Memorandum are identical in content.

Final Results of Review

The Department determines that revocation of the antidumping duty order on seamless pipe from Germany would likely lead to continuation or recurrence of dumping. Further, the Department finds that the magnitude of dumping likely to prevail if the order was revoked is 57.72 percent for Mannesmannrohren Werke AG and for all other German producers and exporters of subject merchandise.

Notification

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the 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 violation which is subject to sanction.

The Department is issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: July 26, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–19069 Filed 8–2–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–806]

Certain Pasta From Turkey: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the ''Department'') is conducting an administrative review of the countervailing duty order on certain pasta (''pasta'') from Turkey for the period January 1, 2010, through December 31, 2010. We preliminarily determine that the net subsidy rate for the companies under review is *de minimis.* Interested parties are invited to comment on these preliminary results.

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

FOR FURTHER INFORMATION CONTACT: David Layton at 202–482–0371 or Christopher Siepmann at 202–482–7958, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2011, the Department published a notice of opportunity to request an administrative review of the countervailing duty order on pasta from Turkey.[1] On July 29, 2011, we received a letter from Marsan Gida Sanayi ve Ticaret A.Ş. (''Marsan''), Birlik Pazarlama Sanayi ve Ticaret A.Ş.

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 38609 (July 1, 2011).

(''Birlik''), Bellini Gida Sanayi A.Ş. (''Bellini''), and Marsa Yag Sanayi ve Ticaret A.Ş. (''Marsa Yag''), jointly requesting that the Department conduct a review of those companies.[2]

On August 26, 2011, the Department initiated an administrative review of the countervailing duty order on pasta from Turkey for the period January 1, 2010, through December 31, 2010, covering Marsan, Birlik, Bellini, and Marsa Yag.[3]

Scope of the Order

The scope of the order consists of certain non–egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by the order is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of the order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non–egg dry pasta containing up to two percent egg white.

The merchandise under review is currently classifiable under subheading 1902.19.20 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Period of Review

The period of review (''POR'') for which we are measuring subsidies is January 1, 2010, through December 31, 2010.

Subsidies Valuation Information

Attribution of Subsidies

In their Review Request, Marsan, Birlik, Bellini, and Marsa Yag claimed to be ''affiliates.'' Upon initiation, the Department used the same language contained in the Review Request. However, by referring to Marsan's ''affiliates'' in the *Initiation Notice,* the Department did not determine that the companies subject to review are affiliated. Rather, the *Initiation Notice* echoes the language used by Marsan, Birlik, Bellini and Marsa Yag in their request for review.

In a countervailing duty proceeding, the Department is primarily concerned not with affiliation, but with cross-ownership. *See* 19 CFR 351.525(b)(6). The standard for cross-ownership is established by 19 CFR 351.525(b)(6)(vi). This regulation states that ''{c}ross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. Normally, this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations.''

Based on our review of the totality of arguments and information submitted by Marsan, Birlik, Bellini and Marsa Yag, we preliminarily determine that cross-ownership existed between Birlik and Bellini, and a third company, Istanbul Gida Dis Ticaret A.Ş. (''Istanbul Gida''), which exported subject merchandise produced by Birlik and Bellini to the United States during the POR.[4] We also preliminarily determine that Marsan was not cross-owned with Birlik, Bellini and Marsa Yag during the POR. *See* Attribution Memo for additional information.

Although Marsa Yag was among the companies that requested a review, there is no indication that Marsa Yag produced subject merchandise or exported subject merchandise to the United States during the POR. Therefore, Marsa Yag is not a proper respondent in this review. Nor does Marsa Yag otherwise meet the criteria of 19 CFR 351.525(b)(6)(iii)–(v). Therefore, although Marsa Yag would be considered as cross-owned with Birlik, Bellini and Istanbul Gida, we have not included Marsa Yag in calculating the countervailing duty rate for Birlik, Bellini, and Istanbul Gida, and the rate calculated for those companies would not apply to any future entries from Marsa Yag.

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)–(v) direct that the Department will attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross-ownership exists between the companies, and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross-owned company. The Court of International Trade (''CIT'') has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.[5]

Birlik, Bellini and Istanbul Gida: As discussed above, the Department preliminarily determines that Birlik and Bellini were cross-owned. Additionally, Birlik and Bellini were producers of subject merchandise during the POR.[6] Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we are attributing subsidies received by Birlik and Bellini to the combined sales of the two companies, exclusive of sales to each other. As noted above, another cross-owned company, Istanbul Gida, acted as a trading company for subject merchandise produced by Birlik and Bellini. The Department has previously found it appropriate to analyze subsidies to a cross-owned trading company by attributing subsidies received by the trading company to the consolidated sales of the trading company and any cross-owned producers of subject merchandise, net of intercompany sales.[7] Thus, we are attributing subsidies received by Istanbul Gida to the consolidated sales of Istanbul Gida, Birlik and Bellini, net of intercompany sales. *See* Attribution Memo.

Marsan: As discussed above, the Department preliminarily determines that Marsan is not cross-owned with Birlik, Bellini or Marsa Yag. Also, during the POR, Marsan did not produce subject merchandise. It did, however, act as a trading company by exporting to the United States subject merchandise produced by Birlik and Bellini. Pursuant to 19 CFR 351.525(c), the Department will cumulate benefits from subsidies provided to trading

[2] *See* Letter from Marsan, Birlik, Bellini and Marsa Yag to the Department, ''Request for Administrative Review'' (July 29, 2011) (''Review Request'').

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 53404 (August 26, 2011) (''*Initiation Notice*'').

[4] *See* Memorandum from Christopher Siepmann, International Trade Compliance Analyst, to Susan Kuhbach, Office Director, ''Attribution Memorandum for Marsan Gida Sanayi ve Ticaret A.Ş. (''Marsan''), Birlik Pazarlama Sanayi ve Ticaret A.Ş. (''Birlik''), Bellini Gida Sanayi A.Ş. (''Bellini''), and Marsa Yag Sanayi ve Ticaret A.Ş. (''Marsa Yag'')'' (July 30, 2012) (''Attribution Memo'').

[5] *See Fabrique de Fer de Charleroi, SA* v. *United States,* 166 F. Supp. 2d 593, 600–604 (CIT 2001).

[6] *See, e.g.,* Marsan, Birlik, Bellini and Marsa Yag's initial questionnaire response dated December 5, 2011 at 4–5 and 8.

[7] *See, e.g., Certain Steel Wheels From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination,* 77 FR 17017 (March 23, 2012), and accompanying Issues and Decision Memorandum at 5.

companies that export subject merchandise with benefits from subsidies provided to the firm which is producing subject merchandise that is sold through the trading company, regardless of whether the trading company and the producing firm are affiliated. Thus, in order to arrive at a rate for Marsan, we are adding the rate for subsidies received by Marsan to the rate for subsidies received by the subject merchandise producers (Birlik and Bellini).

Allocation Period

Pursuant to 19 CFR 351.524(b), benefits from non-recurring subsidies are allocated over a period corresponding to the average useful life (''AUL'') of the renewable physical assets used to produce the subject merchandise. The Department's regulations create a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's Class Life Asset Depreciation Range System (''IRS Tables'').[8] For pasta production, the IRS Tables prescribe an AUL of 12 years. None of the responding companies or other interested parties objected to this allocation period. Therefore, we have used a 12-year allocation period.

Analysis of Programs

Based on our analysis of the responses to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined To Be Countervailable

A. Deduction From Taxable Income for Export Revenue

Article 40 of Income Tax Law 193, dated January 6, 1961, which was amended by Law 4108 on June 2, 1995, allows taxpayers engaged in overseas activities related to exports, construction, maintenance, assembly and transportation to claim a lump sum deduction from gross income in an amount not to exceed 0.5 percent of the taxpayer's foreign-exchange earnings.[9] There is no application or approval process for this program. *Id.* at 11–12. Instead, a company claiming the deduction records an expense in its marketing, selling and distribution expense account equal to the amount of the deduction for which it is eligible.[10] When submitting its tax return, the company reports its total sales less the amount of the expense it recorded in its accounting records.[11] Istanbul Gida reported that it received benefits under this program during the POR because it is an exporter.[12]

We preliminarily determine that this tax deduction is a countervailable subsidy. The deduction provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Tariff Act of 1930, as amended (''the Act''), because it represents revenue forgone by the GOT. The deduction also provides a benefit as described by section 771(5)(E) of the Act, in the amount of the tax savings to the company. Finally, it is specific within the meaning of section 771(5A)(A) and (B) of the Act because its receipt is contingent upon export earnings. The Department has previously found this program countervailable.[13]

The Department typically considers tax deductions to provide recurring benefits, in accordance with 19 CFR 351.524(c)(1). To calculate the countervailable subsidy rate for this program, we calculated the tax savings realized by Istanbul Gida in 2010 as a result of the deduction. We multiplied the amount of the deduction Istanbul Gida claimed in 2010 by the 20 percent tax rate applicable to Istanbul Gida. We divided the resulting benefit by the consolidated export sales of Istanbul Gida, Birlik and Bellini in 2010, net of intercompany sales.

On this basis, we preliminarily determine the net countervailable subsidy for this program to be 0.08 percent *ad valorem* for Istanbul Gida.

B. Law 5084: Incentive for Employers' Share in Insurance Premiums

The Social Security Institution of the GOT administers the Incentive for the Employer's Share in Insurance Premiums Program (Insurance Premiums Program) pursuant to Article 2 and Article 4 of Law 5084.[14] According to the GOT, this program provides an incentive for companies to invest in any of 49 disadvantaged provinces. For companies that establish their facilities in a disadvantaged province, the GOT will cover up to 80 percent of the employer's share of social security premiums for employees working in the province. If the company's facility is located in an industrial zone within a disadvantaged province, the GOT will pay 100 percent of the employer's share.[15]

In order to continue to receive support under this program, employers must submit documentation each month to the Social Security Institution prior to the deadlines stipulated by Social Security Law No. 506. They must also pay their employees' share of the insurance premiums, as well as whatever portion of the employer's share the GOT does not pay. *Id.*

Birlik reported that it received benefits under this program during the POR. When asked what criteria Birlik needed to satisfy to be eligible for this program, Birlik replied that ''{it} is a manufacturer; there are no other criteria.''[16] However, in an earlier questionnaire response, Birlik informed the Department that ''Birlik produces soft wheat flour, rice flour, and other cereal flours, including rye, oat, sorghum, millet, soy bean and barley flour in plants in Ankara and Karaman, Turkey.''[17] Karaman is listed as one of the eligible 49 provinces by the GOT.[18] Thus, record evidence shows that Birlik qualifies for this program under the eligibility criteria described by the GOT.

We preliminarily determine that this program is specific under section 771(5A)(D)(iv) of the Act because it is limited to companies located in designated geographical regions of the country. We also preliminarily determine that this program constitutes a financial contribution in the form of revenue forgone by the GOT within the meaning of section 771(5)(D)(ii) of the Act. Birlik received a benefit from the GOT in the amount of social security premiums it did not have to pay as a result of this program. Therefore, we preliminarily determine that the GOT's social security premium contributions under this program confer a countervailable subsidy.

We preliminarily determine that this program confers recurring benefits. *See* 19 CFR 351.524(c)(1). To calculate the net subsidy rate, we divided the total amount of insurance premium savings reported by Birlik by the consolidated total sales during the POR for Birlik and

[8] *See* 19 CFR 351.524(d)(2); U.S. Internal Revenue Service Publication 946 (2008), *How to Depreciate Property,* at Table B–2: Table of Class Lives and Recovery Periods.

[9] *See* the Government Of Turkey's (''GOT'') first supplemental questionnaire response dated March 30, 2012, at 11.

[10] *See, e.g.,* Marsan, Birlik, Bellini and Marsa Yag's initial questionnaire response at 21.

[11] *See* the GOT's first supplemental questionnaire response at 12–13.

[12] *See* Marsan, Birlik, Bellini and Marsa Yag's initial questionnaire response at 21.

[13] *See, e.g., Certain Welded Carbon Steel Standard Pipe From Turkey: Preliminary Results of Countervailing Duty Administrative Review,* 75 FR 16439, 16440–41 (April 1, 2010), unchanged in *Certain Welded Carbon Steel Standard Pipe from Turkey: Final Results of Countervailing Duty Administrative Review,* 75 FR 44766 (July 29, 2010).

[14] *See* the GOT's first supplemental questionnaire response at 1.

[15] *Id.* at 2.

[16] *See* Marsan, Birlik, Bellini and Marsa Yag's first supplemental questionnaire response dated March 30, 2012, at 13.

[17] *See* Marsan, Birlik, Bellini and Marsa Yag's initial questionnaire response at 8.

[18] *See* the GOT's first supplemental questionnaire response at Exhibit 2.

Bellini, net of sales to each other. On this basis, we preliminarily determine Birlik's net subsidy rate under this program to be 0.03 percent *ad valorem.*

C. Export Subsidy Program for Agricultural Products

Under this program, the GOT issues payments to companies exporting certain agricultural products, such as flowers, vegetables, fruit, olive oil, meats and chocolates. The eligible products, terms of the rebates and other regulations for this program for January 1, 2010, through December 31, 2010 are specified by Article 5 and Article 7 of Communiqué 2010/5, issued by the Money-Credit and Coordination Council. According to the GOT, this Communiqué has its legal basis in Council of Minister's Decree No. 94/6401.[19] The program is administered by the Ministry of Economy, General Directorate of Export.

Companies wishing to take advantage of this program must apply through the applicable exporter's union. Once the company's application is accepted, an account is opened for the exporter at the Central Bank of the Republic of Turkey. For each ton of eligible product exported, the GOT credits the exporter's account with payments according to the schedule in Communiqué 2010/5. A formula governs the payments a company receives, which may fluctuate depending on the price of the exports and the ratios applicable to each product.[20]

The funds deposited into the exporter's account may only be used to offset the company's obligations to the GOT. Pursuant to Article 7 of Communiqué 2010/5, these obligations include taxes, tax penalties, Social Security Institute payments, communication fees (fixed phone lines, telefax, *etc.*), energy costs (electricity and natural gas), debts to the Savings Deposits Insurance Fund and other debts.[21]

We preliminarily determine that this program is specific under section 771(5A)(A) and (B) of the Act because it is contingent on export performance. We also preliminarily determine that this program constitutes a financial contribution in the form of a grant within the meaning of section 771(5)(D)(i) of the Act. Participating companies receive a benefit within the meaning of section 771(5)(E) of the Act from the GOT in the amount of the grant. Therefore, we preliminarily determine that the GOT's reimbursements under this program confer a countervailable subsidy. Additionally, we preliminarily determine that benefits under this program are recurring. Once accepted into this program, a company can expect to receive payments in its account on an ongoing basis from year to year, as long as it is still exporting eligible products.

Marsan and Istanbul Gida reported receiving benefits under this program, both for pasta and for other products. According to the respondents, it is ''impracticable'' for the Department to measure benefits under this program according to the time at which funds were received, because the manner in which the payments are received makes it impossible to link them back to specific customs declarations or products. Rather, the respondents argue that it is appropriate to measure the benefit either according to the date of the exportation of the goods, or according to the date that Marsan or Istanbul Gida applied for the benefit. Either method would allow the Department to isolate the benefit conferred strictly on pasta.[22]

We have considered the respondents' arguments, and for the preliminary results, we are measuring benefits under this program according to the date on which the benefit was received by Marsan or Istanbul Gida. The Department's regulations specify that the Department ''normally will consider a benefit as having been received on the date on which the firm received the grant,'' and ''will allocate (expense) a recurring benefit to the year in which the benefit is received.'' *See* 19 CFR 351.504(b) and 19 CFR 351.524(a), respectively. We disagree with the respondents that this program warrants a departure from our usual practice. Thus, we have computed the subsidy using the total amounts received and allocated the benefit over total exports.

The Department analyzed a similar program, ''Pasta Export Grants,'' in the investigation of pasta from Turkey.[23] For the *Preliminary Determination,* we analyzed the benefit from Pasta Export Grants based on the time at which benefits were earned, stating that ''although the U.S. dollar amount is known at the time of export, the amount the exporter will actually receive in {Turkish lira} is not certain until the time of receipt because it is subject to fluctuations in the exchange rate. This suggests that it may be more appropriate to calculate the benefits as they are received, rather than earned. We will consider this issue further for the final determination.'' *See Preliminary Determination,* 60 FR at 53749. Then, we altered our approach for the *Final Determination,* stating that ''the benefits under this program are bestowed when the cash is received, in the case of grants, and on maturity date, in the case of promissory notes or bonds.'' *See Final Determination,* 61 FR at 30367–30368. Thus, our decision in this review is consistent with our prior practice.

To calculate the countervailable subsidy rate, we treated the amounts received by Marsan and Istanbul Gida as a recurring benefit. For Marsan, we divided the total amount of grants received by Marsan in the POR by Marsan's total export sales in the POR. For Istanbul Gida, we divided the total amount of grants received by Istanbul Gida in the POR by the consolidated export sales of Istanbul Gida, Birlik and Bellini in the POR, net of intercompany sales. On this basis, we preliminarily determine the countervailable subsidy from this program to be 0.12 percent *ad valorem* for Marsan and 0.17 percent *ad valorem* for Istanbul Gida.

II. Programs Preliminarily Determined To Not Provide Countervailable Benefits During the POR

Consistent with 19 CFR 351.525(b)(5), we find that the grants received under these programs were tied to non-subject merchandise and, thus, did not confer a benefit to the production or sales of subject merchandise of the respondent companies during the POR.

A. ''Turquality'' Trademark Support

This program seeks to build international awareness of Turkish brands. It does so by reimbursing eligible companies for certain expenses related to promoting their products abroad. In order to be eligible, companies must hold at least one registered trademark domestically and one registered trademark in a target foreign market. After being approved, companies may affix the ''Turquality'' logo to products accepted into the program.

Istanbul Gida reported that it received funds under this program. However, the benefits were for expenses related to the ''ÜLKER'' brand of goods. According to Marsan, Birlik, Bellini and Marsa Yag,

[19] *See* the GOT's first supplemental questionnaire response at 7–8.

[20] *See* the GOT's initial questionnaire response at 32–34.

[21] *See* the GOT's initial questionnaire response at Exhibit 11.

[22] *See* Marsan, Birlik, Bellini and Marsa Yag's initial questionnaire response at 28–29.

[23] *See Preliminary Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') From Turkey,* 60 FR 53747, 53749 (October 17, 1995) (''*Preliminary Determination*''), unchanged in *Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') from Turkey,* 61 FR 30366, 30367–30368 (June 14, 1996) (''*Final Determination*'').

there is no ''ÜLKER'' brand pasta.[24] Because there was no benefit to the subject merchandise from this program during the POR, we have not analyzed it further and have not included it in our calculations.

B. Grants Paid for Attendance at Foreign Trade Shows

This program reimburses Turkish companies for expenses related to their attendance at foreign trade shows. Istanbul Gida reported that it received reimbursements during the POR for trade shows it attended in Russia, South Africa, Kenya and Hong Kong. However, it did not exhibit pasta at any of these events. Because there was no benefit to the subject merchandise from this program during the POR, we have not analyzed it further and have not included it in our calculations.

III. Programs Preliminarily Determined To Not Be Used

A. *VAT Support for Domestic Machinery and Equipment Purchases*
B. *Pre–Shipment Export Loans*
C. *Resource Utilization Support Fund (''KKDF'') Tax Exemption on Export–Related Loans*
D. *Banking and Insurance (''BIST'') Tax Exemption on Export–Related Loans*
E. *Normal Foreign Currency Export Loans*
F. *Performance Foreign Currency Export Loans*
G. *GIEP*
  a. Additional Refunds of VAT
  b. Postponement of VAT on Imported Goods
  c. Exemption from Certain Taxes, Duties, Fees (Other Tax Exemptions)
  d. Exemption from Certain Customs Duties and Fund Levies
  e. Payment of Certain Obligations of Firms Undertaking Large Investments
  f. Subsidized Turkish Lira Credit Facilities
  g. Land Allocation
  h. Interest Spread Return Program
  i. Energy Support
H. *Exemption from Mass Housing Fund Levy (Duty Exemptions)*
I. *Direct Payments to Exporters of Wheat Products to Compensate for High Domestic Input Prices*
J. *Export Credit Through Foreign Trade Corporate Companies Credit Facility*
K. *Pasta Export Grants*
L. *Corporate Tax Deferral*
M. *Subsidized Credit for Proportion of Fixed Expenditures*
N. *Subsidized Credit in Foreign Currencies*
O. *Subsidized Turkish Lira Credit Facilities*
P. *Exemption from Mass Housing Fund Levy (Duty Exemptions)*

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated subsidy rates for each producer/exporter subject to this administrative review. For the period January 1, 2010, through December 31, 2010, we preliminarily determine the following total net countervailable subsidy rates:

Exporter/manufacturer	Net subsidy rate
Marsan Gida Sanayi ve Ticaret A.Ş.	0.15 (*de minimis*)
Istanbul Gida Dis Ticaret A.Ş./Birlik Pazarlama Sanayi ve Ticaret A.Ş./Bellini Gida Sanayi A.Ş.	0.28 (*de minimis*)

Marsan's final cash deposit rate is a ''combination rate'' pursuant to 19 CFR 351.107(b). It applies only to subject merchandise exported by Marsan and produced by Birlik and/or Bellini.

Assessment Rates

If the final results remain the same as these preliminary results, the Department will instruct U.S. Customs and Border Protection (''CBP'') to liquidate without regard to countervailing duties shipments of subject merchandise (a) exported by Marsan and produced by Birlik and/or Bellini, or (b) exported by Istanbul Gida, Birlik or Bellini, and entered, or withdrawn from warehouse, for consumption from January 1, 2010, through December 31, 2010.

For all other combinations or companies, as appropriate, that were not reviewed, the Department will direct CBP to assess countervailing duties on all entries between January 1, 2010, and December 31, 2010, at the rates in effect at the time of entry.

The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash Deposit Instructions

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown above. For all non-reviewed firms, we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 10 days after public announcement, or if there is no public announcement, five days after the date of the publication of this notice.

Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the date of filing the case briefs, in accordance with 19 CFR 351.309(d). Any case briefs and rebuttal briefs must be filed via the Department's electronic records system, IA ACCESS, in accordance with 19 CFR 351.303. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue, and (2) a brief summary of the argument with an electronic version included. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f)(3)(i).

Also, pursuant to 19 CFR 351.310(c), within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs by electronically filing the request via IA ACCESS. Unless otherwise specified, the hearing, if requested, will

[24] *See, e.g.,* Marsan, Birlik, Bellini and Marsa Yag's first supplemental questionnaire response at 9.

be held two days after the scheduled date for submission of rebuttal briefs.

The Department will publish the final results of this administrative review, including the results of its analysis of arguments made in any case or rebuttal briefs, within 120 days from the publication of these preliminary results, in accordance with section 751(a)(3) of the Act, unless extended.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: July 27, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–19053 Filed 8–2–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–868]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Large Residential Washers From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Determination of Sales at Less Than Fair Value.

SUMMARY: We preliminarily determine that large residential washers (washers) from the Republic of Korea (Korea) are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act).

Interested parties are invited to comment on this preliminary determination. Because we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Henry Almond, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–0049, respectively.

Preliminary Determination

We preliminarily determine that washers from Korea are being sold, or are likely to be sold, in the United States at LTFV, as provided in section 733(b) of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Background

Since the initiation of this investigation on January 19, 2012, the following events have occurred.[1]

On February 21, 2012, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of washers from Korea are materially injuring the United States industry.[2] On March 7, 2012, we issued section A of the questionnaire (*i.e.,* the section covering general information), as well as sections B through E of the questionnaire (*i.e.,* the sections covering comparison market sales, U.S. sales, cost of production (COP) information, and further manufacturing information, respectively) to Daewoo Electronics Corporation (Daewoo), LG Electronics, Inc. (LG), and Samsung Electronics Co., Ltd. (Samsung).

We received responses to section A of the questionnaire from LG and Samsung in April 2012, and to sections B, C, and D of the questionnaire in May 2012. No responses to section E of the questionnaire were necessary. Daewoo did not respond to the questionnaire. *See* ''Application of Facts Available'' section, below.

On May 10, 2012, Whirlpool Corporation (hereafter, the petitioner) requested that the date for the issuance of the preliminary determination in this investigation be fully extended pursuant to section 733(c)(1) of the Act and 19 CFR 351.205(e). On May 16, 2012, pursuant to sections 733(c)(1)(A) and (c)(2) of the Act and 19 CFR 351.205(f), the Department postponed the preliminary determination until no later than July 27, 2012.[3]

On May 17, 2012, the petitioner submitted a request for the Department to amend the scope of this and the concurrent antidumping and countervailing duty investigations of washers from Mexico and Korea, respectively, and to exclude certain products from those investigations. Samsung and LG objected to the petitioner's scope exclusion request on May 23 and May 24, 2012, respectively. On July 11, 2012, General Electric Company and its operating division GE Appliances & Lighting (GE), a domestic producer and importer of washers, declared its support for the petitioner's scope exclusion request. On July 18, 2012, Staber Industries, Inc. (Staber), a domestic producer of washers, also filed a letter in support of the petitioner's scope exclusion request. *See* ''Scope Comments'' section of this notice.

We issued supplemental questionnaires and received responses to these supplemental questionnaires from May through July 2012.[4]

On June 11, 2012, the petitioner alleged that targeted dumping was occurring with respect to washers produced and exported from Korea by LG and Samsung. On July 5, 2012, the petitioner revised its targeted dumping allegation for LG.

On July 13, 2012, Samsung and LG requested a postponement of the final determination.

On July 25, 2012, the petitioner alleged that Samsung has engaged in fraudulent conduct that undermines the integrity of this investigation. While this allegation was not received in time to be considered for the preliminary determination, it will be examined thoroughly and addressed as appropriate over the course of this proceeding.

Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

Pursuant to section 735(a)(2) of the Act, on July 13, 2012, Samsung and LG requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until

[1] *See Large Residential Washers From the Republic of Korea and Mexico: Initiation of Antidumping Duty Investigations,* 77 FR 4007 (January 26, 2012) (*Initiation Notice*).

[2] *See* ITC Investigation Nos. 701–TA–488 and 731–TA–1199–1200 (Publication No. 4306).

[3] *See Large Residential Washers From the Republic of Korea and Mexico: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 77 FR 30261 (May 22, 2012).

[4] We did not consider any data submissions received after July 17, 2012, for purposes of the preliminary determination.

not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register**, and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative for LG and Samsung, (2) LG and Samsung account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting LG's and Samsung's requests and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Period of Investigation

The period of investigation (POI) is October 1, 2010, through September 30, 2011. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.,* December 2011).

Scope of Investigation

The product covered by this investigation is all large residential washers and certain subassemblies thereof from Korea.

For purposes of this investigation, the term ''large residential washers'' denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, except as noted below, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm).

Also covered are certain subassemblies used in large residential washers, namely: (1) All assembled cabinets designed for use in large residential washers which incorporate, at a minimum: (a) At least three of the six cabinet surfaces; and (b) a bracket; (2) all assembled tubs [5] designed for use in large residential washers which incorporate, at a minimum: (a) A tub; and (b) a seal; (3) all assembled baskets [6] designed for use in large residential washers which incorporate, at a minimum: (a) A side wrapper;[7] (b) a base; and (c) a drive hub;[8] and (4) any combination of the foregoing subassemblies.

Excluded from the scope are stacked washer-dryers and commercial washers. The term ''stacked washer-dryers'' denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer. The term ''commercial washer'' denotes an automatic clothes washing machine designed for the ''pay per use'' market meeting either of the following two definitions:

(1) (a) It contains payment system electronics;[9] (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners;[10] or

(2) (a) it contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such that, in normal operation,[11] the unit cannot begin a wash cycle without first receiving a signal from a *bona fide* payment acceptance device such as an electronic credit card reader; (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners.

Also excluded from the scope are automatic clothes washing machines with a vertical rotational axis and a rated capacity of less than 3.7 cubic feet, as certified to the U.S. Department of Energy pursuant to 10 CFR 429.12 and 10 CFR 429.20, and in accordance with the test procedures established in 10 CFR part 430.

The products subject to this investigation are currently classifiable under subheading 450.20.0090 of the Harmonized Tariff System of the United States (HTSUS). Products subject to this investigation may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations,[12] in our *Initiation Notice* 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.* No interested party submitted comments during that period. However, on May 17, 2012, the petitioner indicated that it wanted to amend the scope of the investigations, and requested that the Department exclude automatic washing machines with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet from the scope of this and the concurrent antidumping and countervailing duty investigations of washers from Mexico and Korea, respectively. Subsequently, we received comments from Samsung and LG objecting to the petitioner's scope exclusion request, and comments from GE and Staber supporting the request. We also contacted U.S. Customs and Border Protection (CBP) seeking its input on whether the petitioner's proposed scope exclusion request, if granted by the Department, would be enforceable by CBP. Based on the comments received from the interested parties and information provided by CBP, we are amending preliminarily the scope of the investigations to exclude top-load washers with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet. It is within the Department's authority to define the scope of an investigation. *See* section 732(b)(1) of the Act. Further, it is the Department's practice to provide ample deference to the petitioner with respect to the merchandise from which it intends to seek relief. *See* memorandum entitled ''Preliminary Exclusion of Top-Load Washing Machines with a Rated Capacity Less than 3.70 Cubic Feet from the Scope of the Investigations,'' dated concurrently with this notice, for further discussion.

[5] A ''tub'' is the part of the washer designed to hold water.

[6] A ''basket'' (sometimes referred to as a ''drum'') is the part of the washer designed to hold clothing or other fabrics.

[7] A ''side wrapper'' is the cylindrical part of the basket that actually holds the clothing or other fabrics.

[8] A ''drive hub'' is the hub at the center of the base that bears the load from the motor.

[9] ''Payment system electronics'' denotes a circuit board designed to receive signals from a payment acceptance device and to display payment amount, selected settings, and cycle status. Such electronics also capture cycles and payment history and provide for transmission to a reader.

[10] A ''security fastener'' is a screw with a non-standard head that requires a non-standard driver. Examples include those with a pin in the center of the head as a ''center pin reject'' feature to prevent standard Allen wrenches or Torx drivers from working.

[11] ''Normal operation'' refers to the operating mode(s) available to end users (i.e., not a mode designed for testing or repair by a technician).

[12] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

Application of Facts Available

Section 776(a) of the Act provides that the Department shall, subject to section 782(d) of the Act, apply ''the facts otherwise available'' if (1) necessary information is not available on the record of an antidumping proceeding or (2) an interested party or any other person: (A) Withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority'' if the information is submitted in a timely manner, can be verified, is not so incomplete that it cannot be used, and the interested party acted to the best of its ability in providing the information.

In this case, Daewoo did not respond to the Department's questionnaire by the established deadline nor did it request an extension of time to submit its response. Thus, the Department preliminarily determines that necessary information is not available on the record to serve as the basis for the calculation of a margin for Daewoo. *See* section 776(a)(1) of the Act. We also preliminarily find that Daewoo withheld information requested by the Department and significantly impeded the proceeding. *See* section 776(a)(2)(A) and (C) of the Act.[13]

Therefore, pursuant to sections 776(a)(1) and 776(a)(2)(A) and (C) of the Act, the Department preliminarily determines that the use of the facts otherwise available is warranted for Daewoo. Because Daewoo failed to provide any information in this investigation, sections 782(d) and (e) of the Act are not applicable in this case.

Application of Adverse Facts Available and Selection of Adverse Facts Available Rate

Section 776(b) of the Act provides that, if the Department finds an interested party has failed to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available.[14] Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, Vol. 1 (1994) (SAA) at 870. Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.''[15] In this case, the Department has determined that Daewoo failed to cooperate to the best of its ability in this proceeding by refusing to participate in the Department's investigation. Therefore, the Department has preliminarily determined an adverse inference is warranted in selecting from the facts otherwise available pursuant to section 776(b) of the Act.[16]

Corroboration of Secondary Information Used as Adverse Facts Available

Where the Department applies adverse facts available (AFA) because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. *See* also 19 CFR 351.308(c) and the SAA at 868–870. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. Normally, it is the Department's practice to use the highest rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information.[17] The rates in the petition, as adjusted at initiation, range from 31.03 percent to 82.41 percent. *See Initiation Notice* at 4010.

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. The SAA clarifies that ''corroborate'' means the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used.[18] The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published prices lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See* 19 CFR 351.308(d) and the SAA at 870.

For the purposes of this investigation and to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our

[13] *See also e.g., Certain Lined Paper Products from India: Notice of Final Results of the First Antidumping Duty Administrative Review,* 74 FR 17149 (April 14, 2009), and accompanying Issues and Decision Memorandum at Comment 2.

[14] *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review, and Final Determination to Revoke the Order In Part: Individually Quick Frozen Red Raspberries from Chile,* 72 FR 70295, 70297 (December 11, 2007).

[15] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp.* v. *United States,* 337 F.3d 1373, 1382–83 (Fed. Cir. 2003).

[16] *See, e.g., Stainless Steel Sheet and Strip in Coils From Japan: Preliminary Results of Antidumping Duty Administrative Review,* 70 FR 18369 (April 11, 2005), unchanged in *Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Antidumping Duty Administrative Review,* 70 FR 37759 (June 30, 2005) (KSC/JFE's counsel contacted the Department to state that KSC/JFE would not be submitting a response to the Department's antidumping questionnaire).

[17] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland,* 69 FR 77216 (December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland,* 70 FR 28279 (May 17, 2005)).

[18] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Preliminary Results of Antidumping Duty Administrative Reviews and partial Termination of Administrative Reviews,* 62 FR 57391, 57392 (November 6, 1996) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997)).

pre-initiation analysis and for purposes of this preliminary determination. *See* Antidumping Investigation Initiation Checklist dated January 19, 2012 (Initiation Checklist), at 6 through 11. *See also Initiation Notice* at 4009–4011. We examined evidence supporting the calculations in the petition to determine the probative value of the margins alleged in the petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis we examined the key elements of the U.S. price and normal value (NV) calculations used in the petition to derive margins. During our pre-initiation analysis we also examined information from various independent sources provided either in the petition or in supplements to the petition that corroborates key elements of the U.S. price and NV calculations used in the petition to derive estimated margins. *See Id.*

We have selected the petition rate of 82.41 percent (as adjusted at initiation) as the appropriate AFA rate to apply in this case. This rate achieves the purpose of applying an adverse inference, *i.e.,* it is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[19]

Based on our examination of the information, as discussed in detail in the Initiation Checklist and the *Initiation Notice,* we consider the petitioner's calculation of the U.S. price and NV underlying the 82.41 percent rate to be reliable. Therefore, because we confirmed the accuracy and validity of the information underlying the calculation of margins in the petition by examining source documents as well as publicly available information, we preliminarily determine that the 82.41 percent margin is reliable for purposes of this investigation.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin.[20] Similarly, the Department does not apply a margin that has been discredited or judicially invalidated.[21] The 82.41 percent rate reflects commercial practices of the washer industry and, as such, is relevant to Daewoo. The courts have acknowledged that the consideration of the commercial behavior inherent in the industry is important in determining the relevance of the selected AFA rate to the uncooperative respondent by virtue of it belonging to the same industry.[22] Such consideration typically encompasses the commercial behavior of other respondents under investigation and the selected AFA rate is gauged against the margins we calculate for those respondents. Therefore, we compared the model-specific margins we calculated for LG and Samsung for the POI to the adjusted petition rate of 82.41 percent. We found model-specific margins calculated for LG and Samsung in this investigation in the range of and above the 82.41 percent petition margin. *See* memorandum entitled ''Corroboration of Secondary Information Used as Adverse Facts Available,'' dated concurrently with this notice. Accordingly, the AFA rate is relevant as applied to Daewoo for this investigation because it falls within the range of model-specific margins we calculated for LG and Samsung in this investigation. A similar corroboration methodology has been upheld by the Court of Appeals for the Federal Circuit.[23] Further, this methodology is consistent with our past practice.[24]

Accordingly, we have determined that the AFA rate of 82.41 percent is corroborated ''to the extent practicable'' as provided in section 776(c) of the Act. *See also* 19 CFR 351.308(d). Therefore, with respect to Daewoo, we have used, as AFA, the adjusted petition margin of 82.41 percent.

Targeted Dumping Allegations

The statute allows the Department to employ the average-to-transaction margin-calculation methodology 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 or transaction-to-transaction methodology. *See* section 777A(d)(1)(B) of the Act.

On June 11, 2012, the petitioner submitted allegations of targeted dumping with respect to LG and Samsung and asserted that the Department should apply the average-to-transaction methodology in calculating the margins for these respondents. In its allegations, the petitioner asserted that there are patterns of U.S. sales prices for comparable merchandise that differ significantly among time periods, customers, and regions.[25] *See* the Petitioner's Allegations of Targeted Dumping submission dated June 11, 2012, at pages 3–6. On July 5, 2012, the petitioner revised its targeted dumping allegation for LG with respect to time period.

A. Targeted Dumping Test

We conducted time-period, customer, and regional targeted dumping analyses for LG and Samsung using the methodology we adopted in *Nails* and recently articulated in *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, and *Refrigerators.*

The methodology we employed involves a two-stage test; the first stage addresses the pattern requirement and the second stage addresses the significant-difference requirement. *See* section 777A(d)(1)(B)(i) of the Act, *Nails, Wood Flooring,* and *Refrigerators.* In this test we made all price comparisons on the basis of identical merchandise (*i.e.,* by control number or CONNUM).

LG

We based all of our targeted dumping calculations on the U.S. net price which we determined for U.S. sales by LG in our standard margin calculations. For further discussion of the test and results, *see* memorandum entitled ''Preliminary Determination Margin

[19] *See KYD, Inc.* v. *United States,* 607 F.3d 760, 767 (Fed. Cir. 2010).

[20] *See, e.g., Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996), where the Department disregarded the highest margin in that case as best information available (the predecessor to facts available), because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin.

[21] *See D & L Supply Co.* v. *United States,* 113 F.3d 1220, 1221 (Fed. Cir. 1997).

[22] *See, e.g., Ferro Union, Inc.* v. *United States,* 44 F. Supp. 2d 1310, 1334 (1999).

[23] *See PAM, S.p.A.* v. *United States,* 582 F.3d 1336, 1340 (Fed. Cir. 2009).

[24] *See Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 41808, 41811 (July 19, 2010).

[25] The petitioner relied on the Department's targeted dumping test in *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), and *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 33977 (June 16, 2008) (collectively *Nails*), as applied in more recent investigations such as *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea,* 77 FR 17413 (March 26, 2012) (*Refrigerators*).

Calculation for LG Electronics Inc. and LG Electronics USA, Inc. (collectively, ''LG'') (LG Calculation Memo), dated concurrently with this notice. As a result of our analysis, we preliminarily determine that there is a pattern of U.S. prices for comparable merchandise that differs significantly among certain time periods, customers, and regions for LG, in accordance with section 777A(d)(1)(B)(i) of the Act and our current practice as discussed in *Nails, Wood Flooring,* and *Refrigerators.*

Samsung

We based all of our targeted dumping calculations on the U.S. net price which we determined for Samsung's U.S. sales in our standard margin calculations. For further discussion of the test and results, *see* memorandum entitled ''Preliminary Determination Margin Calculation for Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively, ''Samsung'') (Samsung Calculation Memo), dated concurrently with this notice. As a result of our analysis, we preliminarily determine that there is a pattern of U.S. prices for comparable merchandise that differs significantly among certain time periods, customers, and regions for Samsung, in accordance with section 777A(d)(1)(B)(i) of the Act and our current practice as discussed in *Nails, Wood Flooring,* and *Refrigerators.*

B. Price Comparison Method

Section 777A(d)(1)(B)(ii) of the Act states that the Department may compare the weighted average of the NV to export prices (EPs) (or constructed export prices (CEPs)) of individual transactions for comparable merchandise if the Department explains why differences in the patterns of EPs (or CEPs) cannot be taken into account using the average-to-average methodology. As described above, we preliminarily determine that, with respect to sales by LG and Samsung, for certain time periods, customers, and regions there was a pattern of prices that differed significantly.

For both LG and Samsung, we find that these differences cannot be taken into account using the average-to-average methodology because the average-to-average methodology conceals differences in the patterns of prices between the targeted and non-targeted groups by averaging low-priced sales to the targeted group with high-priced sales to the non-targeted group. Therefore, for the preliminary determination, we find that the standard average-to-average methodology does not take into account LG's and Samsung's price differences because the alternative average-to-transaction methodology yields a material difference in the margin. Accordingly, for this preliminary determination we applied the average-to-transaction methodology to all U.S. sales made by LG and Samsung. In applying this methodology, consistent with our practice, we did not offset negative comparison results with positive comparison results. *See Refrigerators* and accompanying Issues and Decision Memorandum at Comment 2. *See also* the LG Calculation Memo and the Samsung Calculation Memo for further discussion.

Fair Value Comparisons

To determine whether sales of washers from Korea to the United States were made at LTFV, we compared the EP or CEP to the NV, as described in the ''Export Price/Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(B) of the Act, we compared transaction-specific EPs and CEPs to weighted-average NVs for LG and Samsung. *See* ''Targeted Dumping Allegations'' section, above.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents in Korea during the POI that fit the description in the ''Scope of Investigation'' section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: finished unit or subassembly; load, agitator and axis type; capacity measurement; drying system; finish; user interface display; specialty cycle; door/lid material; motor type; water heater; and shoecare function.

We excluded from our analysis U.S. and comparison market sales of top-load washers with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet. *See* ''Scope of Investigation'' and ''Scope Comments'' sections, above.

Export Price/Constructed Export Price

For certain U.S. sales made by LG, we used the EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States before the date of importation by the producer or exporter of the subject merchandise outside the United States, and the use of the CEP methodology was not otherwise warranted based on the facts of record.

For the remaining U.S. sales made by LG and all of Samsung's U.S. sales, we calculated CEP in accordance with section 772(b) of the Act because the subject merchandise was first sold (or agreed to be sold) in the United States after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

A. LG

With respect to EP sales, we based the starting price on the packed prices to unaffiliated purchasers in the United States. For those sales where the shipment date preceded the invoice date, we used the shipment date as the date of sale, in accordance with our practice.[26] We increased the starting price by the amount of billing adjustments. We also increased the starting price by the amount of duty drawback reported by LG, in accordance with section 772(c)(1)(B) of the Act. We made deductions for discounts and rebates, as appropriate. We also made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these expenses included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, and marine insurance. Regarding foreign inland freight, LG used an affiliated company to arrange delivery of its merchandise to the port of exportation. Because LG's affiliate did not provide the same service to unaffiliated parties, nor did LG use unaffiliated companies for its deliveries, we were unable to test the arm's-length nature of the expenses paid by LG. Therefore, we based these expenses on the affiliate's costs. For further discussion, *see* the LG Calculation Memo.

We based CEP on the packed prices to unaffiliated purchasers in the United

[26] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 71 FR 52065 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 11.

States. We increased the starting price by the amount of billing adjustments, where appropriate, and duty drawback reported by LG. We made deductions for discounts and rebates, as appropriate.

We made deductions for movement expenses for LG's CEP transactions, in accordance with section 772(c)(2)(A) of the Act; these expenses included, where appropriate, foreign inland freight (adjusted as noted above), foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, U.S. warehousing, and U.S. inland freight.

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.,* imputed credit expenses, bank charges, flooring fees, advertising expenses, and warranty expenses), offset by restocking fees collected by LG, where applicable, and indirect selling expenses (including inventory carrying costs).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by LG and its affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

B. Samsung

We based CEP on the packed prices to unaffiliated purchasers in the United States. We increased the starting price by the amount of billing adjustments reported by Samsung. We made deductions for discounts and rebates, as appropriate. We did not make an adjustment for duty drawback, as claimed by Samsung, because Samsung did not include the duties drawn-back upon export in its reported COP.[27]

We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these expenses included, where appropriate, foreign inland freight, foreign loading, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, U.S. customs duties (including processing fees and harbor maintenance fees), U.S. warehousing, U.S. inland insurance, and U.S. inland freight. With respect to foreign brokerage and handling, foreign inland freight, foreign loading, and international freight expenses, Samsung used an affiliated company to provide these services. Because Samsung's affiliate did not provide the same services to unaffiliated parties, nor did Samsung use unaffiliated companies for these services, we were unable to test the arm's-length nature of the expenses paid by Samsung. Therefore, we based these expenses on the affiliate's costs. For further discussion, see the Samsung Calculation Memo.

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.,* imputed credit expenses, advertising expenses, and warranty expenses), and indirect selling expenses (including inventory carrying costs).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Samsung and its affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

Furthermore, we included in our calculation of CEP certain U.S. sales affected by an allegedly unforeseen event that affected several transactions, including certain sales that Samsung contends were sold before the POI. We preliminarily determine that these sales were made during the POI and, therefore, we have included them in our preliminary margin analysis. *See* the Samsung Calculation Memo for further discussion.

Samsung argues that expenses associated with this event should not be included in our margin calculation consistent with the Department's practice with respect to the treatment of ''extraordinary'' expenses. Alternatively, Samsung maintains that these expenses should be treated as indirect selling expenses. However, we do not find this type of event to be extraordinary because Samsung failed to demonstrate that it is highly abnormal and so unusual in nature that it could not possibly have been foreseen as part of running a business. Even if this event is, as Samsung argues, completely unexpected in the sale of washers, the petitioner placed information on the record calling into question this claim.[28] While this event was noteworthy to Samsung, it does not rise to the level of the events that the Department has deemed extraordinary in past cases, such as losses caused by a severe hurricane or viral infection that are ''unrelated or incidentally related to the ordinary and typical activities of the entity, in light of the entity's environment.'' [29] Accordingly, we included the expenses associated with this event in our calculation of CEP. Furthermore, based on the nature of these expenses, we treated them as warranty expenses. Because the details relating to the event at issue and the expenses associated with this event are business proprietary, *see* the Samsung Calculation Memo for further discussion.

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act.

In this investigation, we determined that LG's and Samsung's aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV, in accordance with section 773(a)(1)(B) of the Act.

B. Affiliated Party Transactions and Arm's-Length Test

During the POI, LG and Samsung sold foreign like product to affiliated customers. We did not conduct the arm's-length test with respect to LG, because LG reported the downstream

[27] For purpose of the preliminary determination, we used the COP information that Samsung reported in its July 3, 2012, supplemental section D questionnaire response. While Samsung submitted an additional cost response on July 20, 2012, which responds to the Department's request to include the duties drawn back upon export in its reported costs, this response was received too late to be considered for the preliminary determination. We will verify Samsung's claimed duty drawback and product-specific duty costs and consider this information for use in the final determination.

[28] *See* the petitioner's July 2, 2012, submission on this topic.

[29] *See Certain Pasta From Italy: Notice of Final Results of the Twelfth Administrative Review,* 75 FR 6352 (February 9, 2010), and accompanying Issues and Decision Memorandum at Comment 9. *See also Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China,* 72 FR 9508 (March 2, 2007), and accompanying Issues and Decision Memorandum at Comment 25; and *Certain Frozen Warmwater Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 72 FR 52061 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

sales made by its affiliated reseller, rather than the sales it made to its affiliated reseller. We used these downstream sales in our analysis for the preliminary determination.

To test whether Samsung's sales to affiliated customers were made at arm's-length prices, we compared, on a product-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all applicable billing adjustments, discounts and rebates, movement charges, direct selling expenses and packing expenses. Where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c).[30] Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* section 771(15) of the Act and 19 CFR 351.102(b)(35).

With respect to Samsung's sales to affiliated resellers, we determined that sales to certain affiliated resellers were not made at arm's-length prices and, therefore, excluded these sales from our analysis. As this result was a direct consequence of our decision to exclude top-load washers with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet from the scope of investigation (see ''Scope of Investigation,'' ''Scope Comments,'' and ''Product Comparisons'' sections, above), we have not required Samsung to report the related downstream sales.

C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*[31] In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.,* the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.,* NV based on either home market or third country prices),[32] we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.[33]

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.,* no LOT adjustment was possible), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.[34]

In this investigation, we obtained information from LG and Samsung regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

LG

LG reported that it made U.S. sales through three channels of distribution (*i.e.,* direct EP sales to original equipment manufacturer (OEM) customers, CEP sales to OEM customers, and CEP sales out of inventory of LG-branded products). For all three channels of distribution, LG reported that it performed the following selling functions in Korea for sales to U.S. customers: Strategic/economic planning, sales forecasting; marketing (advertising, sales/marketing support, market research); packing; order input; direct sales personnel; warranty services; and freight and delivery services. These selling activities can be generally grouped into three selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery services; and (3) warranty and technical support. Accordingly, based on the selling function categories, we find that LG performed sales and marketing, freight and delivery services, and warranty and technical support for U.S. sales, and that these functions were performed at the same or similar level of intensity in all three distribution channels in the U.S. market. Because the selling functions performed by LG in Korea do not differ significantly among channels, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, LG reported that it made sales through four channels of distribution (*i.e.,* sales to construction companies, sales to unaffiliated retailers, sales to unaffiliated retailers for which LG was responsible for delivery and installation at the end-user's location, and sales made by its affiliated retailer, HiPlaza, to unaffiliated end-users).

LG reported that it performed the following selling functions for sales to all home market customers: Sales forecasting, product development/market research, advertising, sales promotion, packing, inventory maintenance, order input, direct sales personnel/sales support, warranty services, payment of commissions, and freight and delivery services. In addition to these activities, LG reported that HiPlaza maintained an extensive retail presence in Korea during the POI, and performed the following additional selling functions for its sales to unaffiliated retail customers: Sales forecasting, advertising, sales promotion, inventory maintenance, order input, direct sales personnel/sales support, and the payment of commissions.

These selling activities can be generally grouped into four selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support. Accordingly, we find that LG performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing at the same relative level of intensity for its

[30] *See also Stainless Steel Sheet and Strip in Coils From Japan: Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 39615 (August 7, 2009), unchanged in *Stainless Steel Sheet and Strip in Coils form Japan: Final Results of Antidumping Duty Administrative Review,* 75 FR 6631 (February 10, 2010).

[31] *See also Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part,* 75 FR 50999, 51001 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (*OJ from Brazil*).

[32] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) expenses, and profit for CV, where possible.

[33] *See Micron Tech., Inc.* v. *United States,* 243 F.3d 1301, 1314–16 (Fed. Cir. 2001).

[34] *See, e.g., OJ from Brazil,* 75 FR at 51001.

three reported sales channels to unaffiliated customers in the home market. Thus, we consider these three channels to constitute one LOT. Regarding sales made by LG's affiliated retailer, we find that HiPlaza performed additional sales and marketing, and inventory maintenance functions for sales to its customers. These additional selling functions are sufficient to determine that HiPlaza's home market sales were at a more advanced LOT than those made by LG to unaffiliated customers. Accordingly, based on the totality of the facts and circumstances, we preliminarily determine that LG made sales at two LOTs in the home market.

Finally, we compared the U.S. LOT to the home market LOTs and found that the selling functions LG performed for its home market customers are more advanced than those performed for its U.S. customers. That is, there is a broader range of selling functions performed in the home market (at both home market LOTs) than in the U.S. market, and these functions are performed at a higher level of intensity than in the U.S. market. This difference is sufficient to determine that LG's U.S. LOT is different from the home market LOTs. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that sales to the home market during the POI were made at different LOTs than sales to the United States. Additionally, because LG's home market LOTs are at a more advanced stage of distribution than its U.S. LOT and no LOT adjustment is possible, a CEP offset is warranted. Accordingly, we granted a CEP offset pursuant to section 773(a)(7)(B) of the Act.

Samsung

Samsung reported that it made CEP sales through two channels of distribution (*i.e.,* direct sales to unaffiliated customers and CEP sales out of inventory). Samsung reported that it packed subject merchandise in Korea and provided freight and delivery services for sales to its CEP customers. Samsung also performed sales/marketing support and market research for its CEP sales. These selling activities can be generally grouped into two selling function categories for analysis: (1) Sales and marketing and (2) freight and delivery services. Accordingly, based on the selling function categories, we find that Samsung performed freight and delivery and sales and marketing activities for U.S. sales. Because the selling functions performed by Samsung in Korea were the same in both channels of distribution, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Samsung reported that it made sales through two channels of distribution (*i.e.,* sales to unaffiliated customers and sales to affiliated resellers). Samsung reported that it performed the following selling functions for sales to all home market customers: Sales forecasting, strategic/economic planning, personnel training/exchange, provision of engineering services, advertising, sales promotion, distributor/dealer training, packing, inventory maintenance, order input/processing, employment of direct sales personnel, sales/marketing support, market research, technical assistance, provision of rebates and cash discounts, provision of warranty services, provision of guarantees, provision of after-sales services, and provision of freight and delivery services.

These selling activities can be generally grouped into four selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support. Accordingly, we find that Samsung performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support for its home market sales. Because the selling functions Samsung performed were the same in both channels of distribution, we preliminarily determine that Samsung made sales at one LOT in the home market.

Finally, we compared the U.S. LOT to the home market LOT and found that the selling functions Samsung performed for home market customers are more advanced than those performed for its U.S. customers. This difference is sufficient to determine that the U.S. LOT is different from the home market LOT. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that sales to the home market during the POI were made at a different LOT than sales to the United States. Additionally, because Samsung's home market LOT is at a more advanced stage of distribution than its U.S. LOT and no LOT adjustment is possible, a CEP offset is warranted. Accordingly, we granted a CEP offset pursuant to section 773(a)(7)(B) of the Act.

D. Cost of Production Analysis

Based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that LG's and Samsung's sales of washers in the home market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether LG's and Samsung's sales were made at prices below their respective COPs.

1. The Petitioner's Allegation Regarding Input Suppliers

Section 771(33)(G) of the Act defines an affiliated party as any person who controls any other person and such other person. The Act further states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. The SAA, at 838, provides that a company may be in a position to exercise restraint or direction through, among other factors, close supplier relationships in which the supplier or buyer becomes reliant on the other. The Department's regulations at 19 CFR 351.102(b) provide that control will not exist on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise.

The petitioner alleged that LG and Samsung control certain of their respective input suppliers by virtue of a close supplier relationship and, therefore, are affiliated within the meaning of section 771(33)(G) of the Act. Specifically, the petitioner asserted that each of the suppliers in question is reliant on either LG or Samsung for a significant percentage of its total sales, and for certain forms of financial assistance. *See* the petitioner's April 20, June 6, June 11, June 15, and July 7, 2012, submissions. Accordingly, the petitioner requested that we obtain relevant sales and cost data for the top input suppliers of LG and Samsung in order to determine whether the prices between the respondents and their suppliers were at arm's length.

We issued supplemental questionnaires to LG and Samsung requesting additional information so that we could analyze whether the respondents were in a position to exert control over the suppliers at issue. *See* the Department's May 7 and June 18, 2012, questionnaires. LG submitted detailed supplier-specific information on May 25 and July 2, 2012, in response to the Department's requests. *See* LG's July 2, 2012, response at pages 6–8, and Exhibits A–50 through A–53 (Supplier 2011 Financial Statements), Exhibit A–54 (Data on LG Purchases and Supplier Total Sales), Exhibits A–55 through A–58 (2011 Supply Agreements), and

Exhibit A–60 (Sample Loan Contract). Samsung submitted detailed supplier-specific information on May 31 and June 27, 2012. *See* Samsung's June 27, 2012, response at pages 1—5 and Exhibit 1 (Samsung's purchases), Exhibit 2 (Unaffiliated Supplier Financial Statements), Exhibit 3 (Supply Agreements), Exhibits 4–6 (Direct Loan Details), and Exhibits 7–8 (Details of Loans provided under IBK Fund).

In light of the petitioner's allegations, we reviewed the information provided by LG and Samsung and considered several factors in assessing whether there is evidence that the relationships between the respondents and their suppliers had the potential to impact pricing and production decisions. Among the factors we considered in our analysis were: (1) The terms and provisions of supply agreements between the respondents and their suppliers, (2) the relative percentage that sales to the respondents represented of each of the suppliers' total sales, (3) the terms of any financing agreements with the suppliers, if any, and (4) the overall profitability of the input suppliers. For both LG and Samsung, among other things, we found that none of their top input suppliers sold exclusively to them. Based on our analysis of the record information, for LG, we determined that the evidence does not support a conclusion that the relationship between LG and its suppliers is sufficiently close to warrant a finding of control, pursuant to section 771(33)(G) of the Act. Likewise, for Samsung, we determined that the information on the record does not support a finding that the relationship between Samsung and its suppliers is sufficiently close to warrant a finding of control. Therefore, we preliminarily find that LG and Samsung and their respective top input suppliers are not affiliated under section 771(33)(G) of the Act. *See* memoranda entitled ''Cost of Production and Constructed Value Calculation Adjustments for the for the Preliminary Determination—LG Electronics Inc. and LG Electronics USA, Inc.'' (LG Cost Calculation Memo), and ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination—Samsung Electronics Corporation,'' dated concurrently with this notice.

2. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for G&A expenses, interest expenses, and home market packing costs. *See* ''Test of Home Market Sales Prices'' section below for treatment of home market selling expenses. Based on the review of record evidence, neither LG nor Samsung appeared to experience significant changes in the cost of manufacturing during the POI. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

We relied on the COP data submitted by LG and Samsung. For LG, we relied on the COP data submitted except that for LG we revised the G&A expense ratio to express all G&A expenses recorded on LG's company-wide financial statements as a percentage of LG's company-wide unconsolidated cost of goods sold. We also revised the research and development (R&D) component of the G&A calculation to include a portion of R&D expenses reflected on LG's consolidated financial statements. *See* memorandum entitled ''Cost of Production and Constructed Value Calculation Adjustments for the for the Preliminary Determination—LG Electronics Inc. and LG Electronics USA, Inc.'' (LG Cost Calculation Memo), dated concurrently with this notice.

3. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable billing adjustments, discounts and rebates, movement charges, and actual direct and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made: (1) Within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

4. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product during the POI are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given product during the POI are at prices less than the COP, we disregard those sales of that product, because we determine that in such instances the below-cost sales represent substantial quantities within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of LG's and Samsung's home market sales during the POI were at prices less than the COP and, in addition, the below-cost sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

E. Calculation of Normal Value Based on Comparison Market Prices

LG

We calculated NV based on delivered prices to unaffiliated customers. For those sales where the shipment date preceded the invoice date, we used the shipment date as the date of sale. We made deductions, where appropriate, from the starting price for discounts and rebates. We also made deductions for movement expenses, including inland freight, handling, and warehousing, under section 773(a)(6)(B)(ii) of the Act. Regarding inland freight, handling, and warehousing, LG paid an affiliated company to arrange unaffiliated subcontractors to perform these services. Because LG's affiliate did not provide the same service to unaffiliated parties, nor did LG use unaffiliated companies for these services, we were unable to test the arm's-length nature of the expenses paid by LG. Therefore, we based these expenses on the affiliate's costs. *See* the LG Calculation Memo for further discussion.

For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for direct selling expenses, *i.e.,* imputed credit, bank charges, direct advertising and promotional expenses, warranty expenses, and commissions.

For comparisons to CEP sales, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, we deducted from NV direct selling expenses, *i.e.,* imputed credit, bank charges, direct advertising and promotional expenses, warranty expenses, and commissions. We made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses on the home market sales or

the indirect selling expenses deducted from the starting price in calculating CEP.

For comparisons to both EP and CEP sales, we reclassified certain expenses that were incurred by LG's affiliated retailer in maintaining its retail presence in the Korean market as indirect selling expenses because these expenses related to rent, sales staff salaries, and other overhead expenses and did not result from or bear a direct relationship to particular sales.[35] In addition, we disregarded the expense associated with credit card interest support that LG claimed as a direct selling expense because LG allocated this expense to all home market sales, rather than limiting the allocation to those sales incurring the expense, as requested by the Department. We also reclassified as indirect selling expenses the expenses LG reported as home market rebates pertaining to gift cards and loyalty points because LG did not demonstrate adequately that the reported amounts had been applied only to those sales which were purportedly eligible for these rebates. *See* the LG Calculation Memo.

For all price-to-price comparisons, where commissions were granted in the home market but not in the U.S. market, we made an upward adjustment to NV for the lesser of: (1) The amount of commission paid in the home market; or (2) the amount of indirect selling expenses (including inventory carrying costs) incurred in the U.S. market. *See* 19 CFR 351.410(e).

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

Samsung

We calculated NV based on delivered prices to unaffiliated customers and/or prices to affiliated customers that we determined to be at arm's length. We increased the starting price by the amount of billing adjustments. We made deductions, where appropriate, from the starting price for discounts and rebates. We also made deductions for movement expenses, including inland freight and warehousing expenses, under section 773(a)(6)(B)(ii) of the Act.

In accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, we deducted from NV direct selling expenses (*i.e.,* imputed credit expenses, advertising expenses, and warranty expenses).

Regarding inland freight, warehousing, and warranty expenses, Samsung paid affiliated companies to perform these services in the home market. Because Samsung's affiliates did not provide the same service to unaffiliated parties, nor did Samsung use unaffiliated companies for these services, we were unable to test the arm's-length nature of the expenses paid by Samsung. Therefore, we based these expenses on the affiliates' costs. *See* the Samsung Calculation Memo for further discussion.

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

Finally, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses on the home market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing CBP to suspend liquidation of all imports of subject merchandise from Korea that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Consistent with our practice, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct CBP to require a cash deposit[36] equal to the amount by which the NV exceeds the EP or CEP, less the amount of the countervailing duty determined to constitute an export subsidy.[37] In this case, although the product under investigation is also subject to a concurrent countervailing duty investigation, with respect to LG and Samsung, the Department preliminarily found no countervailing duty attributable to export subsidies. Therefore, we have not offset the cash deposit rates shown below for LG or Samsung for purposes of this preliminary determination. However, with respect to Daewoo, the Department did find preliminarily countervailing duties attributable to export subsidies. Therefore, for Daewoo, we offset the AFA antidumping margin (*i.e.,* 82.41 percent) by the countervailing duty rate attributable to export subsidies (*i.e.,* 3.30 percent).[38] *See* Memorandum entitled ''Preliminary Determination Margin Calculation for Daewoo Electronics Corporation,'' dated concurrently with this notice.

We will instruct CBP to require a cash deposit equal to the weighted-average amount by which the NV exceeds EP or CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Daewoo Electronics Corporation	79.11
LG Electronics, Inc.	12.15
Samsung Electronics Co., Ltd.	9.62
All Others	11.36

The ''All Others'' rate is derived exclusive of all *de minimis* or zero margins and margins based entirely on AFA. We have based our calculation of the ''All Others'' rate on the weighted-average of the margins calculated for LG and Samsung using publicly-ranged data. Because we cannot apply our normal methodology of calculating a

[35] *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea,* 76 FR 67675, 67685 (November 2, 2011); unchanged in *Refrigerators.*

[36] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

[37] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India,* 69 FR 67306, 67307 (November 17, 2004).

[38] *See Large Residential Washers From the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination,* 77 FR 33181 (June 5, 2012).

weighted-average margin due to requests to protect business-proprietary information, we find this rate to be the best proxy of the actual weighted-average margin determined for these respondents.[39] For further discussion of this calculation, *see* memorandum entitled ''Calculation of the All Others Rate for the Preliminary Determination of the Antidumping Duty Investigation of Large Residential Washers from Korea,'' dated concurrently with this notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

The Department will disclose to parties the calculations performed in connection with this preliminary determination within five days of the date of publication of this notice. *See* 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. *See* 19 CFR 351.309(d). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Case briefs must present all arguments that continue to be relevant to the Department's final determination, in the submitter's view. *See* 19 CFR 351.309(c)(2). Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. *See* 19 CFR 351.310(c). If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: July 27, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–19056 Filed 8–2–12; 8:45 am]

BILLING CODE 3510–DS–P

[39] *See, e.g., Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review, Partial Rescission, and Final No Shipment Determination,* 76 FR 41203, 41205 (July 13, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–842]

Large Residential Washers From Mexico: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

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

SUMMARY: We preliminarily determine that large residential washers (washers) from Mexico are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act).

Interested parties are invited to comment on this preliminary determination. Because we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Brandon Custard, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–1823, respectively.

Preliminary Determination

We preliminarily determine that washers from Mexico are being sold, or are likely to be sold, in the United States at LTFV, as provided in section 733(b) of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Background

Since the initiation of this investigation on January 19, 2012, the following events have occurred.[1]

On February 16, 2012, we selected the three largest producers/exporters of washers from Mexico as the mandatory respondents in this proceeding. *See* memorandum entitled ''Selection of Respondents for Individual Review,'' dated February 16, 2012.

On February 21, 2012, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of washers from Mexico are materially injuring the United States industry.[2]

On March 5, 2012, we issued section A of the questionnaire (*i.e.,* the section covering general information), as well as sections B through E of the questionnaire (*i.e.,* the sections covering comparison market sales, U.S. sales, cost of production (COP) information, and further manufacturing information, respectively) to Electrolux Home Products, Corp. NV/Electrolux Home Products De Mexico, S.A. de C.V. (Electrolux), Samsung Electronics Mexico S.A. de C.V. (Samsung), and Whirlpool International S. de R.L. de C.V. (Whirlpool).

We received a response to section A of the questionnaire from Electrolux in April 2012, and to sections B, C, and D of the questionnaire in May 2012. No response to section E of the questionnaire was necessary. On March 23 and March 26, 2012, respectively, Samsung and Whirlpool submitted letters informing the Department that they would not be responding to the questionnaire. *See* ''Application of Facts Available'' section, below.

On May 10, 2012, Whirlpool Corporation (hereafter, the petitioner) requested that the date for the issuance of the preliminary determination in this investigation be fully extended pursuant

[1] *See Large Residential Washers From the Republic of Korea and Mexico: Initiation of Antidumping Duty Investigations,* 77 FR 4007 (January 26, 2012) (*Initiation Notice*).

[2] *See* ITC Investigation Nos. 701–TA–488 and 731–TA–1199–1200 (Publication No. 4306).

to section 733(c)(1) of the Act and 19 CFR 351.205(e). On May 16, 2012, pursuant to sections 733(c)(1)(A) and (c)(2) of the Act and 19 CFR 351.205(f), the Department postponed the preliminary determination until no later than July 27, 2012.[3]

On May 17, 2012, the petitioner submitted a request for the Department to amend the scope of this and the concurrent antidumping and countervailing duty investigations of washers from the Republic of Korea (Korea), and to exclude certain products from those investigations. Samsung Electronics Co., Ltd (Samsung Korea) and LG Electronics Inc. (LG), respondents in the antidumping and countervailing duty investigations of washers from Korea, objected to the petitioner's scope exclusion request on May 23 and May 24, 2012, respectively. On July 11, 2012, General Electric Company and its operating division GE Appliances & Lighting (GE), a domestic producer and importer of washers, declared its support for the petitioner's scope exclusion request. On July 18, 2012, Staber Industries, Inc. (Staber), a domestic producer of washers, also filed a letter in support of the petitioner's scope exclusion request. *See* ''Scope Comments'' section of this notice.

On May 21, 2012, the petitioner alleged that Electrolux made third country sales below the COP and, therefore, requested that the Department initiate a sales-below-cost investigation of Electrolux. On June 5, 2012, the Department initiated a sales-below-cost investigation of Electrolux. *See* the ''Cost of Production Analysis'' section, below.

We issued supplemental questionnaires from May through July 2012, and we received responses to these supplemental questionnaires from May through July 2012.[4]

On June 11, 2012, the petitioner alleged that targeted dumping was occurring with respect to washers produced and exported from Mexico by Electrolux.

On July 13, 2012, Electrolux requested a postponement of the final determination.

Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

Pursuant to section 735(a)(2) of the Act, on July 13, 2012, Electrolux requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register**, and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative for Electrolux, (2) Electrolux accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting Electrolux's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Period of Investigation

The period of investigation (POI) is October 1, 2010, through September 30, 2011. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.,* December 2011).

Scope of Investigation

The product covered by this investigation is all large residential washers and certain subassemblies thereof from Mexico.

For purposes of this investigation, the term ''large residential washers'' denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, except as noted below, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm).

Also covered are certain subassemblies used in large residential washers, namely: (1) All assembled cabinets designed for use in large residential washers which incorporate, at a minimum: (a) At least three of the six cabinet surfaces; and (b) a bracket; (2) all assembled tubs[5] designed for use in large residential washers which incorporate, at a minimum: (a) a tub; and (b) a seal; (3) all assembled baskets[6] designed for use in large residential washers which incorporate, at a minimum: (a) A side wrapper;[7] (b) a base; and (c) a drive hub;[8] and (4) any combination of the foregoing subassemblies.

Excluded from the scope are stacked washer-dryers and commercial washers. The term ''stacked washer-dryers'' denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer. The term ''commercial washer'' denotes an automatic clothes washing machine designed for the ''pay per use'' market meeting either of the following two definitions:

(1) (a) it contains payment system electronics;[9] (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners;[10] or

(2) (a) it contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such that, in normal operation,[11] the unit cannot begin a wash cycle without first receiving a signal from a *bona fide* payment acceptance device such as an electronic credit card reader; (c) it contains a push button user

[3] *See Large Residential Washers From the Republic of Korea and Mexico: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 77 FR 30261 (May 22, 2012).

[4] We did not consider any data submissions received after July 17, 2012, for purposes of the preliminary determination.

[5] A ''tub'' is the part of the washer designed to hold water.

[6] A ''basket'' (sometimes referred to as a ''drum'') is the part of the washer designed to hold clothing or other fabrics.

[7] A ''side wrapper'' is the cylindrical part of the basket that actually holds the clothing or other fabrics.

[8] A ''drive hub'' is the hub at the center of the base that bears the load from the motor.

[9] ''Payment system electronics'' denotes a circuit board designed to receive signals from a payment acceptance device and to display payment amount, selected settings, and cycle status. Such electronics also capture cycles and payment history and provide for transmission to a reader.

[10] A ''security fastener'' is a screw with a non-standard head that requires a non-standard driver. Examples include those with a pin in the center of the head as a ''center pin reject'' feature to prevent standard Allen wrenches or Torx drivers from working.

[11] ''Normal operation'' refers to the operating mode(s) available to end users (*i.e.,* not a mode designed for testing or repair by a technician).

interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners.

Also excluded from the scope are automatic clothes washing machines with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet, as certified to the U.S. Department of Energy pursuant to 10 CFR 429.12 and 10 CFR 429.20, and in accordance with the test procedures established in 10 CFR Part 430.

The products subject to this investigation are currently classifiable under subheading 450.20.0090 of the Harmonized Tariff System of the United States (HTSUS). Products subject to this investigation may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations,[12] in our *Initiation Notice* 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.* No interested party submitted comments during that period. However, on May 17, 2012, the petitioner indicated that it wanted to amend the scope of the investigations, and requested that the Department exclude automatic washing machines with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet from the scope of this investigation and the concurrent antidumping and countervailing duty investigations of washers from Korea. Subsequently, we received comments from Samsung Korea and LG objecting to the petitioner's scope exclusion request, and comments from GE and Staber supporting the request. We also contacted U.S. Customs and Border Protection (CBP) seeking its input on whether the petitioner's proposed scope exclusion request, if granted by the Department, would be enforceable by CBP. Based on the comments received from the interested parties and information provided by CBP, we are amending preliminarily the scope of the investigations to exclude top-load washers with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet. It is within the Department's authority to define the scope of an investigation. *See* section 732(b)(1) of the Act. Further, it is the Department's practice to provide ample deference to the petitioner with respect to the merchandise from which it intends to seek relief. *See* memorandum entitled ''Preliminary Exclusion of Top-Load Washing Machines with a Rated Capacity Less than 3.70 Cubic Feet from the Scope of the Investigations,'' dated concurrently with this notice, for further discussion.

Application of Facts Available

Section 776(a) of the Act provides that the Department shall, subject to section 782(d) of the Act, apply ''the facts otherwise available'' if (1) necessary information is not available on the record of an antidumping proceeding or (2) an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority'' if the information is submitted in a timely manner, can be verified, is not so incomplete that it cannot be used, and the interested party acted to the best of its ability in providing the information.

In this case, Samsung and Whirlpool stated in letters dated March 23 and March 26, 2012, respectively, that they would not be responding to the Department's questionnaire or otherwise participating in this investigation. Thus, the Department preliminarily determines that necessary information is not available on the record to serve as the basis for the calculation of margins for Samsung and Whirlpool. *See* section 776(a)(1) of the Act. We also preliminarily find that Samsung and Whirlpool have withheld information requested by the Department and significantly impeded the proceeding. *See* section 776(a)(2)(A) and (C) of the Act.[13]

Therefore, pursuant to sections 776(a)(1) and 776(a)(2)(A) and (C) of the Act, the Department preliminarily determines that the use of the facts otherwise available is warranted for Samsung and Whirlpool. Because Samsung and Whirlpool failed to provide any information in this investigation, sections 782(d) and (e) of the Act are not applicable in this case.

Application of Adverse Facts Available and Selection of Adverse Facts Available Rate

Section 776(b) of the Act provides that, if the Department finds an interested party has failed to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available.[14] Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.''[15] Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.''[16] In this case, the Department has determined that Samsung and Whirlpool failed to cooperate to the best of their ability in this proceeding by refusing to participate in the Department's investigation. Therefore, the Department has preliminarily determined an adverse inference is warranted in selecting from the facts otherwise available pursuant to section 776(b) of the Act.[17]

[12] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[13] *See also, e.g., Certain Lined Paper Products from India: Notice of Final Results of the First Antidumping Duty Administrative Review,* 74 FR 17149 (April 14, 2009), and accompanying Issues and Decision Memorandum at Comment 2.

[14] *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review, and Final Determination to Revoke the Order In Part: Individually Quick Frozen Red Raspberries from Chile,* 72 FR 70295, 70297 (December 11, 2007).

[15] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, Vol. 1 (1994) (SAA) at 870.

[16] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR at 27340; *see also Nippon Steel Corp.* v. *United States,* 337 F.3d 1373, 1382–83 (Fed. Cir. 2003).

[17] *See, e.g., Stainless Steel Sheet and Strip in Coils From Japan: Preliminary Results of Antidumping Duty Administrative Review,* 70 FR

Continued

Corroboration of Secondary Information Used as Adverse Facts Available

Where the Department applies adverse facts available (AFA) because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. *See also* 19 CFR 351.308(c) and the SAA at 868–870. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. Normally, it is the Department's practice to use the highest rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information.[18] The rates in the petition, as adjusted at initiation, range from 27.21 percent to 72.41 percent. *See Initiation Notice,* 77 FR at 4011.

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. The SAA clarifies that ''corroborate'' means the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used.[19] The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published prices lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See* 19 CFR 351.308(d) and the SAA at 870.

For the purposes of this investigation and to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis and for purposes of this preliminary determination. *See* Antidumping Investigation Initiation Checklist, dated January 19, 2012 (Initiation Checklist), at 6 through 11. *See also Initiation Notice,* 77 FR at 4010—4011. We examined evidence supporting the calculations in the petition to determine the probative value of the margins alleged in the petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis we examined the key elements of the U.S. price and normal value (NV) calculations used in the petition to derive margins. During our pre-initiation analysis we also examined information from various independent sources provided either in the petition or in supplements to the petition that corroborates key elements of the U.S. price and NV calculations used in the petition to derive estimated margins. *Id.*

We have selected the petition rate of 72.41 percent (as adjusted at initation) as the appropriate AFA rate to apply in this case. This rate achieves the purpose of applying an adverse inference, *i.e.,* it is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[20]

Based on our examination of the information, as discussed in detail in the Initiation Checklist and the *Initiation Notice,* we consider the petitioner's calculation of the U.S. price and NV underlying the 72.41 percent rate to be reliable. Therefore, because we confirmed the accuracy and validity of the information underlying the calculation of margins in the petition by examining source documents as well as publicly available information, we preliminarily determine that the 72.41 percent margin is reliable for purposes of this investigation.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin.[21] Similarly, the Department does not apply a margin that has been discredited or judicially invalidated.[22]

The 72.41 percent rate reflects commercial practices of the washer industry and, as such, is relevant to Samsung and Whirlpool. The courts have acknowledged that the consideration of the commercial behavior inherent in the industry is important in determining the relevance of the selected AFA rate to the uncooperative respondent by virtue of it belonging to the same industry.[23] Such consideration typically encompasses the commercial behavior of other respondents under investigation and the selected AFA rate is gauged against the margins we calculate for those respondents. Therefore, we compared the model-specific margins we calculated for Electrolux for the POI to the adjusted petition rate of 72.41 percent. We found margins calculated for Electrolux in this investigation in the range of and above the 72.41 percent petition margin. *See* memorandum entitled ''Corroboration of Secondary Information Used as Adverse Facts Available,'' dated concurrently with this notice. Accordingly, the AFA rate is relevant as applied to Samsung and Whirlpool for this investigation because it falls within the range of model-specific margins we calculated for Electrolux in this investigation. A similar corroboration methodology has been upheld by the Court of Appeals for the Federal Circuit.[24] Further, this methodology is consistent with our past practice.[25]

18369 (April 11, 2005), unchanged in *Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Antidumping Duty Administrative Review,* 70 FR 37759 (June 30, 2005) (KSC/JFE's counsel contacted the Department to state that KSC/JFE would not be submitting a response to the Department's antidumping questionnaire).

[18] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland,* 69 FR 77216 (December 27, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland,* 70 FR 28279 (May 17, 2005).

[19] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Preliminary Results of Antidumping Duty Administrative Reviews and partial Termination of Administrative Reviews,* 62 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997).

[20] *See KYD, Inc.* v. *United States,* 607 F.3d 760, 767 (Fed. Cir. 2010).

[21] For example, in *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996), the Department disregarded the highest margin in that case as best information available (the predecessor to facts available), because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin.

[22] *See D & L Supply Co.* v. *United States,* 113 F.3d 1220, 1221 (Fed. Cir. 1997).

[23] *See, e.g., Ferro Union, Inc.* v. *United States,* 44 F. Supp. 2d 1310, 1334 (1999).

[24] *See PAM, S.p.A.* v. *United States,* 582 F.3d 1336, 1340 (Fed. Cir. 2009).

[25] *See Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China:*

Accordingly, we have determined that the AFA rate of 72.41 percent is corroborated to the extent practicable as provided in section 776(c) of the Act. *See also* 19 CFR 351.308(d). Therefore, with respect to Samsung and Whirlpool, we have used, as AFA, the adjusted petition margin of 72.41 percent.

Targeted Dumping Allegation

The statute allows the Department to employ the average-to-transaction margin-calculation methodology 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 or transaction-to-transaction methodology. *See* section 777A(d)(1)(B) of the Act.

On June 11, 2012, the petitioner submitted an allegation of targeted dumping with respect to Electrolux and asserted that the Department should apply the average-to-transaction methodology in calculating the margin for Electrolux. In its allegation, the petitioner asserted that there are patterns of U.S. sales prices for comparable merchandise that differ significantly among time periods, customers, and regions. *See* the Petitioner's Allegations of Targeted Dumping submission, dated June 11, 2012, at 3–6.[26]

A. Targeted Dumping Test

We conducted time-period, customer, and regional targeted dumping analyses for Electrolux using the methodology we adopted in *Nails* and recently articulated in *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, and *Refrigerators.*

The methodology we employed involves a two-stage test; the first stage addresses the pattern requirement and the second stage addresses the significant-difference requirement. *See* section 777A(d)(1)(B)(i) of the Act, *Nails, Wood Flooring,* and *Refrigerators.* In this test we made all price comparisons on the basis of identical merchandise (*i.e.,* by control number or CONNUM). We based all of our targeted dumping calculations on the U.S. net price which we determined for U.S. sales by Electrolux in our standard margin calculation. For further discussion of the test and results, *see* memorandum entitled ''Preliminary Determination Margin Calculation for Electrolux Home Products, Corp. N.V. and Electrolux Home Products De Mexico, S.A. de C.V.'' (Electrolux Calculation Memo), dated concurrently with this notice. As a result of our analysis, we preliminarily determine that there is a pattern of U.S. prices for comparable merchandise that differs significantly among certain time periods, customers, and regions for Electrolux, in accordance with section 777A(d)(1)(B)(i) of the Act and our current practice as discussed in *Nails, Wood Flooring,* and *Refrigerators.*

B. Price Comparison Method

Section 777A(d)(1)(B)(ii) of the Act states that the Department may compare the weighted average of the NV to export prices (EPs) (or constructed export prices (CEPs)) of individual transactions for comparable merchandise if the Department explains why differences in the patterns of EPs (or CEPs) cannot be taken into account using the average-to-average methodology. As described above, we preliminarily determine that, with respect to sales by Electrolux, for certain time periods, customers, and regions there was a pattern of prices that differed significantly.

For Electrolux, we find that these differences can be taken into account using the average-to-average methodology because the average-to-average methodology does not conceal differences in the patterns of prices between the targeted and non-targeted groups by averaging low-priced sales to the targeted group with high-priced sales to the non-targeted group. Therefore, for the preliminary determination, we find that the standard average-to-average methodology takes into account the price differences because the alternative average-to-transaction methodology yields no material difference in the margin. Accordingly, for this preliminary determination we have applied the standard average-to-average methodology to all U.S. sales made by Electrolux. *See* the Electrolux Calculation Memo for further discussion.

Fair Value Comparisons

To determine whether sales of washers from Mexico to the United States were made at LTFV, we compared the CEP to the NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared weighted average CEPs to weighted-average NVs for Electrolux. *See* ''Targeted Dumping Allegations'' section, above.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by Electrolux in the third country, Canada, during the POI that fit the description in the ''Scope of Investigation'' section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the third country (Canadian) market, where appropriate. *See* ''Home Market Viability'' section of the notice for further discussion. Where there were no sales of identical merchandise in the Canadian market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by Electrolux in the following order of importance: finished unit or subassembly; load, agitator and axis type; capacity measurement; drying system; finish; user interface display; specialty cycle; door/lid material; motor type; water heater; and shoecare function.

Constructed Export Price

For all U.S. sales made by Electrolux we calculated CEP in accordance with section 772(b) of the Act because the subject merchandise was first sold (or agreed to be sold) in the United States after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

We based CEP on the packed prices to unaffiliated purchasers in the United States. We used the earlier of shipment or invoice date as the date of sale for

Final Determination of Sales at Less Than Fair Value, 75 FR 41808, 41811 (July 19, 2010).

[26] The petitioner relied on the Department's targeted dumping test in *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), and *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 33977 (June 16, 2008) (collectively *Nails*), as applied in more recent investigations such as *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From Mexico,* 77 FR 17422 (March 26, 2012) (*Refrigerators*).

Electrolux's CEP sales, in accordance with our practice.[27]

We adjusted the starting price by the amount of billing adjustments reported by Electrolux. We made deductions for rebates and discounts, as appropriate. We also made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these expenses included, where appropriate, foreign inland freight, foreign customs fees, foreign and U.S. inland insurance, U.S. inland freight (*i.e.,* freight from factory to warehouse and freight from warehouse to the customer), and pre-sale warehousing expenses. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.,* imputed credit expenses, advertising expenses, and warranty expenses), and indirect selling expenses (including inventory carrying costs). *See* the Electrolux Calculation Memo.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Electrolux on its sales of the subject merchandise in the United States and the profit associated with those sales.

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Electrolux's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act.

In this investigation, we determined that Electrolux's aggregate volume of home market sales of the foreign like product was insufficient to permit a proper comparison with U.S. sales of the subject merchandise. Therefore, we used sales to Canada, Electrolux's largest third country market, comprised of merchandise that is similar and/or identical to the subject merchandise exported to the United States, as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

B. Affiliated Party Transactions and Arm's-Length Test

During the POI, Electrolux sold foreign like product to affiliated customers. To test whether Electrolux's sales to affiliated customers were made at arm's-length prices, we compared, on a product-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all applicable billing adjustments, discounts and rebates, movement charges, direct selling expenses and packing expenses. Where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c).[28] Sales to affiliated customers in the comparison market that were not made at arm's-length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* section 771(15) of the Act and 19 CFR 351.102(b).

C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.[29] In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.,* the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.,* NV based on either home market or third country prices),[30] we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.[31]

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.,* no LOT adjustment was possible), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.[32]

In this investigation, we obtained information from Electrolux regarding the marketing stages involved in making the reported comparison market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Our LOT finding is summarized below.

Electrolux sold washers only to retailers and builders/wholesalers in both the Canadian and U.S. markets. Electrolux reported that it made CEP sales in the U.S. market through the following four channels of distribution: (1) The customer picks up the merchandise from its El Paso, Texas, warehouse; (2) its U.S. affiliate (*i.e.,* Electrolux Major Appliances North America (UWA)) delivers the merchandise from the El Paso warehouse to the customer; (3) the customer picks up the merchandise from a UWA regional distribution center (RDC); and (4) UWA delivers the merchandise from the RDC to the customer. For purposes of examining the different selling activities reported by Electrolux for sales made through

[27] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 72 FR 52065 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 11.

[28] *See Stainless Steel Sheet and Strip in Coils From Japan: Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 39615 (August 7, 2009), unchanged in *Stainless Steel Sheet and Strip in Coils form Japan: Final Results of Antidumping Duty Administrative Review,* 75 FR 6631 (February 10, 2010).

[29] *Id; see also Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent to Revoke Antidumping Duty Order in Part,* 75 FR 50999, 51001 (August 18, 2010) (*OJ from Brazil*) and accompanying Issues and Decision Memorandum at Comment 7.

[30] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A expenses, and profit for CV, where possible.

[31] *See Micron Tech., Inc.* v. *United States,* 243 F.3d 1301, 1314–16 (Fed. Cir. 2001).

[32] *See, e.g., OJ from Brazil,* 75 FR at 51001.

each U.S. channel of distribution, we grouped the selling activities into four selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support.

We compared the selling activities Electrolux performed in each channel, exclusive of the selling activities performed by its U.S. affiliate, and found that either there is no difference in the selling functions performed by Electrolux between the channels (*i.e.,* freight and delivery services) or Electrolux did not perform the selling function at all (*i.e.,* sales and marketing, inventory maintenance and warehousing, and warranty and technical support) for each channel. As a result, we found that Electrolux performed the same selling functions for all four U.S. distribution channels. Accordingly, we determined that all of Electrolux's CEP sales constitute one LOT.

With respect to the Canadian market, Electrolux reported the following three channels of distribution: (1) Its Canadian affiliate (*i.e.,* Electrolux Canada Corp. (CDW)) arranges with UWA to have the merchandise delivered from the El Paso warehouse to CDW's customer; (2) the customer picks up the merchandise from CDW's RDC; and (3) CDW delivers the merchandise from the RDC to the customer. In determining whether separate LOTs exist in the Canadian market, we compared the selling functions performed by Electrolux and its affiliates CDW and UWA on behalf of the Canadian sales. For purposes of examining the different selling activities reported by Electrolux and its affiliates for sales made through each Canadian channel of distribution, we grouped the selling activities into four selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support.

We compared the selling activities Electrolux and its affiliates collectively performed in each channel, and found that there is no difference in the selling functions performed between the channels. As a result, we found that Electrolux performed the same selling functions for all three Canadian market distribution channels. Accordingly, we determined that all Canadian sales constitute one LOT.

Finally, we compared the CEP LOT to the Canadian market LOT and found that the selling functions performed for Canadian market sales are either not performed for CEP sales or are performed at a significantly higher degree of intensity compared to the selling functions performed for U.S. sales. Specifically, we found that three of the four selling functions (*i.e.,* sales and marketing, inventory maintenance and warehousing, and warranty and technical support) are performed by Electrolux in the Canadian market but not in the U.S. market, and the remaining selling function (*i.e.,* freight and delivery services) was performed by Electrolux in the Canadian market at a higher degree of intensity than in the U.S. market. Therefore, we determined that the NV LOT is at a more advanced stage of distribution than the CEP LOT and that no LOT adjustment was possible. Accordingly, we granted a CEP offset pursuant to section 773(a)(7)(B) of the Act.

D. Cost of Production Analysis

Because Electrolux did not have a viable home market, on May 21, 2012, the petitioner alleged that it made third country sales below the COP and, therefore, requested that the Department initiate a sales-below-cost investigation. On June 5, 2012, the Department initiated a sales-below-cost investigation of Electrolux. *See* memorandum entitled ''The Petitioner's Allegation of Sales below the Cost of Production for Electrolux Home Products, Corp. N.V. and Electrolux Home Products, Inc.,'' dated June 5, 2012.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses, interest expenses, and comparison market packing costs. *See* ''Test of Comparison Market Sales Prices'' section below for treatment of comparison market selling expenses. Based on the review of record evidence, Electrolux did not appear to experience significant changes in the cost of manufacturing during the POI. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

We relied on Electrolux's submitted COP data but adjusted this data to account for labor and overhead provided by affiliated parties at transfer prices, in accordance with section 773(f)(2) of the Act. *See* memorandum entitled ''Cost of Production and Constructed Value Adjustments for the Preliminary Determination—Electrolux Home Products, Corp. N.V. and Electrolux Home Products, Inc.,'' dated July 27, 2012, for further discussion.

2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the comparison market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable billing adjustments, discounts and rebates, movement charges, and actual direct and indirect selling expenses. In determining whether to disregard comparison market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product during the POI are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given product during the POI are at prices less than the COP, we disregard those sales of that product, because we determine that in such instances the below-cost sales represent substantial quantities within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of Electrolux's comparison market sales during the POI were at prices less than the COP and, in addition, the below-cost sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

E. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on packed prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for discounts, rebates, and billing adjustments. We also made deductions for movement

expenses, including inland freight, customs fees, brokerage and handling, insurance, and warehousing expenses, under section 773(a)(6)(B)(ii) of the Act. We offset movement expenses, where appropriate, by the amount of freight revenue received by Electrolux. Consistent with our practice, we capped the amount of freight revenue allowed as an offset by the amount of the freight expense incurred.[33] In accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, we deducted from NV direct selling expenses (*i.e.,* warranty and advertising expenses).

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted third country packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

Finally, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses on the comparison market sales or the indirect selling expenses deducted from the starting price in calculating CEP. *See* the Electrolux Calculation Memorandum.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing CBP to suspend liquidation of all imports of subject merchandise from Electrolux, Samsung, Whirlpool, and ''All Others'' that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

We will instruct CBP to require a cash deposit[34] equal to the weighted-average amount by which the NV exceeds CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-Average margin percentage
Electrolux Home Products, Corp. NV/ Electrolux Home Products De Mexico, S.A. de C.V.	33.30
Samsung Electronics Mexico S.A. de C.V.	72.41
Whirlpool International S. de R.L. de C.V.	72.41
All Others	33.30

The ''All Others'' rate is derived exclusive of all *de minimis* or zero margins and margins based entirely on AFA. Specifically, this rate is based on the margin calculated for Electrolux in this case.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

The Department will disclose to parties the calculations performed in connection with this preliminary determination within five days of the date of publication of this notice. *See* 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. *See* 19 CFR 351.309(d). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Case briefs must present all arguments that continue to be relevant to the Department's final determination, in the submitter's view. *See* 19 CFR 351.309(c)(2). Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. *See* 19 CFR 351.310(c). If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: July 27, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–19054 Filed 8–2–12; 8:45 am]

BILLING CODE 3510–DS–P

[33] *See, e.g., OJ from Brazil* and accompanying Issues and Decision Memorandum at Comment 2.

[34] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC143

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Essential Fish Habitat Review Committee (EFHRC) will hold a meeting by conference call to finalize a report on the periodic review of groundfish essential fish habitat (EFH).

DATES: The conference call will be held August 17, 2012 between 9 a.m. and noon.

ADDRESSES: The meeting will be held via conference call, with a listening station provided at the Pacific Council Office, 7700 NE Ambassador Place,

Suite 101, Portland, OR 97220–1384, telephone: (503) 820–2280.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Staff Officer, Pacific Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to finalize the Phase I report on the review of information relevant to EFH for Pacific Coast groundfish stocks. The Phase I report is designed to compile new and newly-available information, and compare it with the suite of information that was used to establish the current groundfish EFH designations. The EFHRC is scheduled to report to the Council at its September 13–18, 2012 meeting in Boise, ID.

Although non-emergency issues not contained in the meeting agenda may come before the EFHRC for discussion, those issues may not be the subject of formal EFHRC action during this meeting. EFHRC action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the EFHRC's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: July 31, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–19031 Filed 8–2–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC146

Caribbean Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) will hold a meeting.

DATES: The meetings will be held on August 28–29, 2012. The Council will convene on Tuesday, August 28, 2012 from 9 a.m. to 5 p.m., and will reconvene on Wednesday, August 29, 2012, from 9 a.m. to 5 p.m.

ADDRESSES: The meetings will be held at the El Conquistador Hotel, #1000 El Conquistador Avenue, Fajardo, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 143rd regular Council Meeting to discuss the items contained in the following agenda:

August 28, 2012—9 a.m. to 5 p.m.

- Call to Order.
- Election of Officers.
- Adoption of Agenda.
- Consideration of the 142nd Council Meeting Verbatim Transcriptions.
- Executive Director's Report.
- Report from Public Hearings and Scoping Meetings.

—ACLs/AMs Seagrassess
—White Paper FMPs by Areas
—Regular Amendment on Parrotfish Trips, Size Limits, and Trap Escape Vents-Options Paper

Public Comment Period—(5) Five-minutes Presentations

August 29, 2012, 9 a.m.—5 p.m.

- Trap Reduction Project Report Update.
- Five Year Research Plan—Barbara Kojis.
- Queen Conch Compatible Regulations St. Croix and EEZ.
- Calendar vs. Fishing Year Issues.
- Enforcement Reports.

—Puerto Rico—DNER
—U.S. Virgin Islands—DPNR
—NOAA/NMFS
—U.S. Coast Guard

- Administrative Committee Recommendations (July 31, 2012 Meeting).
- Meetings Attended by Council Members and Staff.
- Public Comment Period (5–Minutes Presentations).
- Other Business.
- Next Council Meeting.

The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. To further accommodate discussion and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

The meetings are open to the public, and will be conducted in English. Simultaneous Interpretation (English/Spanish) will be provided. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be subjects for formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918–1920, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: July 31, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–19032 Filed 8–2–12; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 9/3/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely

Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Additions

On 4/27/2012 (77 FR 25146–25147); 5/18/2012 (77 FR 29596); 6/1/2012 (77 FR 32591–32592); 6/8/2012 (77 FR 34026–34027; and 6/15/2012 (77 FR 35942–35944), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 USC 8501–8506) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Combat Arms Ear Plug

NSN: 6515–01–576–8796—Skull Screws Ear Plug, Single Ended, Universal Size.
NSN: 6515–01–576–8837—Single Ended, Size Small.
NSN: 6515–01–576–8861—Single Ended, Size Medium.
NSN: 6515–01–576–8869—Single Ended, Size Large.
NSN: 6515–01–466–2710—Dual Ended, Universal Size.
NPA: New Dynamics Corporation, Middletown, NY.
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA.
Coverage: C–List for 100% of the requirement of the Department of Defense for the National Stock Numbers (NSNs) specified, as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA.

A comment was received from a Department of the Army civilian program staff member who expressed opposition to adding the Combat Arms Ear Plugs (ear plugs) to the Procurement List due to his concern that it could impact on-going studies into other ear protection for Army soldiers. The Army program office subsequently withdrew their objection and indicated their support for adding the ear plugs to the Procurement List while acknowledging that the Army may continue other ear protection studies if it is determined appropriate.

Accordingly, following a deliberative review of all information, the Committee has determined that it is appropriate to add the ear plugs specified by the National Stock Numbers (NSNs) referenced to the Procurement List.

Binder, Loose-Leaf

NSN: 7510–01–392–5283—3 D–Ring, No Overlay, Black, 5''
NSN: 7510–01–495–0696—Slant 3 D–Ring with Overlay, White, 4''
NPA: South Texas Lighthouse for the Blind, Corpus Christi, TX
Contracting Activity: General Services Administration, New York, NY
COVERAGE: A–List for the Total Government Requirement as aggregated by the General Services Administration.

Copy Paper, 100% Recycled, Convenience Pack

NSN: 7530–00–NIB–0890—8.5 x 11, Reamless 2500 Sheet.
NSN: 7530–00–NIB–0891—8.5 x 11, Ream Wrapped 2500 Sheet.
NPA: Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY.
Contracting Activity: General Services Administration, New York, NY.
Coverage: A–List for the Total Government Requirement as aggregated by the General Services Administration.

Hose, Fire, Orange

NSN: 4210–01–131–0247—2 1/2'' x 50'.
NSN: 4210–01–131–0249—1 1/2'' x 50'.
NSN: 4210–01–220–6648—4'' x 50'.
NSN: 4210–01–264–3871—1 1/2'' x 25'.
NPA: NewView Oklahoma, Inc., Oklahoma City, OK.
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA.
Coverage: C–List for 25% of the requirement of the U.S. Navy, as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA.
NSN: MR 1026—Broom, Tilt Angle.
NSN: MR 1030—Set, Upright Broom and Dustpan.
NPA: Industries for the Blind, Inc., West Allis, WI.
Contracting Activity: Military Resale-Defense Commissary Agency, Fort Lee, VA.
Coverage: C–List for the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

Services

Service Type/Location: CBRNE Kit Sustainment and Replenishment,
Naval Medical Logistics Command,
(Offsite: 10440 Trenton Avenue, St. Louis, MO),
693 Nelman Street,
Fort Detrick, MD.
NPA: The Lighthouse for the Blind, St. Louis, MO.
Contracting Activity: Dept of the Navy, Naval Medical Logistics Command, Fort Detrick, MD.
Service Type/Location: Custodial and Landscaping Service,
Rome Federal Building,
600 East First Street,
Rome, GA.
NPA: Sara's Mentoring Center, Inc., Virginia Beach, VA
Contracting Activity: General Services Adminisration, Public Buildings Service, Acquisition Division/Services Branch, Atlanta, GA.
Service Type/Location: Mail Service,
US Soldiers Systems Center,
Kansas Street, Building 20,
Natick, MA.
NPA: Community Workshops, Inc., Boston, MA
Contracting Activity: Dept of the Army, W6QK ACC–APG Natick, Natick, MA.
Service Type/Location: Custodial Service,
Transportation Security Administration (TSA) Space,
Lehigh Valley International Airport,
3311 Airport Rd,
Allentown, PA.
NPA: Via of the Lehigh Valley, Inc., Bethlehem, PA
Contracting Activity: General Services Adminisration, Public Buildings Service, R03 Regionalcontracts Support Services Section, Philadelphia, PA.
Service Type/Location: Custodial Service.
National Oceanic and Atmospheric Administration (NOAA)
National Weather Service
32 Dawes Drive
Johnson City, NY
NPA: Human Technologies Corporation, Utica, NY
Contracting Activity: Dept of Commerce, National Oceanic and Atmospheric Administration, Norfolk, VA.
Service Type/Location: Janitorial/Custodial Service.
WA104 Seattle-Marysville Armed Forces Reserve Center (AFRC),
13613 40th Avenue NE.,
Marysville, WA.
NPA: Portland Habilitation Center, Inc., Portland, OR.
Contracting Activity: Dept of the Army,

W6QM MICC–ARCC North, Fort McCoy, WI.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2012–19034 Filed 8–2–12; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from the Procurement List.

SUMMARY: The Committee is proposing to add services to the Procurement List that will be provided by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services previously furnished by such agencies.

Comments Must Be Received on or Before: 9/3/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

For Further Information or to Submit Comments Contact: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

This notice is published pursuant to 41 USC 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to provide the services listed below from the nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the services to the Government.

2. If approved, the action will result in authorizing small entities to provide the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Services:

Service Type/Location: Janitorial Service, US Department of Agriculture Natural Resources, Conservation Service, Shiprock Field Office, Old Post Office Route 491, Shiprock, NM.
NPA: Presbyterian Medical Services, Santa Fe, NM.
Contracting Activity: US Department of Agriculture Natural Resources Conservation Service, Soil Conservation Service, Phoenix, AZ.
Service Type/Location: Storage and Distribution of Various Federal Supply Classes (FSC) Defense Logistics Agency Aviation, Richmond, VA.
NPAs: Industries for the Blind, Greensboro, NC Arizona Industries for the Blind, Phoenix, AZ
Contracting Activity: Defense Logistics Agency Aviation, Richmond, VA.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services proposed for deletion from the Procurement List.

End of Certification

The following products and services are proposed for deletion from the Procurement List:

Products:

Glove Powder Free, Encore Hydrasoft

NSN: 6515–00–NIB–0445
NSN: 6515–00–NIB–0446
NSN: 6515–00–NIB–0447
NSN: 6515–00–NIB–0448
NSN: 6515–00–NIB–0449
NSN: 6515–00–NIB–0450
NSN: 6515–00–NIB–0451
NSN: 6515–00–NIB–0452
NPA: Bosma Industries for the Blind, Inc., Indianapolis, IN.
Contracting Activity: Department of Veterans Affairs, NAC, Hines, IL.

Services

Service Type/Location: Sorting of Time & Attendance Reports, Department of Transportation, 1777 Phoenix Parkway Building, College Park, GA.
NPA: WORKTEC, Jonesboro, GA
Contracting Activity: Department of Transportation, Saint Lawrence Seaway Development Corp., Massena, NY.
Service Type/Location: Mailroom Operation, U.S. Army Reserve Command, Atlanta, GA.
NPA: WORKTEC, Jonesboro, GA
Contracting Activity: Dept of the Army, W6qM MICC Ctr-Ft Sam Houston, Fort Sam Houston, TX.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2012–19035 Filed 8–2–12; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice; Information Collection 3038–0043, Rules Relating to Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments [if any].

DATES: Comments must be submitted on or before September 4, 2012.

ADDRESSES: Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses below. Please

refer to OMB Control No. 3038–0043 in any correspondence. Comments may be mailed to Gail B. Scott, Office of General Counsel, U.S. Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503. Comments may also be submitted by any of the following methods:

The agency's Web site, at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.

Mail: David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

Hand Delivery/Courier: Same as mail above.

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Please submit your comments using only one method and identity that it is for the renewal of 3038–0043.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

For Further Information or a Copy Contact: Gail B. Scott at CFTC, (202) 418–5139; FAX: (202) 418–5524; email: *gscott@cftc.gov* and refer to OMB Control No. 3038–0043.

SUPPLEMENTARY INFORMATION:

Title: Rules Relating to Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions, OMB Control No. 3038–0043. This is a request for extension of a currently approved information collection.

Abstract: 17 CFR part 171 rules require a registered futures association to provide fair and orderly procedures for membership and disciplinary actions. The Commission's review of decisions of registered futures associations in disciplinary, membership denial, registration, and member responsibility actions is governed by Section 17(h)(2) of the Commodity Exchange Act, 7 U.S.C. 21(h)(2). The rules establish procedures and standards for Commission review of such actions, and the reporting requirements included in the procedural rules are either directly required by Section 17 of the Act or are necessary to the type of appellate review role Congress intended the Commission to undertake when it adopted that provision.

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 CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on June 1, 2012 (77 FR 32593).

Burden Statement: The respondent burden for this collection is estimated to average .5 hours per response. This estimate includes the time needed to transmit decisions of disciplinary, membership denial, registration, and member responsibility actions to the Commission for review. The estimated burden of .5 is determined by the following:

Respondents/Affected Entities: 25.

Estimated number of responses: 51.3.

Estimated total annual burden on respondents: 25.6 hours.

Frequency of collection: on occasion.

There are no capital costs or operating and maintenance costs associated with this collection.

Issued in Washington, DC on July 31, 2012.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–19037 Filed 8–2–12; 8:45 am]

BILLING CODE P

[1] *See* 17 CFR 145.9.

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DOD–2012–OS–0039]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by September 4, 2012.

Title, Associated Forms and OMB Number: The 2012 Post-Election Survey of State and Local Election Officials; OMB Control Number 0704–0125.

Type of Request: Reinstatement.

Number of Respondents: 3701.

Responses per Respondent: 1.

Annual Responses: 3701.

Average Burden per Response: 40.07 minutes.

Annual Burden Hours: 2472 hours.

Needs and Uses: This information collection is necessary to fulfill the mandate of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA of 1986 [42 U.S.C. 1973ff]) UOCAVA requires a statistical analysis report to the President and Congress on the effectiveness of assistance under the Act, a statistical analysis of voter participation, and a description of State/Federal cooperation.

Affected Public: State, local, or tribal government

Frequency: Annually.

Respondent's Obligation: Voluntary.

Omb Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: July 18, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–18986 Filed 8–2–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DOD–2012–OS–0065]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by September 4, 2012.

Title, Associated Forms and OMB Number: Confirmation of Request for Reasonable Accommodation; OMB Control Number 0704–TBD.

Type of Request: New.

Number of Respondents: 20.

Responses per Respondent: 1.

Annual Responses: 20.

Average Burden per Response: 15 Minutes.

Annual Burden Hours: 5 Hours.

Needs And Uses: This information collection is necessary to obtain and records requests for reasonable accommodation, with the intent to measure and ensure Agency compliance with the Rehabilitation Act of 1973, Public Law 93–112; Rehabilitation Act Amendments of 1992, Public Law 102–569; Americans with Disabilities Act of 1990, Public Law 101–336; Americans with Disabilities Act Amendments of 2008, Public Law 110–325.

Affected Public: Individuals of households.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: July 13, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–18988 Filed 8–2–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DOD–2012–OS–0066]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by September 4, 2012.

Title, Associated Forms and OMB Number: Revitalizing Base Closure Communities, Economic Development Conveyance Annual Financial Statement; OMB Control Number 0790–0004.

Type of Request: Reinstatement.

Number of Respondents: 40.

Responses per Respondent: 1.

Annual Responses: 40.

Average Burden per Response: 40 hours.

Annual Burden Hours: 1,600 hours.

Needs and Uses: This information collection is necessary to verify that Local Redevelopment Authority (LRA) recipients of Economic Development Conveyances (EDCs) are in compliance with the requirement that the LRA reinvest the proceeds from the sale or lease of EDC property for at least seven years.

Affected Public: State, local, or tribal government; not-for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: July 18, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–18984 Filed 8–2–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 12–29]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 12–29 with attached transmittal and policy justification, and Sensitivity of Technology.

Dated: July 30, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

JUL 20 2012

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 12-29, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Kuwait for defense articles and services estimated to cost $4.2 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 12–29

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Kuwait

(ii) *Total Estimated Value:*

Major Defense Equipment* ..	$2.0 billion
Other	$2.2 billion
Total	$4.2 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 60 PATRIOT Advanced Capability (PAC–3) Missiles, 4 PATRIOT radars, 4 PATRIOT Engagement Control Stations, 20 PATRIOT Launching Stations, 2 Information Coordination Centrals, 10 Electric Power Plants, communication

and power equipment, personnel training and training equipment, spare and repair parts, facility design and construction, publications and technical documentation, U.S. Government and contractor technical and logistics personnel services and other related elements of program and logistics support.

(iv) *Military Department:* Army (UME, UMF, UMG, UMH)

(v) *Prior Related Cases, if any:*

FMS case UJO–$4.7M–31Dec92
FMS case UKD–$16.3M–22Nov99
FMS case UKE–$83.2M–17Nov99
FMS case UKF–$66.4M–30Dec05
FMS case UKI–$1.4M–30Dec05
FMS case ULC–$269.3M–19Mar08
FMS case ULP–$131.7M–15Jun10
FMS case ZUM–$32.1M–15Jun10
FMS case ULU–$150.3M–20Oct10

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* 20 July 2012

* as defined in Section 47(6) of the Arms Export Control Act.

Policy Justification

Kuwait—PATRIOT Advanced Capability (PAC–3) Missiles

The Government of Kuwait has requested a possible sale of 60 PATRIOT Advanced Capability (PAC–3) Missiles, 4 PATRIOT radars, 4 PATRIOT Engagement Control Stations, 20 PATRIOT Launching Stations, 2 Information Coordination Centrals, 10 Electric Power Plants, communication and power equipment, personnel training and training equipment, spare and repair parts, facility design and construction, publications and technical documentation, U.S. Government and contractor technical and logistics personnel services and other related elements of program and logistics support. The estimated cost is $4.2 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

Kuwait will use the PAC–3 missiles and equipment to improve its missile defense capability, strengthen its homeland defense, and deter regional threats. The proposed sale of PAC–3 missiles and support will enhance Kuwait's interoperability with the U.S. and its allies, making it a more valuable partner in an increasingly important area of the world. Kuwait, which already has PAC–3 in its inventory, will have no difficulty absorbing these additional missiles and support into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Raytheon Corporation in Tewksbury, Massachusetts; and Lockheed Martin Missiles and Fire Control in Dallas, Texas. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of three contractor representatives to Kuwait on a temporary basis for program, technical support, and management oversight.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 12–29

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The PATRIOT Air Defense System contains Confidential hardware components and critical/sensitive technology. The PATRIOT Advance Capability-3 (PAC–3) Missile Four-Pack is classified Confidential, and the improved PAC–3 launcher hardware is Unclassified. The modification kits requested represent significant technological advances for the existing Kuwaiti PATRIOT system capabilities. With the incorporation of the PAC–3, Configuration-3 (PAC–3/C–3) improvements, the PATRIOT system will continue to hold a significant technology lead over other surface-to-air missile systems in the world.

2. The PAC–3/C–3 sensitive/critical technology is primarily in the area of design and production know-how and primarily inherent in the design, development and/or manufacturing data related to the following components:

Radar Enhancement Phase III (REP–3) Exciter Assemblies
Radar Digital Processor
Modern Adjunct Processor
REP–3 Traveling Wave Tube
Classification, Discrimination, and Identification-3 (CDI–3) Digital Signal Processor
CDI–3 Analog/Digital Converters
Hardware-in-the-Loop and Digital Simulations
Surface Acoustic Wave Oscillators
PAC–3 Missile Guidance Processor Unit
PAC–3 Seeker
PAC–3 Missile Software
Selected areas of the PATRIOT Ground Equipment and software

3. Information on vulnerability to electronic countermeasures and counter-counter measures, system performance capabilities and effectiveness, survivability and vulnerability data, PAC–3 missile seeker capabilities, non-cooperative target recognition, low observable technologies, select software/software documentation and test data are classified up to and including Secret.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2012–18958 Filed 8–2–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 12–46]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 12–46 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 30, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–01–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON VA 22202-5408

JUL 5 2012

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding Transmittal No. 12-46, which supersedes Transmittal No. 12-25 concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Finland for defense articles and services. On June 1, 2012, the Defense Security Cooperation Agency (DSCA) notified this sale with an estimated value of $132 million. Subsequently, DSCA discovered that the nomenclature of the missile proposed was incorrectly listed as M39 Block 1A Army Tactical Missile System (ATACMS) T2K Unitary Missiles. This does not describe any currently produced version of the ATACMS and was the result of a transcription error. The enclosed Transmittal No. 12-46 replaces the M39 ATACMS with the M57 ATACMS T2K Unitary Missile, which accurately reflects the Finnish request. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 12–46

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Finland

(ii) *Total Estimated Value:*

Major Defense Equipment*	$114 million
Other	$ 18 million
Total	$132 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 70 M57 Army Tactical Missile System (ATACMS) T2K Unitary Missiles, Missile Common Test Device software, ATACMS Quality Assurance Team support, spare and repair parts, tools and test equipment, support equipment, personnel training and training equipment, publications and technical data, U.S. government and contractor engineering and logistics support services, and other related elements of logistics support.

(iv) *Military Department:* Army (VAI)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex Attached

(viii) *Date Report Delivered to Congress:* 5 Jul 12

* as defined in Section 47(6) of the Arms Export Control Act.

Policy Justification

Finland—Army Tactical Missile Systems M57 T2K Unitary

The Government of Finland has requested a possible sale of 70 M57 Army Tactical Missile System (ATACMS) T2K Unitary Missiles, Missile Common Test Device software, ATACMS Quality Assurance Team support, spare and repair parts, tools and test equipment, support equipment, personnel training and training equipment, publications and technical data, U.S. government and contractor engineering and logistics support services, and other related elements of logistics support. The estimated cost is $132 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and economic progress in Europe.

Finland intends to use these defense articles and services to expand its existing army architecture and improve its self-defense capabilities. This will contribute to the Finnish Defense Forces' goal of modernizing its capability while further enhancing interoperability between Finland, the United States, and other allies.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Lockheed Martin Missiles and Fire Control in Dallas, Texas. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require up to two U.S. Government or contractor representatives to travel to Finland for up to one week for equipment de-processing/fielding, system checkout, and training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 12–46

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The Army Tactical Missile System (ATACMS) M57 is a ground-launched surface-to-surface guided missile system with a unitary warhead. ATACMS are fired from the M270A1 Multiple Launch Rocket System and the High Mobility Artillery Rocket System launchers. The highest classification level for release of the ATACMS M57 is Secret. The highest level of classified information that could be disclosed by a sale or by testing of the end item is Secret. The Fire Direction System, Data Processing Unit, and special application software are Secret. The highest level that must be disclosed for production, maintenance, or training is Confidential. The Communications Distribution Unit software is Confidential. The system specifications and limitations are classified Confidential. The vulnerability data, countermeasures, vulnerability/susceptibility analyses, and threat definitions are classified up to Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or could be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2012–18960 Filed 8–2–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 12–39]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 12–39 with attached transmittal and policy justification.

Dated: July 30, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

JUL 20 2012

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 12-39, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Thailand for defense articles and services estimated to cost $235 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard A. Genaille, Jr.
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification

BILLING CODE 5001–06–C

Transmittal No. 12–39

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) Of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Thailand

(ii) *Total Estimated Value:*

Major Defense Equipment*	$170 million
Other	$ 65 million
Total	$235 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 4 UH–60M BLACK HAWK Helicopters, 10 T700–GE–701D Engines (8 installed and 2 spares), warranty, support equipment, spare and repair parts, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical assistance, and other related logistics support.

(iv) *Military Department:* USA (UAF)

(v) *Prior Related Cases, if any:* FMS case UAD–$95M–23Jan12

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* 20 July 2012

* as defined in Section 47(6) of the Arms Export Control Act.

Policy Justification

Thailand—UH–60M BLACK HAWK Helicopters

The Government of Thailand (GoT) has requested a possible sale of 4 UH–60M BLACK HAWK Helicopters, 10 T700–GE–701D Engines (8 installed and 2 spares), warranty, support equipment, spare and repair parts, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical assistance, and other related logistics support. The estimated cost is $235 million.

This proposed sale will contribute to the foreign policy and national security of the United States, by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and economic progress in South-East Asia.

The Government of Thailand intends to use the UH–60s to modernize its armed forces. This proposed sale will contribute to the GoT objective to update its military capabilities and improve interoperability between Thailand and the U.S., and among other allies.

The proposed sale of these helicopters and support will not alter the basic military balance in the region.

The principal contractors will be Sikorsky Aircraft Company in Stratford, Connecticut; and General Electric Aircraft Company (GEAC) in Lynn, Massachusetts. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require U.S. Government representatives to travel to Thailand for a period of 5 weeks for equipment deprocessing/fielding, system checkout and new equipment training and a Contractor Furnished Service Representative (CFSR) for a period of one year.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2012–18977 Filed 8–2–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 12–37]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 12–37 with attached transmittal and policy justification.

Dated: July 30, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

JUL 20 2012

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 12-37, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Colombia for defense articles and services estimated to cost $87 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale

Sincerely,

Richard A. Genaille, Jr.
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification

BILLING CODE 5001–06–C

Transmittal No. 12–37

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) Of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Colombian Army (COLAR)

(ii) *Total Estimated Value:*

Major Defense Equipment *	$80 million
Other	$ 7 million
Total	$87 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 5 UH–60L BLACK HAWK Helicopters, 10 T700–GE–701D General Electric Engines, warranty, internal fuel tanks, spare and repair parts, tools and support equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, logistics and technical support services, and other related elements of logistics support.

(iv) *Military Department:* Army (VGB)

(v) *Prior Related Cases, if any:*

FMS Case UUF—$143M–13 Jun 00
FMS Case UTN—$116M–24 Dec 96
FMS Case USI—$ 37M–28 Dec 93
FMS Case ULY—$ 35M–29 Jun 89
FMS Case UKZ—$ 36M–30 Jun 87
FMS Case UXM—$ 96M–19 Sep 05
FMS Case VBR—$230M–18 Apr 07
FMS Case UYD—$ 30M–10 Mar 06
FMS Case VFP—$128M–10 Mar 11

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services*

Proposed to be Sold: None

(viii) *Date Report Delivered to Congress:* 20 July 2012

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Colombia—UH–60L BLACK HAWK Helicopters

The Government of Colombia has requested a possible sale of 5 UH–60L BLACK HAWK Helicopters, 10 T700–GE–701D General Electric Engines, warranty, internal fuel tanks, spare and repair parts, tools and support equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, logistics, and technical support services, and other related elements of logistics support. The estimated cost is $87M.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country, which has been and continues to be an important force for political stability and economic progress in South America.

Colombia intends to use these helicopters to modernize its armed forces. The purchase of UH–60L BLACK HAWK Helicopters by the Colombian Army will contribute to Colombia's goal of updating its capabilities while enhancing interoperability between Colombia, the U.S., and other allies.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Sikorsky Aircraft Corporation in Stratford, Connecticut. There are no known offset agreements proposed in connection with this potential sale.

Implementation of the proposed sale will require U.S. Government or contractor representatives to travel to Colombia for a period of 6 weeks for equipment deprocessing/fielding, and system checkout.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2012–18964 Filed 8–2–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 12–30]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 12–30 with attached transmittal and policy justification, and Sensitivity of Technology.

Dated: July 30, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 2 0 2012

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 12-30, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $428 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 12–30

Notice Of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(l) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Iraq

(ii) *Total Estimated Value:*

Major Defense Equipment *	$ 199 million
Other	$ 229 million
Total	$ 428 million

* as defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 6 AN/TPQ–36(V)11 FIREFINDER Radar Systems, 6 AN/TPQ–37(V)9 FIREFINDER Radars, 3 Meteorological Measuring Sets, 86 AN/VRC–92 export variant Single Channel Ground and Airborne Radio Systems, 12 Advanced Field Artillery Tactical Data Systems, 3 Improved Position and Azimuth Determining Systems, 63 M1152A1 and 3 M1151A1 High Mobility Multipurpose Wheeled Vehicles, 12 M1083A1 Family of Medium Tactical Utility Vehicles, government furnished equipment, common hardware and software, communication support equipment, tools and test equipment, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, U.S. Government and contractor engineering, logistics, and technical support services, and other related elements of logistics support.

(iv) Military Department: Army (UFN)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* 20 July 2012

* as defined in Section 47(6) of the Arms Export Control Act.

Policy Justification

Iraq—AN/TPQ–36(V)11 FIREFINDER Radars

The Government of Iraq has requested a possible sale of 6 AN/TPQ–36(V)11 FIREFINDER Radar Systems, 6 AN/TPQ–37(V)9 FIREFINDER Radars, 3 Meteorological Measuring Sets, 86 AN/VRC–92 export variant Single Channel Ground and Airborne Radio Systems, 12 Advanced Field Artillery Tactical Data Systems, 3 Improved Position and Azimuth Determining Systems, 63 M1152A1 and 3 M1151A1 High Mobility Multipurpose Wheeled Vehicles, 12 M1083A1 Family of Medium Tactical Utility Vehicles, government furnished equipment, common hardware and software, communication support equipment, tools and test equipment, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, U.S. Government and contractor engineering, logistics, and technical support services, and other related elements of logistics support. The estimated cost is $428 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country. This proposed sale directly supports the Iraq government and serves the interests of the Iraqi people and the United States.

The purchase of these target acquisition radars will enhance the Iraqi Army's foundational defense capability. The radars will significantly reduce the vulnerability of Iraqi forces to indirect fire attacks and provide them with the information to respond to such attacks.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be Thales Raytheon Systems in Fullerton, California; Smith-Detection Technologies in Edgewood, Maryland, ITT Corporation in Fort Wayne, Indiana; Raytheon Company in Fort Wayne, Indiana; and L–3 Communications in Budd Lake, New Jersey. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require U.S. Government or contractor representatives to travel to Iraq for a period of six weeks for equipment de-processing/fielding, system checkout, new equipment training, and logistics support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 12–30

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AN/TPQ–36(V)11 and AN/TPQ–37(V)9 FIREFINDER Radars are Counter-Battery Artillery radar sets. The AN/TPQ–36(V)11 and AN/TPQ–37(V)9 Radars have no classified equipment or material included in this sale.

2. The AN/TPQ–36(V)11 FIREFINDER Radar is a medium-range battlefield surveillance radar that accurately, rapidly and automatically locates a variety of enemy indirect fire weapon systems. It can handle simultaneous fire from weapons at multiple locations, detecting and reporting their positions on the first round. The AN/TPQ–36(V)11 system is compact, mobile, reliable and maintainable.

3. The AN/TPQ–37(V)9 FIREFINDER Radar is a long-range battlefield surveillance radar that accurately, rapidly and automatically locates a variety of enemy indirect fire weapon systems. It can handle simultaneous fire from weapons at multiple locations, detecting and reporting their positions on the first round. The AN/TPQ–37(V)9 FIREFINDER Radar system is mobile, reliable and maintainable. It tracks, corrects and improves the fire of friendly weapons with registration and adjustment data.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2012–18966 Filed 8–2–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 12–07]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 12–07 with attached transmittal and policy justification.

Dated: July 30, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-06-P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

JUL 20 2012

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 12-07, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Lebanon for defense articles and services estimated to cost $63 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001-06-C

Transmittal No. 12–07

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Lebanon

(ii) *Total Estimated Value:*

Major Defense Equipment *	$ 0 million
Other	$63 million
TOTAL	$63 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 6 Huey II helicopters spare and repair parts, maintenance, support equipment, publications and technical documentation, personnel training and training equipment, repair and return, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support.

(iv) *Military Department:* Army (WBL)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None.

(viii) *Date Report Delivered to Congress:* 20 July 2012

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Lebanon—Huey II helicopters

The Government of Lebanon has requested a possible sale of 6 Huey II helicopters, spare and repair parts, maintenance, support equipment, publications and technical documentation, personnel training and training equipment, repair and return, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support. The estimated cost is $63 million.

This proposed sale serves U.S. national, economic, and security interests by providing Lebanon with necessary mobility capabilities to maintain internal security, enforce United Nation's Security Council Resolutions 1559 and 1701, and counter terrorist threats.

The proposed sale of these aircraft will enable Lebanon to meet present and future challenges posed by internal and border security threats, evacuations, search and rescue, and drug interdiction operations. The Huey II will augment Lebanon's aging fleet of UH–1H aircraft.

The proposed sale of these vehicles and support will not alter the basic military balance in the region.

The prime contractor will be Bell Helicopter in Fort Worth, Texas. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Lebanon.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2012–18959 Filed 8–2–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Defense Health Board Meeting

AGENCY: Department of Defense (DoD).

ACTION: Notice of meeting.

SUMMARY: Pursuant to 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, and in accordance with section 10(a)(2) of Public Law, a meeting of the Defense Health Board (DHB) is announced.

DATES:

August 21, 2012

7:00 a.m.–4:00 p.m. (Administrative Working Meeting) and

August 22, 2012

9:00 a.m.–12:00 p.m. (Open Session); 12:00 p.m.–1:00 p.m. (Administrative Working Meeting).

ADDRESSES: The August 22 meeting will be held at the Renaissance Chicago North Shore Hotel, 933 Skokie Blvd., Northbrook, IL 60062.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Bader, Director, Defense Health Board, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101, (703) 681–6653, Fax: (703) 681–9539, *Christine.bader@tma.osd.mil.*

SUPPLEMENTARY INFORMATION: Additional information, including the agenda and electronic registration are available at the DHB Web site, *http://www.health.mil/dhb/default.cfm.* Anyone intending to attend is encouraged to register to ensure that adequate seating is available.

Purpose of the Meeting

The purpose of the meeting is to address and deliberate pending and new Board issues before the Board.

Agenda

On August 21, 2012, the Board will be conducting an administrative working session. On August 22, 2012, the Board will receive briefings regarding military health needs and priorities including, a vote on Supraglottic Airways, information briefs from the Obesity Ad Hoc Work Group, the Categorizing Biological Agents In Post Mortem Risk Groups Ad Hoc Work Group, and Military Health Systems Governance Updates.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject to availability of space, the DHB meeting on August 22, 2012 will be open to the public from 9:00 a.m. to 12:00 p.m.

Written Statements

Any member of the public wishing to provide comments to the DHB may do so in accordance with 41 CFR 102–3.140(C) and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice.

Individuals desiring to provide comments to the DHB may do so by submitting a written statement to the DHB Designated Federal Officer (DFO) (see **FOR FURTHER INFORMATION CONTACT**). Written statements should address the following details: the issue, discussion, and a recommended course of action. Supporting documentation may also be included, as needed, to establish the appropriate historical context and to provide any necessary background information.

If the written statement is not received at least 10 calendar days prior to the meeting, the DFO may choose to postpone consideration of the statement until the next open meeting.

The DFO will review all timely submissions with the DHB President and ensure they are provided to members of the DHB before the meeting that is subject to this notice. After reviewing the written comments, the DHB President and the DFO may choose to invite the submitter to orally present their issue during an open portion of this meeting or at a future meeting. The DFO, in consultation with the DHB President, may allot time for members of the public to present their issues for review and discussion by the DHB.

Special Accommodations

If special accommodations are required to attend (sign language, wheelchair accessibility) please contact Ms. Lisa Jarrett at (703) 681–6670 by Friday, August 10, 2012.

Dated: July 30, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–18962 Filed 8–2–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Department of Defense Military Family Readiness Council; Cancellation

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense.

ACTION: Notice of cancellation.

SUMMARY: On July 18, 2012 (77 FR 42297), the Department of Defense Military Family Readiness Council (MFRC) announced a meeting to be held on Tuesday, August 15, 2012, from 2:00 p.m. to 4:00 p.m. at Pentagon Conference Center B6.

Pursuant to Section 10(a), Public Law 92–463, as amended, the Department of Defense announces that this meeting is cancelled due to the MFRC membership and charter not being approved in time for the August 15 meeting. The purpose of the Council meeting was to review the military family programs which will be the focus for the Council for this year, review the status of warrior care, and address selected concerns of

military family organizations. Information on a subsequent meeting will appear in a future notice.

FOR FURTHER INFORMATION CONTACT: Ms. Melody McDonald or Ms. Betsy Graham, Office of the Deputy Under Secretary (Military Community & Family Policy), 4800 Mark Center Drive, Alexandria, VA 22350–2300, Room 3G15. Telephones (571) 372–0880; (571) 372–0881 and/or email: *FamilyReadinessCouncil@osd.mil*.

Dated: July 30, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–18961 Filed 8–2–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of 10 U.S.C. 2166(e), the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(a), the Department of Defense gives notice that it is renewing the charter for the Army Education Advisory Committee (hereafter referred to as ''the Committee'').

The Committee shall provide independent advice and recommendations on matters relating to U.S. Army educational matters.

The Committee shall report to the Secretary of Defense, through the Secretary of the Army and the Chief of Staff of the U.S. Army. The Secretary of the Army may act upon the Committee's advice and recommendations. The Committee shall be composed of not more than 15 members, who are eminent authorities in the field of defense, management, leadership, and academia.

All Committee members shall be appointed by the Secretary of Defense and all member appointments require annual renewal by the Secretary of Defense. The Secretary of Defense may approve the appointments of Committee members for three-year terms of service; however, no member, unless authorized by the Secretary of Defense, may serve more than two consecutive terms of service. This same term of service limitation also applies to any DoD authorized subcommittees. Committee members appointed by the Secretary of Defense, who are not full-time or permanent part-time federal officers or employees, shall be appointed under the authority of 5 U.S.C. 3109, and serve as special government employees. In addition, all Committee members, with the exception of travel and per diem for official travel, shall serve without compensation. Each Committee member is appointed to provide advice on behalf of the government on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

The Assistant Deputy Chief of Staff (G–3/5/7), U.S. Army Training and Doctrine Command, will serve as a non-voting member of the Committee and will appoint the Committee's Chairperson and Vice Chairperson from the total Committee membership. The Secretary of the Army or designated representative may invite other distinguished Government officers to serve as non-voting observers of the Committee. The Secretary of the Army, pursuant to DoD policies and procedures, may appoint, as deemed necessary, non-voting consultants to provide special expertise to the Committee. These consultants, if not full-time or part-time government employees, shall be appointed under the authority of 5 U.S.C. 3109, shall serve as special government employees, shall be appointed on an intermittent basis to work specific Committee-related efforts, and shall have no voting rights.

The Department, when necessary, and consistent with the Committee's mission and DoD policies and procedures, may establish subcommittees deemed necessary to support the Committee. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the Committee's sponsor.

Such subcommittees shall not work independently of the chartered Committee, and shall report all their recommendations and advice to the Committee for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Committee; nor can any subcommittee or its members update or report directly to the Department of Defense or any Federal officers or employees.

All subcommittee members shall be appointed in the same manner as Committee members; that is, the Secretary of Defense shall appoint subcommittee members even if the member in question is already a Committee member. Subcommittee members, with the approval of the Secretary of Defense, may serve a term of service on the subcommittee of three years subject to annual renewals; however, no member shall serve more than two consecutive terms of service on the subcommittee.

Subcommittee members, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and shall serve as special government employees, whose appointments must be renewed by the Secretary of Defense on an annual basis. With the exception of travel and per diem for official Committee related travel, subcommittee members shall serve without compensation.

All subcommittees operate under the provisions of FACA, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), governing Federal statutes and regulations, and governing DoD policies/procedures.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Committee shall meet at the call of the Designated Federal Officer (DFO), in consultation with the Committee's Chairperson. The estimated number of Committee meetings is two per year.

In addition, the DFO is required to be in attendance at all Committee and subcommittee meetings for the entire duration of each and every meeting; however, in the absence of the DFO, the Alternate DFO shall attend the entire duration of the Committee or subcommittee meeting. Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Committee membership about the Committee's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned Committee meetings.

All written statements shall be submitted to the DFO, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Committee's DFO can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The DFO, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Committee.

The DFO, at that time, may provide additional guidance on the submission

of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: July 30, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–18963 Filed 8–2–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability for the Draft Environmental Impact Statement/ Environmental Impact Report (DEIS/ DEIR) for Proposed Aggregate Terminal Project on Pier D in the Port of Long Beach, Los Angeles County, CA

AGENCY: Department of the Army—U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Availability.

SUMMARY: The U.S. Army Corp of Engineers, Los Angeles District (Regulatory Division), in coordination with the Port of Long Beach (Port), has completed a draft EIS/EIR for the Eagle Rock Aggregates Terminal Project. The proposed project would include the following in-water and land-based elements: dredging, land-based wharf improvements, and the installation of truck scales and conveyor system. Construction duration of the proposed project is estimated at 5 months.

The applicant, Eagle Rock Aggregates, Inc. requires authorization pursuant to Section 10 of the Rivers and Harbors Act in order to conduct dredging activities within waters of the U.S.

Pursuant to the California Environmental Quality Act (CEQA), the Port will serve as the Lead Agency for the preparation of an EIR for its consideration of development approvals within its jurisdiction. The Corps and the Port have agreed to jointly prepare a DEIS/DEIR in order to optimize efficiency and avoid duplication. The DEIS/DEIR is intended to be sufficient in scope to address Federal, State, and local requirements and environmental issues concerning the proposed activities and permit approvals.

SUPPLEMENTARY INFORMATION:

1. Project Site and Background Information

The proposed project site is located at Berth D–44 on Pier D in the Port. The site is currently owned by L.G. Everist, Inc. and would be leased to Eagle Rock Aggregate, Inc. for terminal development and operation. The site, located at 1925 Pier D Street, is bounded by Channel 3 and SSA Matson to the north, G.P. Gypsum to the east, berth D–43 to the west, and Pier D Street to the south. The site was previously used as an aggregate import terminal by Connolly-Pacific Company, which operated the terminal from 2000 until 2009. During this time, the terminal received pre-sorted aggregate that was barged by diesel-powered tugs boats, then off-loaded by conveyor systems, stockpiled, and distributed.

2. Proposed Action

Dredging of Channel 3

In order to prepare the site to accept larger (Panamax-class) aggregate transport vessels, the proposed project would impact approximately 1 acre (490-foot-length by 120-foot-width) of waters of the U.S. within Channel 3 to dredge approximately 6,000 cubic yards of material. The channel bottom within the project area would be deepened from -40 feet Mean Lower Low Water (MLLW) to -46 feet (ft) MLLW over the majority of the dredge footprint, including a 2-foot over-dredge allowance (overdepth). In addition, the proposed project would include advanced maintenance dredging of 2-ft (to -48 feet MLLW) within a 400-foot-long by 20-foot-wide area located immediately adjacent to the berthing area to reduce the necessity for maintenance dredging over the near-term. The applicant has coordinated with the South Coast Dredge Material Management Team/Contaminated Sediments Task Force on disposal options, and has determined the material to be suitable for placement within the Port's Middle Harbor confined disposal facility. The Port has received prior approval for the Middle Harbor project from the Department of the Army (File No. SPL–2004–01053–AOA).

Land-Based Improvements

With the proposed project, land-based wharf improvements would include installing additional steel (stiff) legs for the new wharf structure and conveyor system, driving 28 steel piles to support the stiff legs, and installing the aggregate conveyor system. Additional site improvements would include the installation of truck scales and a pre-fabricated office building. No other site improvements are proposed under this project.

3. Alternatives

Alternatives currently being considered include the following:

(1) Aggregate receiving and storage terminal at berth D–43 utilizing Panamax-class vessels to deliver the aggregate material, including the dredging of approximately 6,000 cubic yards of sediment within Channel 3 (Proposed Project);

(2) Aggregate receiving and storage terminal at berth B–83 utilizing Panamax-class vessels to deliver the aggregate material. No dredging is proposed under this alternative (Alternative Site);

(3) Aggregate receiving and storage terminal at berth D–43 utilizing barges and tug boats to deliver the aggregate material. No dredging is proposed under this alternative (No Federal Action Alternative);

(4) No Project Alternative.

FOR FURTHER INFORMATION CONTACT: Copies of the document are available at *http://www.polb.com/ceqa,* as well as the following locations:

- Port of Long Beach Harbor Administration Building, 925 Harbor Plaza, Long Beach
- Long Beach City Clerk, 333 W. Ocean Boulevard, Long Beach
- Long Beach Main Library, 101 Pacific Avenue, Long Beach
- San Pedro Regional Branch Library, 931 Gaffey Street, San Pedro
- Wilmington Branch Library, 1300 N. Avalon Boulevard, Wilmington

Questions about the proposed action and DEIS/DEIR can be answered by John W. Markham, Corps Project Manager, at (805) 585–2150. Comments regarding the scope of the DEIS/DEIR shall be addressed to: U.S. Army Corp of Engineers, Los Angeles District, Ventura Field Office, ATTN: File Number SPL–2010–00602–JWM, 2152 Allessandro Drive, Suite 110, Ventura, California 93001. Alternatively, comments can be emailed to *john.w.markham@usace.army.mil.* Comments may also be sent to Richard D. Cameron, Port of Long Beach, 925 Harbor Plaza, Long Beach, CA 90802 or emailed to *cameron@polb.com.*

Public Hearing and Comment Period

The U.S Army Corps of Engineers and the Port of Long Beach will jointly hold a public hearing to receive public comments and to assess public concerns regarding the DEIS/EIR and project on August 22, 2012, starting at 6:00 p.m. (doors open at 5:30 p.m.) in the City of Long Beach City Council Chambers in Long Beach, 333 W. Ocean Boulevard, Long Beach, California. Written comments will be accepted until the close of the 45-day public review on September 17, 2012.

Dated: July 23, 2012.

Mark D. Cohen,

Deputy Chief, Regulatory Division, Los Angeles District.

[FR Doc. 2012–18943 Filed 8–2–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Chief of Engineers Environmental Advisory Board; Meeting

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the forthcoming meeting.

Name of Committee: Chief of Engineers Environmental Advisory Board (EAB).

Date: August 28, 2012.

Time: 8:30 a.m. through 12:00 p.m.

Location: Ralph H. Metcalfe Federal Building (RMFB), 77 West Jackson Boulevard, Room 331, Chicago, IL 60604.

Agenda: The Board will advise the Chief of Engineers on environmental policy, identification and resolution of environmental issues and missions, and addressing challenges, problems and opportunities in an environmentally sustainable manner. Discussions and presentations during this meeting will focus on the effects of invasive species on native ecosystems and management techniques. Following the discussions and presentations there will be a public comment period.

FOR FURTHER INFORMATION CONTACT: Mr. John C. Furry, Designated Federal Officer, Headquarters, U.S. Army Corps of Engineers, 441 G Street NW., Washington, DC 20314–1000; *john.c.furry@usace.army.mil,* Ph: (202) 761–5875.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public. Any interested person may attend. However, all attendees will enter and exit RMFB through the appropriate visitors security point(s). Attendees need to arrive in time to complete the security screening and arrive at the meeting room before 8:30. Attendees should be prepared to present two forms of valid photo identification, one of which must be government issued identification, and to pass through a scanning unit. The primary purpose of this meeting is for the Chief of Engineers to receive the views of his EAB; however, up to thirty minutes will be set aside for public comment. Anyone who wishes to speak must register prior to the start of the meeting. Written comments may also be submitted during registration. Registration will be from 8:00 until 8:25 a.m. Please note that the Board operates under the provisions of the Federal Advisory Committee Act, as amended, so all submitted comments and public presentations will be treated as public documents and may be made available for public inspection, including, but not limited to, being posted on the Board's Web site.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2012–19002 Filed 8–2–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–93–000.

Applicants: Spinning Spur Wind LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Spinning Spur Wind LLC.

Filed Date: 7/27/12.

Accession Number: 20120727–5038.

Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: EG12–94–000.

Applicants: Laurel Hill Wind Energy, LLC.

Description: Self-Certification of EWG of Laurel Hill Wind Energy, LLC.

Filed Date: 7/27/12.

Accession Number: 20120727–5069.

Comments Due: 5 p.m. ET 8/17/12.

Take notice that the Commission received the following electric rate filings:.

Docket Numbers: ER10–2669–005; ER10–2670–005; ER10–2671–006; ER10–2673–005; ER10–2253–006; ER10–3319–007; ER10–2674–005; ER10–1544–005; ER10–2627–006; ER10–2629–007; ER10–1547–005; ER10–1549–005; ER10–2675–006; ER10–1546–007; ER10–2676–005; ER10–2636–006; ER10–1550–006; ER10–1974–007; ER10–1975–007; ER11–2424–008; ER10–2677–005; ER10–1551–005; ER10–2678–004; ER10–2638–005.

Applicants: Hopewell Cogeneration Ltd Partnership, Troy Energy, LLC, MT. Tom Generating Company LLC, ANP FUNDING I, LLC, Astoria Energy LLC, FirstLight Power Resources Management, LLC, Calumet Energy Team, LLC, Pleasants Energy, LLC, Waterbury Generation LLC, Choctaw Generation Limited Partnership, Hot Spring Power Company, LLC, Syracuse Energy Corporation, IPA Trading, LLC, Northeastern Power Company, Astoria Energy II LLC, Pinetree Power-Tamworth, Inc., ANP Blackstone Energy Company, LLC, ANP Bellingham Energy Company, LLC, Milford Power Limited Partnership, Northeast Energy Associates, North Jersey Energy Associates, IPR–GDF SUEZ Energy Marketing North America, Inc., Armstrong Energy Limited Partnership, L.L.L.P., FirstLight Hydro Generating Co.

Description: Notice of Non-Material Change in Status for ANP Bellingham Energy Company, LLC, et. al.

Filed Date: 7/27/12.

Accession Number: 20120727–5062.

Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER11–1933–002; *ER10–2441–002*.

Applicants: Green Mountain Power Corporation, Central Vermont Public Service Corporation.

Description: Notice of Material Change in Status of Green Mountain Power Corporation and Central Vermont Public Service Corporation.

Filed Date: 7/27/12.

Accession Number: 20120727–5112.

Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER11–4106–003.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35: Compliance Filing per 6/28/2012 Order in ER11–4106 (sections effective 4/1/2012) to be effective 4/1/2012.

Filed Date: 7/27/12.

Accession Number: 20120727–5058.

Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER11–4106–004.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35: Compliance Filing per 6/28/2012 Order in ER11–4106 (sections effective 7/1/2012) to be effective 7/1/2012.

Filed Date: 7/27/12.

Accession Number: 20120727–5064.

Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2007–001.

Applicants: Algonquin Windsor Locks LLC.

Description: Amendment to Pending Tariff to be effective 1/1/2014.

Filed Date: 7/27/12.

Accession Number: 20120727–5111.

Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2252–001.
Applicants: Public Power (PA), LLC.
Description: Public Power (PA), LLC submits tariff filing per 35.17(b): Amended Proposed Market-Based Rate Tariff to be effective 8/17/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5059.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2313–000.
Applicants: Laurel Hill Wind Energy, LLC.
Description: Laurel Hill Wind Energy, LLC submits tariff filing per 35.1: MBR Application and Tariff Filing to be effective 9/10/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5029.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2314–000.
Applicants: Spinning Spur Wind LLC.
Description: Spinning Spur Wind LLC submits tariff filing per 35.13(a)(2)(iii: Spinning Spur Wind MBR Application Filing to be effective 9/27/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5040.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2315–000.
Applicants: Florida Power Corporation.
Description: Florida Power Corporation submits tariff filing per 35.13(a)(2)(iii): Rate Schedule No. 206 of Florida Power Corp. to be effective 9/25/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5046.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2316–000.
Applicants: Florida Power Corporation.
Description: Florida Power Corporation submits tariff filing per 35.13(a)(2)(iii): Rate Schedule No. 218 of Florida Power Corp. to be effective 9/25/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5047.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2317–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): NYISO filing on behalf of NYPA: NYPA Revised Transmission Revenue Requirement to be effective 8/1/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5056.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2318–000.
Applicants: Carolina Power & Light Company.
Description: Carolina Power & Light Company submits tariff filing per 35: Revised Market-Based Rates of Carolina Power and Light to be effective 7/2/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5061.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2319–000.
Applicants: Florida Power Corporation.
Description: Florida Power Corporation submits tariff filing per 35: Revised Market-Based Rates of Florida Power Corp. to be effective 7/2/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5070.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2320–000.
Applicants: Cimarron Windpower II, LLC.
Description: Merger-Related MBR Tariff Filing to be effective 7/2/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5078.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2321–000.
Applicants: CinCap V, LLC.
Description: Merger-Related MBR Tariff Filing to be effective 7/2/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5079.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2322–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Merger-Related MBR Tariff Filing to be effective 7/2/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5080.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2323–000.
Applicants: Duke Energy Commercial Asset Management.
Description: Merger-Related MBR Tariff Filing to be effective 7/2/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5081.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2324–000.
Applicants: Duke Energy Commercial Enterprises, Inc.
Description: Merger-Related MBR Tariff Filing to be effective 7/2/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5082.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2325–000.
Applicants: Duke Energy Indiana, Inc.
Description: Merger-Related MBR Tariff Filing to be effective 7/2/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5083.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2326–000.
Applicants: Duke Energy Kentucky, Inc.
Description: Merger-Related MBR Tariff Filing to be effective 7/2/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5086.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2327–000.
Applicants: Duke Energy Ohio, Inc.
Description: Merger-Related MBR Tariff Filing to be effective 7/2/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5090.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2328–000.
Applicants: Duke Energy Retail Sales, LLC.
Description: Merger-Related MBR Tariff Filing to be effective 7/2/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5094.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2329–000.
Applicants: Duke Energy Fayette II, LLC.
Description: Merger-Related MBR Tariff Filing to be effective 7/2/201.
Filed Date: 7/27/12.
Accession Number: 20120727–5098.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2330–000.
Applicants: Duke Energy Hanging Rock II, LLC.
Description: Merger-Related MBR Tariff Amendments to be effective 7/2/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5101.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2331–000.
Applicants: Happy Jack Windpower, LLC.
Description: Merger-Related MBR Tariff Filing to be effective 7/2/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5102.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2332–000.
Applicants: Ironwood Windpower, LLC.
Description: Merger-Related MBR Tariff Filing to be effective 7/2/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5104.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2333–000.
Applicants: Duke Energy Lee II, LLC.
Description: Merger-Related MBR Tariff Filing to be effective 7/2/201.
Filed Date: 7/27/12.
Accession Number: 20120727–5105.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2334–000.
Applicants: North Allegheny Wind, LLC.
Description: Merger-Related MBR Tariff Filing to be effective 7/2/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5106.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2335–000.

Applicants: Silver Sage Windpower, LLC.
Description: Merger-Related MBR Tariff Filing to be effective 7/2/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5108.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2336–000.
Applicants: St. Paul Cogeneration, LLC.
Description: Merger-Related MBR Tariff Filing to be effective 7/2/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5114.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2337–000.
Applicants: Three Buttes Windpower, LLC.
Description: Merger-Related MBR Tariff Filing to be effective 7/2/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5116.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2338–000.
Applicants: Top of the World Wind Energy, LLC.
Description: Merger-Related MBR Tariff Filing to be effective 7/2/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5118.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2339–000.
Applicants: Duke Energy Washington II, LLC.
Description: Duke Energy Washington II, LLC submits tariff filing per 35: Merger-Related MBR Tariff Filing to be effective 7/2/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5120.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2340–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 1166R17 Oklahoma Municipal Power Authority NITSA NOA to be effective 7/1/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5121.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2341–000.
Applicants: PJM Interconnection, L.L.C., American Electric Power Service Corporate.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: AEPSC submits 34th Revised SA No. 1336 among AEPSC & Buckeye to be effective 6/18/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5151.
Comments Due: 5 p.m. ET 8/17/12.

Docket Numbers: ER12–2342–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Original Service Agreement No. 3352; Queue No. W1–029 to be effective 6/27/2012.
Filed Date: 7/27/12.
Accession Number: 20120727–5152.
Comments Due: 5 p.m. ET 8/17/12.

Take notice that the Commission received the following land acquisition reports:
Docket Numbers: LA12–2–000.
Applicants: BP Energy Company, BP West Coast Products LLC, Cedar Creek Wind Energy, LLC, Cedar Creek II, LLC, Flat Ridge 2 Wind Energy LLC, Flat Ridge Wind Energy, LLC, Fowler Ridge II Wind Farm LLC, Fowler Ridge III Wind Farm LLC, Fowler Ridge Wind Farm LLC, Goshen Phase II, LLC, Long Island Solar Farm LLC, Rolling Thunder I Power Partners, LLC, Watson Cogeneration Company, and Whiting Clean Energy, Inc.
Description: Quarterly Land Acquisition Report of BP Energy Company, *et. al.* under LA12–2.
Filed Date: 7/27/12.
Accession Number: 20120727–5077.
Comments Due: 5 p.m. ET 8/17/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 27, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–18979 Filed 8–2–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–884–000.
Applicants: WBI Energy Transmission, Inc.
Description: Removal of Capacity Requests Language to be effective 8/25/2012.
Filed Date: 7/25/12.
Accession Number: 20120725–5031.
Comments Due: 5 p.m. ET 8/6/12.

Docket Numbers: RP12–885–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: Trailblazer Pipeline Company LLC submits tariff filing per 154.204: 2012–07–25 NC Mieco, CIMA to be effective 7/26/2012.
Filed Date: 7/25/12.
Accession Number: 20120725–5084.
Comments Due: 5 p.m. ET 8/6/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

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: July 26, 2012.

Nathaniel J. Davis, Sr.

Deputy Secretary

[FR Doc. 2012–18980 Filed 8–2–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:
Docket Numbers: EC12–125–000.
Applicants: Dynegy Inc., Franklin Resources, Inc.
Description: Joint Application For Approval Under Section 203 of the Federal Power Act and Request for Expedited Consideration of Dynegy Inc., *et al.*
Filed Date: 7/25/12.

Accession Number: 20120725–5136.
Comments Due: 5 p.m. ET 8/15/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2780–005.
Applicants: Safe Harbor Water Power Corporation.
Description: Notice of Change in Status of Safe Harbor Water Power Corporation.
Filed Date: 7/25/12.
Accession Number: 20120725–5128.
Comments Due: 5 p.m. ET 8/15/12.

Docket Numbers: ER11–2853–001.
Applicants: Public Service Company of Colorado.
Description: 07252012_PSCo Production Formula Compliance Filing to be effective 9/1/2011.
Filed Date: 7/25/12.
Accession Number: 20120725–5038.
Comments Due: 5 p.m. ET 8/15/12.

Docket Numbers: ER11–4304–002.
Applicants: Golden Spread Electric Cooperative, Inc.
Description: Golden Spread Electric Cooperative, Inc. submits tariff filing per 35: Compliance Filing to April 24 Order to be effective 7/25/2012.
Filed Date: 7/25/12.
Accession Number: 20120725–5103.
Comments Due: 5 p.m. ET 8/15/12.

Docket Numbers: ER12–2302–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 7–25–12 SSR Tariff Filing to be effective 9/24/2012.
Filed Date: 7/25/12.
Accession Number: 20120725–5108.
Comments Due: 5 p.m. ET 8/15/12.

Docket Numbers: ER12–2303–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): NYISO Tariff Revisions to Improve Clarity and Consistency of OATT Attachment Y to be effective 9/24/2012.
Filed Date: 7/25/12.
Accession Number: 20120725–5109.
Comments Due: 5 p.m. ET 8/15/12.

Docket Numbers: ER12–2304–000.
Applicants: ISO New England Inc., Green Mountain Power Corporation, Central Vermont Public Service Corporation.
Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii) GMP and CVPSC Jt. Trans. Rate and Compliance Filing (EC11–117) to be effective 12/31/9998.
Filed Date: 7/26/12.
Accession Number: 20120726–5001.
Comments Due: 5 p.m. ET 8/16/12.

Docket Numbers: ER12–2305–000.
Applicants: The Detroit Edison Company.
Description: The Detroit Edison Company submits tariff filing per 35.12: FERC Electric Rate Schedule No. 44 to be effective 7/27/2012.
Filed Date: 7/26/12.
Accession Number: 20120726–5017.
Comments Due: 5 p.m. ET 8/16/12.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM12–5–000.
Applicants: Otter Tail Power Company.
Description: Application to Terminate Mandatory PURPA Purchase Obligation of Otter Tail Power Company.
Filed Date: 7/25/12.
Accession Number: 20120725–5126.
Comments Due: 5 p.m. ET 8/22/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 26, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–18982 Filed 8–2–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–126–000.
Applicants: Escanaba Green Energy, LLC.
Description: Application of Escanaba Green Energy, LLC for Order Authorizing Transaction Under Section 203 of the Federal Power Act, and Request for Waivers.
Filed Date: 7/26/12.
Accession Number: 20120726–5094.
Comments Due: 5 p.m. ET 8/16/12.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–91–000.
Applicants: Zephyr Wind, LLC.
Description: Self-Certification of EWG Status of Zephyr Wind, LLC.
Filed Date: 7/26/12.
Accession Number: 20120726–5071.
Comments Due: 5 p.m. ET 8/16/12.

Docket Numbers: EG12–92–000.
Applicants: Beebe Renewable Energy, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Beebe Renewable Energy, LLC.
Filed Date: 7/26/12.
Accession Number: 20120726–5084.
Comments Due: 5 p.m. ET 8/16/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–979–001.
Applicants: Rocky Ridge Wind Project, LLC.
Description: Notice of Change in Status of Rocky Ridge Wind Project, LLC.
Filed Date: 7/26/12.
Accession Number: 20120726–5097.
Comments Due: 5 p.m. ET 8/16/12.

Docket Numbers: ER12–1932–001.
Applicants: Franklin County Wind, LLC.
Description: FCW Market-Based Rate Tariff—Revised to be effective 8/1/2012.
Filed Date: 7/26/12.
Accession Number: 20120726–5045.
Comments Due: 5 p.m. ET 8/16/12.

Docket Numbers: ER12–1934–001.
Applicants: Wisconsin Power and Light Company.
Description: WPL Market-Based Rate Tariff—Revised to be effective 8/1/2012.
Filed Date: 7/26/12.
Accession Number: 20120726–5046.
Comments Due: 5 p.m. ET 8/16/12.

Docket Numbers: ER12–1995–001.
Applicants: K Road Modesto Solar LLC.
Description: Amendment to Initial Market-Based Rate Application to be effective 6/13/2012.
Filed Date: 7/26/12.
Accession Number: 20120726–5085.
Comments Due: 5 p.m. ET 8/16/12.

Docket Numbers: ER12–2205–001.
Applicants: Meadow Creek Project Company LLC.
Description: Supplemental MBR Filing to be effective 9/5/2012.
Filed Date: 7/26/12.
Accession Number: 20120726–5061.

Comments Due: 5 p.m. ET 8/16/12.

Docket Numbers: ER12–2205–002.

Applicants: Meadow Creek Project Company LLC.

Description: Rev Supplemental Filing to be effective 9/5/2012.

Filed Date: 7/26/12.

Accession Number: 20120726–5076.

Comments Due: 5 p.m. ET 8/16/12.

Docket Numbers: ER12–2306–000.

Applicants: Puget Sound Energy, Inc.

Description: Engineering & Procurement Agreement No 638 to be effective 7/3/2012.

Filed Date: 7/26/12.

Accession Number: 20120726–5047.

Comments Due: 5 p.m. ET 8/16/12.

Docket Numbers: ER12–2307–000.

Applicants: Escanaba Green Energy, LLC.

Description: Escanaba Green Energy, LLC submits tariff filing per 35.12: Escanaba Green Energy LLC FERC Electric Tariff No. 1 to be effective 7/27/2012.

Filed Date: 7/26/12.

Accession Number: 20120726–5055.

Comments Due: 5 p.m. ET 8/16/12.

Docket Numbers: ER12–2308–000.

Applicants: GSG 6, LLC.

Description: Notice of Non-Material Change to be effective 7/27/2012.

Filed Date: 7/26/12.

Accession Number: 20120726–5060.

Comments Due: 5 p.m. ET 8/16/12.

Docket Numbers: ER12–2309–000.

Applicants: Bartram Lane LLC.

Description: Bartram Lane LLC, FERC Electric Tariff to be effective 9/1/2012.

Filed Date: 7/26/12.

Accession Number: 20120726–5072.

Comments Due: 5 p.m. ET 8/16/12.

Docket Numbers: ER12–2310–000.

Applicants: Zephyr Wind, LLC.

Description: Baseline New to be effective 9/25/2012.

Filed Date: 7/26/12

Accession Number: 20120726–5074.

Comments Due: 5 p.m. ET 8/16/12.

Docket Numbers: ER12–2311–000.

Applicants: Beebe Renewable Energy, LLC.

Description: Application for Market-Based Rate Authorization to be effective 9/24/2012.

Filed Date: 7/26/12.

Accession Number: 20120726–5075.

Comments Due: 5 p.m. ET 8/16/12.

Docket Numbers: ER12–2312–000.

Applicants: Perigee Energy, LLC.

Description: Perigee Energy, LLC submits tariff filing per 35.12: Perigee Energy, LLC Rate Schedule FERC No. 1 to be effective 7/27/2012.

Filed Date: 7/27/12.

Accession Number: 20120727–5002.

Comments Due: 5 p.m. ET 8/17/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 27, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–18983 Filed 8–2–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–886–000.

Applicants: Trailblazer Pipeline Company LLC.

Description: 2012–07–26 NC Mieco and CIMA to be effective 7/27/2012.

Filed Date: 7/26/12.

Accession Number: 20120726–5073.

Comments Due: 5 p.m. ET 8/7/12.

Docket Numbers: RP12–888–000.

Applicants: Petal Gas Storage, L.L.C.

Description: Cash for Fuel to be effective 8/27/2012.

Filed Date: 7/27/12.

Accession Number: 20120727–5017.

Comments Due: 5 p.m. ET 8/8/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP12–854–002

Applicants: Honeoye Storage Corporation

Description: PNFSS Amendment Sept 1 2012 to be effective 9/1/2012.

Filed Date: 7/26/12.

Accession Number: 20120726–5042.

Comments Due: 5 p.m. ET 8/7/12.

Docket Numbers: RP12–850–001.

Applicants: WTG Hugoton, LP.

Description: Annual Fuel Retention Percentage Filing 2012–2013 (Refile Tariff Record 10.2) to be effective 8/1/2012.

Filed Date: 7/27/12.

Accession Number: 20120727–5060.

Comments Due: 5 p.m. ET 8/3/12.

Docket Numbers: RP12–870–001.

Applicants: Petal Gas Storage, L.L.C.

Description: Amendment to filing in RP12–870–000 to be effective 7/17/2012.

Filed Date: 7/27/12.

Accession Number: 20120727–5016.

Comments Due: 5 p.m. ET 8/8/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 30, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–19008 Filed 8–2–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–309–003.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: 7–27–2012 Attachment X Queue Reform III Compliance Filing to be effective 1/1/2012.

Filed Date: 7/25/12.

Accession Number: 20120725–5028.

Comments Due: 5 p.m. ET 8/15/12.

Docket Numbers: ER12–1163–002.

Applicants: ATCO Power Canada Ltd.

Description: ATCO Compliance Filing of Revised Tariff and Request for Category 1 to be effective 7/20/2012.

Filed Date: 7/25/12.

Accession Number: 20120725–5000.

Comments Due: 5 p.m. ET 8/15/12.

Docket Numbers: ER12–1576–000.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company Refund Report to be effective N/A.

Filed Date: 7/24/12.

Accession Number: 20120724–5117.

Comments Due: 5 p.m. ET 8/14/12.

Docket Numbers: ER12–2300–000.

Applicants: Public Service Company of Colorado.

Description: 2012–7–25–Att O–PSCo-Lower ROE to 10.25% to be effective 7/1/2011.

Filed Date: 7/25/12.

Accession Number: 20120725–5021.

Comments Due: 5 p.m. ET 8/15/12.

Docket Numbers: ER12–2301–000.

Applicants: Stream Energy New York, LLC.

Description: Application for Market-Based Rate Authority to be effective 9/23/2012.

Filed Date: 7/25/12.

Accession Number: 20120725–5027.

Comments Due: 5 p.m. ET 8/15/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 25, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–18981 Filed 8–2–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9004–3]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 07/23/2012 Through 07/27/2012

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

SUPPLEMENTARY INFORMATION:

Starting October 1, 2012, EPA will not accept paper copies or CDs of EISs for filing purposes; all submissions on or after October 1, 2012 must be made through e-NEPA.

While this system eliminates the need to submit paper or CD copies to EPA to meet filing requirements, electronic submission does not change requirements for distribution of EISs for public review and comment. To begin using e-NEPA, you must first register with EPA's electronic reporting site—*https://cdx.epa.gov/epa_home.asp*

EIS No. 20120250, Draft EIS, FERC, CA, Middle Fork American River Hydroelectric Project, (FERC Project No. 2079–069) Relicensing, Placer and El Dorado Counties, CA, Comment Period Ends: 10/02/2012, Contact: Mary O'Driscoll ≤1–866–208–3372.

EIS No. 20120251, Draft Supplement, NOAA, WA, PROGRAMMATIC—Lower Duwamish River Natural Resource Damage Assessment (LDR/NRDA) Restoration Plan, Additional Detailed Information and Minor Changes, Implementation, King County, WA, Comment Period Ends: 10/10/2012, Contact: Rebecca Hoff 206–526–6276.

EIS No. 20120252, Final EIS, USFS, CA, Johnny O'Neil Late Successional Reserve Habitat Restoration and Fuel Reduction Project, Proposal to Retain and Promote the Development of Late Successional Habitat and Reduce the Risk of Large, High Severity Wildfire, Happy Camp and Oak Knoll Ranger District, Klamath National Forest, Siskiyou County, CA, Review Period Ends: 09/04/2012, Contact: Timothy Burnett 530–493–1767.

EIS No. 20120253, Draft EIS, USACE, CA, Eagle Rock Aggregate Terminal Project, Determining to Issue Permits for the Authorization of Wharf Improvements and Related Dredging Activities in Navigable Waters of the U.S., Port of Long Beach, Los Angeles County, CA, Comment Period Ends: 09/17/2012, Contact: John Markham 805–585–2150.

EIS No. 20120254, Final EIS, BLM, NV, Clark, Lincoln, and White Pine Counties Groundwater Development Project, Construction and Operation of Pipeline System and Associated Infrastructure, Right-Of-Way Application, Clark, Lincoln, and White Pine Counties, NV, Review Period Ends: 10/01/2012, Contact: Penny Woods 775–861–6466.

EIS No. 20120255, Revised Draft EIS, USDA, WY, Shoshone Land Management Plan Revision, Replacing the existing 1986 Plan with a New Plan, Implementation, Shoshone National Forest, Park, Fremont, Sublette, Teton, and Hot Springs Counties, WY, Comment Period Ends: 11/01/2012, Contact: Carrie Christman 307–578–5118.

EIS No. 20120256, Final EIS, FHWA, NY, Tappan Zee Hudson River Crossing Project, To Provide an Improved Hudson River Crossing between Rockland and Westchester Counties, Funding, USACE Section 10 and 404 Permits, Rockland and Westchester Counties, NY, Review Period Ends: 09/04/2012, Contact: Jonathan D. McDade 518–431–4127.

Dated: July 31, 2012.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2012–19070 Filed 8–2–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9710–9]

Proposed CERCLA Administrative Cost Recovery Settlements for the Buckbee-Mears Co. Superfund Site in Cortland, NY, Cortland County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: Under Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), notice is hereby given of two proposed administrative settlements for recovery

of past response costs concerning the Buckbee-Mears Co. Superfund Site located in Cortland, Cortland County, New York (the ''Site'') with each of the following settling parties: the City of Cortland (''City'') and the County of Cortland (''County'')(collectively the ''Municipal Settlements''). In order to resolve competing liens on two parcels of land within the Site (''Properties''), the Municipal Settlements provide that the City and the County agree to facilitate the sale and redevelopment of the Properties. In addition, if the Properties are sold pursuant to a pending foreclosure action by the State Bank of India, New York Branch (the ''Bank''), the Bank will pay to the City, in full satisfaction of the City's tax lien, the greater of $302,881 (being the amount of City Taxes in arrears as of September 29, 2006) or fifteen percent (15%) of the proceeds from the sale of the Properties, and the Bank will pay to the County $2,120 in full satisfaction of its tax lien, after the Bank is paid $150,000 attributable to the costs of marketing and selling the Properties. Any proceeds from the Bank's foreclosure sale remaining after the above payments to the Bank, the City and the County, shall be distributed in proportion to the percentage that the following amounts represent in relation to the combined total of said amounts: (1) For EPA, $8,323,204; (2) for the Bank, $8,434,911; (3) for the City, $1,194,043 minus the greater of $302,881 or fifteen percent (15%) of the proceeds from the sale of the Properties. Also under the terms of the Municipal Agreements, if the Properties are not sold through the Bank's foreclosure action, the City and County will foreclosure on the Properties, transfer the Properties and pay to EPA 50% of the selling price, after the transaction costs associated with the sale have been paid. The transaction costs are capped at $5,000 for the County and $150,000 for the City. EPA has also agreed to discharge its CERCLA Section 107(*l*) lien on the Properties and has agreed to waive any windfall lien it may have on the Properties under CERCLA Section 107(r).

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the Municipal Agreements. The Agency will consider all comments received and may modify or withdraw its consent to the two settlements if comments received disclose facts or considerations which indicate that either of the settlements is inappropriate, improper, or inadequate.

DATES: Comments must be provided within September 4, 2012.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway, 17th Floor, New York, New York 10007–1866 and should refer to the Buckbee-Mears Co. Superfund Site located in Cortland, New York, Cortland County, EPA Region II Docket No.'s CERCLA–02–2012–2018 and CERCLA–02–2012–2024.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway, 17th Floor, New York, New York 10007–1866, Attention: Marla E. Wieder, Assistant Regional Counsel at (212) 637–3184.

SUPPLEMENTARY INFORMATION: A copy of the proposed settlements may be obtained from Marla E. Wieder, Assistant Regional Counsel at the address above, or via email at *wieder.marla@epa.gov.*

Dated: July 16, 2012.

John S. Frisco,

Acting Director, Emergency & Remedial Response Division.

[FR Doc. 2012–19046 Filed 8–2–12; 8:45 am]

BILLING CODE P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Certification of Compliance With Mandatory Bars to Employment

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.,* the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC, 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 the renewal of an existing information collection, as required by the PRA. On May 30, 2012 (77 FR 31854), the FDIC solicited public comment for a 60-day period on renewal of the following information collection: Certification of Compliance with Mandatory Bars to Employment (OMB No. 3064–0121). No comments were received. Therefore, the FDIC hereby gives notice of submission of its request for renewal to OMB for review.

DATES: Comments must be submitted on or before September 4, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- Email: *comments@fdic.gov* Include the name of the collection in the subject line of the message.
- Mail: Leneta G. Gregorie (202–898–3719), Counsel, Room NYA–5050, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- Hand Delivery: Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collection of information:

Title: Certification of Compliance with Mandatory Bars to Employment.

OMB Number: 3064–0121.

Form Number: FDIC 7300/06.

Frequency of Response: On occasion.

Affected Public: Business or other financial institutions.

Estimated Number of Respondents: 600.

Estimated Time per Response: 10 minutes.

Total Annual Burden: 100 hours.

General Description of Collection: Prior to an offer of employment, job applicants to the FDIC must sign a certification that they have not been convicted of a felony or been involved in other circumstances that prohibit that person from becoming employed by or providing services to the FDIC.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the

burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 31st day of July 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–18995 Filed 8–2–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice To All Interested Parties of the Termination of the Receivership of 10146, Gateway Bank of St. Louis, St. Louis, MO

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Gateway Bank of St. Louis, (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Gateway Bank of St. Louis on November 6, 2009. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 8.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated at Washington, DC, this 31st day of July 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–18994 Filed 8–2–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice To All Interested Parties of the Termination of the Receivership of 10039, Sherman County Bank, Loup City, NE

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Sherman County Bank, (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Sherman County Bank on February 13, 2009. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to:

Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 8.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated at Washington, DC, this 31st day of July 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–18996 Filed 8–2–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: July 16, 2012.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10449	Glasgow Savings Bank	Glasgow	MO	7/13/2012

[FR Doc. 2012–18987 Filed 8–2–12; 8:45 am]
BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: July 30, 2012.
Federal Deposit Insurance Corporation.

Pamela Johnson,
Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION
[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10455	Jasper Banking Company	Jasper	GA	7/27/2012

[FR Doc. 2012–18989 Filed 8–2–12; 8:45 am]
BILLING CODE 6714–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2012–N–08]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 60-day Notice of Submission of Information Collection for Approval from the Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA) is seeking public comments concerning a currently approved information collection known as ''Community Support Requirements,'' which has been assigned control number 2590–0005 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three year extension of the control number, which is due to expire on October 31, 2012.

DATES: Written comments must be received on or before October 2, 2012.

Comments: You may submit your comments to FHFA using any of the following methods:

- *Email: regcomments@fhfa.gov.* Please include Proposed Collection; Comment Request: Community Support Requirements (No. 2012–N–08) in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024, Attention: Public Comments/Proposed Collection; Comment Request: ''Community Support Requirements,'' (No. 2012–N–08).

We will post all public comments we receive without change, including any personal information you provide, such as your name, telephone number, and address, on the FHFA Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. To make an appointment to inspect comments, please call the Office of General Counsel at 202–649–3804.

FOR FURTHER INFORMATION CONTACT: Sylvia C. Martinez, Management Advisor, Division of Bank Regulation (DBR), Federal Housing Finance Agency, by telephone at 202–649–3301 (not a toll-free number), or by electronic mail at *Sylvia.Martinez@fhfa.gov.* The telephone number for the Telecommunications Device for the Hearing Impaired is 800–877–8339.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of the Information Collection

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires FHFA to promulgate regulations establishing standards of community investment or service that Federal Home Loan Bank (Bank) member institutions must meet in order to maintain access to long-term advances.[1] Section 10(g)(2) of the Bank Act requires that, in establishing these community support requirements for Bank members, FHFA take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA)[2] and record of lending to first-time homebuyers.[3]

Part 1290 of FHFA's regulations implements the statutory requirements by providing uniform community support standards that all Bank members must meet, as well as review criteria that FHFA staff must apply to determine compliance with section 10(g) of the Bank Act.[4] Section 1290.2 of the regulations requires that each Bank member submit to FHFA biennially a completed Community Support Statement (Form 60), which contains several short questions the answers to which are used by FHFA to assess the responding member's compliance with the CRA and first time homebuyer performance standards. In section I of the form, a member that is subject to the CRA must record its current CRA rating and the date of its most recent CRA evaluation. Section II of the form addresses a member's efforts to assist first time homebuyers—a member may either record the amount of loans made to first time homebuyers (in dollars and as a percentage of total mortgage loans) in the previous year, indicate the types of programs it has undertaken to assist first time home buyers (by checking selections from a

[1] *See* 12 U.S.C. 1430(g)(1).
[2] 12 U.S.C. 2901, *et seq.*
[3] *See* 12 U.S.C. 1430(g)(2).
[4] *See* 12 CFR part 1290.

list) or do both. If a member has received a CRA rating of ''outstanding,'' it need not complete section II of the form. A copy of Form 60 is available at *http://www.fhfa.gov/webfiles/2924/FHFAForm060.pdf.*

Section 1290.5 describes the circumstances under which FHFA will restrict a member's access to long-term Bank advances for failure to meet the community support requirements. It also permits Bank members whose access to long-term advances has been restricted to apply directly to FHFA to remove the restriction under certain circumstances.

The information collection contained in Form 60 and part 1290 are necessary to enable and are used by FHFA to determine whether Bank members satisfy the statutory and regulatory community support requirements. Only Bank members that meet these requirements may maintain continued access to long-term Bank advances. *See* 12 U.S.C. 1430(g).

The OMB number for the information collection is 2590–0005. The OMB clearance for the information collection expires on October 31, 2012. The likely respondents are institutions that are Bank members.

B. Burden Estimate

The FHFA estimates the total annual average number of respondents that must complete Form 60 at 3,900 Bank members (half of all Bank members each year), with one response per member and an average burden per response of one hour. In addition, FHFA estimates the total annual average number of Bank members whose access to long-term advances has been restricted that will apply to FHFA to remove the restriction at 14 Bank members, with one response per member and an average burden per response of one hour. Thus, the estimate for the total annual hour burden is 3,914 hours.

C. Comment Request

Written comments are requested on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of the FHFA estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: July 27, 2012.

Kevin Winkler,

Chief Information Officer, Federal Housing Finance Agency.

[FR Doc. 2012–19011 Filed 8–2–12; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 27, 2012.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Washington First Bankshares, Inc., Reston, Virginia,* to merge with Alliance Bankshares, Inc., Chantilly, Virginia, and thereby indirectly acquire Alliance Bank Corporation, Fairfax, Virginia.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *C–B–G, Inc., West Liberty, Iowa,* to acquire up to 50.01 percent of Washington Bancorp, Washington, Iowa, and thereby increase its indirect interest in Washington Bancorp's subsidiary, Federation Bank, Washington, Iowa.

C. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Equity Bancshares, Inc., Wichita, Kansas,* to acquire, through its subsidiary EBI Acquisition IV, Inc., Wichita, Kansas, 100 percent of the voting shares of First Community Bancshares, Inc., Overland Park, Kansas, parent of First Community Bank, Lee's Summit, Missouri. Immediately thereafter, EBI Acquisition IV, Inc., Wichita, Kansas, will merge into First Community Bancshares, Inc., Overland Park, Kansas.

2. *Main Banc, Inc.,* to acquire 100 percent of the voting shares of Bank 1st Financial Corporation, and thereby indirectly acquire Bank 1st, all of Albuquerque, New Mexico.

Board of Governors of the Federal Reserve System, July 30, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–18932 Filed 8–2–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 17, 2012.

A Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *Westpac Banking Corporation, Sydney, Australia,* to engage de novo through Westpac Capital Markets LLC, New York, New York in securities brokerage and riskless principal transactions, pursuant to Sections 225.28(b)(7)(i) and 225.28(b)(7)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, July 30, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–18933 Filed 8–2–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from the Feed Materials Production Center in Fernald, Ohio, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On June 27, 2012, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of DOE, its predecessor agencies, and their contractors, or subcontractors who worked at the Feed Materials Production Center (FMPC) in Fernald, Ohio, from January 1, 1968 through December 31, 1978, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation became effective on July 27, 2012, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on July 27, 2012, members of this class of employees, defined as reported in this notice, became members of the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2012–19045 Filed 8–2–12; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Mepur H. Ravindranath, Ph.D., John Wayne Cancer Institute: Based on the report of an investigation conducted by the John Wayne Cancer Institute (JWCI) and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Mepur H. Ravindranath, former Director of the Laboratory of Glycoimmunotheraphy, JWCI, engaged in research misconduct in research supported by National Cancer Institute (NCI), National Institutes of Health (NIH), awards R21 CA107316 and R03 CA107831.

ORI found that the Respondent engaged in research misconduct by falsifying results reported for research supported by U.S. Public Health Service (PHS) grants R21 CA107316 and R03 CA107831, in progress reports for those grants and in two publications in scientific journals.

It is expressly understood that by entering into a Voluntary Settlement Agreement (Agreement), Respondent is not admitting to any of the allegations made against him by JWCI and/or ORI, or any of their respective agents, employees, associates, or related persons, including but not limited to the findings made by ORI listed in the Agreement. Respondent agreed to enter into the Agreement and not to contest the findings contained therein solely because contesting the findings would cause Respondent undue financial hardship and stress, and Respondent wished to seek finality.

Specifically

1. Respondent falsified the number of subjects accrued in the double-blind study reported in the paper Ravindranath, M.H., Muthugounder, S., Presser, N., Ye, X., Brosman, S., & Morton, D.L. ''Endogenous immune response to gangliosides in patients with confined prostate cancer.'' *Int. J. Cancer* 166:368–377, 2005 (subsequently referred to as the ''*IJC* paper) and later reviewed in Ravindranath, M.H. Yesowitch, P., Sumobay, C., & Morton, D.L. ''Glycoimmunomics of human cancer: Current concepts and future perspectives.'' *Future Oncology* 3(2):201–214, 2007 (subsequently referred to as the ''*Future Oncology* paper''), by reporting data of 7 of 63 patients with serial bleeds taken at different points in time and reporting that the values from the 7 patients were for different patients. This same reporting data of individual patients with serial bleeds taken at different points in time and reporting that those values were for different patients was presented in the CA107316 and CA107831 final reports.

2. The methodology used for the Tables of ANOVA results comparing Log Titers of IgM antibodies for the different subject groups in the *IJC* and *Future Oncology* papers and the CA107316 and CA107831 final reports is incorrect and false, since the papers and reports fail to state that the results are not for a simple ANOVA but include various degrees of repeated measures on the variables.

3. In Table 1 of the CA107831 Final Report, Respondent reported mean log titer values for GM1b for healthy, BHP, and T3/4 CaP patients. These values exactly matched with values published for a different ganglioside, GM1, for healthy, BHP, and T3/4 CaP patients, earlier in the *IJC* (Table II) and *Future Oncology* publications. The only exception was the log titer value for T1/2 CaP patients for GM1b (n = 20), which matched with the earlier published mean log titer value for GT1b (6.22 ± 1.40; n = 36). ORI finds the pairwise-difference in the log titer values of GM1b between the T1/2 CaP and healthy patients, claimed to be significant ($p<0.01$), to therefore be incorrect and false. Respondent contends otherwise.

4. Because Respondent included serial bleed values from individual patients in Table 1 of the *IJC* paper, the summary data for anti-ganglioside antibody values, and the statistical analyses derived from them in Tables II and III of the *IJC* paper, Tables 1 and 2 of the *Future Oncology* paper, published Tables A and B of the CA107316 final report, and Tables 1 and 2B of the CA107831 final report are incorrect and false. The inclusion of serial bleeds from

individual patients in Table 1 of the *IJC* paper and their inappropriate impact on the antibody values reported in Table II of the *IJC* paper were reported in detail by Respondent to the Managing Editor in *IJC* in email communications dated September 24 and 29, 2008.

Dr. Ravindranath has entered into a Voluntary Settlement Agreement and has voluntarily agreed for a period of three (3) years, beginning on July 2, 2012:

(1) To have any PHS-supported research supervised; Respondent agreed that prior to the submission of an application for PHS support for a research project on which the Respondent's participation is proposed and prior to Respondent's participation in any capacity on PHS-supported research, Respondent shall ensure that a plan for supervision of Respondent's duties is submitted to ORI for approval; the supervision plan must be designed to ensure the scientific integrity of Respondent's research contribution; Respondent agreed that he shall not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI; Respondent agreed to maintain responsibility for compliance with the agreed upon supervision plan;

(2) That any institution employing him shall submit, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS- supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived, that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract, and that the text in such submissions is his own or properly cites the source of copied language and ideas; and

(3) To exclude himself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

John Dahlberg,

Director, Division of Investigative Oversight, Office of Research Integrity.

[FR Doc. 2012–18990 Filed 8–2–12; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Decision To Evaluate a Petition To Designate a Class of Employees From the Baker Brothers Site in Toledo, Ohio, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: NIOSH gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees from the Bakers Brothers site in Toledo, Ohio, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Baker Brothers.

Location: Toledo, Ohio.

Job Titles and/or Job Duties: All employees who worked in any area.

Period of Employment: June 1, 1943 to December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2012–19047 Filed 8–2–12; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–6042–N]

Medicare Program; Prior Authorization for Power Mobility Device (PMD) Demonstration

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

ACTION: Notice.

SUMMARY: This notice announces a 3-year Medicare Prior Authorization for Power Mobility Device (PMD) Demonstration for certain PMD codes in seven states where there have been high incidences of fraudulent claims and improper payments

DATES: This demonstration begins on September 1, 2012.

FOR FURTHER INFORMATION CONTACT: Daniel Schwartz, 410–786–4197.

Questions regarding the Medicare Prior Authorization for PMD Demonstration should be sent to *pademo@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Power Mobility Devices have had historically high incidents of fraud and improper payments. PMD suppliers also continue to be subject to significant law enforcement investigation.

The Health Care Fraud Prevention and Enforcement Action Team (HEAT) Task Force was launched in May 2009 and is co-chaired by the Deputy Secretary of HHS and the Deputy Attorney General of DOJ. Medicare Fraud Strike Force teams are a key component of HEAT, since their inception and based on data driven investigations, prosecutors have filed more than 600 cases charging more than 1,150 defendants who collectively billed the Medicare program more than $2.9 billion in fraudulent claims. DME is a primary focus of investigation for these strike forces.

The Comprehensive Error Rate Testing (CERT) Program noted in a 2010 Report [1] that 92.6 percent of claims for motorized wheelchairs did not meet Medicare coverage requirements. Although we recognize that many improper payments are not the result of willful fraud, this error rate represents over $822 million dollars in estimated improper payments.

II. Legislative Authority

Section 402(a)(1)(J) of the Social Security Amendments of 1967, 42 U.S.C. 1395b–1(a)(1)(J), authorizes the Secretary to conduct demonstrations designed to develop or demonstrate improved methods for the investigation and prosecution of fraud in the provision of care or services provided under the Medicare program. We plan to conduct a demonstration that implements a prior authorization process for power mobility devices (PMDs), an area with historically high levels of fraud and improper payments, to develop improved methods for the investigation and prosecution of fraud

[1] *http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/CERT/Downloads/CERT_Nov_2010_Appendix_-final.pdf* Supplemental Appendix, Table B2.

in order to protect the Medicare Trust Fund from fraudulent actions and the resulting improper payments. We are conducting this 3-year demonstration in California, Florida, Illinois, Michigan, New York, North Carolina, and Texas. The beneficiary's address as reported to the Social Security Administration (SSA) will determine participation in the demonstration.

We believe this demonstration will provide the agency with valuable data through which the agency, working with its partners, can develop new avenues for combating the submission of fraudulent claims to the Medicare program for PMDs. We will share data developed from this demonstration within the agency, with our contractors, and with our law enforcement partners for further analysis and investigation. We believe that data evidencing changes in physician ordering and supplier billing practices that coincide with this demonstration could provide investigators and law enforcement with important information for determining how and where to focus their investigations concerning fraud in the provision of PMDs. For instance, results from this demonstration could potentially indicate collaboration between ordering physicians and suppliers in submitting fraudulent claims for PMDs. This data could assist investigators and law enforcement in targeting their investigations in this area. Additionally, changes in billing practices that result from this demonstration could provide specific leads for investigators and law enforcement personnel. For instance, where a supplier that frequently submitted claims prior to the demonstration stops submitting claims during the demonstration, law enforcement may determine it prudent to investigate that supplier.

Data we will analyze will include the following:

- Suppliers who no longer bill or have a significant decrease in billing.
- Physicians/treating practitioners with a high volume of submissions.
- Codes that show a dramatic increase in use.
- Codes that show a dramatic decrease in use.

The demonstration will likely have a secondary benefit to help identify and reduce improper payments. We recognize that many improper payments are not the result of willful fraud. Information shared with law enforcement will be limited to data on those providers and suppliers who are potentially submitting fraudulent claims and other information that we believe will assist with the investigation and prosecution of fraud.

Section 402(b) of the Social Security Amendments of 1967 authorizes the Secretary to waive requirements in Title XVIII that relate to reimbursement and payment in order to carry out the demonstrations authorized under section 402(a). In accordance with section 402(b), the Secretary waives certain requirements of sections 1834(a), 1834(j)(4) and 1879 of the Social Security Act to the extent necessary to implement this demonstration, including, but not limited to, certain payment and reimbursement regulations set forth at 42 CFR part 414, Subpart D and 42 CFR Part 411, Subpart K.

III. Provisions of the Notice

This demonstration will implement a prior authorization process for PMDs in seven states where historically there has been extensive evidence of fraud and improper payments (CA, FL, IL, MI, NY, NC, and TX).

The prior authorization process under this demonstration is available for the following codes for Medicare payment:

- Group 1 Power Operated Vehicles (K0800 through K0802 and K0812).
- All standard power wheelchairs (K0813 through K0829).
- All Group 2 complex rehabilitative power wheelchairs (K0835 through K0843).
- All Group 3 complex rehabilitative power wheelchairs without power options (K0848 through K0855).
- Pediatric power wheelchairs (K0890 and K0891).
- Miscellaneous power wheelchairs (K0898).

Prior to the start of the demonstration, we have conducted and will continue to conduct outreach and education including webinars, in-state meetings and other education sessions. Additional information about the implementation of the prior authorization demonstration is available on the CMS Web site (go.cms.gov/PAdemo). In addition, suppliers who have recently furnished and practitioners who have recently ordered a PMD for a beneficiary residing in a demonstration state will be notified via certified letters about the demonstration prior to the start date of the demonstration.

Under this demonstration, a physician, treating practitioner, or supplier will be encouraged to submit to their Durable Medical Equipment (DME) Medicare Administrative Contractor (MAC) a request for prior authorization and all relevant documentation to support Medicare coverage of the PMD item along with the written order for the covered item. The physician, treating practitioner or supplier who submits the request on behalf of the physician or treating practitioner, is referred to as the ''submitter.'' In order to be affirmed, the request for prior authorization must meet all applicable rules, policies, and National Coverage Determination (NCD)/Local Coverage Determination (LCD) requirements for PMD claims.

LCD requirements mandating physician/treating practitioner origination, such as the seven-element order, face-to-face encounter documentation and whatever other clinical documentation is necessary, must be completed by the physician/treating practitioner regardless of which entity is functioning as the submitter. The supplier will still complete the detailed product description regardless of which entity is functioning as the submitter.

After receipt of all relevant documentation, CMS or its agents will make every effort to conduct a review and postmark the notification of their decision with the prior authorization number within 10 business days. Notification is provided to the physician/treating practitioner, supplier, and the Medicare beneficiary for the initial submission. If a subsequent prior authorization request is submitted after a nonaffirmative decision on a prior authorization request, then CMS or its agents will make every effort to conduct a review and postmark the notification of decision with the prior authorization number within 20 business days. These timeframes will become part of the contractors' performance metrics.

There will also be a mechanism in place to request an expedited review in emergency situations where a practitioner indicates clearly, with supporting rationale that the standard (routine) timeframe for a Prior Authorization Decision (10 days) could seriously jeopardize the beneficiary's life or health. In these cases, the contractor will conduct an expedited review. The expedited request must be accompanied by the required supporting documentation for this request to be considered complete thus commencing the 48 hours for review. Inappropriate expedited requests may be downgraded to standard requests. After conducting an expedited review, CMS or its agents will communicate a decision for the prior authorization request to the submitter within 48 hours of the complete submission.

The following explains the various prior authorization scenarios:

- Scenario 1: When a submitter sends a prior authorization request to the DME

MAC with appropriate documentation and all relevant Medicare coverage and documentation requirements are met for the PMD, then the DME MAC sends an affirmative prior authorization decision to the physician or treating practitioner, supplier, and Medicare beneficiary. When the claim is submitted to the DME MAC by the supplier, it is linked to the Prior Authorization via the claims processing system and so long as all applicable requirements in the applicable NCD/LCD are met, the claim is paid.

• Scenario 2: When a submitter sends a prior authorization request but all relevant Medicare coverage requirements are not met for the PMD, then the DME MAC sends a nonaffirmative prior authorization decision to the physician or treating practitioner, supplier, and Medicare beneficiary advising them that Medicare will not pay for the item. A supplier can deliver the PMD, and submit a claim with a non-affirmative prior authorization decision, at which point the DME MAC would deny the claim. The supplier and/or the beneficiary would then have the Medicare denial for secondary insurance purposes and would have full appeal rights.

If an applicable PMD claim is submitted without a prior authorization decision it will be stopped and documentation will be requested to conduct medical review. After the first 3 months of the demonstration, we will assess a payment reduction for claims that, after review, are deemed payable, but did not first receive a prior authorization decision. As evidence of compliance, the supplier must submit the prior authorization number on the claim in order to avoid a 25 percent payment reduction. The 25 percent payment reduction is non-transferrable to the beneficiary and not subject to appeal. In the case of capped rental items, the payment reduction will be applied to all claims in the series.

The 25-percent reduction in the Medicare payment is for each payable base claim not preceded by a prior authorization request except in competitive bidding areas. If a competitive bid contract supplier submits a payable claim for a beneficiary with a permanent residence in a competitive bidding area, that is included in the supplier's contract, without first receiving a prior authorization decision, that competitive bid supplier would receive the applicable single payment amount under the competitive bid program, and would not be subject to the 25-percent reduction. These suppliers must still adhere to all other requirements of the demonstration.

• Scenario 3: When a submitter sends a prior authorization request where documentation is incomplete, the prior authorization request is sent back to the submitter with an explanation about what information is missing. The submitter can rectify the situation and resubmit the prior authorization request. The physician or treating practitioner, supplier, and Medicare beneficiary are also notified.

• Scenario 4: When the DME supplier fails to receive a prior authorization decision, but nonetheless delivers the item to the beneficiary and submits the claim to the DME MAC for payment, the PMD claim will be reviewed under normal medical review processing timeframes.

++ If the claim is determined to be not medically necessary or insufficiently documented, the claim will be denied. The supplier and/or beneficiary can appeal the claim denial. If the claim, after review, is deemed not payable then all current beneficiary/supplier liability policies and procedures as well as appeal rights remain in effect.

++ If the claim is determined to be payable, it will be paid. However, 3 months after the start of the demonstration, a 25-percent reduction in the Medicare Payment will be applied for failure to receive a prior authorization decision before the submission of a claim. This payment reduction will not be applied for competitive bidding program contract suppliers submitting claims for beneficiaries who maintain a permanent residence in a Competitive Bidding Area in their contracts according to the Common Working File (CWF)); these contract suppliers will continue to receive the applicable single payment amount under their contracts. The 25-percent payment reduction is non-transferrable to the beneficiary for the claims that are deemed payable. This payment reduction will begin 3 months after the start of the demonstration and is not subject to appeal. In the case of capped rental items the payment reduction will be applied to all claims in the series. After a claim is submitted and processed, appeal rights are available as they normally are.

Under the demonstration, we will work to limit the impact on beneficiaries. We will educate beneficiaries as part of this protection. If the prior authorization request is not affirmed, and the claim is still submitted by the supplier, the claim will be denied in full, but beneficiaries will continue to have all normal appeal rights as well as the option of signing an Advance Beneficiary Notice in order to receive and be liable for payment for a denied PMD.

Additional information is available on the CMS Web site at go.cms.gov/PAdemo.

IV. Collection of Information Requirements

We announced and solicited comments for the information collection requirements associated with the Medicare Prior Authorization for Power Mobility Device (PMD) Demonstration for certain PMD codes in 60-day and 30-day **Federal Register** notices that published on February 7, 2012 (77 FR 6124) and May 29, 2012 (77 FR 31616), respectively. The information collection requirements are approved under OMB control number 0938–1169.

Authority: Section 402(a)(1)(J) of the Social Security Amendments of 1967.

Dated: July 30, 2012

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2012–19014 Filed 8–1–12; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0386]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments and Listing of Ingredients in Tobacco Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by September 4, 2012.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All

comments should be identified with the OMB control number 0910–0650. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *daniel.gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments and Listing of Ingredients in Tobacco Products (OMB Control Number 0910–0650)—Extension

On June 22, 2009, the President signed the Tobacco Control Act (Pub. L. 111–31) into law. The Tobacco Control Act amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 301 *et seq.*) by, among other things, adding a new chapter granting FDA important authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors.

Section 905(b) of the FD&C Act (21 U.S.C. 387e(b)), as amended by the Tobacco Control Act, requires that ''every person who owns or operates any establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products * * *'' register with FDA the name, places of business, and all establishments owned or operated by that person. Every person must register by December 31 of each year. Section 905(c) of the FD&C Act requires that first-time persons ''engaging in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products shall register with the Secretary the name, places of business, and all such establishments of that person.'' Section 905(d) states that persons required to register under sections 905(b) or 905(c) shall register any additional establishment that they own or operate in any state which begins the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products. Section 905(h) addresses foreign establishment registration requirements, which will go into effect when regulations are promulgated by the Secretary. Section 905(i)(1) of the FD&C Act, as amended by the Tobacco Control Act, requires that all registrants ''shall, at the time of registration under any such subsection, file with [FDA] a list of all tobacco products which are being manufactured, prepared, compounded, or processed by that person for commercial distribution,'' along with certain accompanying consumer information, such as all labeling and a representative sampling of advertisements. Section 904(a)(1) of the FD&C Act (21 U.S.C. 387d(a)(1)), as amended by the Tobacco Control Act, requires each tobacco product manufacturer or importer, or agent thereof, to submit ''a listing of all ingredients, including tobacco, substances, compounds, and additives that are * * * added by the manufacturer to the tobacco, paper, filter, or other part of each tobacco product by brand or by quantity in each brand and subbrand.'' Since the Tobacco Control Act was enacted on June 22, 2009, the information required under section 904(a)(1) must be submitted to FDA by December 22, 2009, and include the ingredients added as of the date of submission. Section 904(c) of the FD&C Act also requires submission of information whenever additives, or the quantities of additives, are changed.

FDA issued guidance documents on both: (1) Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments (November 12, 2009; 74 FR 58298) and (2) Listing of Ingredients in Tobacco Products (December 1, 2009; 74 FR 62795) to assist persons making such submissions to FDA under the Tobacco Control Act. While electronic submission of registration and product listing information and ingredient listing information are not required, FDA is strongly encouraging electronic submission to facilitate efficiency and timeliness of data management and collection. To that end, FDA designed the eSubmitter application to streamline the data entry process for registration and product listing and for ingredient listing. This tool allows for importation of large quantities of structured data, attachment of files (e.g., in portable document format (PDFs) and certain media files), and automatic acknowledgement of FDA's receipt of submissions. FDA also developed paper forms (Form FDA 3742—Registration and Listing for Owners and Operators of Domestic Tobacco Product Establishments and Form FDA 3743—Listing of Ingredients in Tobacco Products) as an alternative submission tool. Both the eSubmitter application and the paper forms can be accessed at *http://www.fda.gov/tobacco.*

In the **Federal Register** of May 3, 2012 (77 FR 26281), FDA published a 60-day notice requesting public comment on the proposed collection of information. One comment beyond the scope of this collection was received that discussed the importance of extending this collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA form/activity/tobacco control act section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Form FDA 3742/Registration and Product Listing for Owners and Operators of Domestic Establishments (Electronic and Paper submission)/Sections 905(b), 905(c), 905(d) 905(h), or 905(i).	125	1.6	200	3.75	750
Form FDA 3743/Listing of Ingredients (Electronic and Paper Submissions)/Sections 904(a)(1) or 904(c).	125	1.6	200	3	600
Obtaining a DUNS Number (10% of total respondents)	8	1	8	0.50 (30 minutes)	4
Total	.....	.....	.....	.....	1,354

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Since this collection of information was last approved by OMB on December 2, 2010, its burden has decreased by 407,421 hours, from 408,775 to 1,354 reporting hours. This adjustment is a result of FDA experience over the past 2 years in the regulation of tobacco products and is based on the actual number of establishment registration and product ingredient submissions received during this time period. In 2010, when this collection was first published for public comment in the **Federal Register**, FDA attempted to determine the actual number of tobacco manufacturers by using the Security and Exchange Commission's Standard Industrial Classification (SIC) codes, which are identifying codes that appear in a company's EDGAR filings to show the company's type of business. When preparing the collection of information package for publication in 2010, the tobacco industry codes indicated that over 10,000 tobacco manufacturers existed under the SIC codes for tobacco products and cigarettes. However, upon further examination of these codes, it appears that the number of tobacco manufacturers was greatly inflated, as the SIC codes included tobacco retail in addition to tobacco manufacturers. In addition, no comments were received from the 2010 initial 60-day **Federal Register** notice regarding either the number of respondents or the number of reporting burden hours listed in the notice, so FDA used the collection's SIC-researched manufacturer numbers for this collection of information. Actual FDA registration and product listing report submissions and FDA experience indicate in the past 2 years, the number of tobacco manufacturers required to register and list their products and ingredient listings is approximately 125, a substantial decrease from the number of potential respondents listed in 2010. By applying the revised number of manufacturers to the burden chart, the total burden for registration and listing now is currently estimated to be 1,354 reporting burden hours, much less than the 408,775 OMB-approved reporting burden hours stated in 2010.

Based on the actual number of registration and product ingredient listing reports received by FDA over the past 2 years, the number of expected annual responses is projected to decrease from 100,000 registration responses to 200 annual responses, and from 11,000 annual product ingredient listing responses to 200 annual product ingredient responses. The Agency bases its estimate on the actual number of registration and listing and product ingredient listing reports received, its experience with the submission of registration and listing requirements applicable to other FDA regulated products, and ongoing interactions with industry. FDA estimates that the submission of registration information as required by section 905 of the FD&C Act will remain at 3.75 hours per establishment. Based on the actual number of registration information submitted in the past 2 years and its experience, the Agency estimates that approximately 200 registrations will be submitted from 125 tobacco product establishments annually, for a total 750 hour burden (125 respondents × 1.6 responses per respondent × 3.75 hours per response).

FDA estimates that the submission of ingredient listing information as required by section 904 of the FD&C Act will remain at 3.0 hours per tobacco product. Based on the actual number of product ingredient listings submitted over the past 2 years and its experience, the Agency estimates that approximately 200 ingredient listings will be submitted from 125 tobacco establishments, for a total 600 burden hours (125 respondents × 1.6 responses per respondent × 3.0 hours per response).

FDA estimates that obtaining a Dun and Bradstreet (DUNS) number will take 0.5 hours, and that 8 respondents (1 percent (1.25) of establishments required to register under section 905 and 5 percent (6.25) of submitters required to list ingredients under section 904) will not already have a DUNS number. The total burden, therefore, will be 4 hours (8 respondents × 1 response per respondent × 0.5 hours per response).

Total burden hours for this collection, therefore is 1,354 hours (750 + 600 + 4 hours).

Dated: July 30, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–18975 Filed 8–2–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0627]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; General Administrative Procedures: Citizen Petitions; Petition for Reconsideration or Stay of Action; Advisory Opinions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''General Administrative Procedures: Citizen Petitions; Petition for Reconsideration or Stay of Action; Advisory Opinions'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7726, *ila.mizrachi@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On March 27, 2012, the Agency submitted a proposed collection of information entitled '' General Administrative Procedures: Citizen Petitions; Petition for Reconsideration or Stay of Action; Advisory Opinions'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0183. The approval expires on June 30, 2014. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: July 26, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–18976 Filed 8–2–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Gastroenterology Regulatory Endpoints and the Advancement of Therapeutics (GREAT); Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration's (FDA) Center for Drug Evaluation and Research is announcing a 4-day public workshop entitled ''Gastroenterology Regulatory Endpoints and the Advancement of Therapeutics (GREAT).'' The purpose of this workshop is to provide a forum to consider issues related to endpoints that can support drug development in the following disease areas: Eosinophilic esophagitis, pediatric and adult inflammatory bowel disease, and parenteral nutrition-associated liver disease.

DATES: The public workshop will be held on September 19, 20, 21, and 24, 2012, from 8:30 a.m. to 5 p.m.

ADDRESSES: The public workshop will be held at the Holiday Inn, 10000 Baltimore Ave., College Park, MD 20740.

FOR FURTHER INFORMATION CONTACT: Kevin Bugin, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–2302, FAX: 301–796–9905, *Kevin.Bugin@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

This workshop will address endpoints for registration trials. Stakeholders, including industry sponsors, academia, and FDA, will be engaged to address challenging issues related to selection of endpoints and assessment methodologies in registration trials. Facilitation of efficient drug development, in the context of these issues, will be discussed.

Each day of the workshop will be devoted to a discussion of a single relevant disease area. The goal of the workshop day dedicated to eosinophilic esophagitis is to discuss its natural history, development of patient reported outcome measures, and biomarkers that might be used to study new treatments for both children and adults. The goal of the workshop day dedicated to pediatric inflammatory bowel disease (IBD) is to discuss issues related to the extrapolation of efficacy data from adult to pediatric patients, the definition and measurement of treatment benefit, and dose-finding strategies in pediatric patients. The goal of the workshop day dedicated to adult IBD is to discuss the definition and measurement of efficacy in adult ulcerative colitis registration trials, including the timing of endpoint assessment and the roles of specific endpoints and measurement tools. The goal of the workshop day dedicated to parenteral nutrition-induced liver disease is to discuss endpoints and their measurement for clinical trials in which parenteral nutrition-induced liver disease is either an efficacy or safety outcome measure.

Particpation In the Public Workshop:

Registration: There is no fee to attend the public workshop, but attendees must register in advance. Space is limited, and registration will be on a first-come, first-served basis. Persons interested in attending this workshop must register online at *http://www.fda.contractmeetings.com* before September 1, 2012. For those without Internet access, please contact Ann Brameyer (7910 Woodmont Ave., suite 310, Bethesda, MD 20814, Phone: 240–316–3205, FAX: 240–316–3201) to register. Onsite registration will not be available.

If you need special accommodations due to a disability, please contact Kevin Bugin (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance.

Transcripts:

Transcripts of the workshop will be available for review at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and on the Internet at *http://www.regulations.gov* approximately 30 days after the workshop. A transcript will also be available in either hard copy or on CD–ROM, after submission of a Freedom of Information request. Send written requests to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. Send faxed requests to 301–827–9267.

Dated: July 31, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–19036 Filed 8–2–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting on of the Substance Abuse and Mental Heal Services Administration's (SAMHSA) Center for Mental Health Services (CMHS) National Advisory Council on August 16, 2012.

The meeting will include topics such as budget, homelessness, and recovery support services initiative.

The meeting is open to the public and will be held online via Live Meeting. Participants can join the event directly at *https://www.mymeetings.com/nc/join.php?i=PW8699891&p=CSAUNDERS&t=c.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the Council. Written submissions should be forwarded to the contact person on or before one week prior to the meeting (August 9, 2012). Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact on or before one week prior (August 9, 2012) to the meeting. Five minutes will be allotted for each presentation.

Substantive program information may be obtained after the meeting by accessing the SAMHSA Committee Web site, *http://nac.samhsa.gov/,* or by contacting Crystal C. Saunders.

Council Name: Substance Abuse and Mental Health Services Administration,

Center for Mental Health Services National Advisory Council.

Date/Time/Type: August 16, 2012, 8:30–5:00 (OPEN).

Place: Live meeting webcast.

Contact: Crystal C. Saunders, Acting Designated Federal Official, SAMHSA, Center for Mental Health Services National Advisory Council, 1 Choke Cherry Road, Rockville, Maryland 20857, Telephone: 240–276–1117, Fax: 240–276–1395.

Cathy J. Friedman,

Public Health Analyst, SAMHSA.

[FR Doc. 2012–19033 Filed 8–2–12; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2012–0720]

Environmental Topics Related to the International Maritime Organization's Development of a Mandatory Code for Ships Operating in Polar Waters; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting; request for comments.

SUMMARY: The United States Coast Guard will hold a public meeting in Washington, DC on environmental topics related to the development of a mandatory code for ships operating in polar waters by the International Maritime Organization (IMO Polar Code).

DATES: The public meeting will be held on Tuesday, August 28, 2012 from 9:30 a.m. to 4 p.m., EST, to provide an opportunity for oral comments. Written comments and related material may also be submitted to Coast Guard personnel specified at that meeting. All comments and related material submitted after the meeting must either be submitted to our online docket via *http://www.regulations.gov* on or before Friday, September 7, 2012 or reach the Docket Management Facility by that date.

ADDRESSES: The public meeting will be held at the United States Coast Guard Headquarters Transpoint Building, Room 2501, 2100 Second Street Southwest, Washington, DC 20593, approximately 1 mile from the Waterfront-SEU Metro Station. Due to building security requirements, each visitor must present two forms of government-issued photo identification in order to gain entrance to the building.

You may submit written comments identified by docket number USCG–2012–0720 before or after the meeting using any one of the following methods:

(1) *http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. Our online docket is available on the Internet at *http://www.regulations.gov* under docket number USCG–2012–0720.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning the meeting, please call or email Lieutenant Andrew Gibbons, U.S. Coast Guard; telephone 202–372–1485, email *Andrew.T.Gibbons@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this matter by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (USCG–2012–0720) and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and insert ''USCG–2012–0720'' in the ''Search'' box. Click ''Search,'' find this notice in the list of Results, and then click on the corresponding ''Comment Now'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov* and insert ''USCG–2012–0720'' in the ''Search'' box. Click ''Search'' and use the filters on the left side of the page to highlight ''Public Submissions'' or other document types. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

The Coast Guard will hold a public meeting regarding environmental topics related to the development of the IMO Polar Code. The public meeting will be held on Tuesday, August 28, 2012 from 9:30 a.m. to 4 p.m., EST at the United States Coast Guard Headquarters Transpoint Building, Room 2501, 2100 Second Street Southwest, Washington, DC 20593, approximately 1 mile from the Waterfront-SEU Metro Station. Due to building security requirements, each visitor must present two forms of government-issued photo identification in order to gain entrance to the building.

The purpose of this public meeting is to discuss relevant topics for consideration in development of environmental sections of the IMO Polar Code. The public meeting will address additional risks and hazards unique to the Arctic and Antarctic regions and any additional safeguards to be considered in the environmental sections of the IMO Polar Code. The primary topics that will be considered at the public meeting include:

- International Convention for the Prevention of Pollution from Ships (MARPOL Annexes I–VI);
- International Convention for the Control and Management of Ships' Ballast Water and Sediments;
- International Convention on the Control of Harmful Anti-fouling Systems on Ships; and
- Other considerations including voyage planning, greywater, underwater noise, marine mammals, heavy grade fuel oil (HFO), and pollution response.

Procedural

Please note that the public meeting has a limited number of seats and may close early if all business is finished. Also, teleconferencing will be available. Those interested in teleconferencing

should contact Lieutenant Andrew Gibbons at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Summaries of comments made, materials presented, and lists of attendees will be available for viewing in the docket after the meeting.

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the security process related to building access, or to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Lieutenant Andrew Gibbons, at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice, or in writing at Commandant (CG–ENG–3), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–7126, not later than Friday, August 17, 2012. We may not be able to accommodate requests made after August 17, 2012. Please note that due to building security requirements, each visitor must present two valid, government-issued photo identifications in order to gain entrance to the Coast Guard Headquarters building. The Coast Guard Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, public parking in the vicinity of the building is extremely limited.

Members of the public are encouraged to participate and join in discussions, subject to the discretion of the moderator. If you bring written comments to the meeting, you may submit them to Coast Guard personnel specified at the meeting to receive written comments. These comments will be submitted to our online public docket. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Lieutenant Andrew Gibbons at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Dated: July 27, 2012.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2012–19005 Filed 8–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0111]

Agency Information Collection Activities: Petition for CNMI-Only Nonimmigrant Transition Worker, Form I–129CW; Extension, Without Change, of a Currently Approved Collection

ACTION: 60–Day Notice.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until October 2, 2012

During this 60 day period, USCIS will be evaluating whether to revise the Form I–129CW. Should USCIS decide to revise Form I–129CW we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–129CW.

Written comments and suggestions regarding items contained in this information collection notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Office of Policy and Strategy, Laura Dawkins, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529. Comments may be submitted to DHS via email at *uscisfrcomment@dhs.gov* and must include OMB Control Number 1615–0111 in the subject box. Comments may also be submitted via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–2012–0011.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension, without change, of a currently approved collection;

(2) *Title of the Form/Collection:* Petition for CNMI-Only Nonimmigrant Transition Worker.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–129CW; U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit; not-for-profit institutions; Commonwealth or Local Government.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 6,000 form respondents at 3 hours per response and 12,000 respondents from whom USCIS collects biometrics at .167 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 26,124 total Annual Hours Burden.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529, Telephone number 202–272–1470.

Dated: July 30, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–19042 Filed 8–2–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5601–N–30]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 26, 2012.

Ann Marie Oliva,

Deputy Assistant Secretary for Special Needs (Acting).

[FR Doc. 2012–18809 Filed 8–2–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5648–N–01]

Proposed Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2013

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Proposed Fiscal Year (FY) 2013 Fair Market Rents (FMRs).

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 (USHA) requires the Secretary to publish FMRs periodically, but not less than annually, adjusted to be effective on October 1 of each year. The primary uses of FMRs are to determine payment standards for the Housing Choice Voucher (HCV) program, to determine initial renewal rents for some expiring project-based Section 8 contracts, to determine initial rents for housing assistance payment contracts in the Moderate Rehabilitation Single Room Occupancy program, and to serve as rent ceilings in the HOME program. Today's notice provides proposed FY 2013 FMRs for all areas that reflect the estimated 40th and 50th percentile rent levels trended to April 1, 2013. The FY 2013 FMRs are based on using 5-year, 2006–2010 data collected by the American Community Survey (ACS). These data are updated by one-year ACS data using areas where statistically valid one-year ACS data is available. The Consumer Price Index (CPI) rent and utility indexes are used to further update the data from 2010 to the end of 2011. HUD continues to use ACS data in different ways according to how many two-bedroom standard-quality and recent-mover sample cases are available in the FMR area or its Core-Based Statistical Area (CBSA).

The proposed FY 2013 FMR areas are based on current Office of Management and Budget (OMB) metropolitan area definitions and include HUD modifications that were first used in the determination of FY 2006 FMR areas. Changes to the OMB metropolitan area definitions through December 2009 are incorporated; there have been no further metropolitan area definitions changes.

The proposed FY 2013 FMRs in this notice reflect several updates to the methodology used to calculate FMRs. First, HUD has updated the bedroom ratios used to calculate 0, 1, 3 and 4 bedroom FMRs based on the 2 bedroom FMR. The new bedroom ratios are constructed using 2006–2010 5-year ACS data. The methodology for calculating the bedroom ratios is very similar to the method used when the bedroom ratios were based on 2000 decennial census long-form data. Second, these FMRs reflect a new trend factor calculation methodology which HUD stated would be implemented in its proposed FY 2012 FMR publication on August 19, 2011 (76 FR 52058). This trend factor is based on national gross rent data and will change annually.

DATES: *Comment Due Date:* September 4, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding the proposed FMRs to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410–0001. Communications must refer to the above docket number and title and should contain the information specified in the ''Request for Comments'' section. There are two methods for submitting public comments.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at all federal agencies, however, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that comments submitted by mail be submitted at least two weeks in advance of the public comment deadline.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow instructions

provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (Fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at 800–245–2691 or access the information on the HUD USER Web site *http://www.huduser.org/portal/datasets/fmr.html.* FMRs are listed at the 40th or 50th percentile in Schedule B. For informational purposes, 40th percentile recent-mover rents for the areas with 50th percentile FMRs will be provided in the HUD FY 2013 FMR documentation system at *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr13* and 50th percentile rents for all FMR areas will be published at *http://www.huduser.org/portal/datasets/50per.html* after publication of final FY 2013 FMRs.

Questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff. Questions on how to conduct FMR surveys or concerning further methodological explanations may be addressed to Marie L. Lihn or Peter B. Kahn, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, telephone 202–708–0590. 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 TDD numbers, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 8 of the USHA (42 U.S.C. 1437f) authorizes housing assistance to aid lower-income families in renting safe and decent housing. Housing assistance payments are limited by FMRs established by HUD for different geographic areas. In the HCV program, the FMR is the basis for determining the ''payment standard amount'' used to calculate the maximum monthly subsidy for an assisted family (see 24 CFR 982.503). In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities. In addition, all rents subsidized under the HCV program must meet reasonable rent standards. HUD's regulations at 24 CFR 888.113 permit it to establish 50th percentile FMRs for certain areas.

Electronic Data Availability: This **Federal Register** notice will be available electronically from the HUD User page at **SUPPLEMENTARY INFORMATION: Federal Register** notices also are available electronically from **SUPPLEMENTARY INFORMATION:** the U.S. Government Printing Office Web site. Complete documentation of the methodology and data used to compute each area's proposed FY 2013 FMRs is available at S**UPPLEMENTARY INFORMATION:** Proposed FY 2013 FMRs are available in a variety of electronic formats at *http://www.huduser.org/portal/datasets/fmr.html.* FMRs may be accessed in PDF format as well as in Microsoft Excel. Small Area FMRs based on proposed FY 2013 Metropolitan Area Rents are available in Microsoft Excel format at the same web address. Please note that these Small Area FMRs are for reference only, except where they are used by public housing agencies (PHAs) participating in the Small Area FMR demonstration.

II. Procedures for the Development of FMRs

Section 8(c) of the USHA requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. Section 8(c) states, in part, as follows:

Proposed fair market rentals for an area shall be published in the **Federal Register** with reasonable time for public comment and shall become effective upon the date of publication in final form in the **Federal Register**. Each fair market rental in effect under this subsection shall be adjusted to be effective on October 1 of each year to reflect changes, based on the most recent available data trended so the rentals will be current for the year to which they apply, of rents for existing or newly constructed rental dwelling units, as the case may be, of various sizes and types in this section.

HUD's regulations at 24 CFR part 888 provide that HUD will develop proposed FMRs, publish them for public comment, provide a public comment period of at least 30 days, analyze the comments, and publish final FMRs. (See 24 CFR 888.115.)

In addition, HUD's regulations at 24 CFR 888.113 set out procedures for HUD to assess whether areas are eligible for FMRs at the 50th percentile. Minimally qualified areas [1] are reviewed each year unless not qualified to be reviewed. Areas are not qualified to be reviewed if they have been made a 50th-percentile area within the last three years or have lost 50th-percentile status for failure to de-concentrate within the last three years.

In FY 2012 there were 21 areas using 50th-percentile FMRs. Of these 21 areas, 7 of them have completed three years of program participation and are due for re-evaluation. The following table lists these 7 areas.

FY 2012 50TH-PERCENTILE FMR AREAS REEVALUATED FOR ELIGIBILITY IN FY 2013

Baltimore-Towson, MD MSA	Fort Lauderdale, FL HMFA.[2]

[1] As defined in 24 CFR 888.113(c), a minimally qualified area is an area with at least 100 census tracts where 70 percent or fewer of the census tracts with at least 10 two bedroom rental units are census tracts in which at least 30 percent of the two bedroom rental units have gross rents at or below the two bedroom FMR set at the 40th percentile rent. This continues to be evaluated with 2000 Decennial Census information. Although the 2006–2010 5-year ACS tract level data is available, HUD's administrative data on tenant locations (used in the calculation of concentration) has not yet been updated to use the 2010 Census Tract area definitions. Once this administrative data is updated, HUD will implement the 5-year ACS data as the basis for determining if areas are minimally qualified for 50th percentile status.

FY 2012 50TH-PERCENTILE FMR AREAS REEVALUATED FOR ELIGIBILITY IN FY 2013—Continued

Grand Rapids-Wyoming, MI HMFA	New Haven-Meriden, CT HMFA.
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	Washington-Arlington-Alexandria, DC-VA-MD HMFA.
West Palm Beach-Boca Raton, FL HMFA.	

Only 5 of the 7 areas up for re-evaluation will continue to be 50th-percentile FMR areas:

FY 2012 50TH-PERCENTILE FMR AREAS THAT CONTINUE AS 50TH-PERCENTILE AREAS, NEXT EVALUATION IN FY 2016

Baltimore-Towson, MD MSA	Fort Lauderdale, FL HMFA.
New Haven-Meriden, CT HMFA	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA.
West Palm Beach-Boca Raton, FL HMFA.	

The Washington-Arlington-Alexandria, DC–VA–MD HMFA did not deconcentrate and will not be eligible for evaluation for three years, until the FY 2016 FMRs are evaluated. Additionally, the Grand Rapids-Wyoming, MI HMFA ''graduated'' from the 50th- percentile FMR program. This means that the concentration of HCV tenants is below what is required to be eligible for a 50th-percentile FMR. Under current 50th percentile regulations, the Grand Rapids-Wyoming, MI HMFA will be evaluated annually and may return to the program in the future.

Of the remaining 14 50th-percentile FMR areas that were not eligible for review in FY 2013, only one area, Bergen-Passaic, NJ HMFA will complete three years in the program next year and be reviewed for the FY 2014 FMRs. Lastly, the Richmond, VA HUD Metro FMR Area, which graduated from the 50th percentile program in FY 2012, re-enters the program in FY 2013 and will next be evaluated in FY 2016.

In summary, there will be 20 50th-percentile FMR areas in FY 2013. These areas are indicated by an asterisk in Schedule B, where all FMRs are listed by state.

III. FMR Methodology

This section provides a brief overview of how the FY 2013 FMRs are computed. For complete information on how FMR areas are determined, and on how each area's FMRs are derived, see the online documentation at *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr13.*

The proposed FY 2013 FMRs are based on current OMB metropolitan area definitions and standards that were first used in the FY 2006 FMRs. OMB changes to the metropolitan area definitions through December 2009 are incorporated. There have been no area definition changes published by OMB since the publication of the FY 2012 FMRs; therefore, the FY 2013 area definitions are the same as those used in FY 2012. HUD anticipates that OMB will publish new area definitions in 2013. Depending on the timing of this release, HUD will incorporate the new area definitions into either the FY 2014 or FY 2015 proposed FMRs.

A. Base Year Rents

The U.S. Census Bureau released standard tabulations of 5-year ACS data collected between 2006 through 2010 in December of 2011. For FY 2013 FMRs, HUD used the 2006–2010 5-year ACS data to update the base rents set in FY 2012 using the 2005–2009 5-year ACS data.

FMRs are historically based on gross rents for recent movers (those who have moved into their current residence in the last 24 months). However, due to the way the 5-year ACS data are constructed, HUD developed a new methodology for calculating recent-mover FMRs in FY 2012. As in FY 2012, all areas are assigned as a base rent the estimated two-bedroom standard quality 5-year gross rent from the ACS.[3] Because HUD's regulations mandate that FMRs must be published as recent mover gross rents, HUD continues to apply a recent mover factor to the standard quality base rents assigned from the 5-year ACS data. Calculation of the recent mover factor is described below.

No local area rent surveys were conducted in 2011 or 2012 by HUD or PHAs, but the surveys conducted in 2010, for Williamsport, PA and Pike County, PA continue to be applied.

B. Recent Mover Factor

Following the assignment of the standard quality two-bedroom rent described above, HUD applies a recent mover factor to these rents. In preparation for calculating the Proposed FY 2013 FMRs, the Department reviewed the methodology for calculating the recent mover factor from the FY 2012 process and made several improvements. The primary change is that HUD no longer compares the standard quality gross rent to the recent mover gross rent to determine if the two statistics are significantly different.[4] For the FY 2012 FMRs, if the two rents were determined to be statistically different the recent mover factor was calculated as the percentage increase of the recent mover gross rent over the standard quality gross rent. In cases where the two gross rents were not statistically different, the recent mover factor was set to one. As described below, HUD calculates a similar percentage increase as the FY 2013 factor using data from

[2] HMFA stands for HUD Metropolitan FMR Area.

[3] For areas with a two-bedroom standard quality gross rent from the ACS that have a margin of error greater than the estimate or no estimate due to inadequate sample in the 2010 5-year ACS, HUD uses the two-bedroom state non-metro rent for non-metro areas.

[4] The statistical comparison test used, the z-test, assumes that the samples from which the 2 statistics are calculated are independent. Because recent mover responders are also part of the standard quality responders, the two samples are not independent.

the smallest geographic area containing the FMR area where the recent mover gross rent is statistically reliable.[5] The following describes the process for determining the appropriate recent mover factor. The revised recent mover factor process results in 91 percent of FMR areas having a recent mover factor greater than one in FY 2013 compared to only 38 percent in FY 2012.

In general, HUD uses the 1 year ACS based two-bedroom statistically reliable recent mover gross rent estimate from the smallest geographic area encompassing the FMR area to calculate the recent mover factor. Some areas' recent mover factors will be calculated using data collected just for the FMR area. Other areas' recent mover factor will be based on larger geographic areas. For metropolitan areas that are sub-areas of larger metropolitan areas, the order is subarea, metropolitan area, state metropolitan area, and state. Metropolitan areas that are not divided follow a similar path from FMR area, to state metropolitan areas, to state. In nonmetropolitan areas the recent mover factor is based on the FMR area, the state nonmetropolitan area, or if that is not available, on the basis of the whole state. The recent mover factor is calculated as the percentage change between the 5-year 2006–2010 two-bedroom gross rent and the 1 year 2010 recent mover two-bedroom gross rent for the recent mover factor area. Recent mover factors are not allowed to lower the standard quality base rent; therefore, if the 5-year standard quality rent is larger than the comparable 1 year recent mover rent, the recent mover factor is set to 1. The process for calculating each area's recent mover factor is detailed in the FY 2013 Proposed FMR documentation system available at: *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr13*.

This process produces an ''as of'' 2010 recent mover two-bedroom base gross rent for the FMR area.[6]

C. Updates From 2010 to 2011

The ACS based ''as of'' 2010 rent is updated through the end of 2011 using the annual change in CPI from 2010 to 2011. As in previous years, HUD uses Local CPI data for FMR areas with at least 75 percent of their population within Class A metropolitan areas covered by local CPI data. HUD uses Census region CPI data for FMR areas in Class B and C size metropolitan areas and nonmetropolitan areas without local CPI update factors. Following the application of the appropriate CPI update factor, HUD converts the ''as of'' 2011 CPI adjusted rents to ''as of'' December 2011 rents by multiplying each rent by the national December 2011 CPI divided by the national annual 2011 CPI value. HUD does this in order to apply an exact amount of the annual trend factor to place the FY 2013 FMRs as of the mid-point of the 2013 fiscal year.

D. Trend From 2011 to 2013

On March 9, 2011 (76 FR 12985), HUD published a notice requesting public comment regarding the manner in which it calculates the trend factor used in determining FMR estimates to meet the statutory requirement that FMRs be ''trended so the rentals will be current for the year to which they apply.'' HUD's notice provided several proposed alternatives to the current trend factor and requested comments on the alternatives as well as suggestions of other ideas. In its publication of the proposed FY 2012 FMRs on August 19, 2011, (76 FR 52058) HUD discussed these comments and announced that a new trend factor would be used in the FY 2013 FMRs. HUD calculates the trend factor as the annualized change in median gross rents as measured between the 1 year 2005 ACS and the 1 year 2010 ACS. The median gross rent in 2005 was $728 and $855 in 2010. The overall change is 17.45% and the annualized change is 3.27%. Over a 15-month time period, the effective trend factor is 4.1%

E. Bedroom Rent Adjustments

HUD calculates the primary FMR estimates for two-bedroom units. This is generally the most common sized rental unit and, therefore, the most reliable to survey and analyze. Formerly, after each Decennial Census, HUD calculated rent relationships between two-bedroom units and other unit sizes and used them to set FMRs for other units. HUD did this because it is much easier to update two-bedroom estimates and to use pre-established cost relationships with other bedroom sizes than it is to develop independent FMR estimates for each bedroom size. For FY 2013 Proposed FMRs, HUD has updated the bedroom ratio adjustment factors using 2006–2010 5-year ACS data using similar methodology to what was implemented when calculating bedroom ratios using 2000 Census data to establish rent ratios.

HUD again made adjustments to the bedroom ratios using 2006–2010 5-year ACS data for areas with local bedroom-size intervals above or below what are considered reasonable ranges, or where sample sizes are inadequate to accurately measure bedroom rent differentials. Experience has shown that highly unusual bedroom ratios typically reflect inadequate sample sizes or peculiar local circumstances that HUD would not want to utilize in setting FMRs (e.g., luxury efficiency apartments that rent for more than typical one-bedroom units). HUD established bedroom interval ranges based on an analysis of the range of such intervals for all areas with large enough samples to permit accurate bedroom ratio determinations. These ranges are: efficiency FMRs are constrained to fall between 0.59 and 0.81 of the two-bedroom FMR; one-bedroom FMRs must be between 0.74 and 0.84 of the two-bedroom FMR; three-bedroom FMRs must be between 1.15 and 1.36 of the two-bedroom FMR; and four-bedroom FMRs must be between 1.24 and 1.64 of the two-bedroom FMR. HUD adjusts bedroom rents for a given FMR area if the differentials between bedroom-size FMRs were inconsistent with normally observed patterns (i.e., efficiency rents are not allowed to be higher than one-bedroom rents and four-bedroom rents are not allowed to be lower than three-bedroom rents).

HUD further adjusts the rents for three-bedroom and larger units to reflect HUD's policy to set higher rents for these units than would result from using unadjusted market rents. This adjustment is intended to increase the likelihood that the largest families, who have the most difficulty in leasing units, will be successful in finding eligible program units. The adjustment adds bonuses of 8.7 percent to the unadjusted three-bedroom FMR estimates and adds 7.7 percent to the unadjusted four-bedroom FMR estimates. The FMRs for unit sizes larger than four bedrooms are calculated by adding 15 percent to the

[5] For the purpose of the recent mover factor calculation, statistically reliable is where the recent mover gross rent has a margin of error that is less than the estimate itself.

[6] The Pacific Islands (Guam, Northern Marianas and American Samoa) as well as the US Virgin Islands are not covered by ACS data. As part of the 2010 Decennial Census, these areas were covered by a long-form survey. The results gathered by this long form survey are not expected to be available until later in 2012. Therefore, HUD uses the national change in gross rents, measured between 2009 and 2010 to update last year's FMR for these areas. Puerto Rico is covered by the Puerto Rico Community Survey within the American Community Survey; however, the gross rent data produced by the 2006–2010 ACS are not sufficient to adequately house voucher holders in Puerto Rico. This is due to the limited ability to eliminate units that do not pass the voucher program's housing quality standards. Consequently, HUD is updating last year's FMRs for Puerto Rico using the change in rents measured from all of Puerto Rico measured between the 2009 and 2010. For details behind these calculations, please see HUD's Proposed FY 2013 FMR documentation system available at: *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr13*.

four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. FMRs for single-room occupancy units are 0.75 times the zero-bedroom (efficiency) FMR.

For low-population, nonmetropolitan counties with small or statistically insignificant 2006–2010 5-year ACS recent-mover rents, HUD uses state non-metropolitan data to determine bedroom ratios for each bedroom size. HUD made this adjustment to protect against unrealistically high or low FMRs due to insufficient sample sizes.

IV. Manufactured Home Space Surveys

The FMR used to establish payment standard amounts for the rental of manufactured home spaces in the HCV program is 40 percent of the FMR for a two-bedroom unit. HUD will consider modification of the manufactured home space FMRs where public comments present statistically valid survey data showing the 40th-percentile manufactured home space rent (including the cost of utilities) for the entire FMR area.

All approved exceptions to these rents that were in effect in FY 2012 were updated to FY 2013 using the same data used to estimate the HCV program FMRs. If the result of this computation was higher than 40 percent of the new two-bedroom rent, the exception remains and is listed in Schedule D. The FMR area definitions used for the rental of manufactured home spaces are the same as the area definitions used for the other FMRs.

V. Small Area Fair Market Rents

Public housing authorities in the Dallas, TX HMFA continue to be the only PHAs managing their voucher programs using Small Area Fair Market Rents (SAFMRs). These FMRs are listed in Schedule B addendum. The department anticipates announcing additional PHAs authorized to operate using SAFMRs in the notice of Final FY 2013 FMRs.

SAFMRs are calculated using a rent ratio determined by dividing the median gross rent across all bedrooms for the small area (a ZIP code) by the similar median gross rent for the metropolitan area of the ZIP code. This rent ratio is multiplied by the current two- bedroom rent for the entire metropolitan area containing the small area to generate the current year two-bedroom rent for the small area. In small areas where the median gross rent is not statistically reliable, HUD substitutes the median gross rent for the county containing the ZIP code in the numerator of the rent ratio calculation. For proposed FY 2013 SAFMRs, HUD has implemented two changes to the rent ratio calculation methodology. First, HUD has updated the 2005–2009 5-year ACS based ZIP code median gross rent data with 2006–2010 5-year ZIP Code Tabulation Area (ZCTA) median gross rent data. Next, HUD has expanded the criteria for determining the statistical reliability of the small area rent data in order to ensure that more SAFMRs are based on the data for the small area as opposed to using data from the parent county as a proxy.[7]

VI. Request for Public Comments

HUD seeks public comments on the methodology used to calculate FY 2013 Proposed FMRs and the FMR levels for specific areas. Comments on FMR levels must include sufficient information (including local data and a full description of the rental housing survey methodology used) to justify any proposed changes. Changes may be proposed in all or any one or more of the unit-size categories on the schedule. Recommendations and supporting data must reflect the rent levels that exist within the entire FMR area.

For the supporting data, HUD recommends the use of professionally conducted surveys to test the accuracy of FMRs for areas where there is a sufficient number of Section 8 units to justify the survey cost of approximately $25,000—$35,000. Areas with 2,000 or more program units usually meet this cost criterion, and areas with fewer units may meet it if actual rents for two-bedroom units are significantly different from the FMRs proposed by HUD.

PHAs in nonmetropolitan areas may, in certain circumstances, conduct surveys of groups of counties. HUD must approve all county-grouped surveys in advance. PHAs are cautioned that the resulting FMRs may not be identical for the counties surveyed; each individual FMR area will have a separate FMR based on the relationship of rents in that area to the combined rents in the cluster of FMR areas. In addition, PHAs are advised that counties where FMRs are based on the combined rents in the cluster of FMR areas will not have their FMRs revised unless the grouped survey results show a revised FMR statistically different from the combined rent level.

The survey methodology has recently changed with mail surveys being the preferred method for conducting surveys, because of the lower cost and greater number of survey results. These surveys, however, take almost twice as long to conduct and random digit dialing surveys may be conducted as well. The methodology for both types of surveys and the survey instruments is posted on the HUD USER Web site, at the bottom of the FMR page: *http://www.huduser.org/portal/datasets/fmr.html*.

Other survey methodologies are acceptable in providing data to support comments if the survey methodology can provide statistically reliable, unbiased estimates of the gross rent. Survey samples should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn to be statistically representative of the entire rental housing stock of the FMR area. Surveys must include units at all rent levels and be representative by structure type (including single-family, duplex, and other small rental properties), age of housing unit, and geographic location. The 2006–2010 5-year ACS data should be used as a means of verifying if a sample is representative of the FMR area's rental housing stock.

Most surveys cover only one- and two-bedroom units, which has statistical advantages. If the survey is statistically acceptable, HUD will estimate FMRs for other bedroom sizes using ratios based on the 2006–2010 5-year ACS data. A PHA or contractor that cannot obtain the recommended number of sample responses after reasonable efforts should consult with HUD before abandoning its survey; in such situations, HUD may find it appropriate to relax normal sample size requirements.

HUD will consider increasing manufactured home space FMRs where public comment demonstrates that 40 percent of the two-bedroom FMR is not adequate. In order to be accepted as a basis for revising the manufactured home space FMRs, comments must include a pad rental survey of the mobile home parks in the area, identify the utilities included in each park's rental fee, and provide a copy of the applicable public housing authority's utility schedule.

As stated earlier in this Notice, HUD is required to use the most recent data available when calculating FMRs. Therefore, in order to re-evaluate an area's FMR, HUD requires more current

[7] HUD has provided numerous detailed accounts of the calculation methodology used for Small Area Fair Market Rents. Please see our **Federal Register** notice of April 20, 2011 (76 FR 22125) for more information regarding the calculation methodology. Also, HUD's Proposed FY 2013 FMR documentation system available at (*http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr13*) contains detailed calculations for each ZIP code area in the Dallas, TX HMFA.

rental market data than the 2010 ACS. HUD encourages a PHA or other interested party that believes the FMR in their area is incorrect to file a comment even if they do not have the resources to provide market-wide rental data. In these instances, HUD will use the comments when determining the areas HUD will select for HUD-funded local are rent surveys using the limited survey budget available.

VII. Environmental Impact

This Notice involves the establishment of fair market rent schedules, which do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this Notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR part 888, are proposed to be amended as shown in the Appendix to this notice:

Dated: July 27, 2012.

Erika C. Poethig,

Acting Assistant Secretary for Policy Development and Research.

Fair Market Rents for the Housing Choice Voucher Program

Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. Metropolitan Areas—Most FMRs are market-wide rent estimates that are intended to provide housing opportunities throughout the geographic area in which rental-housing units are in direct competition. HUD is using the metropolitan CBSAs, which are made up of one or more counties, as defined by the Office of Management and Budget (OMB), with some modifications. HUD is generally assigning separate FMRs to the component counties of CBSA Micropolitan Areas.

b. Modifications to OMB Definitions—Following OMB guidance, the estimation procedure for the FY 2012 proposed FMRs incorporates the current OMB definitions of metropolitan areas based on the CBSA standards as implemented with 2000 Census data, but makes adjustments to the definitions to separate subparts of these areas where FMRs or median incomes would otherwise change significantly if the new area definitions were used without modification. In CBSAs where subareas are established, it is HUD's view for programmatic purposes that the geographic extent of the housing markets are not yet the same as the geographic extent of the CBSAs, but may become so in the future as the social and economic integration of the CBSA component areas increases. Modifications to metropolitan CBSA definitions are made according to a formula as described below.

Metropolitan area CBSAs (referred to as MSAs) may be modified to allow for subarea FMRs within MSAs based on the boundaries of old FMR areas (OFAs) within the boundaries of new MSAs. (OFAs are the FMR areas defined for the FY 2005 FMRs. Collectively they include 1999-definition MSAs/Primary Metropolitan Statistical Areas (PMSAs), metro counties deleted from 1999-definition MSAs/PMSAs by HUD for FMR purposes, and counties and county parts outside of 1999-definition MSAs/PMSAs referred to as nonmetropolitan counties.) Subareas of MSAs are assigned their own FMRs when the subarea 2000 Census Base Rent differs by at least 5 percent from (i.e., is at most 95 percent or at least 105 percent of) the MSA 2000 Census Base Rent, or when the 2000 Census Median Family Income for the subarea differs by at least 5 percent from the MSA 2000 Census Median Family Income. MSA subareas, and the remaining portions of MSAs after subareas have been determined, are referred to as HMFAs to distinguish these areas from OMB's official definition of MSAs.

The specific counties and New England towns and cities within each state in MSAs and HMFAs are listed in Schedule B.

2. Bedroom Size Adjustments

Schedule B shows the FMRs for zero-bedroom through four-bedroom units. The Schedule B addendum shows Small Area FMRs for PHAs operating using Small Area FMRs within the Dallas, TX HMFA. The FMRs for unit sizes larger than four bedrooms are calculated by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. FMRs for single-room-occupancy (SRO) units are 0.75 times the zero-bedroom FMR.

3. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedule B are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each state. The exception FMRs for manufactured home spaces in Schedule D are listed alphabetically by state.

b. The constituent counties (and New England towns and cities) included in each metropolitan FMR area are listed immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one state can be identified by consulting the listings for each applicable state.

c. Two nonmetropolitan counties are listed alphabetically on each line of the non-metropolitan county listings.

d. The New England towns and cities included in a nonmetropolitan county are listed immediately following the county name.

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 1

ALABAMA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anniston-Oxford, AL MSA	463	484	636	822	855	Calhoun
Auburn-Opelika, AL MSA	487	490	663	913	1120	Lee
Birmingham-Hoover, AL HMFA	554	662	785	1031	1160	Bibb, Blount, Jefferson, St. Clair, Shelby
Chilton County, AL HMFA	419	471	594	795	1052	Chilton
Columbus, GA-AL MSA	530	621	736	1014	1304	Russell
Decatur, AL MSA	431	521	618	857	883	Lawrence, Morgan
Dothan, AL HMFA	424	454	584	779	963	Geneva, Houston
Florence-Muscle Shoals, AL MSA	454	457	584	780	783	Colbert, Lauderdale
Gadsden, AL MSA	391	505	657	818	923	Etowah
Henry County, AL HMFA	424	454	584	861	963	Henry
Huntsville, AL MSA	471	527	650	894	945	Limestone, Madison
Mobile, AL MSA	616	643	762	1021	1174	Mobile
Montgomery, AL MSA	629	665	790	1086	1291	Autauga, Elmore, Lowndes, Montgomery
Tuscaloosa, AL MSA	469	595	788	989	1123	Greene, Hale, Tuscaloosa
Walker County, AL HMFA	472	482	584	807	980	Walker

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Baldwin	472	615	729	1074	1261	Barbour	429	432	584	727	780
Bullock	469	493	584	772	1034	Butler	442	445	584	848	871
Chambers	460	463	627	781	932	Cherokee	469	487	584	861	871
Choctaw	547	551	745	928	1111	Clarke	449	452	584	815	868
Clay	434	437	584	783	786	Cleburne	485	488	660	822	882
Coffee	488	491	630	854	883	Conecuh	447	450	584	861	864
Coosa	469	493	584	727	780	Covington	448	451	584	844	937
Crenshaw	429	432	584	823	871	Cullman	472	481	588	741	786
Dale	390	458	585	852	1024	Dallas	391	453	613	784	999
DeKalb	347	451	584	730	931	Escambia	489	510	605	753	879
Fayette	469	493	584	766	1034	Franklin	429	432	584	727	871
Jackson	469	493	584	727	800	Lamar	469	493	584	727	871
Macon	506	509	689	858	976	Marengo	463	466	584	777	780
Marion	469	478	584	848	850	Marshall	494	498	662	912	915
Monroe	469	493	584	861	1034	Perry	447	450	584	852	871
Pickens	444	447	605	753	809	Pike	472	493	584	857	860
Randolph	498	501	634	790	847	Sumter	469	493	584	727	819
Talladega	429	432	584	797	800	Tallapoosa	460	463	584	796	798
Washington	469	493	584	861	876	Wilcox	429	432	584	727	780
Winston	469	493	584	800	1034						

ALASKA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anchorage, AK HMFA	745	862	1104	1627	1955	Anchorage
Fairbanks, AK MSA	695	864	1169	1723	2007	Fairbanks North Star
Matanuska-Susitna Borough, AK HMFA	663	767	1015	1496	1798	Matanuska-Susitna

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 2

ALASKA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aleutians East	632	742	880	1096	1271	Aleutians West	941	1169	1581	1969	2283
Bethel	984	1126	1524	1898	2037	Bristol Bay	776	799	1081	1454	1459
Denali	595	698	828	1220	1224	Dillingham	780	916	1086	1353	1568
Haines	644	727	897	1322	1326	Hoonah-Angoon	599	616	834	1039	1288
Juneau	808	980	1326	1735	2062	Kenai Peninsula	672	712	892	1118	1462
Ketchikan Gateway	656	847	1102	1624	1762	Kodiak Island	739	871	1089	1605	1929
Lake and Peninsula	493	579	686	922	1215	Nome	879	1092	1478	1841	1975
North Slope	760	958	1136	1415	1821	Northwest Arctic	935	977	1158	1442	1548
Petersburg	666	686	928	1156	1644	Prince of Wales-Hyder	674	679	918	1143	1227
Sitka	861	913	1235	1720	1783	Skagway	825	969	1149	1431	1659
Southeast Fairbanks	727	859	1139	1419	1959	Valdez-Cordova	685	724	905	1274	1377
Wade Hampton	614	721	855	1065	1235	Wrangell	493	535	686	1011	1014
Yakutat	519	564	723	1065	1281	Yukon-Koyukuk	654	671	809	1008	1255

ARIZONA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Flagstaff, AZ MSA	733	852	1066	1353	1724	Coconino
Lake Havasu City-Kingman, AZ MSA	488	603	769	1043	1206	Mohave
*Phoenix-Mesa-Glendale, AZ MSA	593	748	925	1363	1592	Maricopa, Pinal
Prescott, AZ MSA	571	648	819	1207	1276	Yavapai
*Tucson, AZ MSA	521	651	876	1286	1531	Pima
Yuma, AZ MSA	553	591	780	1149	1316	Yuma

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Apache	379	463	626	784	942	Cochise	551	569	712	1028	1261
Gila	520	541	729	1053	1235	Graham	387	546	650	958	961
Greenlee	446	463	626	780	837	La Paz	483	500	677	843	1051
Navajo	498	502	679	958	967	Santa Cruz	483	546	677	854	1199

ARKANSAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fayetteville-Springdale-Rogers, AR HMFA	446	510	655	965	1138	Benton, Madison, Washington
Fort Smith, AR-OK HMFA	502	505	662	882	994	Crawford, Sebastian
Franklin County, AR HMFA	453	456	617	795	927	Franklin
Grant County, AR HMFA	421	493	585	862	1036	Grant
Hot Springs, AR MSA	428	531	719	957	1174	Garland
Jonesboro, AR HMFA	380	505	625	878	881	Craighead
Little Rock-North Little Rock-Conway, AR HMFA	537	620	745	1041	1156	Faulkner, Lonoke, Perry, Pulaski, Saline
Memphis, TN-MS-AR HMFA	567	648	768	1049	1170	Crittenden
Pine Bluff, AR MSA	421	495	659	825	1009	Cleveland, Jefferson, Lincoln
Poinsett County, AR HMFA	367	447	585	857	1010	Poinsett
Texarkana, TX-Texarkana, AR MSA	447	579	712	887	952	Miller

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 3

ARKANSAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Arkansas	449	452	612	762	868
Baxter	440	447	596	874	1056
Bradley	417	438	593	861	864
Carroll	480	484	641	835	857
Clark	477	480	633	839	846
Cleburne	467	470	602	790	923
Conway	467	470	636	792	1031
Dallas	456	493	585	862	1023
Drew	429	432	585	841	1036
Greene	370	438	590	819	1045
Hot Spring	456	493	585	779	904
Independence	443	446	604	765	970
Jackson	429	432	585	862	1036
Lafayette	429	432	585	862	885
Lee	456	493	585	749	782
Logan	348	432	585	729	816
Mississippi	365	432	585	778	863
Montgomery	518	521	705	878	1067
Newton	430	433	586	730	887
Phillips	429	432	585	862	954
Polk	449	452	585	783	786
Prairie	456	493	585	862	1036
St. Francis	477	498	590	821	944
Searcy	429	432	585	729	782
Sharp	429	432	585	769	877
Union	476	479	648	807	926
White	523	526	712	1049	1103
Yell	429	432	585	862	1036

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ashley	429	432	585	792	795
Boone	429	432	585	817	982
Calhoun	429	432	585	729	885
Chicot	432	435	585	862	1036
Clay	429	432	585	759	802
Columbia	429	432	585	824	826
Cross	462	465	601	827	1002
Desha	429	432	585	803	1007
Fulton	429	432	585	729	885
Hempstead	456	478	585	729	951
Howard	390	432	585	769	946
Izard	429	432	585	729	804
Johnson	446	449	603	751	924
Lawrence	429	432	585	778	931
Little River	424	438	592	737	1049
Marion	429	432	585	729	856
Monroe	429	432	585	795	1006
Nevada	429	432	585	755	1016
Ouachita	450	453	585	753	782
Pike	444	447	585	729	885
Pope	460	463	619	845	1096
Randolph	429	432	585	747	885
Scott	431	434	587	731	888
Sevier	456	464	585	751	821
Stone	429	432	585	751	885
Van Buren	456	493	585	743	885
Woodruff	429	432	585	862	885

CALIFORNIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bakersfield-Delano, CA MSA	610	614	804	1179	1424	Kern
Chico, CA MSA	532	666	878	1253	1555	Butte
El Centro, CA MSA	523	636	822	1211	1456	Imperial
Fresno, CA MSA	668	695	878	1234	1440	Fresno
Hanford-Corcoran, CA MSA	486	575	778	1106	1163	Kings
Los Angeles-Long Beach, CA HMFA	911	1101	1421	1921	2140	Los Angeles
Madera-Chowchilla, CA MSA	632	636	861	1251	1372	Madera
Merced, CA MSA	507	587	772	1138	1367	Merced
Modesto, CA MSA	594	734	941	1387	1609	Stanislaus
Napa, CA MSA	776	973	1302	1858	1864	Napa
Oakland-Fremont, CA HMFA	892	1082	1361	1901	2332	Alameda, Contra Costa
*Orange County, CA HMFA	1126	1294	1621	2268	2525	Orange

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 4

CALIFORNIA continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Oxnard-Thousand Oaks-Ventura, CA MSA	934	1116	1499	2070	2396	Ventura
Redding, CA MSA	734	755	949	1398	1559	Shasta
*Riverside-San Bernardino-Ontario, CA MSA	763	879	1116	1577	1924	Riverside, San Bernardino
*Sacramento--Arden-Arcade--Roseville, CA HMFA	717	855	1073	1581	1900	El Dorado, Placer, Sacramento
Salinas, CA MSA	864	971	1223	1784	1994	Monterey
San Benito County, CA HMFA	701	871	1179	1737	2088	San Benito
San Diego-Carlsbad-San Marcos, CA MSA	959	1054	1382	2009	2448	San Diego
San Francisco, CA HMFA	1093	1423	1795	2438	2948	Marin, San Francisco, San Mateo
San Jose-Sunnyvale-Santa Clara, CA HMFA	1079	1262	1610	2270	2574	Santa Clara
San Luis Obispo-Paso Robles, CA MSA	761	880	1136	1674	1746	San Luis Obispo
Santa Barbara-Santa Maria-Goleta, CA MSA	1035	1190	1426	1906	2206	Santa Barbara
Santa Cruz-Watsonville, CA MSA	970	1173	1587	2045	2282	Santa Cruz
Santa Rosa-Petaluma, CA MSA	873	1018	1332	1963	2301	Sonoma
Stockton, CA MSA	638	760	997	1469	1766	San Joaquin
Vallejo-Fairfield, CA MSA	739	931	1166	1718	2043	Solano
Visalia-Porterville, CA MSA	575	590	768	1132	1316	Tulare
Yolo, CA HMFA	741	801	1082	1594	1860	Yolo
Yuba City, CA MSA	526	634	812	1173	1389	Sutter, Yuba

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alpine	664	674	912	1136	1472	Amador	644	800	1082	1436	1747
Calaveras	672	732	923	1360	1635	Colusa	562	566	766	1129	1357
Del Norte	628	633	856	1261	1377	Glenn	570	574	776	1119	1374
Humboldt	657	722	973	1434	1668	Inyo	675	703	836	1232	1481
Lake	645	650	879	1295	1309	Lassen	700	740	1001	1400	1405
Mariposa	605	614	831	1035	1341	Mendocino	700	749	989	1363	1647
Modoc	456	528	626	922	1101	Mono	888	1015	1203	1498	1942
Nevada	775	780	1034	1524	1762	Plumas	565	702	950	1183	1562
Sierra	601	611	826	1217	1333	Siskiyou	528	629	803	1171	1318
Tehama	491	611	826	1165	1336	Trinity	581	585	782	1152	1385
Tuolumne	613	744	1007	1484	1489						

COLORADO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boulder, CO MSA	743	863	1068	1574	1870	Boulder
Colorado Springs, CO HMFA	504	626	813	1198	1440	El Paso
Denver-Aurora-Broomfield, CO MSA	588	726	940	1379	1599	Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Elbert, Gilpin, Jefferson, Park
Fort Collins-Loveland, CO MSA	559	692	833	1227	1475	Larimer
Grand Junction, CO MSA	528	629	837	1233	1417	Mesa
Greeley, CO MSA	479	560	720	1056	1275	Weld
Pueblo, CO MSA	420	509	666	953	1028	Pueblo
Teller County, CO HMFA	552	712	890	1285	1289	Teller

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 5

COLORADO continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alamosa	535	557	662	824	885
Baca	506	528	626	922	961
Chaffee	498	501	678	999	1165
Conejos	506	528	626	780	837
Crowley	460	463	626	783	1109
Delta	557	561	759	945	1308
Eagle	936	942	1275	1650	2097
Garfield	795	800	1083	1354	1918
Gunnison	567	642	869	1082	1454
Huerfano	607	611	827	1030	1105
Kiowa	479	482	626	780	900
Lake	674	730	987	1229	1515
Las Animas	524	528	714	993	997
Logan	398	494	669	833	988
Moffat	573	577	734	1082	1085
Montrose	485	562	760	1073	1346
Otero	386	480	649	808	867
Phillips	502	506	675	841	902
Prowers	460	463	626	783	852
Rio Grande	506	528	626	831	1109
Saguache	506	528	626	795	1109
San Miguel	672	869	1063	1545	1838
Summit	739	1003	1242	1631	2074
Yuma	460	463	626	827	974

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Archuleta	573	576	748	978	1000
Bent	460	463	626	780	961
Cheyenne	460	463	626	858	961
Costilla	506	528	626	922	926
Custer	529	532	720	937	1105
Dolores	506	528	626	922	961
Fremont	554	571	686	986	1063
Grand	666	670	907	1270	1275
Hinsdale	525	529	686	940	1053
Jackson	550	553	718	894	1102
Kit Carson	460	463	626	780	1104
La Plata	702	749	931	1262	1622
Lincoln	553	556	710	884	1090
Mineral	739	744	966	1203	1483
Montezuma	506	528	626	922	1109
Morgan	543	546	712	921	1011
Ouray	744	749	1013	1493	1640
Pitkin	787	977	1322	1751	1767
Rio Blanco	481	484	655	965	1013
Routt	664	894	1102	1508	1514
San Juan	527	604	817	1204	1254
Sedgwick	506	528	626	891	894
Washington	460	463	626	780	845

CONNECTICUT

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bridgeport, CT HMFA	770	967	1230	1609	1743	Fairfield County towns of Bridgeport town, Easton town, Fairfield town, Monroe town, Shelton town, Stratford town, Trumbull town
Colchester-Lebanon, CT HMFA	792	865	1170	1457	1695	New London County towns of Colchester town, Lebanon town
Danbury, CT HMFA	897	1023	1384	1725	2183	Fairfield County towns of Bethel town, Brookfield town, Danbury town, New Fairfield town, Newtown town, Redding town, Ridgefield town, Sherman town
*Hartford-West Hartford-East Hartford, CT HMFA	704	883	1101	1371	1593	Hartford County towns of Avon town, Berlin town, Bloomfield town, Bristol town, Burlington town, Canton town, East Granby town, East Hartford town, East Windsor town, Enfield town, Farmington town, Glastonbury town, Granby town, Hartford town, Hartland town, Manchester town, Marlborough town, New Britain town, Newington town, Plainville town, Rocky Hill town, Simsbury town, Southington town, South Windsor town, Suffield town, West Hartford town, Wethersfield town, Windsor town, Windsor Locks town

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 6

CONNECTICUT continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Middlesex County towns of Chester town, Cromwell town, Durham town, East Haddam town, East Hampton town, Haddam town, Middlefield town, Middletown town, Portland town Tolland County towns of Andover town, Bolton town, Columbia town, Coventry town, Ellington town, Hebron town, Mansfield town, Somers town, Stafford town, Tolland town, Union town, Vernon town, Willington town
Milford-Ansonia-Seymour, CT HMFA	993	1047	1294	1638	1825	New Haven County towns of Ansonia town, Beacon Falls town, Derby town, Milford town, Oxford town, Seymour town
*New Haven-Meriden, CT HMFA	874	1055	1316	1639	1818	New Haven County towns of Bethany town, Branford town, Cheshire town, East Haven town, Guilford town, Hamden town, Madison town, Meriden town, New Haven town, North Branford town, North Haven town, Orange town, Wallingford town, West Haven town, Woodbridge town
Norwich-New London, CT HMFA	737	829	1088	1393	1606	New London County towns of Bozrah town, East Lyme town, Franklin town, Griswold town, Groton town, Ledyard town, Lisbon town, Lyme town, Montville town, New London town, North Stonington town, Norwich town, Old Lyme town, Preston town, Salem town, Sprague town, Stonington town, Voluntown town, Waterford town
Southern Middlesex County, CT HMFA	881	887	1200	1670	1676	Middlesex County towns of Clinton town, Deep River town, Essex town, Killingworth town, Old Saybrook town, Westbrook town
Stamford-Norwalk, CT HMFA	1095	1327	1648	2052	2553	Fairfield County towns of Darien town, Greenwich town, New Canaan town, Norwalk town, Stamford town, Weston town, Westport town, Wilton town
Waterbury, CT HMFA	572	772	942	1173	1275	New Haven County towns of Middlebury town, Naugatuck town, Prospect town, Southbury town, Waterbury town, Wolcott town
NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Litchfield County, CT	817	830	1066	1350	1602	Barkhamsted town, Bethlehem town, Bridgewater town, Canaan town, Colebrook town, Cornwall town, Goshen town, Harwinton town, Kent town, Litchfield town, Morris town, New Hartford town, New Milford town, Norfolk town, North Canaan town, Plymouth town, Roxbury town, Salisbury town, Sharon town, Thomaston town, Torrington town, Warren town, Washington town, Watertown town, Winchester town, Woodbury town
Windham County, CT	565	709	950	1183	1324	Ashford town, Brooklyn town, Canterbury town, Chaplin town, Eastford town, Hampton town, Killingly town, Plainfield town, Pomfret town, Putnam town, Scotland town, Sterling town, Thompson town, Windham town, Woodstock town

DELAWARE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Dover, DE MSA	653	835	990	1386	1749	Kent

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 7

DELAWARE continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA..	788	929	1119	1394	1496	New Castle

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Sussex	708	724	979	1336	1556

DISTRICT OF COLUMBIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Washington-Arlington-Alexandria, DC-VA-MD HMFA	1130	1191	1412	1890	2374	District of Columbia

FLORIDA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Baker County, FL HMFA	501	627	743	992	1080	Baker
Cape Coral-Fort Myers, FL MSA	718	722	915	1242	1278	Lee
Crestview-Fort Walton Beach-Destin, FL MSA	717	721	902	1329	1554	Okaloosa
Deltona-Daytona Beach-Ormond Beach, FL MSA	562	723	890	1216	1309	Volusia
*Fort Lauderdale, FL HMFA	748	973	1236	1763	2189	Broward
Gainesville, FL MSA	731	751	954	1275	1658	Alachua, Gilchrist
Jacksonville, FL HMFA	614	757	910	1200	1468	Clay, Duval, Nassau, St. Johns
Lakeland-Winter Haven, FL MSA	615	619	801	1086	1322	Polk
Miami-Miami Beach-Kendall, FL HMFA	719	876	1122	1539	1799	Miami-Dade
Naples-Marco Island, FL MSA	724	833	1038	1356	1669	Collier
*North Port-Bradenton-Sarasota, FL MSA	722	803	1027	1376	1616	Manatee, Sarasota
Ocala, FL MSA	518	642	805	1085	1089	Marion
Orlando-Kissimmee-Sanford, FL MSA	697	825	983	1311	1586	Lake, Orange, Osceola, Seminole
Palm Bay-Melbourne-Titusville, FL MSA	540	706	874	1210	1439	Brevard
Palm Coast, FL MSA	708	793	1035	1348	1479	Flagler
Panama City-Lynn Haven-Panama City Beach, FL MSA	729	776	920	1253	1583	Bay
Pensacola-Ferry Pass-Brent, FL MSA	574	655	776	1046	1357	Escambia, Santa Rosa
Port St. Lucie, FL MSA	685	759	940	1292	1523	Martin, St. Lucie
Punta Gorda, FL MSA	512	675	861	1223	1227	Charlotte
Sebastian-Vero Beach, FL MSA	565	700	872	1173	1177	Indian River
Tallahassee, FL HMFA	717	762	920	1179	1604	Gadsden, Jefferson, Leon
Tampa-St. Petersburg-Clearwater, FL MSA	582	730	915	1221	1462	Hernando, Hillsborough, Pasco, Pinellas
Wakulla County, FL HMFA	567	571	772	1041	1367	Wakulla
*West Palm Beach-Boca Raton, FL HMFA	738	947	1183	1597	1907	Palm Beach

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bradford	506	528	626	922	926	Calhoun	506	519	626	780	881
Citrus	594	598	762	1009	1257	Columbia	403	519	626	922	1109
DeSoto	574	600	711	970	974	Dixie	506	528	626	914	917
Franklin	548	573	679	1001	1004	Glades	577	581	752	976	1059
Gulf	532	556	659	971	974	Hamilton	506	519	626	780	915
Hardee	662	675	820	1021	1096	Hendry	548	552	747	985	1135

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FLORIDA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Highlands	554	557	704	1037	1041	Holmes	506	528	626	858	881
Jackson	506	524	626	780	973	Lafayette	507	521	628	782	884
Levy	506	517	626	872	1109	Liberty	506	519	626	922	926
Madison	506	519	626	922	1037	Monroe	1126	1134	1534	2001	2050
Okeechobee	653	657	889	1107	1188	Putnam	504	507	626	780	837
Sumter	555	579	687	1012	1084	Suwannee	375	466	630	905	908
Taylor	506	528	626	922	997	Union	460	463	626	812	837
Walton	615	619	838	1110	1120	Washington	462	465	629	834	886

GEORGIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany, GA MSA	504	571	688	952	977	Baker, Dougherty, Lee, Terrell, Worth
Athens-Clarke County, GA MSA	577	635	776	1052	1185	Clarke, Madison, Oconee, Oglethorpe
Atlanta-Sandy Springs-Marietta, GA HMFA	676	737	874	1158	1406	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Heard, Henry, Jasper, Newton, Paulding, Pickens, Pike, Rockdale, Spalding, Walton
Augusta-Richmond County, GA-SC MSA	549	619	738	1004	1243	Burke, Columbia, McDuffie, Richmond
Brunswick, GA MSA	509	512	693	863	970	Brantley, Glynn, McIntosh
Butts County, GA HMFA	545	548	742	955	992	Butts
Chattanooga, TN-GA MSA	484	584	727	989	1114	Catoosa, Dade, Walker
Columbus, GA-AL MSA	530	621	736	1014	1304	Chattahoochee, Harris, Marion, Muscogee
Dalton, GA HMFA	472	511	623	800	997	Whitfield
Gainesville, GA MSA	625	629	796	1033	1064	Hall
Haralson County, GA HMFA	440	443	599	842	964	Haralson
Hinesville-Fort Stewart, GA HMFA	654	681	850	1200	1491	Liberty
Lamar County, GA HMFA	463	505	599	883	978	Lamar
Long County, GA HMFA	538	560	699	956	1238	Long
Macon, GA MSA	472	568	673	929	1016	Bibb, Crawford, Jones, Twiggs
Meriwether County, GA HMFA	498	543	644	825	861	Meriwether
Monroe County, GA HMFA	420	505	599	883	1061	Monroe
Murray County, GA HMFA	448	451	608	766	1067	Murray
Rome, GA MSA	576	580	785	978	1389	Floyd
Savannah, GA MSA	598	734	870	1161	1376	Bryan, Chatham, Effingham
Valdosta, GA MSA	576	579	720	923	1098	Brooks, Echols, Lanier, Lowndes
Warner Robins, GA MSA	640	659	813	1043	1246	Houston

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Appling	484	505	599	746	875	Atkinson	356	443	599	746	801
Bacon	463	466	599	746	801	Baldwin	461	531	674	874	901
Banks	488	509	604	830	997	Ben Hill	484	488	648	807	866
Berrien	440	443	599	746	1048	Bleckley	440	443	599	883	907
Bulloch	422	476	606	877	1066	Calhoun	440	443	599	746	907
Camden	561	565	764	1061	1218	Candler	440	443	599	746	904
Charlton	445	448	606	842	918	Chattooga	440	443	599	805	1061

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 9

GEORGIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Clay	471	473	599	746	907
Coffee	447	450	599	872	1053
Cook	484	505	599	883	886
Decatur	484	505	599	775	801
Dooly	484	505	599	883	938
Elbert	484	489	599	883	907
Evans	483	486	599	754	801
Franklin	440	443	599	822	1061
Glascock	484	487	659	821	881
Grady	449	452	611	762	904
Habersham	484	505	599	883	1061
Hart	440	443	599	844	1061
Jackson	545	548	742	924	1057
Jefferson	484	490	599	746	801
Johnson	440	443	599	746	832
Lincoln	440	443	599	883	1061
Macon	484	505	599	746	980
Mitchell	479	483	653	813	873
Morgan	520	543	644	949	1101
Pierce	447	450	599	746	1061
Pulaski	440	443	599	883	907
Quitman	484	505	599	883	907
Randolph	440	443	599	791	907
Screven	440	443	599	796	801
Stephens	463	466	630	869	1116
Sumter	490	502	607	829	832
Taliaferro	463	466	599	746	907
Taylor	356	466	599	863	907
Thomas	482	485	650	907	910
Toombs	459	462	599	778	835
Treutlen	463	466	599	746	801
Turner	443	446	599	746	1061
Upson	484	505	599	883	1061
Warren	484	490	599	883	886
Wayne	440	443	599	749	801
Wheeler	463	466	599	864	1017
Wilcox	440	443	599	746	1029
Wilkinson	440	443	599	746	907

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Clinch	440	443	599	864	907
Colquitt	443	446	599	883	886
Crisp	452	455	599	746	991
Dodge	484	505	599	883	1061
Early	451	454	599	883	1007
Emanuel	440	443	599	834	943
Fannin	440	443	599	753	1061
Gilmer	511	514	672	837	1190
Gordon	520	523	679	916	1132
Greene	440	443	599	835	892
Hancock	545	548	742	924	992
Irwin	445	448	606	755	810
Jeff Davis	484	505	599	816	819
Jenkins	463	466	599	845	927
Laurens	484	505	599	829	832
Lumpkin	565	569	770	1038	1042
Miller	440	443	599	859	883
Montgomery	484	505	599	746	907
Peach	383	475	643	876	879
Polk	487	491	664	862	971
Putnam	515	531	638	938	941
Rabun	425	590	714	920	954
Schley	440	443	599	835	1061
Seminole	484	505	599	822	825
Stewart	484	505	599	833	907
Talbot	463	466	631	786	956
Tattnall	484	505	599	829	842
Telfair	440	443	599	746	854
Tift	485	490	630	798	1034
Towns	509	513	659	821	946
Troup	601	617	744	1016	1020
Union	484	487	659	855	881
Ware	399	446	604	752	807
Washington	484	505	599	782	1061
Webster	463	466	599	746	907
White	549	553	748	1028	1133
Wilkes	451	454	599	883	1061

HAWAII

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Honolulu, HI MSA	1276	1392	1833	2701	3100	Honolulu

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HAWAII continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hawaii	680	857	1044	1407	1762
Kauai	1235	1245	1685	2293	2716
Kalawao	871	969	1213	1607	1837
Maui	905	1018	1315	1812	1819

IDAHO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boise City-Nampa, ID HMFA	431	576	724	1067	1186	Ada, Boise, Canyon, Owyhee
Coeur d'Alene, ID MSA	480	572	724	1031	1270	Kootenai
Gem County, ID HMFA	375	466	631	930	1118	Gem
Idaho Falls, ID MSA	420	496	671	946	1188	Bonneville, Jefferson
Lewiston, ID-WA MSA	402	509	657	850	1164	Nez Perce
Logan, UT-ID MSA	473	476	631	908	1108	Franklin
Pocatello, ID MSA	372	469	626	922	1109	Bannock, Power

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	460	463	626	922	1094
Benewah	501	528	626	840	1109
Blaine	694	699	921	1285	1354
Boundary	460	463	626	780	1094
Camas	496	499	633	875	1106
Cassia	372	464	626	922	1109
Clearwater	501	528	626	862	1094
Elmore	470	473	640	915	1134
Gooding	485	488	626	881	1109
Jerome	412	481	626	913	932
Lemhi	501	528	626	922	1094
Lincoln	501	528	626	850	1109
Minidoka	501	528	626	922	985
Payette	460	463	626	878	1057
Teton	573	603	715	962	1266
Valley	484	585	694	1023	1229
Bear Lake	464	467	632	931	1104
Bingham	501	523	626	922	926
Bonner	467	564	669	975	1185
Butte	476	479	626	909	1094
Caribou	490	494	626	876	1094
Clark	490	494	626	922	1094
Custer	493	496	671	922	1173
Fremont	514	517	700	872	940
Idaho	475	478	626	877	1109
Latah	513	516	661	974	1171
Lewis	506	512	626	922	926
Madison	488	491	631	930	1118
Oneida	501	528	626	900	1068
Shoshone	457	510	626	806	890
Twin Falls	459	504	655	860	1117
Washington	460	463	626	922	1094

ILLINOIS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington-Normal, IL MSA	509	552	726	1022	1234	McLean
Bond County, IL HMFA	452	511	691	861	923	Bond
Cape Girardeau-Jackson, MO-IL MSA	428	532	720	934	1138	Alexander
Champaign-Urbana, IL MSA	514	645	785	1012	1363	Champaign, Ford, Piatt
Chicago-Joliet-Naperville, IL HMFA	717	815	966	1231	1436	Cook, DuPage, Kane, Lake, McHenry, Will
Danville, IL MSA	460	503	629	798	841	Vermilion
Davenport-Moline-Rock Island, IA-IL MSA	448	555	711	959	1009	Henry, Mercer, Rock Island
DeKalb County, IL HMFA	527	623	807	1145	1334	DeKalb
Decatur, IL MSA	381	486	634	882	967	Macon

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 11

ILLINOIS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Grundy County, IL HMFA	546	678	917	1342	1346	Grundy
Kankakee-Bradley, IL MSA	458	581	767	1079	1302	Kankakee
Kendall County, IL HMFA	728	918	1223	1802	1885	Kendall
Macoupin County, IL HMFA	409	474	626	910	995	Macoupin
Peoria, IL MSA	421	552	708	915	1099	Marshall, Peoria, Stark, Tazewell, Woodford
Rockford, IL MSA	466	533	717	978	1111	Boone, Winnebago
Springfield, IL MSA	442	546	695	909	958	Menard, Sangamon
St. Louis, MO-IL HMFA	543	643	830	1081	1227	Calhoun, Clinton, Jersey, Madison, Monroe, St. Clair

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	372	463	626	861	1006	Brown	372	463	626	780	919
Bureau	378	477	635	877	880	Carroll	415	463	626	780	837
Cass	482	486	657	818	927	Christian	466	469	635	791	1010
Clark	457	509	688	857	919	Clay	415	528	626	780	919
Coles	479	483	653	962	1012	Crawford	415	528	626	909	912
Cumberland	415	528	626	848	851	De Witt	415	463	626	820	999
Douglas	435	484	655	816	899	Edgar	463	466	626	861	1109
Edwards	415	503	626	780	919	Effingham	460	463	626	922	1076
Fayette	474	511	626	780	948	Franklin	372	463	626	780	1043
Fulton	483	487	626	801	1056	Gallatin	415	528	626	922	926
Greene	415	528	626	780	1109	Hamilton	415	528	626	780	919
Hancock	372	502	626	780	837	Hardin	415	463	626	780	919
Henderson	415	517	626	781	837	Iroquois	475	478	642	887	1023
Jackson	412	496	671	888	996	Jasper	415	528	626	922	1059
Jefferson	477	497	626	844	1088	Jo Daviess	415	528	626	831	837
Johnson	415	528	626	780	974	Knox	372	463	626	780	1109
La Salle	433	537	727	994	997	Lawrence	506	528	626	922	926
Lee	485	488	626	887	890	Livingston	454	484	644	871	874
Logan	415	463	626	871	874	McDonough	424	527	713	894	1072
Marion	415	477	626	891	894	Mason	415	463	626	780	1023
Massac	415	463	626	780	1109	Montgomery	415	528	626	780	1035
Morgan	374	464	628	782	839	Moultrie	415	528	626	878	914
Ogle	465	517	670	954	1121	Perry	460	463	626	787	1057
Pike	459	528	626	820	1094	Pope	415	528	626	922	926
Pulaski	415	528	626	780	837	Putnam	415	528	626	780	837
Randolph	415	466	626	844	957	Richland	415	463	626	893	897
Saline	460	463	626	901	1035	Schuyler	415	528	626	922	926
Scott	415	476	626	868	1038	Shelby	419	466	631	786	935
Stephenson	421	469	635	791	978	Union	415	463	626	827	837
Wabash	415	463	626	780	892	Warren	447	504	673	986	989
Washington	415	470	626	809	919	Wayne	415	528	626	849	919
White	413	528	626	784	857	Whiteside	482	519	664	827	918
Williamson	496	499	675	953	1196						

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 12

INDIANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anderson, IN MSA	409	497	673	898	979	Madison
Bloomington, IN HMFA	548	598	747	1042	1323	Monroe
Carroll County, IN HMFA	500	522	619	885	888	Carroll
Cincinnati-Middleton, OH-KY-IN HMFA	445	557	740	1025	1129	Dearborn, Franklin, Ohio
Columbus, IN MSA	536	587	730	960	990	Bartholomew
Elkhart-Goshen, IN MSA	446	553	721	934	1098	Elkhart
Evansville, IN-KY HMFA	544	583	754	960	1049	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA	461	506	646	831	942	Allen, Wells, Whitley
Gary, IN HMFA	471	636	792	992	1058	Lake, Newton, Porter
Gibson County, IN HMFA	469	492	650	870	874	Gibson
Greene County, IN HMFA	368	458	619	771	931	Greene
Indianapolis, IN HMFA	499	615	765	1020	1190	Boone, Brown, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan, Shelby
Jasper County, IN HMFA	512	516	698	869	933	Jasper
Kokomo, IN MSA	466	483	654	876	957	Howard, Tipton
Lafayette, IN HMFA	519	594	749	980	1232	Benton, Tippecanoe
Louisville, KY-IN HMFA	503	588	731	1012	1144	Clark, Floyd, Harrison
Michigan City-La Porte, IN MSA	483	560	758	1004	1013	LaPorte
Muncie, IN MSA	442	493	635	833	1125	Delaware
Owen County, IN HMFA	449	481	619	793	1096	Owen
Putnam County, IN HMFA	518	526	641	945	1085	Putnam
South Bend-Mishawaka, IN HMFA	490	558	714	895	954	St. Joseph
Sullivan County, IN HMFA	500	522	619	909	912	Sullivan
Terre Haute, IN HMFA	412	511	692	862	1011	Clay, Vermillion, Vigo
Washington County, IN HMFA	426	503	619	871	874	Washington

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	404	489	619	820	1007	Blackford	404	458	619	771	1094
Cass	404	458	619	771	1094	Clinton	400	497	672	857	965
Crawford	404	458	619	771	879	Daviess	404	458	619	889	892
Decatur	381	473	640	809	855	DeKalb	394	476	619	881	1037
Dubois	404	466	619	912	923	Fayette	432	467	625	800	835
Fountain	404	522	619	875	879	Fulton	427	523	654	815	874
Grant	385	459	619	818	898	Henry	469	473	634	807	874
Huntington	391	473	630	808	842	Jackson	423	526	711	948	1095
Jay	404	477	619	861	908	Jefferson	372	485	626	855	892
Jennings	384	483	646	834	925	Knox	462	468	619	773	872
Kosciusko	425	486	651	842	962	LaGrange	411	511	691	861	946
Lawrence	368	478	619	820	885	Marshall	420	478	644	802	861
Martin	404	522	619	912	962	Miami	368	522	619	857	1008
Montgomery	405	488	659	923	940	Noble	397	482	633	788	1086
Orange	404	458	619	844	1050	Parke	404	458	619	841	1096
Perry	404	466	619	878	894	Pike	404	522	619	912	1029
Pulaski	368	460	619	804	827	Randolph	404	477	619	862	1014
Ripley	411	511	691	861	991	Rush	404	458	619	795	827
Scott	431	489	661	907	1006	Spencer	368	458	619	771	827

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 13

INDIANA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Starke	432	522	619	805	827	Steuben	437	497	670	834	935
Switzerland	404	458	619	912	961	Union	404	522	619	912	1096
Wabash	408	463	626	780	837	Warren	404	522	619	843	846
Wayne	465	485	619	817	920	White	407	526	624	848	851

IOWA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Ames, IA MSA	493	578	720	1019	1191	Story
Benton County, IA HMFA	430	478	591	767	942	Benton
Bremer County, IA HMFA	417	449	607	830	833	Bremer
Cedar Rapids, IA HMFA	431	536	725	982	1093	Linn
Davenport-Moline-Rock Island, IA-IL MSA	448	555	711	959	1009	Scott
Des Moines-West Des Moines, IA MSA	503	605	750	1044	1112	Dallas, Guthrie, Madison, Polk, Warren
Dubuque, IA MSA	397	491	637	854	992	Dubuque
Iowa City, IA HMFA	559	670	853	1257	1511	Johnson
Jones County, IA HMFA	368	457	618	851	966	Jones
Omaha-Council Bluffs, NE-IA HMFA	493	659	828	1110	1233	Harrison, Mills, Pottawattamie
Sioux City, IA-NE-SD MSA	391	511	657	863	969	Woodbury
Washington County, IA HMFA	423	505	636	937	1070	Washington
Waterloo-Cedar Falls, IA HMFA	436	506	635	844	1125	Black Hawk, Grundy

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	394	429	581	810	813	Adams	410	447	605	753	836
Allamakee	383	477	565	833	864	Appanoose	415	418	565	716	755
Audubon	383	455	565	704	933	Boone	371	460	623	817	968
Buchanan	428	431	573	742	930	Buena Vista	402	468	594	748	864
Butler	383	477	565	833	862	Calhoun	383	433	565	765	768
Carroll	447	449	565	704	807	Cass	377	462	565	765	813
Cedar	418	456	617	799	870	Cerro Gordo	380	472	639	835	854
Cherokee	383	424	565	704	755	Chickasaw	383	459	565	833	835
Clarke	385	421	569	709	1008	Clay	383	418	565	763	916
Clayton	400	477	565	796	913	Clinton	363	468	586	743	932
Crawford	383	477	565	729	1001	Davis	383	454	566	705	782
Decatur	421	443	565	833	1001	Delaware	456	463	565	822	842
Des Moines	487	490	663	826	892	Dickinson	383	418	565	795	801
Emmet	402	471	594	751	820	Fayette	352	475	565	726	764
Floyd	383	437	565	796	799	Franklin	415	418	565	789	966
Fremont	383	458	565	786	862	Greene	383	418	565	704	1001
Hamilton	420	458	620	772	1013	Hancock	384	419	567	706	825
Hardin	383	435	565	706	755	Henry	388	461	572	793	796
Howard	383	418	565	704	755	Humboldt	383	418	565	797	800
Ida	383	428	565	750	755	Iowa	383	445	565	833	970
Jackson	383	477	565	833	835	Jasper	364	467	611	776	857

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 14

IOWA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Jefferson	442	487	652	812	871
Kossuth	383	418	565	751	791
Louisa	415	458	612	762	945
Lyon	383	471	565	704	967
Marion	521	530	645	803	1142
Mitchell	383	477	565	833	835
Monroe	383	418	565	704	780
Muscatine	434	473	640	878	948
Osceola	383	461	565	704	755
Palo Alto	383	475	565	833	1001
Pocahontas	383	438	565	704	1001
Ringgold	383	458	565	709	857
Shelby	383	436	565	732	849
Tama	390	426	576	721	841
Union	388	426	572	767	933
Wapello	419	495	649	829	867
Webster	455	458	565	803	838
Winneshiek	415	418	565	739	1001
Wright	383	445	565	704	755

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Keokuk	383	429	565	786	789
Lee	394	429	581	797	800
Lucas	383	418	565	743	949
Mahaska	442	445	573	733	881
Marshall	413	479	589	760	837
Monona	383	418	565	755	757
Montgomery	415	418	565	822	825
O'Brien	419	460	565	818	821
Page	383	441	565	769	772
Plymouth	405	475	598	828	831
Poweshiek	414	489	611	803	851
Sac	338	423	565	731	755
Sioux	383	446	565	775	778
Taylor	383	477	565	833	835
Van Buren	383	477	565	794	796
Wayne	383	418	565	833	835
Winnebago	383	449	565	833	864
Worth	374	477	565	716	755

KANSAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Franklin County, KS HMFA	449	557	753	938	1198	Franklin
Kansas City, MO-KS HMFA	491	632	783	1073	1195	Johnson, Leavenworth, Linn, Miami, Wyandotte
Lawrence, KS MSA	526	664	860	1259	1384	Douglas
Manhattan, KS MSA	627	631	830	1196	1470	Geary, Pottawatomie, Riley
St. Joseph, MO-KS MSA	438	474	633	811	1000	Doniphan
Sumner County, KS HMFA	448	451	610	812	1080	Sumner
Topeka, KS MSA	412	522	692	978	1187	Jackson, Jefferson, Osage, Shawnee, Wabaunsee
Wichita, KS HMFA	428	529	704	971	1070	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allen	375	487	577	795	798
Atchison	343	432	577	850	853
Barton	466	486	577	762	992
Brown	375	426	577	791	793
Chautauqua	375	487	577	809	839
Cheyenne	375	426	577	719	771
Clay	504	508	687	856	918
Coffey	375	426	577	780	783
Cowley	385	452	592	791	794
Decatur	375	429	577	719	839

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Anderson	375	433	577	850	1022
Barber	375	426	577	758	839
Bourbon	388	447	605	753	983
Chase	375	431	577	819	822
Cherokee	375	426	577	783	928
Clark	375	476	577	751	1022
Cloud	375	440	577	850	853
Comanche	375	487	577	751	839
Crawford	391	467	602	887	1054
Dickinson	375	440	577	797	1022

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 15

KANSAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Edwards	375	426	577	719	965
Ellis	452	469	635	886	957
Finney	400	480	615	777	1042
Gove	375	487	577	732	839
Grant	375	429	577	830	839
Greeley	375	429	577	719	788
Hamilton	431	494	664	827	966
Haskell	398	453	613	763	958
Jewell	375	487	577	787	824
Kingman	375	487	577	719	979
Labette	375	426	577	719	771
Lincoln	375	471	577	719	771
Lyon	359	446	604	817	820
Marion	375	426	577	719	771
Meade	375	426	577	719	771
Montgomery	460	463	577	777	909
Morton	375	446	577	719	771
Neosho	375	426	577	765	771
Norton	375	487	577	825	839
Ottawa	375	477	577	850	1022
Phillips	375	448	577	841	969
Rawlins	375	426	577	719	839
Republic	375	426	577	719	771
Rooks	375	482	577	719	771
Russell	375	426	577	753	863
Scott	375	429	577	850	853
Sheridan	378	430	582	725	778
Smith	375	460	577	850	853
Stanton	375	429	577	779	821
Thomas	375	487	577	828	1022
Wallace	375	429	577	719	839
Wichita	396	460	610	760	887
Woodson	375	426	577	850	853

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Elk	375	487	577	850	853
Ellsworth	375	449	577	740	839
Ford	473	507	630	803	970
Graham	375	487	577	850	853
Gray	375	471	577	773	776
Greenwood	375	454	577	805	938
Harper	375	437	577	850	1015
Hodgeman	375	426	577	719	839
Kearny	375	429	577	830	839
Kiowa	375	487	577	850	853
Lane	423	484	651	811	947
Logan	375	426	577	719	771
McPherson	404	460	622	775	831
Marshall	447	450	577	769	950
Mitchell	375	487	577	850	876
Morris	375	465	577	724	839
Nemaha	375	450	577	850	853
Ness	375	487	577	719	900
Osborne	375	487	577	842	845
Pawnee	409	465	629	783	841
Pratt	408	464	628	782	839
Reno	402	452	612	860	916
Rice	375	439	577	781	882
Rush	375	487	577	778	839
Saline	484	493	630	815	962
Seward	435	549	669	843	992
Sherman	375	429	577	769	1022
Stafford	375	439	577	719	771
Stevens	472	537	727	905	1057
Trego	507	577	780	1149	1153
Washington	424	426	577	719	771
Wilson	375	426	577	783	1022

KENTUCKY

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bowling Green, KY MSA	496	511	675	858	1037	Edmonson, Warren
Cincinnati-Middleton, OH-KY-IN HMFA	445	557	740	1025	1129	Boone, Bracken, Campbell, Gallatin, Kenton, Pendleton
Clarksville, TN-KY HMFA	473	540	704	933	1011	Christian, Trigg
Elizabethtown, KY MSA	486	489	645	950	1142	Hardin, Larue
Evansville, IN-KY HMFA	544	583	754	960	1049	Henderson, Webster
Grant County, KY HMFA	425	522	706	879	943	Grant

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 16

KENTUCKY continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Huntington-Ashland, WV-KY-OH MSA	373	510	627	828	1017	Boyd, Greenup
Lexington-Fayette, KY MSA	458	535	700	997	1116	Bourbon, Clark, Fayette, Jessamine, Scott, Woodford
Louisville, KY-IN HMFA	503	588	731	1012	1144	Bullitt, Henry, Jefferson, Oldham, Spencer, Trimble
Meade County, KY HMFA	451	485	656	930	933	Meade
Nelson County, KY HMFA	421	486	613	903	920	Nelson
Owensboro, KY MSA	458	475	643	832	915	Daviess, Hancock, McLean
Shelby County, KY HMFA	518	522	706	948	1114	Shelby

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	407	410	555	818	821	Allen	417	468	555	818	821
Anderson	557	560	704	877	1020	Ballard	419	422	571	783	934
Barren	422	425	575	806	909	Bath	417	467	555	818	821
Bell	342	445	555	779	782	Boyle	454	458	619	860	1096
Breathitt	417	468	555	691	771	Breckinridge	417	452	555	818	821
Butler	417	468	555	818	983	Caldwell	417	468	555	783	786
Calloway	457	514	618	882	886	Carlisle	421	472	560	697	748
Carroll	435	488	579	853	977	Carter	417	468	555	776	983
Casey	407	410	555	756	778	Clay	417	468	555	818	983
Clinton	366	440	555	782	983	Crittenden	417	468	555	794	797
Cumberland	417	447	555	818	821	Elliott	417	440	555	691	778
Estill	417	434	555	691	941	Fleming	417	468	555	818	821
Floyd	417	463	555	700	983	Franklin	412	547	670	987	991
Fulton	417	468	555	818	821	Garrard	438	492	583	814	817
Graves	458	461	610	760	896	Grayson	417	425	555	781	850
Green	417	468	555	762	764	Harlan	448	468	555	755	827
Harrison	359	446	603	751	910	Hart	407	410	555	691	742
Hickman	417	440	555	691	742	Hopkins	438	440	555	818	951
Jackson	461	517	613	784	859	Johnson	407	410	555	719	742
Knott	407	410	555	790	793	Knox	407	410	555	800	802
Laurel	419	471	558	738	988	Lawrence	417	427	555	717	957
Lee	417	468	555	816	818	Leslie	471	475	642	800	858
Letcher	417	453	555	691	742	Lewis	407	410	555	732	742
Lincoln	407	410	555	721	754	Livingston	417	468	555	818	821
Logan	465	473	628	782	839	Lyon	420	423	572	712	802
McCracken	461	464	590	735	788	McCreary	417	468	555	764	778
Madison	471	474	617	874	1093	Magoffin	407	410	555	691	778
Marion	457	460	623	776	833	Marshall	429	463	626	803	837
Martin	417	468	555	800	983	Mason	419	422	571	805	808
Menifee	417	468	555	710	778	Mercer	465	471	619	839	988
Metcalfe	421	424	574	715	805	Monroe	411	414	555	691	742
Montgomery	417	468	555	807	983	Morgan	437	440	555	818	834
Muhlenberg	363	428	555	691	983	Nicholas	408	411	555	796	983
Ohio	413	416	555	786	983	Owen	429	432	585	759	1036

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 17

KENTUCKY continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Owsley	417	440	555	727	778
Pike	412	415	561	722	750
Pulaski	430	433	558	774	872
Rockcastle	417	424	555	791	831
Russell	340	410	555	735	928
Taylor	370	447	605	753	809
Union	443	454	555	766	778
Wayne	417	431	555	691	778
Wolfe	417	422	555	818	983

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Perry	417	468	555	691	742
Powell	407	410	555	794	805
Robertson	557	561	759	945	1064
Rowan	362	466	572	712	897
Simpson	514	517	685	853	960
Todd	434	486	578	836	839
Washington	417	468	555	752	755
Whitley	427	430	582	786	1001

LOUISIANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Alexandria, LA MSA	531	540	657	891	1022	Grant, Rapides
Baton Rouge, LA HMFA	551	672	801	998	1149	Ascension, East Baton Rouge, East Feliciana, Livingston, Pointe Coupee, St. Helena, West Baton Rouge, West Feliciana
Houma-Bayou Cane-Thibodaux, LA MSA	480	553	748	967	1325	Lafourche, Terrebonne
Iberville Parish, LA HMFA	427	458	620	838	979	Iberville
Lafayette, LA MSA	488	651	772	1013	1252	Lafayette, St. Martin
Lake Charles, LA MSA	563	594	748	997	1221	Calcasieu, Cameron
Monroe, LA MSA	523	527	695	866	929	Ouachita, Union
New Orleans-Metairie-Kenner, LA MSA	637	755	935	1173	1420	Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany
Shreveport-Bossier City, LA MSA	563	631	785	978	1070	Bossier, Caddo, De Soto

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Acadia	478	481	620	833	836
Assumption	494	530	628	925	959
Beauregard	520	534	644	860	1141
Caldwell	487	523	620	914	1038
Claiborne	487	523	620	914	1098
East Carroll	484	487	620	772	1096
Franklin	455	458	620	806	829
Jackson	476	495	620	914	1008
La Salle	464	467	620	855	934
Madison	455	458	620	793	829
Natchitoches	519	542	643	855	870
Richland	455	458	620	845	874
St. James	487	523	620	914	989
St. Mary	488	492	656	921	985
Tensas	455	458	620	772	829
Vernon	510	632	855	1065	1143
Webster	487	501	620	813	829
Winn	487	523	620	833	836

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allen	487	519	620	877	880
Avoyelles	420	458	620	891	1077
Bienville	487	523	620	914	934
Catahoula	487	518	620	914	999
Concordia	455	458	620	914	917
Evangeline	455	458	620	820	842
Iberia	504	507	686	854	917
Jefferson Davis	513	551	653	926	929
Lincoln	567	571	702	974	1243
Morehouse	493	496	663	826	1084
Red River	487	523	620	914	934
Sabine	501	508	620	772	1098
St. Landry	417	458	620	777	829
Tangipahoa	538	691	819	1034	1212
Vermilion	487	523	620	905	1060
Washington	467	470	636	792	1008
West Carroll	455	458	620	888	925

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 18

MAINE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bangor, ME HMFA	585	676	854	1064	1235	Penobscot County towns of Bangor city, Brewer city, Eddington town, Glenburn town, Hampden town, Hermon town, Holden town, Kenduskeag town, Milford town, Old Town city, Orono town, Orrington town, Penobscot Indian Island Reservation, Veazie town
Cumberland County, ME (part) HMFA	527	663	879	1257	1498	Cumberland County towns of Baldwin town, Bridgton town, Brunswick town, Harpswell town, Harrison town, Naples town, New Gloucester town, Pownal town, Sebago town
Lewiston-Auburn, ME MSA	534	632	826	1041	1105	Androscoggin County towns of Auburn city, Durham town, Greene town, Leeds town, Lewiston city, Lisbon town, Livermore town, Livermore Falls town, Mechanic Falls town, Minot town, Poland town, Sabattus town, Turner town, Wales town
Penobscot County, ME (part) HMFA	425	532	631	883	1021	Penobscot County towns of Alton town, Argyle UT, Bradford town, Bradley town, Burlington town, Carmel town, Carroll plantation, Charleston town, Chester town, Clifton town, Corinna town, Corinth town, Dexter town, Dixmont town, Drew plantation, East Central Penobscot UT, East Millinocket town, Edinburg town, Enfield town, Etna town, Exeter town, Garland town, Greenbush town, Howland town, Hudson town, Kingman UT, Lagrange town, Lakeville town, Lee town, Levant town, Lincoln town, Lowell town, Mattawamkeag town, Maxfield town, Medway town, Millinocket town, Mount Chase town, Newburgh town, Newport town, North Penobscot UT, Passadumkeag town, Patten town, Plymouth town, Prentiss UT, Seboeis plantation, Springfield town, Stacyville town, Stetson town, Twombly UT, Webster plantation, Whitney UT, Winn town, Woodville town
Portland, ME HMFA	685	816	1008	1334	1401	Cumberland County towns of Cape Elizabeth town, Casco town, Cumberland town, Falmouth town, Freeport town, Frye Island town, Gorham town, Gray town, Long Island town, North Yarmouth town, Portland city, Raymond town, Scarborough town, South Portland city, Standish town, Westbrook city, Windham town, Yarmouth town York County towns of Buxton town, Hollis town, Limington town, Old Orchard Beach town
Sagadahoc County, ME HMFA	654	695	824	1068	1345	Sagadahoc County towns of Arrowsic town, Bath city, Bowdoin town, Bowdoinham town, Georgetown town, Perkins UT, Phippsburg town, Richmond town, Topsham town, West Bath town, Woolwich town
York County, ME (part) HMFA	605	699	886	1203	1245	York County towns of Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town, Lebanon town, Limerick town, Lyman town, Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Sanford town, Shapleigh town, Waterboro town, Wells town
York-Kittery-South Berwick, ME HMFA	712	779	1025	1383	1388	York County towns of Berwick town, Eliot town, Kittery town, South Berwick town, York town

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 19

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Aroostook County, ME	511	525	632	800	877	Allagash town, Amity town, Ashland town, Bancroft town, Blaine town, Bridgewater town, Caribou city, Cary plantation, Castle Hill town, Caswell town, Central Aroostook UT, Chapman town, Connor UT, Crystal town, Cyr plantation, Dyer Brook town, Eagle Lake town, Easton town, Fort Fairfield town, Fort Kent town, Frenchville town, Garfield plantation, Glenwood plantation, Grand Isle town, Hamlin town, Hammond town, Haynesville town, Hersey town, Hodgdon town, Houlton town, Island Falls town, Limestone town, Linneus town, Littleton town, Ludlow town, Macwahoc plantation, Madawaska town, Mapleton town, Mars Hill town, Masardis town, Merrill town, Monticello town, Moro plantation, Nashville plantation, New Canada town, New Limerick town, New Sweden town, Northwest Aroostook UT, Oakfield town, Orient town, Oxbow plantation, Penobscot Indian Island Reservation, Perham town, Portage Lake town, Presque Isle city, Reed plantation, St. Agatha town, St. Francis town, St. John plantation, Sherman town, Smyrna town, South Aroostook UT, Square Lake UT, Stockholm town, Van Buren town, Wade town, Wallagrass town, Washburn town, Westfield town, Westmanland town, Weston town, Winterville plantation, Woodland town
Franklin County, ME	561	585	694	865	1229	Avon town, Carrabassett Valley town, Carthage town, Chesterville town, Coplin plantation, Dallas plantation, East Central Franklin UT, Eustis town, Farmington town, Industry town, Jay town, Kingfield town, Madrid town, New Sharon town, New Vineyard town, North Franklin UT, Phillips town, Rangeley town, Rangeley plantation, Sandy River plantation, South Franklin UT, Strong town, Temple town, Weld town, West Central Franklin UT, Wilton town, Wyman UT
Hancock County, ME	591	668	851	1120	1137	Amherst town, Aurora town, Bar Harbor town, Blue Hill town, Brooklin town, Brooksville town, Bucksport town, Castine town, Central Hancock UT, Cranberry Isles town, Dedham town, Deer Isle town, Eastbrook town, East Hancock UT, Ellsworth city, Franklin town, Frenchboro town, Gouldsboro town, Great Pond town, Hancock town, Lamoine town, Mariaville town, Mount Desert town, Northwest Hancock UT, Orland town, Osborn town, Otis town, Penobscot town, Sedgwick town, Sorrento town, Southwest Harbor town, Stonington town, Sullivan town, Surry town, Swans Island town, Tremont town, Trenton town, Verona Island town, Waltham town, Winter Harbor town
Kennebec County, ME	512	593	758	951	1013	Albion town, Augusta city, Belgrade town, Benton town, Chelsea town, China town, Clinton town, Farmingdale town, Fayette town, Gardiner city, Hallowell city, Litchfield town, Manchester town, Monmouth town, Mount Vernon town, Oakland town, Pittston town, Randolph town, Readfield town,

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 20

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Rome town, Sidney town, Unity UT, Vassalboro town, Vienna town, Waterville city, Wayne town, West Gardiner town, Windsor town, Winslow town, Winthrop town
Knox County, ME	705	709	874	1121	1168	Appleton town, Camden town, Criehaven UT, Cushing town, Friendship town, Hope town, Isle au Haut town, Matinicus Isle plantation, North Haven town, Owls Head town, Rockland city, Rockport town, St. George town, South Thomaston town, Thomaston town, Union town, Vinalhaven town, Warren town, Washington town
Lincoln County, ME	543	724	913	1137	1220	Alna town, Boothbay town, Boothbay Harbor town, Bremen town, Bristol town, Damariscotta town, Dresden town, Edgecomb town, Hibberts gore, Jefferson town, Monhegan plantation, Newcastle town, Nobleboro town, Somerville town, South Bristol town, Southport town, Waldoboro town, Westport Island town, Whitefield town, Wiscasset town
Oxford County, ME	548	582	733	989	1281	Andover town, Bethel town, Brownfield town, Buckfield town, Byron town, Canton town, Denmark town, Dixfield town, Fryeburg town, Gilead town, Greenwood town, Hanover town, Hartford town, Hebron town, Hiram town, Lincoln plantation, Lovell town, Magalloway plantation, Mexico town, Milton UT, Newry town, North Oxford UT, Norway town, Otisfield town, Oxford town, Paris town, Peru town, Porter town, Roxbury town, Rumford town, South Oxford UT, Stoneham town, Stow town, Sumner town, Sweden town, Upton town, Waterford town, West Paris town, Woodstock town
Piscataquis County, ME	508	573	679	880	931	Abbot town, Atkinson town, Beaver Cove town, Blanchard UT, Bowerbank town, Brownville town, Dover-Foxcroft town, Greenville town, Guilford town, Kingsbury plantation, Lake View plantation, Medford town, Milo town, Monson town, Northeast Piscataquis UT, Northwest Piscataquis UT, Parkman town, Sangerville town, Sebec town, Shirley town, Southeast Piscataquis UT, Wellington town, Willimantic town
Somerset County, ME	579	606	722	982	986	Anson town, Athens town, Bingham town, Brighton plantation, Cambridge town, Canaan town, Caratunk town, Central Somerset UT, Cornville town, Dennistown plantation, Detroit town, Embden town, Fairfield town, Harmony town, Hartland town, Highland plantation, Jackman town, Madison town, Mercer town, Moose River town, Moscow town, New Portland town, Norridgewock town, Northeast Somerset UT, Northwest Somerset UT, Palmyra town, Pittsfield town, Pleasant Ridge plantation, Ripley town, St. Albans town, Seboomook Lake UT, Skowhegan town, Smithfield town, Solon town, Starks town, The Forks plantation, West Forks plantation
Waldo County, ME	529	634	752	1024	1089	Belfast city, Belmont town, Brooks town, Burnham town, Frankfort town, Freedom town, Islesboro town, Jackson town, Knox town, Liberty town, Lincolnville town, Monroe town, Montville town, Morrill town, Northport town, Palermo town, Prospect town, Searsmont town, Searsport town,

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 21

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Washington County, ME	521	573	683	871	1056	Stockton Springs town, Swanville town, Thorndike town, Troy town, Unity town, Waldo town, Winterport town Addison town, Alexander town, Baileyville town, Baring plantation, Beals town, Beddington town, Calais city, Centerville town, Charlotte town, Cherryfield town, Codyville plantation, Columbia town, Columbia Falls town, Cooper town, Crawford town, Cutler town, Danforth town, Deblois town, Dennysville town, East Central Washington UT, East Machias town, Eastport city, Grand Lake Stream plantation, Harrington town, Jonesboro town, Jonesport town, Lubec town, Machias town, Machiasport town, Marshfield town, Meddybemps town, Milbridge town, Northfield town, North Washington UT, Passamaquoddy Indian Township Reservation, Passamaquoddy Pleasant Point Reservation, Pembroke town, Perry town, Princeton town, Robbinston town, Roque Bluffs town, Steuben town, Talmadge town, Topsfield town, Vanceboro town, Waite town, Wesley town, Whiting town, Whitneyville town

MARYLAND

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Baltimore-Towson, MD HMFA	846	1000	1251	1598	1740	Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city
Columbia city, MD HMFA	1056	1318	1569	2010	2205	Columbia city
Cumberland, MD-WV MSA	451	533	632	860	980	Allegany
Hagerstown, MD HMFA	528	642	831	1150	1167	Washington
*Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	788	929	1119	1394	1496	Cecil
Salisbury, MD HMFA	539	670	906	1166	1286	Wicomico
Somerset County, MD HMFA	426	604	716	900	989	Somerset
Washington-Arlington-Alexandria, DC-VA-MD HMFA	1130	1191	1412	1890	2374	Calvert, Charles, Frederick, Montgomery, Prince George's

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Caroline	752	758	1025	1365	1533
Garrett	543	583	699	889	934
St. Mary's	767	961	1139	1656	2011
Worcester	695	796	1057	1316	1604

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Dorchester	720	754	927	1155	1239
Kent	750	755	1022	1344	1810
Talbot	893	899	1171	1458	2012

MASSACHUSETTS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Barnstable Town, MA MSA	847	945	1267	1657	1740	Barnstable County towns of Barnstable Town city, Bourne town, Brewster town, Chatham town, Dennis town, Eastham town, Falmouth town, Harwich town, Mashpee town, Orleans town, Provincetown town, Sandwich town, Truro town, Wellfleet town,

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 22

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Yarmouth town
Berkshire County, MA (part) HMFA.....	620	648	768	973	1186	Berkshire County towns of Alford town, Becket town, Clarksburg town, Egremont town, Florida town, Great Barrington town, Hancock town, Monterey town, Mount Washington town, New Ashford town, New Marlborough town, North Adams city, Otis town, Peru town, Sandisfield town, Savoy town, Sheffield town, Tyringham town, Washington town, West Stockbridge town, Williamstown town, Windsor town
Boston-Cambridge-Quincy, MA-NH HMFA.....	1035	1156	1444	1798	1955	Essex County towns of Amesbury Town city, Beverly city, Danvers town, Essex town, Gloucester city, Hamilton town, Ipswich town, Lynn city, Lynnfield town, Manchester-by-the-Sea town, Marblehead town, Middleton town, Nahant town, Newbury town, Newburyport city, Peabody city, Rockport town, Rowley town, Salem city, Salisbury town, Saugus town, Swampscott town, Topsfield town, Wenham town Middlesex County towns of Acton town, Arlington town, Ashby town, Ashland town, Ayer town, Bedford town, Belmont town, Boxborough town, Burlington town, Cambridge city, Carlisle town, Concord town, Everett city, Framingham town, Holliston town, Hopkinton town, Hudson town, Lexington town, Lincoln town, Littleton town, Malden city, Marlborough city, Maynard town, Medford city, Melrose city, Natick town, Newton city, North Reading town, Reading town, Sherborn town, Shirley town, Somerville city, Stoneham town, Stow town, Sudbury town, Townsend town, Wakefield town, Waltham city, Watertown city, Wayland town, Weston town, Wilmington town, Winchester town, Woburn city Norfolk County towns of Bellingham town, Braintree Town city, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin Town city, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth Town city, Wrentham town Plymouth County towns of Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland town, Scituate town, Wareham town Suffolk County towns of Boston city, Chelsea city, Revere city, Winthrop Town city
Brockton, MA HMFA.....	853	859	1122	1432	1516	Norfolk County towns of Avon town Plymouth County towns of Abington town, Bridgewater town, Brockton city, East Bridgewater town, Halifax town, Hanson town, Lakeville town, Marion town, Mattapoisett town, Middleborough town, Plympton town, Rochester town, West Bridgewater town, Whitman town
Eastern Worcester County, MA HMFA.....	752	854	1156	1440	1545	Worcester County towns of Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town, Lancaster town,

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 23

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Mendon town, Milford town, Millville town, Southborough town, Upton town
Easton-Raynham, MA HMFA	900	992	1255	1789	1795	Bristol County towns of Easton town, Raynham town
Fitchburg-Leominster, MA HMFA	550	748	925	1152	1370	Worcester County towns of Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg town, Templeton town, Westminster town, Winchendon town
Franklin County, MA (part) HMFA	671	724	917	1187	1445	Franklin County towns of Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield Town city, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague town, New Salem town, Northfield town, Orange town, Rowe town, Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town
Lawrence, MA-NH HMFA	762	869	1115	1389	1490	Essex County towns of Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city, Lawrence city, Merrimac town, Methuen city, North Andover town, West Newbury town
Lowell, MA HMFA	759	874	1122	1397	1646	Middlesex County towns of Billerica town, Chelmsford town, Dracut town, Dunstable town, Groton town, Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town
New Bedford, MA HMFA	676	715	848	1056	1133	Bristol County towns of Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city
Pittsfield, MA HMFA	527	677	803	1000	1128	Berkshire County towns of Adams town, Cheshire town, Dalton town, Hinsdale town, Lanesborough town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town
Providence-Fall River, RI-MA HMFA	675	762	930	1158	1386	Bristol County towns of Attleboro city, Fall River city, North Attleborough town, Rehoboth town, Seekonk town, Somerset town, Swansea town, Westport town
Springfield, MA HMFA	624	748	935	1167	1330	Franklin County towns of Sunderland town Hampden County towns of Agawam Town city, Blandford town, Brimfield town, Chester town, Chicopee city, East Longmeadow town, Granville town, Hampden town, Holland town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer Town city, Russell town, Southwick town, Springfield city, Tolland town, Wales town, Westfield city, West Springfield Town city, Wilbraham town Hampshire County towns of Amherst town, Belchertown town, Chesterfield town, Cummington town, Easthampton Town city, Goshen town, Granby town, Hadley town, Hatfield town, Huntington town, Middlefield town, Northampton city, Pelham town, Plainfield town, Southampton town, South Hadley town, Ware town, Westhampton town, Williamsburg town, Worthington town
Taunton-Mansfield-Norton, MA HMFA	826	872	1134	1412	1515	Bristol County towns of Berkley town, Dighton town, Mansfield town, Norton town, Taunton city
Western Worcester County, MA HMFA	499	647	767	995	1358	Worcester County towns of Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town, Phillipston town, Royalston town, Warren town
Worcester, MA HMFA	629	768	966	1203	1315	Worcester County towns of Auburn town, Barre town,

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 24

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town, East Brookfield town, Grafton town, Holden town, Leicester town, Millbury town, Northborough town, Northbridge town, North Brookfield town, Oakham town, Oxford town, Paxton town, Princeton town, Rutland town, Shrewsbury town, Southbridge Town city, Spencer town, Sterling town, Sturbridge town, Sutton town, Uxbridge town, Webster town, Westborough town, West Boylston town, West Brookfield town, Worcester city

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Dukes County, MA	833	1035	1400	1818	1871	Aquinnah town, Chilmark town, Edgartown town, Gosnold town, Oak Bluffs town, Tisbury town, West Tisbury town
Nantucket County, MA	1117	1387	1877	2635	2644	Nantucket town

MICHIGAN

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Ann Arbor, MI MSA	630	760	901	1232	1596	Washtenaw
Barry County, MI HMFA	506	531	718	940	1003	Barry
Battle Creek, MI MSA	449	587	740	933	1035	Calhoun
Bay City, MI MSA	372	489	626	835	987	Bay
Cass County, MI HMFA	475	478	626	899	903	Cass
Detroit-Warren-Livonia, MI HMFA	495	629	821	1095	1196	Lapeer, Macomb, Oakland, St. Clair, Wayne
Flint, MI MSA	423	547	711	928	1048	Genesee
Grand Rapids-Wyoming, MI HMFA	520	590	739	1031	1160	Kent
Holland-Grand Haven, MI MSA	574	600	711	982	1049	Ottawa
Ionia County, MI HMFA	524	528	697	939	1014	Ionia
Jackson, MI MSA	471	547	711	978	981	Jackson
Kalamazoo-Portage, MI MSA	464	563	716	942	1147	Kalamazoo, Van Buren
Lansing-East Lansing, MI MSA	503	641	797	1060	1285	Clinton, Eaton, Ingham
Livingston County, MI HMFA	487	681	807	1169	1403	Livingston
Monroe, MI MSA	449	562	754	971	1149	Monroe
Muskegon-Norton Shores, MI MSA	380	472	638	870	995	Muskegon
Newaygo County, MI HMFA	488	491	626	822	1013	Newaygo
Niles-Benton Harbor, MI MSA	456	518	676	909	1059	Berrien
Saginaw-Saginaw Township North, MI MSA	399	529	665	886	1020	Saginaw

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alcona	436	463	626	833	1109	Alger	443	470	636	792	1021
Allegan	574	583	710	923	959	Alpena	400	507	626	922	1093
Antrim	386	490	649	881	1108	Arenac	472	512	626	895	1109
Baraga	436	463	626	780	862	Benzie	527	551	653	962	1157
Branch	495	498	633	865	868	Charlevoix	552	564	683	851	1080
Cheboygan	436	517	626	922	926	Chippewa	443	481	635	791	849

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 25

MICHIGAN continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Clare	448	475	643	801	859	Crawford	443	470	636	805	1126
Delta	470	473	626	922	1008	Dickinson	436	468	626	780	1109
Emmet	552	564	763	975	1326	Gladwin	436	528	626	922	1109
Gogebic	430	463	626	857	987	Grand Traverse	571	600	797	1068	1072
Gratiot	445	472	638	816	1022	Hillsdale	409	512	669	918	922
Houghton	453	463	626	780	893	Huron	436	518	626	911	978
Iosco	506	528	626	922	1109	Iron	454	463	626	799	837
Isabella	435	587	696	924	1130	Kalkaska	491	521	705	974	978
Keweenaw	436	463	626	922	926	Lake	436	463	626	861	1105
Leelanau	568	694	823	1025	1100	Lenawee	542	548	671	836	930
Luce	436	483	626	890	904	Mackinac	436	528	626	791	897
Manistee	452	479	648	819	866	Marquette	474	538	688	857	919
Mason	455	483	653	854	873	Mecosta	455	528	626	871	878
Menominee	436	476	626	829	968	Midland	537	541	702	1034	1138
Missaukee	436	528	626	884	887	Montcalm	480	510	643	910	1032
Montmorency	445	493	667	929	1181	Oceana	473	477	626	794	1019
Ogemaw	436	481	626	780	837	Ontonagon	488	491	626	829	897
Osceola	436	463	626	888	943	Oscoda	468	496	671	836	897
Otsego	478	507	686	966	1038	Presque Isle	436	481	626	884	1109
Roscommon	436	481	626	826	991	St. Joseph	454	518	642	850	916
Sanilac	436	463	626	817	913	Schoolcraft	436	463	626	780	1109
Shiawassee	456	567	767	964	1025	Tuscola	374	501	626	866	1027
Wexford	390	506	655	897	900						

MINNESOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Duluth, MN-WI MSA	459	552	725	945	1052	Carlton, St. Louis
Fargo, ND-MN MSA	408	495	639	942	1114	Clay
Grand Forks, ND-MN MSA	420	512	686	928	1119	Polk
La Crosse, WI-MN MSA	416	520	699	972	1183	Houston
Mankato-North Mankato, MN MSA	535	611	765	1050	1355	Blue Earth, Nicollet
Minneapolis-St. Paul-Bloomington, MN-WI MSA	592	736	920	1296	1529	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright
Rochester, MN HMFA	573	622	838	1123	1484	Dodge, Olmsted
St. Cloud, MN MSA	565	583	699	923	1238	Benton, Stearns
Wabasha County, MN HMFA	511	514	641	945	1004	Wabasha

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aitkin	456	528	626	922	1109	Becker	417	503	626	826	837
Beltrami	418	493	648	894	925	Big Stone	417	527	626	780	837
Brown	417	528	626	780	837	Cass	477	511	671	836	1188
Chippewa	417	528	626	922	926	Clearwater	417	463	626	781	1100
Cook	533	565	757	968	1102	Cottonwood	417	463	626	922	926

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 26

MINNESOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Crow Wing	421	522	706	1040	1044	Douglas	429	475	643	875	1080
Faribault	417	492	626	922	926	Fillmore	506	526	626	899	965
Freeborn	417	463	627	781	838	Goodhue	489	557	754	1100	1312
Grant	417	528	626	922	926	Hubbard	407	463	626	912	1060
Itasca	444	552	747	930	998	Jackson	417	485	626	893	1054
Kanabec	520	577	781	1037	1044	Kandiyohi	474	477	642	803	1031
Kittson	417	528	626	877	968	Koochiching	417	463	626	780	911
Lac qui Parle	417	463	626	780	959	Lake	410	481	651	925	948
Lake of the Woods	472	524	709	883	1032	Le Sueur	451	500	677	846	1110
Lincoln	417	528	626	780	837	Lyon	470	474	626	922	926
McLeod	525	528	693	954	1021	Mahnomen	458	509	688	857	1003
Marshall	489	500	626	865	868	Martin	381	474	641	798	991
Meeker	449	623	754	939	1008	Mille Lacs	426	551	716	892	957
Morrison	478	481	626	806	837	Mower	446	511	670	903	1095
Murray	417	528	626	780	1109	Nobles	506	528	626	922	1027
Norman	417	464	626	922	926	Otter Tail	417	499	626	894	919
Pennington	372	463	626	780	1109	Pine	458	534	688	902	1038
Pipestone	417	528	626	921	1014	Pope	455	506	684	852	914
Red Lake	417	486	626	893	911	Redwood	417	463	626	843	1109
Renville	417	524	626	780	856	Rice	492	611	827	1199	1205
Rock	470	473	640	797	857	Roseau	417	463	626	780	932
Sibley	417	493	626	922	988	Steele	433	571	728	1003	1289
Stevens	517	521	653	813	873	Swift	417	463	626	922	1109
Todd	417	463	626	905	962	Traverse	417	463	626	780	837
Wadena	417	526	626	825	1109	Waseca	439	488	660	973	1169
Watonwan	417	466	626	922	926	Wilkin	417	472	626	842	911
Winona	460	533	693	915	1065	Yellow Medicine	417	471	626	921	1088

MISSISSIPPI

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Gulfport-Biloxi, MS MSA	692	714	857	1102	1174	Hancock, Harrison, Stone
Hattiesburg, MS MSA	518	546	700	938	986	Forrest, Lamar, Perry
Jackson, MS HMFA	482	671	810	1009	1108	Copiah, Hinds, Madison, Rankin
Marshall County, MS HMFA	433	436	590	848	1045	Marshall
Memphis, TN-MS-AR HMFA	567	648	768	1049	1170	DeSoto
Pascagoula, MS MSA	597	601	754	1035	1043	George, Jackson
Simpson County, MS HMFA	351	498	590	740	788	Simpson
Tate County, MS HMFA	532	535	724	902	1252	Tate
Tunica County, MS HMFA	499	518	701	873	1068	Tunica

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 27

MISSISSIPPI continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	402	498	590	773	998	Alcorn	402	498	590	801	884
Amite	402	498	590	805	972	Attala	402	498	590	869	872
Benton	402	498	590	759	788	Bolivar	485	488	660	822	882
Calhoun	351	444	590	833	1014	Carroll	575	694	844	1208	1212
Chickasaw	365	436	590	735	788	Choctaw	402	469	590	869	872
Claiborne	402	498	590	780	788	Clarke	402	498	590	869	872
Clay	448	486	658	820	879	Coahoma	367	520	617	768	825
Covington	402	486	590	869	1027	Franklin	402	436	590	869	872
Greene	402	460	590	869	872	Grenada	402	493	590	744	788
Holmes	402	498	590	735	788	Humphreys	402	436	590	859	862
Issaquena	407	491	597	880	883	Itawamba	402	498	590	869	872
Jasper	402	498	590	869	953	Jefferson	402	436	590	797	800
Jefferson Davis	402	449	590	869	872	Jones	351	498	590	749	788
Kemper	402	436	590	735	788	Lafayette	538	622	790	1006	1056
Lauderdale	402	498	590	843	1045	Lawrence	402	498	590	736	1045
Leake	402	498	590	806	826	Lee	429	608	721	981	985
Leflore	477	488	590	735	799	Lincoln	401	440	595	783	960
Lowndes	402	515	611	855	858	Marion	424	489	622	775	844
Monroe	402	436	590	755	788	Montgomery	402	486	590	828	927
Neshoba	402	488	590	794	912	Newton	402	437	591	827	1047
Noxubee	402	498	590	869	872	Oktibbeha	531	557	665	953	1142
Panola	402	498	590	808	811	Pearl River	445	483	654	957	960
Pike	434	471	637	793	851	Pontotoc	411	446	603	815	1027
Prentiss	402	464	590	823	843	Quitman	351	498	590	735	788
Scott	387	508	651	813	1059	Sharkey	402	498	590	735	788
Smith	402	436	590	735	889	Sunflower	411	436	590	773	876
Tallahatchie	477	498	590	869	872	Tippah	402	498	590	784	877
Tishomingo	402	444	590	859	896	Union	402	498	590	869	1045
Walthall	490	592	719	895	961	Warren	519	522	665	829	915
Washington	478	481	603	844	847	Wayne	402	436	590	738	1045
Webster	477	498	590	869	1045	Wilkinson	402	436	590	735	788
Winston	402	486	591	854	857	Yalobusha	402	498	590	869	1045
Yazoo	414	449	608	758	813						

MISSOURI

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bates County, MO HMFA	414	488	660	888	891	Bates
Calloway County, MO HMFA	460	463	626	839	913	Callaway
Cape Girardeau-Jackson, MO-IL MSA	428	532	720	934	1138	Bollinger, Cape Girardeau
Columbia, MO MSA	533	546	704	1030	1245	Boone, Howard
Dallas County, MO HMFA	401	491	595	741	795	Dallas
Jefferson City, MO HMFA	354	440	595	828	856	Cole, Osage

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 28

MISSOURI continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Joplin, MO MSA	440	447	595	813	816	Jasper, Newton
Kansas City, MO-KS HMFA	491	632	783	1073	1195	Caldwell, Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
McDonald County, MO HMFA	440	443	595	877	901	McDonald
Moniteau County, MO HMFA	359	446	603	771	880	Moniteau
Polk County, MO HMFA	405	440	595	849	1054	Polk
Springfield, MO HMFA	442	487	656	966	969	Christian, Greene, Webster
St. Joseph, MO-KS MSA	438	474	633	811	1000	Andrew, Buchanan, DeKalb
St. Louis, MO-IL HMFA	543	643	830	1081	1227	Sullivan city part of Crawford, Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city
Washington County, MO HMFA	481	502	595	830	879	Washington

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	371	498	595	776	1054	Atchison	393	441	595	876	879
Audrain	414	463	627	856	969	Barry	385	502	595	768	795
Barton	354	455	595	748	795	Benton	409	458	620	914	917
Butler	374	450	595	741	799	Camden	413	528	626	892	1109
Carroll	460	463	595	741	795	Carter	393	502	595	877	919
Cedar	393	440	595	836	919	Chariton	393	440	595	741	795
Clark	354	460	595	776	919	Cooper	393	455	595	877	950
Crawford	487	492	607	756	904	Dade	393	456	595	807	810
Daviess	393	446	595	877	919	Dent	393	448	595	842	845
Douglas	393	502	595	819	822	Dunklin	437	440	595	876	879
Gasconade	393	460	595	877	1021	Gentry	393	440	595	817	909
Grundy	389	498	595	877	982	Harrison	395	469	599	746	801
Henry	395	448	598	847	1041	Hickory	415	440	595	741	795
Holt	393	440	595	777	917	Howell	354	454	595	761	1054
Iron	393	502	595	793	1054	Johnson	485	503	667	983	1009
Knox	393	451	595	877	919	Laclede	393	502	595	821	952
Lawrence	451	454	595	845	1054	Lewis	437	440	595	771	919
Linn	437	440	595	799	802	Livingston	473	476	644	850	861
Macon	449	452	612	837	940	Madison	393	440	595	761	795
Maries	393	502	595	877	973	Marion	357	443	599	747	934
Mercer	393	440	595	819	919	Miller	439	496	619	780	827
Mississippi	377	440	595	765	795	Monroe	402	450	609	758	825
Montgomery	393	440	595	750	1054	Morgan	371	460	623	776	881
New Madrid	476	479	595	775	795	Nodaway	474	477	595	746	877
Oregon	393	502	595	795	958	Ozark	393	502	595	741	919
Pemiscot	393	467	595	766	795	Perry	418	468	633	890	1031
Pettis	468	472	638	843	929	Phelps	379	471	637	866	994
Pike	395	442	598	870	873	Pulaski	381	532	640	943	1134
Putnam	427	478	647	806	1000	Ralls	393	502	595	877	1023
Randolph	366	459	615	766	1089	Reynolds	393	475	595	741	795

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 29

MISSOURI continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ripley	393	440	595	877	904
Ste. Genevieve	446	449	607	854	938
Saline	393	440	595	808	913
Scotland	393	440	595	757	919
Shannon	354	440	595	741	919
Stoddard	393	445	595	800	803
Sullivan	483	486	658	925	1017
Texas	354	440	595	877	995
Wayne	393	502	595	819	1054
Wright	393	440	595	751	1046
St. Clair	393	488	595	741	795
St. Francois	510	514	695	938	1028
Schuyler	406	440	595	877	1054
Scott	363	451	610	768	840
Shelby	393	440	595	807	810
Stone	451	560	758	944	1013
Taney	539	572	709	883	1256
Vernon	383	453	613	810	819
Worth	393	440	595	762	919

MONTANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Billings, MT MSA	483	536	725	1002	1006	Carbon, Yellowstone
Great Falls, MT MSA	496	517	663	959	977	Cascade
Missoula, MT MSA	545	591	738	1058	1307	Missoula

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beaverhead	460	463	626	922	992
Blaine	457	463	626	780	837
Carter	457	515	626	879	992
Custer	442	525	626	913	916
Dawson	457	470	626	899	1109
Fallon	457	515	626	922	992
Flathead	516	604	747	1101	1323
Garfield	457	483	626	879	992
Golden Valley	482	557	660	822	1046
Hill	457	471	626	922	926
Judith Basin	457	528	626	893	992
Lewis and Clark	532	536	723	976	1159
Lincoln	506	528	626	881	1109
Madison	518	599	710	884	949
Mineral	457	520	626	865	869
Park	453	563	762	949	1349
Phillips	457	493	626	879	992
Powder River	457	483	626	922	992
Prairie	457	528	626	879	992
Richland	457	528	626	802	1109
Rosebud	457	463	626	780	837
Sheridan	457	528	626	922	1109
Stillwater	422	463	626	883	1109
Teton	457	487	626	868	992
Big Horn	457	528	626	888	891
Broadwater	495	501	678	844	1075
Chouteau	457	528	626	922	935
Daniels	457	483	626	855	992
Deer Lodge	457	528	626	922	1075
Fergus	457	508	626	818	1109
Gallatin	549	594	745	1098	1319
Glacier	506	528	626	922	995
Granite	457	463	626	780	992
Jefferson	457	463	626	780	837
Lake	394	559	663	854	1110
Liberty	457	483	626	879	992
McCone	457	483	626	922	1109
Meagher	457	463	626	780	992
Musselshell	457	463	626	870	992
Petroleum	482	509	660	927	1046
Pondera	457	528	626	922	1109
Powell	457	528	626	780	1092
Ravalli	527	530	714	1052	1056
Roosevelt	457	463	626	780	837
Sanders	374	466	626	796	896
Silver Bow	470	473	640	797	937
Sweet Grass	457	528	626	922	1109
Toole	457	528	626	922	1109

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 30

MONTANA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Treasure	457	483	626	872	992	Valley	457	528	626	867	870
Wheatland	457	483	626	879	992	Wibaux	457	483	626	879	992

NEBRASKA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Lincoln, NE HMFA	412	525	693	964	1203	Lancaster
Omaha-Council Bluffs, NE-IA HMFA	493	659	828	1110	1233	Cass, Douglas, Sarpy, Washington
Saunders County, NE HMFA	463	576	779	970	1041	Saunders
Seward County, NE HMFA	370	484	622	862	1102	Seward
Sioux City, IA-NE-SD MSA	391	511	657	863	969	Dakota, Dixon

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	470	473	640	797	855	Antelope	419	525	622	807	831
Arthur	419	466	622	917	920	Banner	419	466	622	784	850
Blaine	419	466	622	775	850	Boone	419	525	622	775	831
Box Butte	419	477	622	816	865	Boyd	419	525	622	917	920
Brown	419	460	622	775	917	Buffalo	413	493	667	900	1150
Burt	421	462	625	859	862	Butler	419	460	622	821	1026
Cedar	419	460	622	775	1102	Chase	419	460	622	775	879
Cherry	456	500	676	842	924	Cheyenne	419	486	622	901	904
Clay	419	525	622	775	831	Colfax	472	591	701	873	974
Cuming	419	460	622	775	843	Custer	419	525	622	917	1102
Dawes	443	460	622	917	920	Dawson	446	489	661	823	883
Deuel	426	467	632	787	864	Dodge	395	503	664	872	887
Dundy	419	460	622	775	850	Fillmore	419	460	622	805	838
Franklin	419	466	622	914	1102	Frontier	419	460	622	775	831
Furnas	419	460	622	775	850	Gage	408	469	626	816	851
Garden	419	466	622	775	1029	Garfield	419	466	622	775	831
Gosper	419	460	622	775	850	Grant	419	466	622	775	850
Greeley	419	466	622	917	970	Hall	411	515	666	832	890
Hamilton	430	472	638	811	968	Harlan	419	460	622	775	831
Hayes	419	466	622	775	831	Hitchcock	419	466	622	775	875
Holt	419	525	622	775	861	Hooker	419	466	622	797	850
Howard	419	460	622	788	831	Jefferson	419	471	622	775	1015
Johnson	439	482	652	812	871	Kearney	419	524	622	842	845
Keith	419	525	622	844	1030	Keya Paha	419	466	622	775	850
Kimball	419	460	622	775	831	Knox	419	525	622	917	1102
Lincoln	409	508	687	856	980	Logan	499	555	741	923	1013
Loup	419	466	622	775	850	McPherson	419	466	622	775	850
Madison	419	466	622	802	997	Merrick	419	460	622	917	920
Morrill	419	460	622	788	915	Nance	419	525	622	775	842
Nemaha	419	493	622	775	1102	Nuckolls	419	525	622	917	920

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NEBRASKA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Otoe	419	475	622	917	1102	Pawnee	419	460	622	775	831
Perkins	419	466	622	775	976	Phelps	419	525	622	775	1102
Pierce	419	525	622	775	1098	Platte	502	525	622	775	949
Polk	419	460	622	775	831	Red Willow	419	491	622	775	981
Richardson	419	516	622	775	831	Rock	419	466	622	791	850
Saline	472	518	701	873	937	Scotts Bluff	466	495	659	821	967
Sheridan	419	525	622	840	843	Sherman	419	460	622	775	984
Sioux	419	525	622	838	850	Stanton	419	460	622	917	1003
Thayer	419	460	622	775	831	Thomas	419	466	622	775	850
Thurston	419	460	622	775	831	Valley	419	460	622	775	850
Wayne	419	460	622	865	868	Webster	419	525	622	917	1102
Wheeler	419	466	622	917	920	York	423	474	628	782	839

NEVADA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Carson City, NV MSA	560	702	893	1273	1550	Carson
*Las Vegas-Paradise, NV MSA	691	864	1064	1568	1861	Clark
Reno-Sparks, NV MSA	568	721	953	1404	1688	Storey, Washoe

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Churchill	490	637	822	1024	1456	Douglas	571	767	949	1398	1681
Elko	478	594	803	1026	1307	Esmeralda	385	477	646	907	1037
Eureka	482	598	809	1008	1298	Humboldt	398	494	668	955	1072
Lander	404	572	678	884	1088	Lincoln	435	539	729	948	992
Lyon	455	638	756	1114	1339	Mineral	380	538	638	795	1024
Nye	496	616	834	1119	1131	Pershing	373	528	626	922	1005
White Pine	436	617	732	1057	1061						

NEW HAMPSHIRE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Boston-Cambridge-Quincy, MA-NH HMFA	1035	1156	1444	1798	1955	Rockingham County towns of Seabrook town, South Hampton town
Hillsborough County, NH (part) HMFA	714	757	912	1139	1305	Hillsborough County towns of Antrim town, Bennington town, Deering town, Francestown town, Greenfield town, Hancock town, Hillsborough town, Lyndeborough town, New Boston town, Peterborough town, Sharon town, Temple town, Windsor town
Lawrence, MA-NH HMFA	762	869	1115	1389	1490	Rockingham County towns of Atkinson town, Chester town, Danville town, Derry town, Fremont town, Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town
Manchester, NH HMFA	651	862	1095	1364	1544	Hillsborough County towns of Bedford town, Goffstown town, Manchester city, Weare town

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 32

NEW HAMPSHIRE continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Nashua, NH HMFA	792	899	1174	1578	1832	Hillsborough County towns of Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Pelham town, Wilton town
Portsmouth-Rochester, NH HMFA	734	856	1088	1491	1556	Rockingham County towns of Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton town, Hampton Falls town, Kensington town, New Castle town, Newfields town, Newington town, Newmarket town, North Hampton town, Portsmouth city, Rye town, Stratham town Strafford County towns of Barrington town, Dover city, Durham town, Farmington town, Lee town, Madbury town, Middleton town, Milton town, New Durham town, Rochester city, Rollinsford town, Somersworth city, Strafford town
Western Rockingham County, NH HMFA	869	881	1192	1636	1642	Rockingham County towns of Auburn town, Candia town, Deerfield town, Londonderry town, Northwood town, Nottingham town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Belknap County, NH	739	744	1006	1431	1436	Alton town, Barnstead town, Belmont town, Center Harbor town, Gilford town, Gilmanton town, Laconia city, Meredith town, New Hampton town, Sanbornton town, Tilton town
Carroll County, NH	699	777	1007	1402	1407	Albany town, Bartlett town, Brookfield town, Chatham town, Conway town, Eaton town, Effingham town, Freedom town, Hale's location, Hart's Location town, Jackson town, Madison town, Moultonborough town, Ossipee town, Sandwich town, Tamworth town, Tuftonboro town, Wakefield town, Wolfeboro town
Cheshire County, NH	637	764	1008	1255	1642	Alstead town, Chesterfield town, Dublin town, Fitzwilliam town, Gilsum town, Harrisville town, Hinsdale town, Jaffrey town, Keene city, Marlborough town, Marlow town, Nelson town, Richmond town, Rindge town, Roxbury town, Stoddard town, Sullivan town, Surry town, Swanzey town, Troy town, Walpole town, Westmoreland town, Winchester town
Coos County, NH	558	583	691	922	1106	Atkinson and Gilmanton Academy grant, Beans grant, Beans purchase, Berlin city, Cambridge township, Carroll town, Chandlers purchase, Clarksville town, Colebrook town, Columbia town, Crawfords purchase, Cutts grant, Dalton town, Dixs grant, Dixville township, Dummer town, Errol town, Ervings location, Gorham town, Greens grant, Hadleys purchase, Jefferson town, Kilkenny township, Lancaster town, Low and Burbanks grant, Martins location, Milan town, Millsfield township, Northumberland town, Odell township, Pinkhams grant, Pittsburg town, Randolph town, Sargents purchase, Second College grant, Shelburne town, Stark town, Stewartstown town, Stratford town, Success township,

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 33

NEW HAMPSHIRE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Thompson and Meserves purchase, Wentworth location, Whitefield town
Grafton County, NH	780	798	1004	1260	1401	Alexandria town, Ashland town, Bath town, Benton town, Bethlehem town, Bridgewater town, Bristol town, Campton town, Canaan town, Dorchester town, Easton town, Ellsworth town, Enfield town, Franconia town, Grafton town, Groton town, Hanover town, Haverhill town, Hebron town, Holderness town, Landaff town, Lebanon city, Lincoln town, Lisbon town, Littleton town, Livermore town, Lyman town, Lyme town, Monroe town, Orange town, Orford town, Piermont town, Plymouth town, Rumney town, Sugar Hill town, Thornton town, Warren town, Waterville Valley town, Wentworth town, Woodstock town
Merrimack County, NH	654	819	1024	1350	1611	Allenstown town, Andover town, Boscawen town, Bow town, Bradford town, Canterbury town, Chichester town, Concord city, Danbury town, Dunbarton town, Epsom town, Franklin city, Henniker town, Hill town, Hooksett town, Hopkinton town, Loudon town, Newbury town, New London town, Northfield town, Pembroke town, Pittsfield town, Salisbury town, Sutton town, Warner town, Webster town, Wilmot town
Sullivan County, NH	672	765	933	1264	1285	Acworth town, Charlestown town, Claremont city, Cornish town, Croydon town, Goshen town, Grantham town, Langdon town, Lempster town, Newport town, Plainfield town, Springfield town, Sunapee town, Unity town, Washington town

NEW JERSEY

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Atlantic City-Hammonton, NJ MSA	815	944	1173	1622	1885	Atlantic
*Bergen-Passaic, NJ HMFA	1132	1223	1450	1878	2130	Bergen, Passaic
Jersey City, NJ HMFA	1014	1115	1322	1682	1857	Hudson
Middlesex-Somerset-Hunterdon, NJ HMFA	904	1153	1420	1843	2417	Hunterdon, Middlesex, Somerset
Monmouth-Ocean, NJ HMFA	961	1135	1410	1955	2299	Monmouth, Ocean
Newark, NJ HMFA	971	1007	1202	1550	1772	Essex, Morris, Sussex, Union
Ocean City, NJ MSA	606	756	1019	1442	1517	Cape May
*Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	788	929	1119	1394	1496	Burlington, Camden, Gloucester, Salem
Trenton-Ewing, NJ MSA	886	1001	1206	1577	1823	Mercer
Vineland-Millville-Bridgeton, NJ MSA	769	888	1094	1405	1761	Cumberland
Warren County, NJ HMFA	659	884	1078	1409	1571	Warren

NEW MEXICO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albuquerque, NM MSA	507	637	780	1129	1381	Bernalillo, Sandoval, Torrance, Valencia
Farmington, NM MSA	540	580	785	978	1049	San Juan
Las Cruces, NM MSA	444	534	633	906	1007	Dona Ana

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 34

NEW MEXICO continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Santa Fe, NM MSA	756	823	976	1308	1399	Santa Fe

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Catron	470	528	626	922	939	Chaves	525	577	780	1101	1361
Cibola	475	479	626	864	1109	Colfax	460	463	626	780	837
Curry	471	475	639	934	1132	De Baca	470	528	626	922	939
Eddy	483	496	659	847	881	Grant	470	528	626	922	1006
Guadalupe	470	487	626	922	939	Harding	470	487	626	829	939
Hidalgo	470	487	626	922	939	Lea	485	489	661	840	889
Lincoln	519	645	872	1086	1165	Los Alamos	639	822	1066	1393	1806
Luna	470	527	626	902	905	McKinley	482	528	626	780	837
Mora	470	528	626	824	939	Otero	386	528	626	913	1109
Quay	474	477	645	829	862	Rio Arriba	427	531	718	894	960
Roosevelt	372	485	626	780	1109	San Miguel	372	515	626	827	857
Sierra	437	475	643	801	965	Socorro	440	463	626	780	1109
Taos	579	695	832	1036	1112	Union	460	463	626	907	939

NEW YORK

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany-Schenectady-Troy, NY MSA	657	744	921	1147	1231	Albany, Rensselaer, Saratoga, Schenectady, Schoharie
Binghamton, NY MSA	528	558	713	1017	1152	Broome, Tioga
Buffalo-Niagara Falls, NY MSA	557	591	736	941	1065	Erie, Niagara
Elmira, NY MSA	467	561	736	943	1057	Chemung
Glens Falls, NY MSA	520	666	809	1087	1241	Warren, Washington
Ithaca, NY MSA	682	836	1001	1387	1392	Tompkins
Kingston, NY MSA	743	924	1197	1569	1818	Ulster
Nassau-Suffolk, NY HMFA	1014	1285	1583	2058	2370	Nassau, Suffolk
New York, NY HMFA	1191	1243	1474	1895	2124	Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland
Poughkeepsie-Newburgh-Middletown, NY MSA	853	984	1211	1517	1618	Dutchess, Orange
Rochester, NY MSA	579	705	859	1083	1157	Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY MSA	549	613	784	1029	1129	Madison, Onondaga, Oswego
Utica-Rome, NY MSA	563	573	729	966	1084	Herkimer, Oneida
Westchester County, NY Statutory Exception Area	980	1192	1468	1877	2180	Westchester

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allegany	520	524	654	855	962	Cattaraugus	502	550	694	921	986
Cayuga	534	567	722	947	1130	Chautauqua	511	515	671	952	977
Chenango	531	534	670	950	981	Clinton	514	577	737	989	1067
Columbia	655	659	819	1062	1362	Cortland	575	584	727	939	972
Delaware	536	540	681	853	979	Essex	523	614	788	981	1216
Franklin	526	530	682	981	1085	Fulton	535	539	692	914	1047
Genesee	469	607	761	976	1077	Greene	590	668	792	1060	1170
Hamilton	535	593	703	876	1012	Jefferson	700	806	1048	1332	1504

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 35

NEW YORK continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Lewis	492	533	647	953	1000
Otsego	607	657	816	1097	1165
Schuyler	482	527	633	913	1082
Steuben	474	560	686	887	999
Wyoming	478	538	728	950	973
Montgomery	576	580	731	910	1032
St. Lawrence	485	550	699	938	1016
Seneca	492	608	721	1029	1033
Sullivan	686	691	857	1115	1518
Yates	503	508	661	902	1171

NORTH CAROLINA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anson County, NC HMFA	467	514	610	893	1080	Anson
Asheville, NC HMFA	462	655	777	997	1293	Buncombe, Henderson, Madison
Burlington, NC MSA	553	557	702	913	938	Alamance
Charlotte-Gastonia-Rock Hill, NC-SC HMFA	607	669	793	1069	1326	Cabarrus, Gaston, Mecklenburg, Union
Durham-Chapel Hill, NC HMFA	573	708	839	1082	1267	Chatham, Durham, Orange
Fayetteville, NC HMFA	580	584	747	999	1258	Cumberland
Goldsboro, NC MSA	433	452	611	797	974	Wayne
Greene County, NC HMFA	448	451	610	766	815	Greene
Greensboro-High Point, NC HMFA	516	591	701	953	1075	Guilford, Randolph
Greenville, NC HMFA	541	545	704	954	1247	Pitt
Haywood County, NC HMFA	556	560	721	1000	1277	Haywood
Hickory-Lenoir-Morganton, NC MSA	493	514	610	798	993	Alexander, Burke, Caldwell, Catawba
Hoke County, NC HMFA	486	489	626	871	1079	Hoke
Jacksonville, NC MSA	666	671	824	1159	1459	Onslow
Pender County, NC HMFA	459	462	625	921	1041	Pender
Person County, NC HMFA	442	478	647	806	927	Person
Raleigh-Cary, NC MSA	634	741	878	1137	1412	Franklin, Johnston, Wake
Rockingham County, NC HMFA	480	483	611	761	817	Rockingham
Rocky Mount, NC MSA	510	513	634	865	912	Edgecombe, Nash
*Virginia Beach-Norfolk-Newport News, VA-NC MSA	918	944	1136	1570	1976	Currituck
Wilmington, NC HMFA	615	660	816	1076	1227	Brunswick, New Hanover
Winston-Salem, NC MSA	533	554	678	978	1032	Davie, Forsyth, Stokes, Yadkin

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alleghany	493	514	610	874	877
Avery	517	520	704	1037	1041
Bertie	451	455	615	814	822
Camden	675	680	849	1057	1278
Caswell	448	451	610	873	945
Chowan	526	549	651	863	1153
Cleveland	481	484	610	846	885
Craven	451	560	758	983	1323
Davidson	457	485	610	850	961
Gates	488	491	613	815	1077
Granville	583	607	722	899	980
Harnett	554	557	754	1002	1229
Ashe	425	465	610	760	815
Beaufort	472	475	610	899	1014
Bladen	448	451	610	760	815
Carteret	577	602	714	1021	1265
Cherokee	448	451	610	806	1036
Clay	493	514	610	899	1080
Columbus	493	498	610	760	815
Dare	651	683	924	1296	1549
Duplin	482	485	610	760	891
Graham	448	451	610	899	1080
Halifax	444	505	610	795	1076
Hertford	512	535	634	790	1123

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 36

NORTH CAROLINA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hyde	631	635	793	988	1060	Iredell	590	616	730	947	1290
Jackson	499	502	642	833	1045	Jones	493	514	610	799	815
Lee	540	564	669	833	894	Lenoir	381	490	640	797	875
Lincoln	493	514	610	831	834	McDowell	448	451	610	761	998
Macon	514	517	700	872	935	Martin	493	514	610	760	815
Mitchell	448	451	610	785	918	Montgomery	479	482	610	800	916
Moore	493	507	610	894	1076	Northampton	454	457	610	814	1047
Pamlico	450	453	613	875	1072	Pasquotank	582	586	737	990	1162
Perquimans	493	514	610	899	1080	Polk	481	484	640	797	1064
Richmond	493	514	610	808	815	Robeson	465	468	610	774	939
Rowan	501	504	652	868	1001	Rutherford	493	514	610	865	1016
Sampson	363	491	610	824	947	Scotland	457	460	622	795	831
Stanly	365	465	613	847	1070	Surry	493	514	610	899	1080
Swain	543	546	739	920	1114	Transylvania	494	498	651	867	870
Tyrrell	493	514	610	781	918	Vance	399	495	670	834	977
Warren	379	464	610	899	1080	Washington	485	488	610	874	1030
Watauga	480	627	806	1130	1315	Wilkes	458	514	610	760	1019
Wilson	450	520	703	935	939	Yancey	458	461	610	767	815

NORTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bismarck, ND MSA	443	502	628	890	1050	Burleigh, Morton
Fargo, ND-MN MSA	408	495	639	942	1114	Cass
Grand Forks, ND-MN MSA	420	512	686	928	1119	Grand Forks

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	456	458	573	844	847	Barnes	471	474	601	749	803
Benson	463	483	573	844	847	Billings	456	459	574	715	778
Bottineau	421	424	573	714	766	Bowman	463	483	573	844	847
Burke	441	444	573	741	766	Cavalier	421	424	573	798	950
Dickey	463	483	573	765	777	Divide	456	458	573	798	801
Dunn	441	444	573	844	847	Eddy	463	483	573	844	847
Emmons	463	483	573	844	956	Foster	445	448	573	843	1015
Golden Valley	463	483	573	798	801	Grant	421	424	573	798	801
Griggs	463	483	573	844	1015	Hettinger	463	483	573	844	847
Kidder	427	430	573	828	831	LaMoure	431	434	587	865	868
Logan	456	458	573	798	801	McHenry	447	450	573	752	892
McIntosh	508	511	692	862	926	McKenzie	421	424	573	844	847
McLean	458	461	573	781	822	Mercer	463	483	573	844	847
Mountrail	496	518	614	765	1071	Nelson	463	483	573	798	801
Oliver	456	458	573	798	801	Pembina	463	483	573	714	766

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 37

NORTH DAKOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pierce	463	483	573	844	847	Ramsey	447	450	573	786	789
Ransom	440	443	594	875	878	Renville	421	424	573	844	847
Richland	421	424	573	840	907	Rolette	463	483	573	844	923
Sargent	421	424	573	826	902	Sheridan	463	472	573	798	801
Sioux	456	458	573	790	793	Slope	456	459	574	800	803
Stark	532	555	658	913	916	Steele	460	463	573	759	777
Stutsman	445	448	590	735	968	Towner	421	424	573	798	936
Traill	424	427	578	737	774	Walsh	463	483	573	774	867
Ward	456	486	641	945	983	Wells	463	483	573	844	908
Williams	455	496	605	753	809						

OHIO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Akron, OH MSA	501	582	787	1013	1052	Portage, Summit
Brown County, OH HMFA	366	473	615	872	932	Brown
Canton-Massillon, OH MSA	394	493	642	843	906	Carroll, Stark
Cincinnati-Middleton, OH-KY-IN HMFA	445	557	740	1025	1129	Butler, Clermont, Hamilton, Warren
Cleveland-Elyria-Mentor, OH MSA	487	585	741	993	1025	Cuyahoga, Geauga, Lake, Lorain, Medina
Columbus, OH HMFA	484	601	782	1008	1166	Delaware, Fairfield, Franklin, Licking, Madison, Morrow, Pickaway
Dayton, OH HMFA	501	563	738	988	1107	Greene, Miami, Montgomery
Huntington-Ashland, WV-KY-OH MSA	373	510	627	828	1017	Lawrence
Lima, OH MSA	463	467	625	778	847	Allen
Mansfield, OH MSA	460	463	615	903	906	Richland
Parkersburg-Marietta-Vienna, WV-OH MSA	458	494	645	866	952	Washington
Preble County, OH HMFA	403	500	677	902	906	Preble
Sandusky, OH MSA	405	551	680	886	909	Erie
Springfield, OH MSA	450	507	661	871	955	Clark
Steubenville-Weirton, OH-WV MSA	433	500	615	824	944	Jefferson
Toledo, OH MSA	406	521	683	921	974	Fulton, Lucas, Ottawa, Wood
Union County, OH HMFA	493	597	797	993	1065	Union
Wheeling, WV-OH MSA	467	494	615	789	822	Belmont
Youngstown-Warren-Boardman, OH HMFA	442	500	619	816	862	Mahoning, Trumbull

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	418	486	615	779	822	Ashland	371	489	623	882	922
Ashtabula	440	512	667	903	908	Athens	546	570	676	851	904
Auglaize	396	484	655	900	1076	Champaign	400	503	615	906	978
Clinton	449	490	663	866	1034	Columbiana	392	476	615	814	892
Coshocton	418	482	615	847	868	Crawford	388	467	632	892	895
Darke	450	507	615	889	999	Defiance	474	477	615	810	1047
Fayette	515	519	702	874	1037	Gallia	418	495	615	811	916
Guernsey	366	481	615	768	858	Hancock	422	539	691	1009	1043
Hardin	403	480	615	850	1024	Harrison	366	512	615	875	878
Henry	418	507	615	893	1089	Highland	398	496	652	812	871

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 38

OHIO continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hocking	418	481	615	817	822	Holmes	418	476	615	774	822
Huron	366	465	615	863	974	Jackson	497	514	615	812	822
Knox	496	500	626	873	938	Logan	470	473	640	849	980
Marion	493	560	719	953	1055	Meigs	418	464	615	800	933
Mercer	418	455	615	851	854	Monroe	418	519	615	766	822
Morgan	456	501	615	906	909	Muskingum	366	501	615	881	969
Noble	479	482	615	847	902	Paulding	418	487	615	786	822
Perry	418	455	615	806	861	Pike	497	519	615	906	1069
Putnam	445	496	655	816	875	Ross	446	487	659	831	1068
Sandusky	418	505	615	812	1089	Scioto	420	519	615	766	904
Seneca	474	477	615	856	865	Shelby	419	497	672	837	898
Tuscarawas	371	474	624	779	834	Van Wert	452	462	615	803	847
Vinton	418	519	615	872	968	Wayne	403	504	641	827	857
Williams	461	464	620	772	906	Wyandot	437	519	615	888	1060

OKLAHOMA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fort Smith, AR-OK HMFA	502	505	662	882	994	Sequoyah
Grady County, OK HMFA	410	450	609	820	823	Grady
Lawton, OK MSA	479	489	662	916	1082	Comanche
Le Flore County, OK HMFA	466	469	591	776	963	Le Flore
Lincoln County, OK HMFA	405	476	591	805	808	Lincoln
Oklahoma City, OK HMFA	503	584	748	1024	1229	Canadian, Cleveland, Logan, McClain, Oklahoma
Okmulgee County, OK HMFA	352	498	591	736	790	Okmulgee
Pawnee County, OK HMFA	373	498	591	740	977	Pawnee
Tulsa, OK HMFA	455	553	721	978	1090	Creek, Osage, Rogers, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	416	437	591	743	790	Alfalfa	416	437	591	740	913
Atoka	416	437	591	736	790	Beaver	416	453	591	757	891
Beckham	496	500	676	842	1019	Blaine	416	437	591	871	874
Bryan	464	467	596	825	896	Caddo	437	464	591	736	1047
Carter	378	449	607	756	846	Cherokee	352	491	591	736	979
Choctaw	416	444	591	871	1016	Cimarron	418	501	594	750	895
Coal	416	437	591	867	891	Cotton	416	437	591	736	790
Craig	416	498	591	785	846	Custer	477	489	591	871	874
Delaware	450	453	591	833	1047	Dewey	447	486	635	791	888
Ellis	416	498	591	736	891	Garfield	409	514	610	813	911
Garvin	380	445	602	750	839	Grant	416	498	591	736	790
Greer	416	486	591	736	891	Harmon	416	453	591	757	889
Harper	416	453	591	759	891	Haskell	416	437	591	816	819
Hughes	416	498	591	759	790	Jackson	423	451	591	858	1047
Jefferson	416	437	591	736	790	Johnston	416	437	591	736	790

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OKLAHOMA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Kay	465	468	633	819	1010	Kingfisher	445	467	632	814	1089
Kiowa	435	438	591	840	891	Latimer	416	471	591	854	857
Love	416	498	591	822	825	McCurtain	416	437	591	804	990
McIntosh	399	437	591	736	1047	Major	416	453	591	871	1047
Marshall	416	437	591	813	859	Mayes	352	437	591	813	1047
Murray	449	472	638	795	853	Muskogee	411	501	658	920	960
Noble	416	498	591	799	862	Nowata	418	476	594	740	895
Okfuskee	416	495	591	823	826	Ottawa	437	440	595	741	854
Payne	396	488	636	927	1126	Pittsburg	383	490	644	802	861
Pontotoc	416	498	591	793	1012	Pottawatomie	465	468	633	801	848
Pushmataha	416	437	591	778	871	Roger Mills	416	453	591	786	790
Seminole	391	469	591	868	902	Stephens	416	437	591	828	1047
Texas	427	511	606	755	1073	Tillman	416	444	591	767	790
Washington	371	516	624	911	1087	Washita	416	498	591	871	1047
Woods	416	437	591	736	794	Woodward	477	498	591	871	1047

OREGON

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bend, OR MSA	557	645	803	1147	1373	Deschutes
Corvallis, OR MSA	450	578	757	1115	1341	Benton
Eugene-Springfield, OR MSA	488	611	821	1182	1387	Lane
Medford, OR MSA	602	608	823	1213	1367	Jackson
Portland-Vancouver-Hillsboro, OR-WA MSA	659	766	912	1344	1615	Clackamas, Columbia, Multnomah, Washington, Yamhill
Salem, OR MSA	530	560	756	1114	1339	Marion, Polk

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Baker	477	493	627	803	881	Clatsop	543	590	797	1136	1412
Coos	460	524	684	969	1193	Crook	416	537	663	977	1135
Curry	515	591	799	1175	1226	Douglas	476	562	740	1090	1311
Gilliam	404	475	626	903	1053	Grant	404	487	626	922	1109
Harney	404	463	626	780	837	Hood River	528	552	654	964	1066
Jefferson	390	497	626	922	926	Josephine	424	541	713	1031	1126
Klamath	422	555	684	986	1193	Lake	404	528	626	780	1109
Lincoln	553	590	738	1087	1091	Linn	469	543	734	1069	1172
Malheur	432	481	626	882	942	Morrow	440	504	682	871	1056
Sherman	410	536	636	836	1070	Tillamook	453	571	714	988	1260
Umatilla	374	471	629	827	1114	Union	391	486	657	899	1134
Wallowa	434	539	673	838	949	Wasco	506	557	705	1032	1146
Wheeler	404	463	626	780	1053						

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PENNSYLVANIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Allentown-Bethlehem-Easton, PA HMFA	631	724	915	1145	1299	Carbon, Lehigh, Northampton
Altoona, PA MSA	479	510	611	804	897	Blair
Armstrong County, PA HMFA	363	451	610	771	839	Armstrong
Erie, PA MSA	443	540	681	851	1016	Erie
Harrisburg-Carlisle, PA MSA	632	704	899	1160	1201	Cumberland, Dauphin, Perry
Johnstown, PA MSA	439	514	610	810	815	Cambria
Lancaster, PA MSA	605	689	881	1135	1177	Lancaster
Lebanon, PA MSA	489	638	822	1056	1166	Lebanon
*Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	788	929	1119	1394	1496	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pike County, PA HMFA	809	814	1035	1301	1649	Pike
Pittsburgh, PA HMFA	540	619	772	969	1032	Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland
Reading, PA MSA	532	659	873	1087	1167	Berks
Scranton--Wilkes-Barre, PA MSA	501	597	743	943	1059	Lackawanna, Luzerne, Wyoming
Sharon, PA HMFA	505	545	701	885	937	Mercer
State College, PA MSA	716	784	964	1263	1310	Centre
Williamsport, PA MSA	524	591	748	990	1014	Lycoming
York-Hanover, PA MSA	489	620	822	1062	1134	York

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	636	640	827	1099	1201	Bedford	493	507	610	790	815
Bradford	455	461	610	818	821	Cameron	443	514	610	883	1080
Clarion	443	514	610	761	969	Clearfield	431	474	610	817	820
Clinton	494	497	673	874	1092	Columbia	567	571	725	933	1257
Crawford	443	493	610	807	884	Elk	443	493	610	760	815
Forest	493	514	610	899	1080	Franklin	533	620	797	1060	1330
Fulton	443	514	610	763	815	Greene	443	499	610	760	815
Huntingdon	488	509	610	870	873	Indiana	493	514	610	821	824
Jefferson	365	501	610	760	839	Juniata	396	505	610	866	869
Lawrence	427	575	717	932	958	McKean	441	489	611	773	817
Mifflin	472	475	610	766	815	Monroe	688	815	1066	1480	1625
Montour	459	533	632	837	845	Northumberland	493	503	610	799	909
Potter	443	514	610	792	949	Schuylkill	369	476	620	850	856
Snyder	494	515	611	788	817	Somerset	427	502	610	760	859
Sullivan	488	491	610	843	846	Susquehanna	493	514	610	799	933
Tioga	369	521	618	770	940	Union	483	498	665	911	1045
Venango	453	456	610	760	815	Warren	493	507	610	766	895
Wayne	407	558	661	974	977						

RHODE ISLAND

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Newport-Middleton-Portsmouth, RI HMFA	908	914	1135	1672	2010	Newport County towns of Middletown town, Newport city, Portsmouth town
Providence-Fall River, RI-MA HMFA	675	762	930	1158	1386	Bristol County towns of Barrington town, Bristol town, Warren town

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RHODE ISLAND continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Kent County towns of Coventry town, East Greenwich town, Warwick city, West Greenwich town, West Warwick town Newport County towns of Jamestown town, Little Compton town, Tiverton town Providence County towns of Burrillville town, Central Falls city, Cranston city, Cumberland town, East Providence city, Foster town, Glocester town, Johnston town, Lincoln town, North Providence town, North Smithfield town, Pawtucket city, Providence city, Scituate town, Smithfield town, Woonsocket city Washington County towns of Charlestown town, Exeter town, Narragansett town, North Kingstown town, Richmond town, South Kingstown town
Westerly-Hopkinton-New Shoreham, RI HMFA.....	588	731	989	1244	1557	Washington County towns of Hopkinton town, New Shoreham town, Westerly town

SOUTH CAROLINA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anderson, SC MSA.....	521	529	645	883	913	Anderson
Augusta-Richmond County, GA-SC MSA.....	549	619	738	1004	1243	Aiken, Edgefield
Charleston-North Charleston-Summerville, SC MSA...	710	740	879	1138	1510	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Rock Hill, NC-SC HMFA.....	607	669	793	1069	1326	York
Columbia, SC HMFA.....	595	645	765	1009	1279	Calhoun, Fairfield, Lexington, Richland, Saluda
Darlington County, SC HMFA.....	498	521	625	778	943	Darlington
Florence, SC HMFA.....	547	552	687	856	918	Florence
Greenville-Mauldin-Easley, SC MSA.....	478	603	715	948	1123	Greenville, Pickens
Kershaw County, SC HMFA.....	486	527	625	836	1061	Kershaw
Laurens County, SC HMFA.....	516	683	868	1118	1246	Laurens
Myrtle Beach-North Myrtle Beach-Conway, SC MSA....	658	662	823	1025	1203	Horry
Spartanburg, SC MSA.....	412	550	652	871	979	Spartanburg
Sumter, SC MSA.....	484	487	625	778	965	Sumter

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Abbeville.....	465	468	625	849	1107	Allendale.....	499	502	625	778	1107
Bamberg.....	495	498	674	839	1194	Barnwell.....	459	462	625	881	885
Beaufort.....	624	758	899	1140	1377	Cherokee.....	505	527	625	845	1107
Chester.....	505	527	625	816	958	Chesterfield.....	505	527	625	825	1029
Clarendon.....	459	462	625	778	1049	Colleton.....	569	573	722	924	965
Dillon.....	459	462	625	892	895	Georgetown.....	559	562	761	1010	1272
Greenwood.....	537	540	702	926	969	Hampton.....	476	479	648	816	866
Jasper.....	506	583	789	1055	1152	Lancaster.....	492	495	625	860	921
Lee.....	505	527	625	921	1107	McCormick.....	488	491	625	921	924
Marion.....	505	527	625	786	920	Marlboro.....	459	462	625	778	843
Newberry.....	507	510	690	888	1200	Oconee.....	529	532	673	838	1052
Orangeburg.....	379	495	625	778	1056	Union.....	475	478	647	855	865

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 42

SOUTH CAROLINA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Williamsburg	372	527	625	802	872

SOUTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Meade County, SD HMFA	441	563	697	983	986	Meade
Rapid City, SD HMFA	493	583	779	1052	1380	Pennington
Sioux City, IA-NE-SD MSA	391	511	657	863	969	Union
Sioux Falls, SD MSA	461	541	681	958	1127	Lincoln, McCook, Minnehaha, Turner

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aurora	455	460	623	851	854	Beadle	449	454	614	824	828
Bennett	449	518	614	905	1005	Bon Homme	449	495	614	861	939
Brookings	403	469	635	936	1125	Brown	400	454	614	781	1087
Brule	449	518	614	847	850	Buffalo	498	503	681	848	910
Butte	449	502	614	905	908	Campbell	464	496	635	876	879
Charles Mix	449	518	614	796	821	Clark	449	454	614	765	821
Clay	468	499	641	945	1135	Codington	402	486	632	815	845
Corson	449	455	614	874	877	Custer	527	533	721	898	1195
Davison	449	482	652	858	871	Day	449	454	614	905	908
Deuel	449	518	614	888	891	Dewey	449	454	614	854	865
Douglas	459	464	628	782	839	Edmunds	503	509	689	1015	1019
Fall River	525	531	718	985	988	Faulk	449	518	614	847	850
Grant	449	483	614	850	1055	Gregory	449	518	614	905	908
Haakon	449	455	614	905	908	Hamlin	487	490	614	905	908
Hand	449	467	614	895	898	Hanson	449	455	614	765	821
Harding	449	455	614	847	850	Hughes	479	484	655	965	1160
Hutchinson	449	512	614	820	1087	Hyde	449	455	614	905	908
Jackson	449	518	614	905	908	Jerauld	449	482	614	905	908
Jones	449	455	614	905	908	Kingsbury	449	473	614	905	986
Lake	449	518	614	905	908	Lawrence	438	510	643	916	919
Lyman	449	496	614	905	1087	McPherson	449	454	614	847	850
Marshall	449	454	614	905	908	Mellette	449	455	614	905	908
Miner	449	518	614	847	850	Moody	449	454	614	902	905
Perkins	464	469	635	791	849	Potter	449	518	614	765	821
Roberts	449	514	614	857	860	Sanborn	449	518	614	905	989
Shannon	449	500	614	817	845	Spink	496	518	614	905	908
Stanley	509	515	696	1026	1074	Sully	490	496	670	834	895
Todd	449	455	614	765	821	Tripp	449	454	614	832	835
Walworth	449	518	614	905	908	Yankton	443	459	621	867	1035
Ziebach	449	477	614	897	1019						

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TENNESSEE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Chattanooga, TN-GA MSA	484	584	727	989	1114	Hamilton, Marion, Sequatchie
Clarksville, TN-KY HMFA	473	540	704	933	1011	Montgomery
Cleveland, TN MSA	503	540	731	940	1211	Bradley, Polk
Hickman County, TN HMFA	414	423	572	843	991	Hickman
Jackson, TN MSA	450	592	756	1008	1101	Chester, Madison
Johnson City, TN MSA	439	521	654	894	1122	Carter, Unicoi, Washington
Kingsport-Bristol-Bristol, TN-VA MSA	439	487	626	819	927	Hawkins, Sullivan
Knoxville, TN MSA	471	601	741	990	1112	Anderson, Blount, Knox, Loudon, Union
Macon County, TN HMFA	413	421	570	710	762	Macon
Memphis, TN-MS-AR HMFA	567	648	768	1049	1170	Fayette, Shelby, Tipton
Morristown, TN MSA	421	465	611	819	958	Grainger, Hamblen, Jefferson
Nashville-Davidson--Murfreesboro--Franklin, TN MSA	593	684	819	1089	1168	Cannon, Cheatham, Davidson, Dickson, Robertson, Rutherford, Sumner, Trousdale, Williamson, Wilson
Smith County, TN HMFA	404	424	570	773	795	Smith
Stewart County, TN HMFA	413	472	614	843	882	Stewart

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bedford	417	517	613	864	1023	Benton	387	421	570	840	1010
Bledsoe	387	435	570	710	806	Campbell	387	457	570	748	1010
Carroll	387	421	570	710	871	Claiborne	352	476	570	710	1010
Clay	387	421	570	840	844	Cocke	387	468	570	824	827
Coffee	393	474	629	863	919	Crockett	387	481	570	720	877
Cumberland	400	492	588	736	786	Decatur	387	481	570	743	951
DeKalb	387	421	570	832	835	Dyer	451	454	614	828	831
Fentress	387	421	570	726	795	Franklin	405	441	596	796	799
Gibson	457	459	570	780	783	Giles	399	495	587	842	845
Greene	387	476	570	757	768	Grundy	387	439	570	840	843
Hancock	387	429	570	782	1010	Hardeman	387	481	570	717	935
Hardin	400	435	589	737	1043	Haywood	376	533	632	787	845
Henderson	421	458	620	772	829	Henry	394	488	579	721	1025
Houston	339	421	570	719	762	Humphreys	387	481	570	746	762
Jackson	387	421	570	840	843	Johnson	389	424	573	714	766
Lake	445	448	570	840	917	Lauderdale	387	421	570	808	1000
Lawrence	387	440	570	710	787	Lewis	387	481	570	840	1010
Lincoln	387	435	570	710	958	McMinn	356	499	599	788	901
McNairy	362	421	570	710	767	Marshall	455	494	669	852	905
Maury	476	480	637	855	977	Meigs	387	435	570	840	843
Monroe	387	432	570	763	806	Moore	387	435	570	764	806
Morgan	402	466	591	736	906	Obion	372	421	570	711	762
Overton	387	424	570	840	1010	Perry	387	481	570	710	806
Pickett	387	435	570	710	806	Putnam	405	458	597	854	937
Rhea	460	465	570	762	785	Roane	415	452	611	834	837
Scott	403	481	570	801	1010	Sevier	461	508	678	844	1088
Van Buren	387	435	570	710	806	Warren	387	421	570	822	1010

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 44

TENNESSEE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Wayne	387	421	570	831	1010
White	402	437	591	767	790
Weakley	426	450	570	796	800

TEXAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Abilene, TX MSA	526	604	814	1031	1314	Callahan, Jones, Taylor
Amarillo, TX MSA	488	576	757	1033	1081	Armstrong, Carson, Potter, Randall
Aransas County, TX HMFA	457	545	738	1087	1150	Aransas
Atascosa County, TX HMFA	419	538	705	944	1073	Atascosa
Austin County, TX HMFA	467	528	694	1023	1171	Austin
*Austin-Round Rock-San Marcos, TX MSA	681	834	1050	1421	1723	Bastrop, Caldwell, Hays, Travis, Williamson
Beaumont-Port Arthur, TX MSA	513	643	797	1045	1065	Hardin, Jefferson, Orange
Brazoria County, TX HMFA	652	656	843	1162	1434	Brazoria
Brownsville-Harlingen, TX MSA	443	524	653	855	950	Cameron
Calhoun County, TX HMFA	499	502	679	848	1066	Calhoun
College Station-Bryan, TX MSA	674	679	837	1210	1451	Brazos, Burleson, Robertson
Corpus Christi, TX HMFA	551	661	847	1122	1319	Nueces, San Patricio
Dallas, TX HMFA	585	701	887	1183	1429	Collin, Dallas, Delta, Denton, Ellis, Hunt, Kaufman, Rockwall
El Paso, TX MSA	523	572	706	1001	1200	El Paso
*Fort Worth-Arlington, TX HMFA	610	714	924	1239	1475	Johnson, Parker, Tarrant
*Houston-Baytown-Sugar Land, TX HMFA	636	765	945	1290	1595	Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, Waller
Kendall County, TX HMFA	576	769	912	1344	1615	Kendall
Killeen-Temple-Fort Hood, TX HMFA	580	595	792	1167	1324	Bell, Coryell
Lampasas County, TX HMFA	470	541	642	946	1057	Lampasas
Laredo, TX MSA	543	586	736	967	1001	Webb
Longview, TX HMFA	637	642	788	981	1261	Gregg, Upshur
Lubbock, TX MSA	482	562	738	1077	1241	Crosby, Lubbock
McAllen-Edinburg-Mission, TX MSA	441	501	652	812	991	Hidalgo
Medina County, TX HMFA	459	511	692	914	990	Medina
Midland, TX MSA	557	719	937	1167	1295	Midland
Odessa, TX MSA	487	564	726	924	970	Ector
Rusk County, TX HMFA	501	505	681	900	1089	Rusk
San Angelo, TX MSA	460	537	717	995	1066	Irion, Tom Green
San Antonio-New Braunfels, TX HMFA	550	693	870	1134	1244	Bandera, Bexar, Comal, Guadalupe, Wilson
Sherman-Denison, TX MSA	499	626	809	1089	1386	Grayson
Texarkana, TX-Texarkana, AR MSA	447	579	712	887	952	Bowie
Tyler, TX MSA	567	665	789	1047	1054	Smith
Victoria, TX HMFA	535	570	721	898	1150	Goliad, Victoria
Waco, TX MSA	477	560	758	993	1110	McLennan
Wichita Falls, TX MSA	411	552	690	977	1119	Archer, Clay, Wichita
Wise County, TX HMFA	478	594	803	1000	1073	Wise

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Anderson	491	585	693	905	1227
Angelina	616	673	815	1066	1201
Baylor	446	466	630	785	914
Andrews	466	510	658	970	973
Bailey	448	492	633	788	918
Bee	519	531	642	946	1040

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 45

TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Blanco	607	634	858	1069	1147
Bosque	443	482	626	919	1035
Briscoe	443	486	626	835	908
Brown	416	517	699	897	1238
Camp	443	528	626	809	923
Castro	447	533	632	787	911
Childress	498	594	704	877	1021
Coke	372	463	626	780	908
Collingsworth	443	486	626	922	926
Comanche	443	463	626	780	908
Cooke	567	592	801	1046	1070
Crane	627	688	886	1103	1285
Culberson	443	486	626	896	908
Dawson	443	521	626	922	926
DeWitt	460	463	626	780	908
Dimmit	443	528	626	780	837
Duval	462	550	652	812	946
Edwards	473	519	668	832	969
Falls	421	463	626	864	867
Fayette	516	539	729	920	974
Floyd	443	528	626	922	1079
Franklin	443	463	626	922	1109
Frio	443	528	626	922	1109
Garza	443	528	626	922	926
Glasscock	471	517	665	828	965
Gray	450	496	636	798	1010
Hale	457	491	626	852	1039
Hamilton	443	463	626	922	926
Hardeman	559	613	789	983	1145
Hartley	443	463	626	869	908
Hemphill	516	601	729	908	1057
Hill	500	522	706	958	1019
Hood	642	647	875	1171	1239
Houston	376	467	632	903	906
Hudspeth	443	486	626	922	926
Jack	457	545	646	805	1144
Jasper	479	526	677	843	905
Jim Hogg	443	528	626	794	908
Karnes	506	528	626	922	1109
Kent	546	599	771	960	1118
Kimble	461	481	651	811	870
Kinney	443	479	626	922	926

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Borden	471	517	665	828	965
Brewster	560	564	763	950	1107
Brooks	443	528	626	922	926
Burnet	476	497	672	990	1190
Cass	443	491	626	862	1109
Cherokee	443	521	626	813	874
Cochran	443	463	626	922	926
Coleman	443	463	626	922	1109
Colorado	438	494	669	960	1184
Concho	733	766	1036	1290	1503
Cottle	471	540	665	980	983
Crockett	455	475	643	948	951
Dallam	485	578	685	1000	1004
Deaf Smith	462	482	652	908	912
Dickens	461	506	651	811	944
Donley	459	480	649	808	941
Eastland	460	463	626	780	1101
Erath	533	537	705	947	950
Fannin	400	497	673	925	1090
Fisher	443	463	626	922	926
Foard	443	486	626	922	926
Freestone	460	571	773	963	1121
Gaines	443	463	626	880	937
Gillespie	634	662	895	1115	1585
Gonzales	460	463	626	922	928
Grimes	452	511	639	852	927
Hall	418	486	626	922	926
Hansford	447	532	631	834	938
Harrison	435	553	690	905	922
Haskell	443	486	626	922	926
Henderson	650	657	805	1055	1302
Hockley	518	543	732	912	978
Hopkins	517	520	704	903	1136
Howard	402	499	675	875	1002
Hutchinson	474	528	670	850	895
Jackson	406	536	682	924	1208
Jeff Davis	443	528	626	835	908
Jim Wells	527	572	745	928	996
Kenedy	545	598	770	1027	1117
Kerr	643	647	819	1158	1162
King	471	517	665	828	965
Kleberg	552	556	752	1032	1332

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TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Knox	443	486	626	780	837
Lamb	443	528	626	836	1008
Lavaca	397	463	626	898	908
Leon	447	479	631	820	985
Lipscomb	489	511	691	861	923
Llano	450	469	635	936	939
Lynn	443	528	626	922	926
McMullen	471	517	665	980	983
Marion	479	500	676	842	981
Mason	443	486	626	922	926
Maverick	414	528	626	890	908
Milam	443	494	626	922	1109
Mitchell	443	528	626	900	1109
Moore	536	539	665	828	1103
Motley	443	486	626	780	908
Navarro	568	572	750	941	1007
Nolan	443	528	626	922	1109
Oldham	485	578	685	1009	1213
Panola	443	463	626	799	1109
Pecos	450	517	626	828	1109
Presidio	443	528	626	922	926
Reagan	469	538	663	827	962
Red River	443	463	626	820	1109
Refugio	476	497	673	963	976
Runnels	443	528	626	922	1109
San Augustine	460	463	626	780	1081
Schleicher	469	489	662	824	960
Shackelford	443	486	626	922	926
Sherman	443	528	626	865	908
Starr	443	463	626	780	998
Sterling	509	606	719	1031	1043
Sutton	443	510	626	801	908
Terrell	469	558	662	883	960
Throckmorton	443	486	626	922	926
Trinity	443	522	626	922	1109
Upton	443	528	626	849	908
Val Verde	476	486	657	952	955
Walker	495	605	717	974	978
Washington	592	698	835	1063	1116
Wheeler	443	528	626	900	908
Willacy	443	463	626	830	1109
Wood	493	497	672	903	1146

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Lamar	446	531	630	918	1092
La Salle	443	463	626	922	926
Lee	450	536	635	936	939
Limestone	499	531	705	993	1001
Live Oak	513	611	725	903	969
Loving	471	517	665	887	965
McCulloch	443	463	626	910	914
Madison	443	528	626	922	926
Martin	522	622	737	918	1069
Matagorda	415	515	697	944	1234
Menard	443	467	626	849	908
Mills	443	488	626	922	1109
Montague	469	489	662	932	935
Morris	443	470	626	897	908
Nacogdoches	593	614	771	960	1030
Newton	443	519	626	780	837
Ochiltree	443	528	626	882	908
Palo Pinto	484	551	745	998	1047
Parmer	443	528	626	821	1059
Polk	455	466	626	917	1055
Rains	443	463	626	922	926
Real	443	463	626	922	926
Reeves	443	498	626	922	1109
Roberts	471	517	665	828	965
Sabine	443	528	626	922	926
San Saba	443	463	626	851	1109
Scurry	460	463	626	922	926
Shelby	443	463	626	780	908
Somervell	443	528	626	922	1109
Stephens	467	488	660	862	957
Stonewall	443	497	626	915	918
Swisher	443	463	626	841	908
Terry	443	478	626	802	908
Titus	377	495	633	793	911
Tyler	461	504	651	959	963
Uvalde	510	562	666	915	966
Van Zandt	517	540	730	945	976
Ward	443	528	626	780	837
Wharton	430	534	723	955	966
Wilbarger	496	517	700	951	1015
Winkler	457	477	645	950	954
Yoakum	476	523	673	911	976

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 47

TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Young	428	531	719	922	961
Zavala	443	528	626	922	926
Zapata	443	463	626	780	908

UTAH

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Logan, UT-ID MSA	473	476	631	908	1108	Cache
Ogden-Clearfield, UT MSA	473	579	759	1070	1285	Davis, Morgan, Weber
Provo-Orem, UT MSA	483	617	737	1066	1305	Juab, Utah
Salt Lake City, UT HMFA	564	677	839	1197	1408	Salt Lake
St. George, UT MSA	518	595	782	1073	1378	Washington
Summit County, UT HMFA	619	681	921	1277	1282	Summit
Tooele County, UT HMFA	539	569	758	979	1242	Tooele

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beaver	467	519	615	850	853
Carbon	466	469	615	766	871
Duchesne	486	540	640	943	1134
Garfield	479	482	648	807	938
Iron	435	543	644	907	1141
Millard	467	519	615	906	1065
Rich	699	776	920	1146	1436
Sanpete	464	467	615	766	822
Uintah	607	611	827	1117	1294
Wayne	467	519	615	874	986
Box Elder	467	519	615	906	1089
Daggett	602	669	793	988	1238
Emery	467	519	615	766	923
Grand	534	593	703	1036	1039
Kane	467	519	615	906	909
Piute	617	685	812	1011	1268
San Juan	467	519	615	830	833
Sevier	467	519	615	795	951
Wasatch	645	717	850	1253	1257

VERMONT

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Burlington-South Burlington, VT MSA	726	788	1029	1289	1513	Chittenden County towns of Bolton town, Buels gore, Burlington city, Charlotte town, Colchester town, Essex town, Hinesburg town, Huntington town, Jericho town, Milton town, Richmond town, St. George town, Shelburne town, South Burlington city, Underhill town, Westford town, Williston town, Winooski city Franklin County towns of Bakersfield town, Berkshire town, Enosburg town, Fairfax town, Fairfield town, Fletcher town, Franklin town, Georgia town, Highgate town, Montgomery town, Richford town, St. Albans city, St. Albans town, Sheldon town, Swanton town Grand Isle County towns of Alburg town, Grand Isle town, Isle La Motte town, North Hero town, South Hero town

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 48

VERMONT continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Addison County, VT	742	807	957	1327	1604	Addison town, Bridport town, Bristol town, Cornwall town, Ferrisburgh town, Goshen town, Granville town, Hancock town, Leicester town, Lincoln town, Middlebury town, Monkton town, New Haven town, Orwell town, Panton town, Ripton town, Salisbury town, Shoreham town, Starksboro town, Vergennes city, Waltham town, Weybridge town, Whiting town
Bennington County, VT	579	749	939	1187	1322	Arlington town, Bennington town, Dorset town, Glastenbury town, Landgrove town, Manchester town, Peru town, Pownal town, Readsboro town, Rupert town, Sandgate town, Searsburg town, Shaftsbury town, Stamford town, Sunderland town, Winhall town, Woodford town
Caledonia County, VT	588	622	737	918	1122	Barnet town, Burke town, Danville town, Groton town, Hardwick town, Kirby town, Lyndon town, Newark town, Peacham town, Ryegate town, St. Johnsbury town, Sheffield town, Stannard town, Sutton town, Walden town, Waterford town, Wheelock town
Essex County, VT	577	636	754	939	1207	Averill town, Avery's gore, Bloomfield town, Brighton town, Brunswick town, Canaan town, Concord town, East Haven town, Ferdinand town, Granby town, Guildhall town, Lemington town, Lewis town, Lunenburg town, Maidstone town, Norton town, Victory town, Warner's grant, Warren's gore
Lamoille County, VT	659	796	992	1442	1746	Belvidere town, Cambridge town, Eden town, Elmore town, Hyde Park town, Johnson town, Morristown town, Stowe town, Waterville town, Wolcott town
Orange County, VT	559	785	940	1171	1665	Bradford town, Braintree town, Brookfield town, Chelsea town, Corinth town, Fairlee town, Newbury town, Orange town, Randolph town, Strafford town, Thetford town, Topsham town, Tunbridge town, Vershire town, Washington town, West Fairlee town, Williamstown town
Orleans County, VT	612	634	758	949	1028	Albany town, Barton town, Brownington town, Charleston town, Coventry town, Craftsbury town, Derby town, Glover town, Greensboro town, Holland town, Irasburg town, Jay town, Lowell town, Morgan town, Newport city, Newport town, Troy town, Westfield town, Westmore town
Rutland County, VT	645	712	902	1123	1370	Benson town, Brandon town, Castleton town, Chittenden town, Clarendon town, Danby town, Fair Haven town, Hubbardton town, Ira town, Killington town, Mendon town, Middletown Springs town, Mount Holly town, Mount Tabor town, Pawlet town, Pittsfield town, Pittsford town, Poultney town, Proctor town, Rutland city, Rutland town, Shrewsbury town, Sudbury town, Tinmouth town, Wallingford town, Wells town, West Haven town, West Rutland town
Washington County, VT	775	780	967	1227	1534	Barre city, Barre town, Berlin town, Cabot town, Calais town, Duxbury town, East Montpelier town, Fayston town, Marshfield town, Middlesex town, Montpelier city, Moretown town, Northfield town, Plainfield town, Roxbury town, Waitsfield town, Warren town, Waterbury town, Woodbury town, Worcester town
Windham County, VT	644	724	931	1178	1483	Athens town, Brattleboro town, Brookline town, Dover town,

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 49

VERMONT continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Dummerston town, Grafton town, Guilford town, Halifax town, Jamaica town, Londonderry town, Marlboro town, Newfane town, Putney town, Rockingham town, Somerset town, Stratton town, Townshend town, Vernon town, Wardsboro town, Westminster town, Whitingham town, Wilmington town, Windham town
Windsor County, VT	784	789	1024	1297	1424	Andover town, Baltimore town, Barnard town, Bethel town, Bridgewater town, Cavendish town, Chester town, Hartford town, Hartland town, Ludlow town, Norwich town, Plymouth town, Pomfret town, Reading town, Rochester town, Royalton town, Sharon town, Springfield town, Stockbridge town, Weathersfield town, Weston town, West Windsor town, Windsor town, Woodstock town

VIRGINIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Blacksburg-Christiansburg-Radford, VA HMFA	550	645	765	1071	1355	Montgomery, Radford city
Charlottesville, VA MSA	701	927	1099	1398	1586	Albemarle, Fluvanna, Greene, Nelson, Charlottesville city
Danville, VA MSA	401	510	626	887	890	Pittsylvania, Danville city
Franklin County, VA HMFA	441	504	637	813	966	Franklin
Giles County, VA HMFA	478	528	626	913	1036	Giles
Harrisonburg, VA MSA	565	568	741	941	1312	Rockingham, Harrisonburg city
Kingsport-Bristol-Bristol, TN-VA MSA	439	487	626	819	927	Scott, Washington, Bristol city
Louisa County, VA HMFA	579	608	721	1062	1066	Louisa
Lynchburg, VA MSA	544	595	726	929	1071	Amherst, Appomattox, Bedford, Campbell, Bedford city, Lynchburg city
Pulaski County, VA HMFA	509	531	630	803	995	Pulaski
*Richmond, VA HMFA	786	826	979	1287	1560	Amelia, Caroline, Charles, Chesterfield, Cumberland, Dinwiddie, Goochland, Hanover, Henrico, King and Queen, King William, New Kent, Powhatan, Prince George, Sussex, Colonial Heights city, Hopewell city, Petersburg city, Richmond city
Roanoke, VA HMFA	529	613	764	1001	1134	Botetourt, Craig, Roanoke, Roanoke city, Salem city
*Virginia Beach-Norfolk-Newport News, VA-NC MSA	918	944	1136	1570	1976	Gloucester, Isle of Wight, James, Mathews, Surry, York, Chesapeake city, Hampton city, Newport News city, Norfolk city, Poquoson city, Portsmouth city, Suffolk city, Virginia Beach city, Williamsburg city
Warren County, VA HMFA	661	666	886	1258	1262	Warren
Washington-Arlington-Alexandria, DC-VA-MD HMFA	1130	1191	1412	1890	2374	Arlington, Clarke, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas city, Manassas Park city
Winchester, VA-WV MSA	594	648	839	1141	1424	Frederick, Winchester city

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 50

VIRGINIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Accomack	597	623	739	920	1175
Augusta	429	529	669	883	1171
Bland	506	528	626	780	1005
Buchanan	506	528	626	780	837
Carroll	506	528	626	847	1062
Culpeper	564	739	948	1397	1679
Essex	582	673	798	994	1281
Grayson	506	528	626	826	1109
Halifax	485	488	626	799	837
Highland	506	528	626	922	926
Lancaster	631	635	859	1070	1379
Lunenburg	484	487	659	821	881
Mecklenburg	506	528	626	826	902
Northampton	539	543	734	914	1236
Nottoway	584	610	723	994	998
Page	565	579	699	871	934
Prince Edward	552	556	735	947	982
Richmond	523	527	713	1051	1143
Russell	506	528	626	861	1005
Smyth	506	528	626	780	958
Tazewell	506	528	626	792	890
Wise	506	528	626	780	990
Buena Vista city	499	572	678	844	1184
Covington city	506	509	626	922	1005
Franklin city	585	588	777	968	1038
Lexington city	499	572	678	844	1184
Norton city	506	528	626	780	990
Waynesboro city	429	529	669	883	1171

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alleghany	506	509	626	922	1005
Bath	513	536	635	818	1020
Brunswick	479	482	652	812	1155
Buckingham	506	528	626	922	1109
Charlotte	486	489	626	847	851
Dickenson	460	463	626	780	837
Floyd	460	463	626	780	1005
Greensville	507	530	628	925	929
Henry	437	525	626	805	927
King George	725	730	987	1303	1540
Lee	506	515	626	780	1005
Madison	578	603	715	1054	1057
Middlesex	514	536	636	937	1126
Northumberland	575	579	750	1105	1109
Orange	674	679	918	1200	1626
Patrick	506	528	626	801	1005
Rappahannock	764	798	946	1388	1519
Rockbridge	499	572	678	844	1184
Shenandoah	459	632	761	1036	1313
Southampton	585	588	777	968	1038
Westmoreland	703	708	896	1143	1439
Wythe	473	476	626	804	1109
Clifton Forge city	506	509	626	922	1005
Emporia city	507	530	628	925	929
Galax city	506	528	626	847	1062
Martinsville city	437	525	626	805	927
Staunton city	429	529	669	883	1171

WASHINGTON

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bellingham, WA MSA	583	686	902	1306	1458	Whatcom
Bremerton-Silverdale, WA MSA	556	712	934	1341	1599	Kitsap
Kennewick-Pasco-Richland, WA MSA	526	602	770	1029	1327	Benton, Franklin
Lewiston, ID-WA MSA	402	509	657	850	1164	Asotin
Longview, WA MSA	441	575	707	1042	1252	Cowlitz
Mount Vernon-Anacortes, WA MSA	601	669	899	1262	1266	Skagit
Olympia, WA MSA	721	787	963	1394	1706	Thurston
Portland-Vancouver-Hillsboro, OR-WA MSA	659	766	912	1344	1615	Clark, Skamania
Seattle-Bellevue, WA HMFA	758	897	1104	1627	1955	King, Snohomish
Spokane, WA MSA	470	575	778	1113	1262	Spokane
Tacoma, WA HMFA	608	740	964	1421	1707	Pierce
Wenatchee-East Wenatchee, WA MSA	487	605	818	1030	1449	Chelan, Douglas

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WASHINGTON continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Yakima, WA MSA	446	544	700	935	1128	Yakima

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	408	528	626	874	1024	Clallam	588	719	973	1397	1403
Columbia	414	470	636	913	1041	Ferry	462	538	638	940	1044
Garfield	408	528	626	780	1018	Grant	538	574	759	1026	1242
Grays Harbor	448	521	673	961	994	Island	552	670	875	1289	1349
Jefferson	566	704	952	1186	1686	Kittitas	554	612	828	1220	1467
Klickitat	479	620	735	920	1135	Lewis	527	623	830	1090	1260
Lincoln	470	534	722	899	965	Mason	524	650	879	1190	1194
Okanogan	488	545	679	863	1203	Pacific	445	603	748	1001	1171
Pend Oreille	409	508	687	904	1124	San Juan	731	735	938	1238	1254
Stevens	487	491	664	928	1176	Wahkiakum	455	516	698	869	1142
Walla Walla	496	562	760	1004	1346	Whitman	473	572	749	1104	1320

WEST VIRGINIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boone County, WV HMFA	426	429	577	719	860	Boone
Charleston, WV HMFA	466	523	624	821	930	Clay, Kanawha, Lincoln, Putnam
Cumberland, MD-WV MSA	451	533	632	860	980	Mineral
Huntington-Ashland, WV-KY-OH MSA	373	510	627	828	1017	Cabell, Wayne
Jefferson County, WV HMFA	629	666	901	1188	1233	Jefferson
Martinsburg, WV HMFA	466	533	708	914	946	Berkeley, Morgan
Morgantown, WV MSA	599	626	742	1000	1011	Monongalia, Preston
Parkersburg-Marietta-Vienna, WV-OH MSA	458	494	645	866	952	Pleasants, Wirt, Wood
Steubenville-Weirton, OH-WV MSA	433	500	615	824	944	Brooke, Hancock
Wheeling, WV-OH MSA	467	494	615	789	822	Marshall, Ohio
Winchester, VA-WV MSA	594	648	839	1141	1424	Hampshire

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barbour	426	461	624	777	852	Braxton	373	434	587	731	809
Calhoun	451	480	577	719	814	Doddridge	445	448	606	755	871
Fayette	401	447	577	773	801	Gilmer	464	468	593	739	838
Grant	539	543	734	914	1300	Greenbrier	438	527	625	778	1033
Hardy	441	444	598	745	843	Harrison	456	459	586	759	796
Jackson	425	428	579	742	935	Lewis	434	437	591	736	790
Logan	466	487	577	817	820	McDowell	466	487	577	732	814
Marion	502	508	622	912	915	Mason	436	439	577	838	840
Mercer	448	451	577	719	771	Mingo	343	484	577	719	946
Monroe	451	487	577	719	814	Nicholas	451	487	577	768	881
Pendleton	451	487	577	850	853	Pocahontas	428	431	583	726	822
Raleigh	528	532	701	873	937	Randolph	459	462	577	820	1004

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WEST VIRGINIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ritchie	451	487	577	816	819	Roane	371	487	577	850	853
Summers	462	475	590	775	788	Taylor	411	484	577	841	844
Tucker	451	487	577	850	960	Tyler	451	475	577	719	771
Upshur	451	454	587	788	828	Webster	451	484	577	719	771
Wetzel	451	458	577	850	1022	Wyoming	451	456	577	719	1022

WISCONSIN

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Appleton, WI MSA	405	530	681	1003	1062	Calumet, Outagamie
Columbia County, WI HMFA	492	544	736	1038	1106	Columbia
Duluth, MN-WI MSA	459	552	725	945	1052	Douglas
Eau Claire, WI MSA	442	514	658	969	1004	Chippewa, Eau Claire
Fond du Lac, WI MSA	402	502	670	855	1029	Fond du Lac
Green Bay, WI HMFA	425	517	685	978	1005	Brown, Kewaunee
Iowa County, WI HMFA	515	551	746	966	997	Iowa
Janesville, WI MSA	437	556	734	926	981	Rock
Kenosha County, WI HMFA	523	624	801	1163	1219	Kenosha
La Crosse, WI-MN MSA	416	520	699	972	1183	La Crosse
Madison, WI HMFA	614	734	889	1226	1366	Dane
Milwaukee-Waukesha-West Allis, WI MSA	535	659	828	1056	1142	Milwaukee, Ozaukee, Washington, Waukesha
Minneapolis-St. Paul-Bloomington, MN-WI MSA	592	736	920	1296	1529	Pierce, St. Croix
Oconto County, WI HMFA	456	505	626	894	897	Oconto
Oshkosh-Neenah, WI MSA	477	516	669	891	1185	Winnebago
Racine, WI MSA	539	543	733	961	980	Racine
Sheboygan, WI MSA	545	647	803	1054	1085	Sheboygan
Wausau, WI MSA	471	489	638	901	977	Marathon

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	397	528	626	848	978	Ashland	397	488	626	807	837
Barron	389	506	654	817	1049	Bayfield	372	528	626	873	876
Buffalo	501	504	682	899	978	Burnett	419	535	661	974	977
Clark	379	464	628	782	839	Crawford	460	463	626	784	898
Dodge	433	555	728	928	973	Door	434	599	730	957	976
Dunn	435	498	674	850	901	Florence	397	474	626	780	865
Forest	397	463	626	817	837	Grant	429	476	626	796	970
Green	450	524	709	883	963	Green Lake	397	486	626	856	1109
Iron	372	463	626	853	1109	Jackson	372	463	626	780	837
Jefferson	438	562	737	994	1108	Juneau	430	475	626	880	1109
Lafayette	397	480	626	852	915	Langlade	425	489	626	922	1109
Lincoln	399	465	629	927	1032	Manitowoc	418	470	626	780	938
Marinette	480	483	626	897	1032	Marquette	418	519	702	874	938
Menominee	433	505	683	851	913	Monroe	396	499	666	895	1010
Oneida	512	534	658	879	1165	Pepin	397	528	626	922	926

SCHEDULE B - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 53

WISCONSIN continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Polk	441	548	742	985	992
Price	397	463	626	780	955
Rusk	460	463	626	830	1109
Sawyer	397	528	626	780	837
Taylor	372	463	626	780	837
Vernon	397	463	626	797	837
Walworth	562	616	817	1163	1191
Waupaca	492	496	663	879	909
Wood	417	483	626	838	928

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Portage	409	509	684	852	933
Richland	449	509	626	809	1037
Sauk	532	589	772	967	1032
Shawano	460	463	626	862	993
Trempealeau	405	463	626	837	1020
Vilas	515	518	701	873	1117
Washburn	421	493	664	873	918
Waushara	475	478	647	825	865

WYOMING

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Casper, WY MSA	533	610	807	1189	1413	Natrona
Cheyenne, WY MSA	449	511	691	947	1110	Laramie

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Albany	577	601	776	1111	1178
Campbell	673	702	880	1108	1176
Converse	498	501	678	999	1002
Fremont	514	525	710	964	968
Hot Springs	479	528	626	922	1109
Lincoln	602	650	787	1160	1164
Park	498	551	696	994	1233
Sheridan	612	645	800	996	1417
Sweetwater	590	704	953	1187	1688
Uinta	505	508	677	947	1129
Weston	570	580	746	929	1138

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Big Horn	460	463	626	877	897
Carbon	569	573	775	1036	1147
Crook	479	528	626	922	1109
Goshen	471	474	638	878	881
Johnson	502	537	657	968	1038
Niobrara	479	528	626	876	987
Platte	479	528	626	874	955
Sublette	709	782	927	1355	1360
Teton	776	922	1114	1642	1699
Washakie	479	528	626	887	1067

GUAM

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pacific Islands	807	867	1058	1542	1843

PUERTO RICO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Aguadilla-Isabela-San Sebastián, PR MSA	381	414	459	590	661	Aguada, Aguadilla, Añasco, Isabela, Lares, Moca, Rincó San Sebastián
Arecibo, PR HMFA	401	436	484	660	773	Arecibo, Camuy, Hatillo
Barranquitas-Aibonito-Quebradillas, PR HMFA	395	427	475	605	695	Aibonito, Barranquitas, Ciales, Maunabo, Orocovis, Quebradillas
Caguas, PR HMFA	441	477	531	736	887	Caguas, Cayey, Cidra, Gurabo, San Lorenzo

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PUERTO RICO continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fajardo, PR MSA	457	497	552	803	968	Ceiba, Fajardo, Luquillo
Guayama, PR MSA	403	435	484	687	851	Arroyo, Guayama, Patillas
Mayagüez, PR MSA	432	469	521	623	860	Hormigueros, Mayagüez
Ponce, PR MSA	467	507	561	779	889	Juana Díaz, Ponce, Villalba
San Germán-Cabo Rojo, PR MSA	376	391	453	593	639	Cabo Rojo, Lajas, Sabana Grande, San Germán
San Juan-Guaynabo, PR HMFA	484	526	584	773	915	Aguas Buenas, Barceloneta, Bayamón, Canóvanas, Carolina, Cataño, Comerío, Corozal, Dorado, Florida, Guaynabo, Humacao, Juncos, Las Piedras, Loíza, Manatí, Morovis, Naguabo, Naranjito, Río Grande, San Juan, Toa Alta, Toa Baja, Trujillo Alto, Vega Alta, Vega Baja, Yabucoa
Yauco, PR MSA	373	394	448	564	719	Guánica, Guayanilla, Peñuelas, Yauco

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adjuntas	372	402	448	614	666	Coamo	372	402	448	614	666
Culebra	372	402	448	614	666	Jayuya	372	402	448	614	666
Las Marías	372	402	448	614	666	Maricao	372	402	448	614	666
Salinas	372	402	448	614	666	Santa Isabel	372	402	448	614	666
Utuado	372	402	448	614	666	Vieques	372	402	448	614	666

VIRGIN ISLANDS

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
St. Croix	589	614	744	929	1063	St. John	670	800	1030	1276	1334
St. Thomas	670	800	1030	1276	1334						

Note1: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.
Note2: 50th percentile FMRs are indicated by an * before the FMR Area name.
Note3: FMR areas designated by 3 asterisks (***) are part of the Small Area Demonstration Program and will use the FMRs found on Schedule B Addendum.

SCHEDULE B Addendum - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING WITHIN THE DALLAS, TX HMFA PAGE 1

Collin County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75002	750	900	1140	1520	1840	75009	610	730	920	1230	1480
75013	760	910	1150	1530	1850	75023	700	840	1060	1410	1710
75024	680	810	1030	1370	1660	75025	750	900	1140	1520	1840
75026	660	790	1000	1330	1610	75033	620	740	940	1250	1510
75034	730	870	1100	1470	1770	75035	860	1040	1310	1750	2110
75048	740	890	1120	1490	1800	75069	590	700	890	1190	1430
75070	840	1000	1270	1690	2050	75071	620	740	940	1250	1510
75074	630	750	950	1270	1530	75075	640	770	970	1290	1560
75078	740	890	1120	1490	1800	75080	690	830	1050	1400	1690
75082	730	880	1110	1480	1790	75086	660	790	1000	1330	1610
75093	680	810	1030	1370	1660	75094	880	1050	1330	1770	2140
75098	730	880	1110	1480	1790	75164	550	660	840	1120	1350
75166	880	1050	1330	1770	2140	75173	730	880	1110	1480	1790
75189	670	800	1010	1350	1630	75252	530	640	810	1080	1300
75287	570	680	860	1150	1390	75370	660	790	1000	1330	1610
75407	670	800	1010	1350	1630	75409	630	760	960	1280	1550
75424	630	750	950	1270	1530	75442	540	650	820	1090	1320
75452	530	630	800	1070	1290	75454	730	880	1110	1480	1790
75491	660	790	1000	1330	1610	75495	560	670	850	1130	1370

Dallas County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75001	620	740	940	1250	1510	75006	590	710	900	1200	1450
75007	650	780	990	1320	1590	75011	570	690	870	1160	1400
75014	570	690	870	1160	1400	75015	570	690	870	1160	1400
75016	570	690	870	1160	1400	75017	570	690	870	1160	1400
75019	740	890	1120	1490	1800	75030	570	690	870	1160	1400
75038	580	700	880	1170	1420	75039	720	860	1090	1450	1760
75040	730	870	1100	1470	1770	75041	580	700	880	1170	1420
75042	550	660	840	1120	1350	75043	610	740	930	1240	1500
75044	670	810	1020	1360	1640	75045	570	690	870	1160	1400
75046	570	690	870	1160	1400	75047	570	690	870	1160	1400
75048	740	890	1120	1490	1800	75049	570	690	870	1160	1400
75050	550	660	830	1110	1340	75051	540	650	820	1090	1320
75052	710	850	1080	1440	1740	75053	570	690	870	1160	1400
75060	530	640	810	1080	1300	75061	500	600	760	1010	1220
75062	550	660	840	1120	1350	75063	670	810	1020	1360	1640
75080	690	830	1050	1400	1690	75081	710	850	1070	1430	1720
75082	730	880	1110	1480	1790	75083	570	690	870	1160	1400
75085	570	690	870	1160	1400	75088	840	1010	1280	1710	2060
75089	880	1050	1330	1770	2140	75104	760	910	1150	1530	1850
75106	570	690	870	1160	1400	75115	610	730	920	1230	1480

SCHEDULE B Addendum - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING WITHIN THE DALLAS, TX HMFA PAGE 2

Dallas County continued

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75116	610	740	930	1240	1500	75123	570	690	870	1160	1400
75134	610	730	920	1230	1480	75137	750	900	1140	1520	1840
75138	570	690	870	1160	1400	75141	550	660	830	1110	1340
75146	600	720	910	1210	1470	75149	650	770	980	1310	1580
75150	610	730	920	1230	1480	75154	730	880	1110	1480	1790
75159	610	730	920	1230	1480	75172	470	570	720	960	1160
75180	540	650	820	1090	1320	75181	880	1050	1330	1770	2140
75182	570	690	870	1160	1400	75185	570	690	870	1160	1400
75187	570	690	870	1160	1400	75201	820	990	1250	1670	2010
75202	880	1050	1330	1770	2140	75203	440	530	670	890	1080
75204	750	900	1140	1520	1840	75205	720	860	1090	1450	1760
75206	600	720	910	1210	1470	75207	580	700	880	1170	1420
75208	510	610	770	1030	1240	75209	750	890	1130	1510	1820
75210	440	530	670	890	1080	75211	520	620	790	1050	1270
75212	510	610	770	1030	1240	75214	550	660	830	1110	1340
75215	480	580	730	970	1180	75216	510	620	780	1040	1260
75217	570	680	860	1150	1390	75218	650	770	980	1310	1580
75219	590	710	900	1200	1450	75220	490	590	740	990	1190
75221	570	690	870	1160	1400	75222	570	690	870	1160	1400
75223	530	630	800	1070	1290	75224	490	590	750	1000	1210
75225	880	1050	1330	1770	2140	75226	700	840	1060	1410	1710
75227	530	640	810	1080	1300	75228	470	560	710	950	1140
75229	550	660	840	1120	1350	75230	490	590	740	990	1190
75231	470	560	710	950	1140	75232	520	620	790	1050	1270
75233	550	660	830	1110	1340	75234	590	700	890	1190	1430
75235	570	690	870	1160	1400	75236	560	670	850	1130	1370
75237	520	620	790	1050	1270	75238	500	600	760	1010	1220
75240	530	630	800	1070	1290	75241	610	740	930	1240	1500
75242	570	690	870	1160	1400	75243	510	610	770	1030	1240
75244	740	890	1120	1490	1800	75246	440	530	670	890	1080
75247	480	580	730	970	1180	75248	640	770	970	1290	1560
75249	720	860	1090	1450	1760	75250	570	690	870	1160	1400
75251	780	930	1180	1570	1900	75253	550	660	840	1120	1350
75254	580	700	880	1170	1420	75313	570	690	870	1160	1400
75315	570	690	870	1160	1400	75342	570	690	870	1160	1400
75354	570	690	870	1160	1400	75355	570	690	870	1160	1400
75356	570	690	870	1160	1400	75360	570	690	870	1160	1400
75367	570	690	870	1160	1400	75371	570	690	870	1160	1400
75372	570	690	870	1160	1400	75374	570	690	870	1160	1400
75378	570	690	870	1160	1400	75379	570	690	870	1160	1400
75380	570	690	870	1160	1400	75381	570	690	870	1160	1400
75382	570	690	870	1160	1400						

SCHEDULE B Addendum - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING WITHIN THE DALLAS, TX HMFA PAGE 3

Delta County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75415	540	650	820	1090	1320	75432	510	620	780	1040	1260
75441	540	650	820	1090	1320	75448	540	650	820	1090	1320
75450	540	650	820	1090	1320	75469	540	650	820	1090	1320

Denton County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75007	650	780	990	1320	1590	75009	610	730	920	1230	1480
75010	740	890	1120	1490	1800	75022	750	900	1140	1520	1840
75027	610	730	920	1230	1480	75028	880	1050	1330	1770	2140
75029	610	730	920	1230	1480	75033	620	740	940	1250	1510
75034	730	870	1100	1470	1770	75056	790	950	1200	1600	1930
75057	610	730	920	1230	1480	75065	650	780	990	1320	1590
75067	610	730	920	1230	1480	75068	710	850	1070	1430	1720
75077	770	930	1170	1560	1880	75093	680	810	1030	1370	1660
75287	570	680	860	1150	1390	76052	880	1050	1330	1770	2140
76177	580	700	880	1170	1420	76201	460	550	700	930	1130
76202	610	730	920	1230	1480	76205	570	680	860	1150	1390
76206	610	730	920	1230	1480	76207	550	660	830	1110	1340
76208	610	740	930	1240	1500	76209	560	670	850	1130	1370
76210	710	850	1080	1440	1740	76226	880	1050	1330	1770	2140
76227	820	990	1250	1670	2010	76247	700	840	1060	1410	1710
76249	740	890	1120	1490	1800	76258	560	670	850	1130	1370
76259	620	740	940	1250	1510	76262	710	850	1070	1430	1720
76266	620	740	940	1250	1510	76272	610	730	920	1230	1480

Ellis County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75101	530	640	810	1080	1300	75119	540	650	820	1090	1320
75125	540	650	820	1090	1320	75152	480	580	730	970	1180
75154	730	880	1110	1480	1790	75165	590	710	900	1200	1450
75167	740	890	1120	1490	1800	75168	590	700	890	1190	1430
76041	590	700	890	1190	1430	76055	590	700	890	1190	1430
76064	670	810	1020	1360	1640	76065	620	740	940	1250	1510
76084	600	720	910	1210	1470	76623	590	700	890	1190	1430
76651	660	790	1000	1330	1610	76670	470	560	710	950	1140

Hunt County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75135	530	640	810	1080	1300	75160	570	680	860	1150	1390
75169	490	590	740	990	1190	75189	670	800	1010	1350	1630

SCHEDULE B Addendum - FY 2013 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING WITHIN THE DALLAS, TX HMFA PAGE 4

Hunt County continued

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75401	480	580	730	970	1180	75402	500	600	760	1010	1220
75403	480	580	730	970	1180	75404	480	580	730	970	1180
75422	510	610	770	1030	1240	75423	510	620	780	1040	1260
75428	400	470	600	800	970	75442	540	650	820	1090	1320
75449	400	480	610	810	980	75452	530	630	800	1070	1290
75453	650	770	980	1310	1580	75474	440	530	670	890	1080
75496	380	450	570	760	920						

Kaufman County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75114	730	870	1100	1470	1770	75126	880	1050	1330	1770	2140
75142	530	640	810	1080	1300	75143	510	610	770	1030	1240
75147	500	600	760	1010	1220	75156	560	670	850	1130	1370
75157	430	510	650	870	1050	75158	510	620	780	1040	1260
75159	610	730	920	1230	1480	75160	570	680	860	1150	1390
75161	570	690	870	1160	1400						

Rockwall County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75032	810	970	1230	1640	1980	75087	750	890	1130	1510	1820
75088	840	1010	1280	1710	2060	75089	880	1050	1330	1770	2140
75132	760	920	1160	1550	1870	75189	670	800	1010	1350	1630

SCHEDULE D - FY 2013 FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES IN THE SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

State	Area Name	Space Rent
California	*Orange County, CA HUD Metro FMR Area	$801
	*Riverside-San Bernardino-Ontario, CA MSA	$521
	Los Angeles-Long Beach, CA HUD Metro FMR	$660
	San Diego-Carlsbad-San Marcos, CA MSA	$804
	Santa Rosa-Petaluma, CA MSA	$708
	Vallejo-Fairfield, CA MSA	$570
Colorado	Boulder, CO MSA	$466
Maryland	St. Mary's County	$490
Oregon	Bend, OR MSA	$351
	Salem, OR MSA	$488
Pennsylvania	Adams County	$561
Washington	Olympia, WA MSA	$578
	Seattle-Bellevue, WA HUD Metro FMR Area	$635
West Virginia	Logan County	$444
	McDowell County	$444
	Mercer County	$444
	Mingo County	$444
	Wyoming County	$444

* 50th percentile FMR areas.

[FR Doc. 2012–18874 Filed 8–2–12; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2012–N066; 40120–1112–0000–F2]

Endangered and Threatened Wildlife and Plants; Receipt of Application for Incidental Take Permit; Availability of Proposed Low-Effect Habitat Conservation Plan and Associated Documents; Charlotte County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment/information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of an incidental take permit (ITP) application and Habitat Conservation Plan (HCP). Wayne Cimato (applicant) requests an ITP under the Endangered Species Act of 1973, as amended (Act). The applicant anticipates taking about 1 acre of Florida scrub-jay habitat in Charlotte County, Florida, for the construction of a single-family residence and associated

infrastructure. The applicant's HCP describes the minimization and mitigation measures proposed to address the effects of the project on the scrub-jay.

DATES: Written comments on the ITP application and HCP should be sent to the South Florida Ecological Services Office (see **ADDRESSES**) and should be received on or before September 4, 2012.

ADDRESSES: You may request documents by email, U.S. mail, or fax (see below). These documents are also available for public inspection by appointment during normal business hours at the office below. Send your comments or requests by any one of the following methods.

Email: Trish_Adams@fws.gov. Use ''Attn: Permit number TE74559A–0'' as your message subject line.

Fax: Trish Adams, 772–562–4288, Attn.: Permit number TE74559A–0.

U.S. mail: Trish Adams, HCP Coordinator, South Florida Ecological Services Field Office, Attn: Permit number TE74559A–0, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559.

In-person drop-off: You may drop off information during regular business hours at the above office address.

FOR FURTHER INFORMATION CONTACT: Ms. Trish Adams, HCP Coordinator, South Florida Ecological Services Office, Vero Beach, Florida (see **ADDRESSES**), telephone: 772–469–4232.

SUPPLEMENTARY INFORMATION: Wayne Cimato (applicant) anticipates taking 1 acre of habitat used for breeding, feeding, and sheltering by the Florida scrub-jay (*Aphelocoma coerulescens*) in Charlotte County, Florida. The Service listed the scrub-jay as threatened on June 3, 1987 (52 FR 20715). The listing became effective July 6, 1987.

Applicant's Proposed Project

We received an application for an incidental take permit (ITP), along with a proposed habitat conservation plan (HCP). The applicant requests a 2-year permit under section 10(a)(1)(B) of the Act (87 Stat. 884; 16 U.S.C. 1531 *et seq.*). If we approve the permit, the applicant anticipates taking 1 acre of Florida scrub-jay habitat for construction of a single family residence and associated infrastructure. The project is located on parcel 402413451002 at latitude 26.993037, longitude –81.866754, Charlotte County, Florida.

The applicant proposes to mitigate for the loss of 1 acre of occupied scrub-jay habitat by on-site establishment of a 2-acre conservation easement to be managed by Charlotte Harbor Environmental Center, along with a fee of $6,000.00 for perpetual maintenance of the donated land, within 180 days of permit issuance or before the commencement of clearing and construction activities, whichever is sooner.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, issuance of the ITP is a ''low-effect'' action and qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA) (40 CFR 1506.6), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1), and as defined in our Habitat Conservation Planning Handbook (November 1996).

We base our determination that issuance of the ITP qualifies as a low-effect action on the following three criteria: (1) Implementation of the project would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the project would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant. As more fully explained in our environmental action statement and associated Low-Effect Screening Form, the applicant's proposed project qualifies as a ''low-effect'' project. This preliminary determination may be revised based on our review of public comments that we receive in response to this notice.

Next Steps

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP would comply with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP. If it is determined that the requirements of the Act are met, the ITP will be issued for the incidental take of the Florida scrub-jay.

Submitting Comments

If you wish to submit comments or information, you may do so by any one of several methods. Please reference permit number TE74559A–0 in such comments. You may mail comments to the Service's South Florida Ecological Services Office (see **ADDRESSES**). You may also comment via email to trish_adams@fws.gov. Please also include your name and return address in your email message. If you do not receive a confirmation from us that we have received your email message, contact us directly at the telephone number listed under **FOR FURTHER INFORMATION CONTACT**. Finally, you may hand deliver comments to the Service office listed under **ADDRESSES**.

Availability of Public Comments

Before including your address, phone number, email address, or other personal identifying information in your comments, 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.

Authority

This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

Dated: July 26, 2012.

Larry Williams,

Field Supervisor, South Florida Ecological Services Office.

[FR Doc. 2012–18985 Filed 8–2–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–ES–2012–N098; FXHC1122055COM0Z5_123_FF05E00000]

Adoption and Notice of Availability of a Final Environmental Assessment for the Penobscot River Restoration Project

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) hereby gives notice of

its intent to adopt the Federal Energy Regulatory Commission's (Commission) existing Final Environmental Assessment (FEA) for the Application for Surrender of License of the Veazie, Great Works, and Howland Projects.

The FEA, issued on May 18, 2010, evaluates the environmental impacts that would result from the Commission approving the applications for license surrender. The Penobscot River Restoration Project (PRRP) seeks to restore diadromous fish to the Penobscot River and key tributaries in accordance with the Lower Penobscot River Basin Comprehensive Settlement Agreement (Agreement), to which the U.S. Department of the Interior (Department) is a signatory. The Service intends to approve mechanisms to assist with funding the PRRP because it will provide substantial benefits for diadromous fish. Based on the Service's independent evaluation, adoption of the FEA would meet the Department's and the Service's National Environmental Policy Act (NEPA) procedures and guidelines, as the Service is funding the precise actions, the effects of which have already been analyzed by the Commission. As part of that process, the Service is recirculating the FEA as its final Environmental Assessment in accordance with the Service's adoption requirements.

DATES: We will accept comments received or postmarked on or before August 20, 2012. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Document availability:* You may obtain copies of the notice and the FEA on the Internet at *http://www.regulations.gov* at Docket Number FWS–R5–ES–2012–0046, or at *http://www.fws.gov/mainefieldoffice/index.html* (Web site for the Service's Field Office in Maine, or by mail from the Service's Maine Field Office (see **FOR FURTHER INFORMATION CONTACT**). The full administrative record is available though the Commission's eLibrary at *http://www.ferc.gov/docs-filing/eLibrary.asp.* To use eLibrary, enter the docket number (either P–2403, P–2312, or P–2721) to access the document. For assistance, contact the Commission's online support toll free at (866) 208–3676, or TTY at (866) 208–3372.

Comment submission: You may submit written comments by one of the following methods:

Electronically: Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R5–ES–2012–0046, which is the docket number for this notice. Then, on the left side of the screen, under the *Document Type* heading, click on the *Notices* link to locate this document and submit a comment.

By compact disk (CD) or hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R5–ES–2012–0046; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all information received on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Steve Shepard, Maine Field Office, by mail at 17 Godfrey Drive, Suite #2, Orono Maine 04473; by telephone at (207) 866–3344, extension 116; or by electronic mail at *steve_shepard@fws.gov.*

SUPPLEMENTARY INFORMATION: The Service hereby gives notice of its intent to adopt the Commission's existing FEA for the Application for Surrender of License of the Veazie, Great Works, and Howland Projects (FERC Project Nos. 2403, 2312 and 2721, respectively) (Project). The FEA, issued on May 18, 2010, evaluates the environmental impacts that would result from the Commission approving the applications for license surrender for the Veazie, Great Works, and Howlands hydroelectric projects. The FEA makes it clear that surrender of the licenses would lead to removal of Veazie and Great Works Dams and construction of a nature-like fish bypass around the Howland Dam, which are key elements of the PRRP. The dams are located in the towns of Veazie, Old Town, and Howland in Penobscot County, Maine.

The PRRP seeks to restore diadromous fish to the Penobscot River and key tributaries in accordance with the Lower Penobscot River Basin Comprehensive Settlement Agreement (Agreement), to which the Department is a signatory. The Service intends to approve grants, cooperative agreements, memoranda of agreement or understanding, or other administrative mechanisms to assist with funding the PRRP because the project will provide substantial benefits for diadromous fish.

The May 2010 FEA assessed the environmental effects of five alternatives of the PRRP: (1) No action; (2) the proposed action (the removal of the Veazie and Great Works Dams and the construction of a nature-like fish bypass at the Howland Dam); (3) the removal of all three dams; (4) the removal of the Veazie and Great Works Dams and surrender in place at the Howland Project; and (5) the surrender in place of all three projects. The Service commented on the draft FEA and is satisfied that all of its comments have been adequately addressed by the Commission in the FEA. Based on its review, the Service finds that the FEA would satisfy the Department's and the Service's NEPA compliance requirements with respect to the Service's decision to provide funds for the PRRP. Therefore, by this notice, the Service is recirculating the FEA for written public comment to meet its NEPA (40 CFR 1506.3 and 1506.6) requirements for the approval of future administrative mechanisms or funds in support of the PRRP. The Service encourages interested persons to review the FEA and submit written comments.

Availability of Documents

Those who do not have access to the Web site or cannot visit our office can request copies by telephone at (207) 866–3344 or by letter to the Maine Field Office (see **ADDRESSES**).

Location

The dams are located in the towns of Veazie, Old Town, and Howland in Penobscot County, Maine. They are currently operated as hydroelectric facilities under a Federal license with the Commission.

Background

The Commission's FEA was based on license applications from the Penobscot River Restoration Trust, a not-for-profit organization founded to implement the PRRP on behalf of the parties involved in the Agreement. The Service is a party to the Agreement, along with other State and Federal agencies, nongovernmental organizations, and PPL Corporation, which owned the hydroelectric facilities and three dams at the time of the Agreement. The specific purpose of the PRRP is to restore diadromous fish to the Penobscot River. Diadromous fish are species that use both marine and freshwater habitats during their life cycles. The species can be anadromous like Atlantic salmon, which are born and grow in freshwater, migrate out to sea to finish growing, and migrate back to freshwater, and for many species their natal river, to spawn. The species can also be catadromous like American eel, which are born and grow at sea, migrate to freshwater rivers, ponds, and lakes where they finish growing, and

migrate back to their natal area at sea to spawn. Diadromous fish are one of the Service's trust resources for which the Service has been given specific responsibilities under Federal law. The Service's trust resources include migratory birds, interjurisdictional fishes (fish species that may cross State lines and include diadromous fish), federally listed threatened or endangered species, some marine mammals, and lands owned by the Service such as National Wildlife Refuges. The PRRP is consistent with the Service's mission to conserve trust resources. Therefore, the Service intends to assist in funding the PRRP through a variety of administrative mechanisms.

The FEA evaluates five alternatives, including the no action alternative. Details of these alternatives and their environmental effects are described in the FEA. The Service intends to approve grants, cooperative agreements, memoranda of agreement or understanding, or other administrative mechanisms to assist with funding the PRRP. Those future Federal actions trigger the need for compliance with NEPA. Based on its review, the Service finds that the FEA adequately addresses appropriate alternatives and their environmental effects and accurately describes the future actions that the Service may fund. The Service finds, therefore, that the FEA meets the Department's and the Service's NEPA procedures and guidelines and is appropriate for adoption.

Public Comments

The Service invites the public to comment on the Service adopting the FEA in order to comply with NEPA in association with future decisions to fund the PRRP (see **DATES**). You may submit your comments and materials concerning the notice by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as documents associated with the notice, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R5–ES–2012–0046, or by appointment, during normal business hours, at the Service's Maine Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the notice on the Internet at *http://www.regulations.gov* at Docket No. FWS–R5–ES–2012–0046, or by mail from the Service's Maine Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Conclusion

Based on the information summarized above, the Service intends to adopt the Commission's FEA to fully comply with the regulations for implementing NEPA for Federal funding decisions the Service may make in the future. After the close of the comment period, the Service anticipates issuing a Finding of No Significant Impact (FONSI) in conjunction with adopting the FEA. The FONSI will be available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R5–ES–2012–0046, and at *http://www.fws.gov/mainefieldoffice/index.html* (Service's Maine Field Office Web site), or may be obtained by mail from the Service's Maine Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

This notice is provided pursuant to NEPA regulations (40 CFR 1506.3 and 1506.6).

Dated: July 17, 2012.

Henry Chang,

Acting Regional Director.

[FR Doc. 2012–18978 Filed 8–2–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2012–N189; FXIA16710900000P5–123–FF09A30000]

Endangered Species; Marine Mammals; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) prohibit activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before September 4, 2012. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by September 4, 2012.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in

support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: Miami-Dade Zoological Parks and Gardens (Zoo Miami), Miami, FL; PRT–75942A

The applicant requests a permit to import two male cheetahs (*Acinonyx jubatus*) that were bred in captivity in South Africa at the Ann van Dyk Cheetah Centre for the purpose of enhancement of the survival of the species.

Applicant: Riverbanks Zoo and Garden, Columbia, SC; PRT–74896A

The applicant requests a permit to import one male captive-born Amur tiger (*Panthera tigris altaica)* from Toronto Zoo, Ontario, CA, for the purpose of enhancement of the survival of the species.

Applicant: Indianhead Ranch, Inc., Del Rio, TX; PRT–67596A

The applicant requests a permit to export the sport-hunted trophy of one male Addax *(Addax nasomaculatus)* culled from a captive herd maintained in the state of Texas, for the purpose of enhancement of the survival of the species.

Applicant: Wildlife Artistry Taxidermy, Centreville, MD; PRT–77276A

The applicant requests a permit to export the sport-hunted trophy of one male Addax *(Addax nasomaculatus)* culled from a captive herd maintained in the state of Texas, for the purpose of enhancement of the survival of the species.

Applicant: Monterey Bay Aquarium, Monterey, CA; PRT–186914

The applicant requests a permit to take up to 10 southern sea otters (*Enhydra lutris nereis*) annually from the wild (animals that are rescued for rehabilitation and release) for the purpose of scientific research on the pharmacokinetics of the antibiotic cefovecin. This notification covers activities to be conducted by the applicant over the remainder of the 5-year period for which the permit would be valid.

Applicant: Wildlife Conservation Society, Bronx, NY; PRT–033594

The applicant requests renewal of their permit to import biological samples collected from wild, captive-held, and/or captive-born specimens of endangered animal species from worldwide locations, for the purpose of scientific research. No animals may be intentionally killed for the purpose of collecting such samples. Any invasively collected samples can only be collected by trained personnel. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: A.C. Ranch, Sonora, TX; PRT–73894A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the addax (*Addax nasomaculatus*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: A.C. Ranch, Sonora, TX; PRT–73893A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess addax (*Addax nasomaculatus*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Dub Wallace Ranch LLC, Sonora, TX; PRT–75592A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Dub Wallace Ranch LLC, Sonora, TX; PRT–75535A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*), from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

B. Endangered Marine Mammals and Marine Mammals

Applicant: U.S. Geological Service, Alaska Science Center, Anchorage, AK; PRT–690038

The applicant requests to renew the permit for to take polar bears (*Ursus maritimus*) in Alaska and to import and export biological samples for the purpose of scientific research. The take activities include capture, recapture, and release; tag, mark, and radio collar; administer oxytocin to females, biopsy dart, conduct bio-electrical impedance analysis, administer doubly-labeled water; survey maternal dens; aerial survey; and collection of biometrics and biological samples from both live and dead animals. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Darlene Ketten, Ph.D., Woods Hole Oceanographic Institute, Woods Hole, MA; PRT–130062

On July 27, 2012, (77 FR 44264), we published a notice receipt of permit applications for that contained incorrect information for the applicant. The correct information should read as follows:

The applicant requests renewal of the permit to authorize import, export, and acquisition of dead specimens, including whole carcasses, heads, and temporal bones from marine otter (*Lontra felina*), all sea otters (*Enhydra lutris*), walrus (*Odobenus rosmarus*), polar bear (*Ursus maritimus*), all manatee species (*Trichechus* spp.), and

dugongs (*Dugong dugon*) for the purpose of scientific research on the hearing physiology of marine mammals. This notification covers activities to be conducted by the applicant over a 5-year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2012–19007 Filed 8–2–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVL00000.L51010000.ER0000. LVRWF12F3450 241A; N–78803; 12–08807; MO# 4500034975; TAS: 14X5017]

Notice of Availability of the Final Environmental Impact Statement, Including a Programmatic Agreement, for the Clark, Lincoln, and White Pine Counties Groundwater Development Project, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the National Historic Preservation Act of 1966 (NHPA), as amended, the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (EIS) and a Programmatic Agreement (PA), which is included as an Appendix to the EIS, for the Southern Nevada Water Authority's (SNWA) Clark, Lincoln, and White Pine Counties Groundwater Development Project (SNWA Project), and by this notice is announcing the availability of the Final EIS.

DATES: The Department of the Interior will not issue a final decision on the proposal for a minimum of 60 days after the date that the Environmental Protection Agency publishes its Notice of Availability of the Final EIS in the **Federal Register.**

ADDRESSES: The Final EIS will be mailed to those parties who participated in the process. Written requests for a copy of the Final EIS or the PA for the SNWA Project may be submitted to the BLM at the address below or by any of the following methods:

- *Email: nvgwprojects@blm.gov.*
- Download the document from the BLM's Web site at *www.blm.gov/5w5c.*
- *Fax:* 775–861–6689.
- *Mail:* SNWA Project, Bureau of Land Management, Attn: Penny Woods, 1340 Financial Blvd., Reno NV 89502.

Review copies are available in the following locations:

BLM Offices in Nevada:

Nevada State Office, 1340 Financial Blvd., Reno
Ely District Office, 702 N. Industrial Way, Ely
Caliente Field Office, U.S. Hwy. 93, Building #1, Caliente
Southern Nevada District Office, 4701 N. Torrey Pines Drive, Las Vegas

Libraries in Nevada:

Nevada State Library, 100 N. Stewart St., Carson City
White Pine County Library, 950 Campton St., Ely
Lincoln County Library, 100 Depot Ave., Caliente
Lincoln County Library, 100 N. First St. E., Alamo
Mesquite Library, 121 W. First N. St., Mesquite
Clark County Library, 1401 E. Flamingo Road, Las Vegas

BLM Offices in Utah:

Utah State Office, 440 W. 200 S., Salt Lake City
West Desert District Office, 2370 S. 2300 W., Salt Lake City
Color Country District Office, 1760 East DL Sargent Drive, Cedar City
Fillmore Field Office, 35 E. 500 N., Fillmore
St George Field Office, 345 E. Riverside Drive, St. George

Libraries in Utah:

Utah State Library, 250 N. 1950 W., Salt Lake City
Delta City Library, 76 N. 200 W., Delta
Cedar City Library, 303 N. 100 E., Cedar City
Washington County Library, 88 W. 100 S., St. George
Tooele City Library, 128 W. Vine St., Tooele
Nephi Library, 21 E. 100 N., Nephi
Beaver Library, 55 W. Center St., Beaver

FOR FURTHER INFORMATION CONTACT: Penny Woods, Project Manager, telephone: 775–861–6466; address: 1340 Financial Blvd., Reno, NV 89502; email; *pwoods@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 BLM served as the lead agency for the preparation of this EIS. The BLM worked with 16 cooperating agencies including: Federal—Fish and Wildlife Service, Bureau of Reclamation, Bureau of Indian Affairs, National Park Service, Forest Service, Army Corps of Engineers, U.S. Air Force-Nellis Air Force Base; State—Nevada Department of Wildlife, State of Utah; Counties and County Organizations—Central Nevada Regional Water Authority, White Pine, Lincoln, and Clark counties (NV); and Juab, Millard, and Tooele counties (UT).

The Final EIS describes and analyzes the SNWA's rights-of-way (ROWs) on public land for the SNWA Project. Project components include a system of groundwater conveyance and treatment facilities in southeastern Nevada which would transport groundwater from Spring, Delamar, Dry Lake, and Cave valleys pursuant to water rights permits issued by the Nevada State Engineer (NSE) and from Snake Valley pursuant to water right applications that are currently pending before the NSE. The Final EIS addresses the ROW request as submitted by the SNWA; alternative alignments of pipelines, power lines, and other ancillary facilities; alternative pumping locations/scenarios; and a no action alternative. The Final EIS also analyzes, conceptually, future facilities such as placement of water wells, collector pipelines and groundwater pumping.

A PA has been prepared pursuant to the regulations of the Advisory Council on Historic Preservation (ACHP) to comply with section 106 of the NHPA and the implementing regulations at 36 CFR part 800. The executed PA was signed by the BLM, the Nevada State Historic Preservation Officer (SHPO), the ACHP and the SNWA, and negotiated with other consulting parties through consultation. The terms of the executed PA set forth the conditions for satisfying the SNWA's obligations for the proposed project under section 106 of the NHPA.

The exact amount of groundwater available to the proposed project is dependent upon future action by the NSE. The EIS and ROW application are not for the purpose of supporting the permitting of water rights or authorizing of such rights. The NSE is solely responsible for granting water rights.

Between the Draft EIS and the Final EIS one alternative—Alternative F—was developed in response to public comments, input from the applicant, and the agency's need to analyze a broader range of alternatives. Alternatives considered in the Final EIS include:

Proposed Action—Distributed Pumping at 1989 Application Quantities: This alternative requires ROWs for a main pipeline of up to 96 inches in diameter, lateral pipelines, and associated ancillary facilities. This alternative considers conveyance of the full quantity of SNWA's water rights applications in Spring, Snake, Cave, Dry Lake, and Delamar valleys. Under this alternative, groundwater wells would be distributed across five hydrologic basins. Under the proposed action, the SNWA could be granted a ROW that would permit the development and operation of a system of regional water facilities that could be used to convey up to 217,655 acre-feet per year (afy) of groundwater, including 184,655 afy of the SNWA groundwater rights (if permitted by the NSE) with the remaining capacity reserved for future use by Lincoln County.

The proposed ROW project would include approximately 306 miles of a buried water pipeline between 16 and 84 inches in diameter; approximately 323 miles of 230 kilovolt (kV), 69 kV and 25 kV overhead power lines; two primary electrical substations, five secondary substations, three pressure-reducing facilities; five pumping stations; six regulating tanks; a 40-million-gallon buried storage reservoir; a 165 million-gallon-per-day water treatment facility; and associated access roads.

Alternative A—Distributed Pumping at Reduced Quantities. This alternative requires ROWs for a main pipeline of up to 96 inches in diameter, lateral pipelines, and associated ancillary facilities. This alternative considers conveyance of less than the full quantity of SNWA's applications in Spring, Cave, Dry Lake, and Delamar valleys and an assumed quantity of 36,000 afy of new groundwater rights in Snake Valley.

Alternative B—Points of Diversion Pumping at Application Quantities. This alternative requires ROWs for a main pipeline of up to 96 inches in diameter, lateral pipelines, and associated ancillary facilities. Alternative B would develop and convey the same groundwater volume as the Proposed Action. However, groundwater would be developed within a 1-mile radius of the 34 application Points of Diversion locations.

Alternative C—Intermittent Pumping at Reduced Quantities. This alternative requires ROWs for a main pipeline of up to 96 inches in diameter, lateral pipelines, and associated ancillary facilities. The development pattern for this alternative would be the same as Alternative A. However, a lower overall volume of groundwater would be pumped over time as compared to any of the other alternatives.

Alternative D—Distributed Pumping at Reduced Quantities in Lincoln County Only. The pipeline and groundwater development for this alternative is limited to Clark and Lincoln counties; no facilities would be constructed in White Pine County. This alternative requires ROWs for a main pipeline of up to 78 inches in diameter, lateral pipelines, and associated ancillary facilities. Groundwater development considerations would be the same as that analyzed under Alternative A without the Snake Valley and the White-Pine-County portion of Spring Valley groundwater amounts.

Alternative E—Distributed Pumping at Reduced Quantities—Spring, Cave, Dry Lake, and Delamar valleys. The pipeline and groundwater development for this alternative is limited to four groundwater development basins (Spring, Cave, Dry Lake, and Delamar valleys), with no facilities extending into Snake Valley, and no groundwater development occurring there. This alternative requires ROWs for a main pipeline of up to 78 inches in diameter, lateral pipelines, and associated ancillary facilities.

Alternative F—Distributed Pumping at Perennial Yield Quantities—Spring, Cave, Dry Lake, and Delamar valleys. Alternative F would not include groundwater development in Snake Valley. This alternative includes development of the unappropriated groundwater resources in Spring, Cave, Dry Lake, and Delamar valleys. This alternative considers the perennial yield amount for each of these basins, less existing committed groundwater rights, and up to the maximum of the SNWA groundwater application quantity.

No-Action Alternative—Pursuant to the Southern Nevada Public Lands Management Act of 1998 and the Lincoln County Conservation, Recreation, and Development Act of 2004, the BLM must grant the SNWA's ROW requests in Clark County and Lincoln County. However, the No-Action Alternative in this Final EIS describes baseline conditions without construction of the SNWA Project, as a benchmark for the comparison of the Proposed Action and alternatives.

Route Alternatives. Alignment Options 1 through 4 were also analyzed in the Final EIS. They include local-scale option locations for certain facilities (pipelines, power lines): Alignment Option 1—Humboldt-Toiyabe Power Line Alignment—In this option, the Humboldt-Toiyabe 230-kV power line would parallel an existing transmission line over the Schell Creek Range between the Gonder Substation and Spring Valley.

Alignment Option 2—North Lake Valley Pipeline and Power Line Alignments—This option would change the location of the mainline pipeline and associated power line in North Lake Valley.

Alignment Option 3—Muleshoe Substation and Power Line Alignment—This option depends on the implementation of at least one major regional power line project in the SNWA Project area.

Alignment Option 4—North Delamar Valley Pipeline Alignment—This option would be the same as the Proposed Action, except that the pipeline and power line in northern Delamar Valley would follow the same alignment along Poleline Road.

Agency Preferred Alternative. In selecting the preferred alternative, the BLM considered all information that has been received consistent with its environmental review, ROW permitting responsibilities, and the NSE's jurisdiction over the SNWA's groundwater applications. The preferred alternative is the main conveyance pipeline alignment contained in Alternative F as described in the Final EIS which does not include development in Snake Valley and would be limited to water volumes approved by the NSE. In addition, Alignment Option 1—Humboldt-Toiyabe Power Line Alignment would be selected in combination with the main conveyance pipeline alignment described in Alternative F. Mitigation and monitoring identified in Chapter 3 and other sections of the Final EIS may be included as part of future decisions.

Alternative F was not included in the Draft EIS but was developed in response to public and applicant comments and the agency's desire to provide a more comprehensive analysis of the range of alternatives. Alternative E (no development in Snake Valley) was in the Draft EIS and received numerous public and agency comments noting the probable reduction in impacts in close proximity to Great Basin National Park.

In addition, the environmental benefits include the construction of conveyance facilities within a designated BLM utility corridor and/or adjacent to existing BLM-granted ROWs to limit the fragmentation of habitat and natural features and the transportation of future-developed water from Spring, Delamar, Cave and Dry Lake valleys in the most direct route that is technologically advantageous for the transport, delivery, and operation of the system. Alignment Option 1—the

Humboldt-Toiyabe Powerline Alignment—would lessen impacts to the sagebrush habitat and the related species dependent upon that habitat (i.e. sage grouse, pygmy rabbits, migratory birds, etc.) and maintain the proposed power line within an existing utility corridor.

To understand the impacts of the Preferred Alternative, one should consider the impacts of Alternatives E and F and understand that the preferred Alternative's impacts would be between the two. The amount of groundwater development analyzed in Alternative F is greater than that allocated by the NSE. The amount of groundwater development analyzed in Alternative E is closer to that allocated by the NSE. Both alternatives analyze the same main conveyance pipeline alignment and differ only in the assessment of the possible groundwater to be developed.

This is the initial EIS in a tiered NEPA evaluation process. As described in Council on Environmental Quality Regulations, a tiered NEPA process can be used for Proposed Actions such as the SNWA Project when specific locations have not been defined for all phases. Under NEPA, tiering involves a two-fold approach wherein general analyses are first covered in a broad EIS and more detailed issues are tiered (referenced) to that broader EIS. Once the broader EIS is completed, subsequent narrower statements or environmental assessments incorporate the general discussions from the broader EIS by reference, allowing the subsequent document to concentrate on the issues specific to the project or project phase. The NEPA regulations encourage Federal agencies to tier environmental documents for multi-stage projects to eliminate repetitive discussions of the same issues and to focus on the issues that are ready for decision at each level of environmental review.

The BLM conducted scoping in two periods: April 8 to August 1, 2005 and July 19 to October 18, 2006. The BLM received a total of 1,210 substantive letters during scoping. Key issues identified by individuals, groups and governmental entities include water supply and use, competing or conflicting land uses, and cumulative impacts and connected actions.

On June 10, 2011 the BLM published a Notice of Availability of the Draft EIS in the **Federal Register** (76 FR 34097) as did the EPA (76 FR 34072), which started a 90-day comment period. The Draft EIS 90-day public review and initial comment period ran from June 10 through September 9, 2011. The comment period was extended by 30 days and terminated on October 11, 2011. During the Draft EIS public comment period, the Nevada State Office received approximately 20,500 comment letters and emails from Federal agencies, State and local governments, Indian tribes, interested groups, and the public.

The majority of the concerns that were raised by Federal and state agencies, local and tribal governments, interested groups, and the public on the Draft EIS were focused on impacts to cultural resources, air quality, water resources, water dependent biological resources, human resources both within the area of development and in Las Vegas, wildlife, monitoring/mitigation of the project and cumulative impacts from the long-term development of the resources.

Authority: 40 CFR 1506.6, 40 CFR 1506.10.

Amy Lueders,

Nevada State Director.

[FR Doc. 2012–19148 Filed 8–2–12; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Draft Resource Management Plan/General Plan Draft Environmental Impact Statement/Revised Draft Environmental Impact Report for the San Luis Reservoir State Recreation Area, Merced County, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Reclamation, as the National Environmental Policy Act Federal lead agency, and the California Department of Parks and Recreation (CDPR), as the California Environmental Quality Act State lead agency, have made available for public review and comment the San Luis Reservoir State Recreation Area Resource Management Plan/General Plan (RMP/GP) Draft Environmental Impact Statement/Revised Draft Environmental Impact Report (EIS/EIR). The Draft RMP/GP EIS/EIR describes and presents the environmental effects of the No Action/No Project Alternative and three Action Alternatives. A public meeting will be held to receive comments from individuals and organizations on the Draft RMP/GP EIS/EIR.

DATES: Submit written comments on the Draft RMP/GP EIS/EIR on or before *October 2, 2012.*

A public meeting has been scheduled to receive oral or written comments regarding environmental effects. The meeting will be held from 6:30 p.m. to 9:00 p.m. on August 23, 2012, in Gustine, California.

ADDRESSES: Send written comments on the Draft RMP/GP EIS/EIR to Mr. Dave Woolley, Bureau of Reclamation, 1243 N Street, Fresno, CA 93721, or by email to *dwoolley@usbr.gov*. Written comments also may be submitted during the public meeting.

The public meeting will be held at the San Luis Reservoir State Recreation Area Headquarters, 31426 Gonzaga Road, Gustine, CA 95322.

Copies of the Draft RMP/GP EIS/EIR may be requested from Mr. Dave Woolley, by writing to: Bureau of Reclamation, 1243 N Street, Fresno, CA 93721; by calling 559–487–5049 (TDD 559–487–5933); or by emailing *dwoolley@usbr.gov*. The Draft EIS/EIR is also accessible from the following Web site: *http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=548*. See the **SUPPLEMENTARY INFORMATION** section below for locations where copies of the Draft RMP/GP EIS/EIR are available for public review.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Woolley, Bureau of Reclamation, at 559–487–5049 (TTY 1–800–735–2929) or *dwoolley@usbr.gov*.

SUPPLEMENTARY INFORMATION: The Draft RMP/GP EIS/EIR analyzes the direct, indirect, and cumulative effects to the physical, biological, and socioeconomic environment that may result from various resource management alternatives contained in the subject document.

The purposes of the RMP/GP EIS/EIR include: (1) Identifying the current and most appropriate future uses of land and water resources within the RMP/GP Area; (2) identifying the long-term resource programs and implementation guidelines to manage and develop recreation, natural, and cultural resources; and (3) developing strategies and approaches to protect and preserve the natural, recreational, aesthetic, and cultural resources.

The RMP/GP was initially released with a Draft EIR in 2005 for compliance with California Environmental Quality Act. The RMP/GP is being reissued with a joint Draft EIS/Revised Draft EIR for the purposes of both National Environmental Policy Act and California Environmental Quality Act compliance.

The RMP/GP area consists of over 27,000 acres owned by the Bureau of Reclamation (Reclamation) and includes the water surfaces of San Luis Reservoir, O'Neill Forebay, Los Banos Creek Reservoir, and adjacent recreation lands

within the vicinity of Los Banos, California. The general project location is south of State Route 152 between U.S. 101 and Interstate 5, approximately two hours southeast from San Francisco.

The RMP/GP area is owned by Reclamation and was built as part of the water storage and delivery system of reservoirs, aqueducts, power plants, and pumping stations operated under the California State Water Project and Central Valley Project. Construction began on San Luis Reservoir in 1963 and was completed in 1967 with planned joint-use by the State Water Project and the Central Valley Project. The California Department of Parks and Recreation was given the responsibility to plan, design, construct, maintain, and operate the recreation areas surrounding the reservoirs.

The new plan will: (1) Enhance natural resources and recreational opportunities without interrupting reservoir operations; (2) provide recreational opportunities to meet the demands of a growing population with diverse interests; (3) ensure diversity of recreational opportunities and quality of the recreational experience; (4) protect natural, cultural, and recreational sources while providing resource education opportunities and stewardship; and (5) provide updated management direction for establishing a new management agreement with the State of California.

The Draft EIS/Revised Draft EIR outlines the formulation and evaluation of alternatives designed to address these issues through a representation of the varied interests at the Plan Area. The No Action/No Project Alternative (Alternative 1) would result in the continuation of current management practices. Action Alternative 2 (Limited New Access and Development) emphasizes resource protection and limited new development. Action Alternative 3 (Moderate New Access and Development) balances natural and cultural resource protection and recreation opportunities. Action Alternative 4 (Maximum New Access and Development) provides the most overall recreation facility development.

The Draft RMP/GP EIS/EIR has been developed within the authorities provided by Congress through the Reclamation Recreation Management Act of 1992 (Pub. L. 102–575, Title 28, 16 U.S.C. 460L) and other applicable agency and Department of the Interior policies.

Copies of the Draft RMP/GP EIS/EIR are available for public review at the following locations:

- Bureau of Reclamation, Mid-Pacific Region, Regional Library, 2800 Cottage Way, Sacramento, CA 95825.
- Bureau of Reclamation, South-Central California Area Office, 1243 N Street, Fresno, CA 93721.
- Four Rivers Sector Office, 31426 Gonzaga Road, Gustine, CA 95322
- Los Banos Library, 1312 South 7th Street, Los Banos, CA 93635.
- California Department of Parks and Recreation, Northern Service Center, One Capitol Mall, Suite 500, Sacramento, CA 95814.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225.
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW., Main Interior Building, Washington, DC 20240–0001.

Public Meeting

A brief presentation, including a project overview, will open the public meeting. This will be followed by an open house during which individual concerns and questions will be addressed through interaction with the project team.

If special assistance is required at the public meeting, please contact Mr. Dave Woolley at 559–487–5049, (TTY 1–800–735–2929), or by emailing *dwoolley@usbr.gov*. Please notify Mr. Woolley as far in advance as possible to enable Reclamation staff enough time to secure the needed services. If a request cannot be honored, the requestor will be notified.

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 can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 17, 2012.

Pablo R. Arroyave,

Deputy Regional Director, Mid-Pacific Region.

[FR Doc. 2012–19021 Filed 8–2–12; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–365]

Proposed Aggregate Production Quotas for Schedule I and II Controlled Substances and Proposed Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2013

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice with request for comments.

SUMMARY: This notice proposes initial year 2013 aggregate production quotas for controlled substances in schedules I and II of the Controlled Substances Act (CSA) and assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

DATES: Electronic comments must be submitted and written comments must be postmarked on or before September 4, 2012. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–365'' on all electronic and written correspondence. DEA encourages that all comments be submitted electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site for easy reference. Paper comments that duplicate the electronic submission are not necessary as all comments submitted to *http://www.regulations.gov* will be posted for public review and are part of the official docket record. Written comments submitted via regular or express mail should be sent to the Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152.

FOR FURTHER INFORMATION CONTACT: John W. Partridge, Chief, Liaison and Policy Section, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone: (202) 307–4654.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the DEA's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted, and the comment, in redacted form, will be posted online and placed in the DEA's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Background

Section 306 of the CSA (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for each basic class of controlled substance listed in schedules I and II and for ephedrine, pseudoephedrine, and phenylpropanolamine. This responsibility has been delegated to the Administrator of the DEA by 28 CFR 0.100. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to 28 CFR 0.104.

The proposed year 2013 aggregate production quotas represent those quantities of schedule I and II controlled substances, and the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, to be manufactured in the United States in 2013 to provide for the estimated medical, scientific, research, and industrial needs of the United States, lawful export requirements, and the establishment and maintenance of reserve stocks. These quotas include imports of ephedrine, pseudoephedrine, and phenylpropanolamine but do not include imports of controlled substances for use in industrial processes.

In determining the proposed 2013 aggregate production quotas and assessment of annual needs, DEA has taken into account the criteria that DEA is required to consider in accordance with 21 U.S.C. 826(a), 21 CFR 1303.11 (aggregate production quotas for controlled substances), and 21 CFR 1315.11 (assessment of annual needs for ephedrine, pseudoephedrine, and phenylpropanolamine). DEA proposes the aggregate production quotas and assessment of annual needs for 2013 by considering (1) total net disposal of the class or chemical by all manufacturers and chemical importers during the current and two preceding years; (2) trends in the national rate of net disposal of the class or chemical; (3) total actual (or estimated) inventories of the class or chemical and of all substances manufactured from the class or chemical, and trends in inventory accumulation; (4) projected demand for such class or chemical as indicated by procurement and chemical import quotas requested pursuant to 21 CFR 1303.12, 1315.32, and 1315.34; and (5) other factors affecting the medical, scientific, research, and industrial needs in the United States, lawful export requirements, and reserve stocks, as the Deputy Administrator finds relevant. Other factors DEA considered in calculating the aggregate production quotas, but not the assessment of annual needs, include product development requirements of both bulk and finished dosage form manufacturers, and other pertinent information. In determining the proposed 2013 assessment of annual needs, DEA used the calculation methodology previously described in the 2010 and 2011 assessment of annual needs (74 FR 60294 and 75 FR 79407, respectively).

DEA also specifically considered that inventory allowances granted to individual manufacturers may not always result in the availability of sufficient quantities to maintain an adequate reserve stock pursuant to 21 U.S.C. 826(a), as intended. See 21 CFR 1303.24. This would be concerning if a natural disaster or other unforeseen event resulted in substantial disruption to the amount of controlled substances available to provide for legitimate public need. As such, DEA proposes to include in all schedule II aggregate production quotas, and certain schedule I aggregate production quotas (gamma-hydroxybutyric acid and tetrahydrocannabinols), an additional 25% of the estimated medical, scientific, and research needs as part of the amount necessary to ensure the establishment and maintenance of reserve stocks. The resulting established aggregate production quota will reflect these included amounts. This action will not affect the ability of manufacturers to maintain inventory allowances as specified by regulation. DEA expects that maintaining this reserve in certain established aggregate production quotas will mitigate adverse public affects if an unforeseen event resulted in substantial disruption to the amount of controlled substances available to provide for legitimate public need, as determined by DEA. DEA does not anticipate utilizing the reserve in the absence of these circumstances.

The Deputy Administrator, therefore, proposes that the year 2013 aggregate production quotas and assessment of annual needs for the following schedule I and II controlled substances and for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, expressed in grams of anhydrous acid or base, be established as follows:

	Proposed 2013 quotas g
Basic Class—Schedule I	
1-(5-Fluoropentyl)-3-(1-naphthoyl)indole (AM2201)	45
1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole (AM694)	45
1-[1-(2-Thienyl)cyclohexyl]piperidine	5
1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH–200)	45
1-Butyl-3-(1-naphthoyl)indole (JWH–073)	45
1-Cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (SR–18 and RCS–8)	45
1-Hexyl-3-(1-naphthoyl)indole (JWH–019)	45
1-Methyl-4-phenyl-4-propionoxypiperidine	2
1-Pentyl-3-(1-naphthoyl)indole (JWH–018 and AM678)	45
1-Pentyl-3-(2-chlorophenylacetyl)indole (JWH–203)	45
1-Pentyl-3-(2-methoxyphenylacetyl)indole (JWH–250)	45
1-Pentyl-3-(4-chloro-1-naphthoyl)indole (JWH–398)	45
1-Pentyl-3-(4-methyl-1-naphthoyl)indole (JWH–122)	45
1-Pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH–081)	45
1-Pentyl-3-[(4-methoxy)-benzoyl]indole (SR–19, RCS–4)	45
2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C–P)	15
2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C–E)	15
2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C–D)	15
2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C–N)	15
2-(2,5-Dimethoxyphenyl)ethanamine (2C–H)	15
2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C–C)	15
2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C–I)	15
2,5-Dimethoxy-4-ethylamphetamine (DOET)	12
2,5-Dimethoxy-4-n-propylthiophenethylamine	12
2,5-Dimethoxyamphetamine	12
2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C–T–2)	15
2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C–T–4)	15
3-Methylfentanyl	2
3-Methylthiofentanyl	2
3,4-Methylenedioxyamphetamine (MDA)	30
3,4-Methylenedioxy-N-methylcathinone (methylone)	15
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	24
3,4-Methylenedioxymethamphetamine (MDMA)	35
3,4-Methylenedioxypyrovalerone (MDPV)	15
3,4,5-Trimethoxyamphetamine	12
4-Bromo-2,5-dimethoxyamphetamine (DOB)	12
4-Bromo-2,5-dimethoxyphenethylamine (2–CB)	12
4-Methoxyamphetamine	88
4-Methylaminorex	12
4-Methyl-2,5-dimethoxyamphetamine (DOM)	12
4-Methyl-N-methylcathinone (mephedrone)	15
5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol	68
5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP–47, 497 C8-homolog)	53
5-Methoxy-3,4-methylenedioxyamphetamine	12
5-Methoxy-N,N-diisopropyltryptamine	12
5-Methoxy-N,N-dimethyltryptamine	10
Acetyl-alpha-methylfentanyl	2
Acetyldihydrocodeine	2
Acetylmethadol	2
Allylprodine	2
Alphacetylmethadol	2
Alpha-ethyltryptamine	12
Alphameprodine	2
Alphamethadol	2
Alpha-methylfentanyl	2
Alpha-methylthiofentanyl	2
Alpha-methyltryptamine (AMT)	12
Aminorex	12
Benzylmorphine	2
Betacetylmethadol	2
Beta-hydroxy-3-methylfentanyl	2
Beta-hydroxyfentanyl	2
Betameprodine	2
Betamethadol	2
Betaprodine	2
Bufotenine	3
Cathinone	12
Codeine-N-oxide	602
Desomorphine	5

	Proposed 2013 quotas g
Diethyltryptamine	12
Difenoxin	50
Dihydromorphine	3,300,000
Dimethyltryptamine	18
Gamma-hydroxybutyric acid	46,250,000
Heroin	25
Hydromorphinol	54
Hydroxypethidine	2
Ibogaine	5
Lysergic acid diethylamide (LSD)	30
Marihuana	21,000
Mescaline	13
Methaqualone	10
Methcathinone	14
Methyldihydromorphine	2
Morphine-N-oxide	655
N-Benzylpiperazine	12
N,N-Dimethylamphetamine	12
N-Ethylamphetamine	12
N-Hydroxy-3,4-methylenedioxyamphetamine	12
Noracymethadol	2
Norlevorphanol	52
Normethadone	2
Normorphine	18
Para-fluorofentanyl	2
Phenomorphan	2
Pholcodine	2
Properidine	2
Psilocybin	2
Psilocyn	4
Tetrahydrocannabinols	491,000
Thiofentanyl	2
Tilidine	10
Trimeperidine	2
Basic Class—Schedule II	
1-Phenylcyclohexylamine	3
1-Piperdinocyclohexanecarbonitrile	21
4-Anilino-N-phenethyl-4-piperidine (ANPP)	2,250,000
Alfentanil	38,250
Alphaprodine	3
Amobarbital	9
Amphetamine (for conversion)	18,375,000
Amphetamine (for sale)	38,000,000
Carfentanil	6
Cocaine	240,000
Codeine (for conversion)	81,250,000
Codeine (for sale)	49,506,250
Dextropropoxyphene	19
Dihydrocodeine	250,000
Diphenoxylate	750,000
Ecgonine	127,500
Ethylmorphine	3
Fentanyl	2,108,750
Glutethimide	3
Hydrocodone (for sale)	78,750,000
Hydromorphone	4,535,000
Isomethadone	5
Levo-alphacetylmethadol (LAAM)	4
Levomethorphan	6
Levorphanol	4,500
Lisdexamfetamine	19,250,000
Meperidine	6,875,000
Meperidine Intermediate-A	6
Meperidine Intermediate-B	11
Meperidine Intermediate-C	6
Metazocine	6
Methadone (for sale)	25,000,000
Methadone Intermediate	32,500,000
Methamphetamine	3,912,500

	Proposed 2013 quotas g
[962,500 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 2,888,750 grams for methamphetamine mostly for conversion to a schedule III product; and 61,250 grams for methamphetamine (for sale)].	
Methylphenidate	72,250,000
Morphine (for conversion)	103,750,000
Morphine (for sale)	51,250,000
Nabilone	25,628
Noroxymorphone (for conversion)	9,000,000
Noroxymorphone (for sale)	508,750
Opium (powder)	91,250
Opium (tincture)	1,287,500
Oripavine	22,750,000
Oxycodone (for conversion)	10,250,000
Oxycodone (for sale)	123,375,000
Oxymorphone (for conversion)	16,000,000
Oxymorphone (for sale)	6,875,000
Pentobarbital	42,500,000
Phenazocine	6
Phencyclidine	30
Phenmetrazine	3
Phenylacetone	20,000,000
Racemethorphan	3
Remifentanil	2,500
Secobarbital	215,003
Sufentanil	6,250
Tapentadol	13,500,000
Thebaine	145,000,000
Basic Class—List I Chemicals	
Ephedrine (for conversion)	12,000,000
Ephedrine (for sale)	3,200,000
Phenylpropanolamine (for conversion)	25,700,000
Phenylpropanolamine (for sale)	4,400,000
Pseudoephedrine (for sale)	185,000,000

The Deputy Administrator further proposes that aggregate production quotas for all other schedule I and II controlled substances included in 21 CFR 1308.11 and 1308.12 be established at zero. Pursuant to 21 CFR 1303.13 and 21 CFR 1315.13, upon consideration of the relevant factors, the Deputy Administrator may adjust the 2013 aggregate production quotas and assessment of annual needs as needed.

Comments

Pursuant to 21 CFR 1303.11 and 21 CFR 1315.11, any interested person may submit written comments on or objections to these proposed determinations. Based on comments received in response to this Notice, the Deputy Administrator may hold a public hearing on one or more issues raised. In the event the Deputy Administrator decides in his sole discretion to hold such a hearing, the Deputy Administrator will publish a notice of any such hearing in the **Federal Register**. After consideration of any comments and after a hearing, if one is held, the Deputy Administrator will publish in the **Federal Register** a final order establishing the 2013 aggregate production quota for each basic class of controlled substance and assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

Dated: July 31, 2012.

Thomas M. Harrigan,

Deputy Administrator.

[FR Doc. 2012–19052 Filed 8–2–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Prohibited Transaction Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Prohibited Transaction Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds,'' 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 September 4, 2012.

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, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), 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: The Prohibited Transaction Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds permits cross-trades of securities between index and model-driven funds managed by investment managers and among such funds and certain large accounts to which such investment managers act as a trading adviser in connection with a specific portfolio-restructuring program. To ensure managers have complied with exemption requirements, the DOL has included in the exemption certain recordkeeping and disclosure obligations designed to safeguard plan assets by periodically providing information to plan fiduciaries, who generally must be independent about the cross-trading 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 if the collection of information 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 1210–0115. The current approval is scheduled to expire on August 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on April 5, 2012 (77 FR 20650).

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 1210–0115. 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: Prohibited Transaction Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds.

OMB Control Number: 1210–0115.

Affected Public: Private sector—businesses or other for-profits.

Total Estimated Number of Respondents: 60.

Total Estimated Number of Responses: 840.

Total Estimated Annual Burden Hours: 855.

Total Estimated Annual Other Costs Burden: $528.

Dated: July 30, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–19016 Filed 8–2–12; 8:45 a.m.]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Employee Retirement Income Security Act Summary Annual Report Requirement

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Employee Retirement Income Security Act Summary Annual Report Requirement,'' 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 September 4, 2012.

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, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), 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: Employee Retirement Income Security Act of 1974 section 104(b)(3), 29 U.S.C. 1024(b)(3), and regulations codified at 29 CFR 2520.104b–10 require employee benefit plans to furnish a summary of the plan's annual report to participants and specified beneficiaries for purposes of disclosure of basic financial information.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information 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 1210–0040. The current approval is scheduled to expire on

August 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on April 5, 2012 (77 FR 20650).

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 1210–0040. 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: Employee Retirement Income Security Act Summary Annual Report.

OMB Control Number: 1210–0040.

Affected Public: Private sector—businesses or other for-profits.

Total Estimated Number of Respondents: 38.

Total Estimated Number of Responses: 169,000,000.

Total Estimated Annual Burden Hours: 2,300,000.

Total Estimated Annual Other Costs Burden: $58,300,000.

Dated: July 30, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–19050 Filed 8–2–12; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Extension of Existing Information Collection; Petitions for Modification of Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to assure that requested 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. Currently, the Mine Safety and Health Administration is soliciting comments concerning the extension of the information collection for 30 CFR 44.9, 44.10, and 44.11. OMB last approved this information collection request on January 8, 2010. The package expires on January 31, 2013.

DATES: All comments must be postmarked or received by midnight Eastern Time on October 2, 2012.

ADDRESSES: Comments concerning the information collection requirements of this notice must be clearly identified with ''OMB 1219–0065'' and sent to the Mine Safety and Health Administration (MSHA). Comments may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Facsimile:* 202–693–9441, include ''OMB 1219–0065'' in the subject line of the message.
- *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. For hand delivery, sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: Greg Moxness, Chief, Economic Analysis Division, Office of Standards, Regulations, and Variances, MSHA, at *moxness.greg@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 811(c), provides that a mine operator or a representative of miners may petition the Secretary of Labor (Secretary) to modify the application of a mandatory safety standard. A petition for modification may be granted if the Secretary determines (1) that an alternative method of achieving the results of the standard exists and that it will guarantee, at all times, no less than the same measure of protection for the miners affected as that afforded by the standard, or (2) that the application of the standard will result in a diminution of safety to the miners affected.

Upon receipt of a petition, MSHA publishes a notice in the **Federal Register** advising interested parties that they may provide comments or other relevant information on the proposed modification. Thereafter, MSHA conducts an investigation to determine the merits of the petition for the purpose of deciding whether or not to grant it and, if granted, whether there is a need for any additional terms or conditions. This information collection addresses the recordkeeping associated with 30 CFR 49.9, 44.10, and 44.11.

II. Desired Focus of Comments

The Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to this safety standard on petitions for modification of mandatory safety standards. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- Evaluate the accuracy of the MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Address 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) to minimize the burden of the collection of information on those who are to respond.

The public may examine publicly available documents, including the public comment version of the supporting statement, at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. OMB clearance requests are available on MSHA's Web site at *http://www.msha.gov* under ''Rules & Regs'' on the right side of the screen by selecting *Information Collections Requests, Paperwork Reduction Act Supporting Statements.* The document will be available on MSHA's Web site for 60 days after the publication date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because comments will not be edited to remove any identifying or contact information, MSHA cautions the commenter against including any information in the submission that should not be publicly disclosed. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

The information contained in an approved petition for modification is used by MSHA during inspections to determine compliance with the relevant safety standard. MSHA has updated the data with respect to the number of respondents and responses, as well as the total burden hours and total annual cost burden supporting this information collection extension request.

Summary

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Petitions for Modification of Mandatory Safety Standards.

OMB Number: 1219–0065.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: 30 CFR 44.9, 44.10, and 44.11.

Total Number of Respondents: 80.

Frequency: Infrequent.

Total Number of Responses: 80.

Total Burden Hours: 2,560 hours.

Other Cost Burden: $37,514.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Authority: 44 U.S.C. 3506(c)(2)(A).

Dated: July 31, 2012.

George F. Triebsch,

Certifying Officer.

[FR Doc. 2012–19012 Filed 8–2–12; 8:45 am]

BILLING CODE 4510–43–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2012–5 CRB SD 2010]

Distribution of 2010 Satellite Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice requesting comments.

SUMMARY: The Copyright Royalty Judges are soliciting comments on a motion of Phase I claimants for partial distribution in connection with the 2010 satellite royalty funds. The Judges are also requesting comments as to the existence of Phase I and Phase II controversies with respect to the distribution of 2010 satellite royalty funds.

DATES: Comments are due on or before September 4, 2012.

ADDRESSES: Comments may be sent electronically to *crb@loc.gov.* In the alternative, send an original, five copies, and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments must be brought to the Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE., Washington, DC 20559–6000. If delivered by a commercial courier, comments must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Street NE., Washington, DC. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: Lakeshia Keys, Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: On June 20, 2012, representatives of the Phase I claimant categories (the ''Phase I Claimants'') [1] filed with the Judges a motion requesting a partial distribution of 50% of the 2010 satellite royalty funds pursuant to section 801(b)(3)(C) of the Copyright Act. 17 U.S.C. 801(b)(3)(C). That section requires that the Judges publish a notice in the **Federal Register** seeking responses to the motion for partial distribution to ascertain whether any claimant entitled to receive such fees has a reasonable objection to the requested distribution before ruling on the motion. Consequently, this Notice seeks comments from interested claimants on whether any reasonable objection exists that would preclude the distribution of 50% of the 2010 satellite royalty funds to the Phase I Claimants. The Judges must be advised of the existence and extent of all such objections by the end of the comment period. The Judges will not consider any objections with respect to the partial distribution motion that come to their attention after the close of that period.

The Judges also seek comment on the existence and extent of any controversies to the 2010 satellite royalty funds at Phase I or Phase II with respect to those funds that would remain if the motion for partial distribution is granted.

The Motion of the Phase I Claimants for Partial Distribution is posted on the Copyright Royalty Board Web site at *http://www.loc.gov/crb.*

Dated: July 30, 2012.

Suzanne M. Barnett,

Chief U.S. Copyright Royalty Judge.

[FR Doc. 2012–18928 Filed 8–2–12; 8:45 am]

BILLING CODE 1410–72–P

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[1] The ''Phase I Claimants'' are Program Suppliers, Joint Sports Claimants, Broadcaster Claimants Group, Music Claimants (represented by American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.), and Devotional Claimants. In Phase I of a satellite royalty distribution proceeding, royalties are allocated among certain categories of broadcast programming that have been retransmitted by satellite systems. The categories have traditionally been movies and syndicated television series, sports programming, commercial broadcaster-owned programming, religious programming, and music. Public Television Claimants, Canadian Claimants, and National Public Radio, which traditionally have received Phase I shares of cable royalties, do not claim Phase I shares of the satellite royalty funds. In Phase II of a satellite royalty distribution proceeding, royalties are allocated among claimants within each of the Phase I categories.

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2012–4 CRB CD 2010]

Distribution of the 2010 Cable Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice requesting comments.

SUMMARY: The Copyright Royalty Judges are soliciting comments on a motion of Phase I claimants for partial distribution in connection with the 2010 cable royalty funds. The Judges are also requesting comments as to the existence of Phase I and Phase II controversies with respect to the distribution of 2010 cable royalty funds.

DATES: Comments are due on or before September 4, 2012.

ADDRESSES: Comments may be sent electronically to *crb@loc.gov.* In the alternative, send an original, five copies, and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments must be brought to the Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE., Washington, DC 20559–6000. If delivered by a commercial courier, comments must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Street NE., Washington, DC. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: Lakeshia Keys, Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: Each year cable systems must submit royalty payments to the Register of Copyrights as required by the statutory license set forth in section 111 of the Copyright Act for the retransmission to cable subscribers of over-the-air television and radio broadcast signals. *See* 17 U.S.C. 111(d). These royalties are then distributed to copyright owners whose works were included in a qualifying transmission and who timely filed a claim for royalties. Allocation of the royalties collected occurs in one of two ways. In the first instance, these funds will be distributed through a negotiated settlement among the parties. 17 U.S.C. 111(d)(4)(A). If the claimants do not reach an agreement with respect to the royalties, the Copyright Royalty Judges (''Judges'') must conduct a proceeding to determine the distribution of any royalties that remain in controversy. 17 U.S.C. 111(d)(4)(B).

On June 20, 2012, representatives of the Phase I claimant categories (the ''Phase I Parties'') [1] filed with the Judges a motion requesting a partial distribution of 50% of the 2010 cable royalty funds pursuant to Section 801(b)(3)(C) of the Copyright Act. 17 U.S.C. 801(b)(3)(C). Under that section of the Copyright Act, before ruling on a partial distribution motion the Judges must publish a notice in the **Federal Register** seeking responses to the motion to ascertain whether any claimant entitled to receive such royalty fees has a reasonable objection to the proposed distribution. Consequently, this Notice seeks comments from interested claimants on whether any reasonable objection exists that would preclude the distribution of 50% of the 2010 cable royalty funds to the Phase I Parties. The Judges must be advised of the existence and extent of all such objections by the end of the comment period. The Judges will not consider any objections with respect to the partial distribution motion that come to their attention after the close of that period.

The Judges also seek comment on the existence and extent of any controversies to the 2010 cable royalty funds at Phase I or Phase II with respect to those funds that would remain if the partial distribution is granted.

The Motion of Phase I Claimants for Partial Distribution is posted on the Copyright Royalty Board Web site at *http://www.loc.gov/crb.*

[1] The ''Phase I Parties'' are the Program Suppliers, Joint Sports Claimants, Public Television Claimants, Commercial Television Claimants (represented by National Association of Broadcasters), Music Claimants (represented by American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.), Canadian Claimants Group, National Public Radio, and Devotional Claimants. In Phase I of a cable royalty distribution proceeding, royalties are allocated among certain categories of broadcast programming that have been retransmitted by cable systems. The categories have traditionally been movies and syndicated television series, sports programming, commercial and noncommercial broadcaster-owned programming, religious programming, music, public radio programming, and Canadian programming. In Phase II of a cable royalty distribution proceeding, royalties are allocated among claimants within each of the Phase I categories.

Dated: July 30, 2012.

Suzanne Barnett,

Chief U.S. Copyright Royalty Judge.

[FR Doc. 2012–18930 Filed 8–2–12; 8:45 am]

BILLING CODE 1410–72–P

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities; Proposed Collection

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), the U.S. Merit Systems Protection Board (MSPB) is submitting a request for a three-year extension of an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. This ICR describes the nature of the information collection and its estimated burden and cost.

DATE: Submit written comments on or before September 4, 2012.

ADDRESSES: Submit your comments concerning this ICR by one of the following methods:

Mail: Attention: Desk Officer for MSPB, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Email: OIRA_Submission@OMB.EOP.GOV.

You also may submit comments to MSPB by one of the following methods:

Mail: William D. Spencer, Clerk of the Board, U.S. Merit Systems Protection Board, Suite 500, 1615 M Street NW., Washington DC 20419.

Email: Please include ''Voluntary Customer Surveys'' in the subject line of the message and send it to *mspb@mspb.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Dee Ann Batten by phone at (202) 254–4495; by email at *deeann.batten@mspb.gov;* or by fax at (202) 653–7211.

SUPPLEMENTARY INFORMATION: Under PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. The MSPB intends to ask for a three-year renewal of its Generic Clearance Request for Voluntary Customer Surveys, OMB Control No. 3124–0012. On April 30, 2012, MSPB sought public comments on this ICR pursuant to 5 CFR 1320.8(d). *See* 77 FR 25501. The MSPB did not receive any comments. The MSPB is

submitting the ICR to OMB for review and approval according to the procedure prescribed in 5 CFR 1320.12.

Executive Order 12862, ''Setting Customer Service Standards,'' mandates agencies to identify their customers and survey them to determine the kind and quality of services they want and their level of satisfaction with existing services. The MSPB's customers and stakeholders include persons who file appeals with MSPB for agency actions taken against them (appellants), their representatives, and representatives of the agency which took the action.

These surveys will be used to evaluate how well we are serving our customers in terms of their perceptions of timeliness, fairness, accessibility, and sensitivity to their situation in deciding their appeals. We also have used customer surveys to determine the usefulness of the reports issued by the Office of Policy & Evaluation. As a result of these surveys we have established baseline performance measures for both our appeals process and merit systems review responsibilities.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.50 hours per respondent.

Respondents/Affected Entities: Participants are selected via simple or stratified random sampling to facilitate a representative sample of Federal employees.

Estimated Number of Respondents Survey: 3,000.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 750 hours.

William D. Spencer,

Clerk of the Board.

[FR Doc. 2012–18939 Filed 8–2–12; 8:45 am]

BILLING CODE 7400–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On June 19, 2012, the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on July 30, 2012 to: Kristin O'Brien, Permit No. 2013–009.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2012–18922 Filed 8–2–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Week of August 6, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of August 6, 2012

Tuesday, August 7, 2012

8:55 a.m. Affirmation Session (Public Meeting) (Tentative)

a. *Calvert Cliffs Nuclear Project, L.L.C.* (Calvert Cliffs Nuclear Power Plant, Unit 3), et al., Petition to Suspend Final Decisions on Reactor License Applications Pending Completion of Remanded Waste Confidence Proceeding (June 18, 2012) (Tentative).

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: *www.nrc.gov/about-nrc/policy-making/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 Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at *william.dosch@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: July 31, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–19100 Filed 8–1–12; 11:15 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service™.

ACTION: Notice of modification to existing system of records.

SUMMARY: The United States Postal Service® is proposing to modify a Customer Privacy Act System of Records. These modifications reflect the needs of two new Postal Service programs to assist customers with package and mail tracking. Also, there is an update to the current system manager's title.

DATES: The revision will become effective without further notice on September 4, 2012 unless comments received on or before that date result in a contrary determination.

ADDRESSES: Comments may be mailed or delivered to the Records Office, United States Postal Service, 475 L'Enfant Plaza SW., Room 9431, Washington, DC 20260–2201. Copies of all written comments will be available at this address for public inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jane Eyre, Manager, Records Office, 202–268–2608.

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish their amended systems of records in the **Federal Register** when there is a revision, change, or addition. The Postal Service™ has reviewed this system of records and has determined that this Customer Privacy Act System of

Records should be revised to modify Categories of Records in the System, Purpose(s), Retrievability, Retention and Disposal, and the System Manager(s) and Address.

I. Background

In its continuing effort to improve its value-added services, the Postal Service will launch two new programs in 2012. The first will assist business mailers with tracking mail pieces sent to their customers. The tracking of these mail pieces will utilize the 11-digit ZIP Code and/or an Intelligent Mail Barcode. The second will strengthen the digital relationship with consumers and aid all customers with package tracking and visibility within the Postal Service network and through other carrier networks.

Additionally, in June, 2012, the Postal Service made additional management and organizational changes.

II. Rationale for Changes to USPS Privacy Act Systems of Records

The Postal Service is enhancing our customers' visibility of their mailings. The first program will automate the process to provide business mailers with mail piece induction information. The second program will integrate tracking information from multiple carriers.

Lastly, in regards to the system manager title update, there is a continuing need to reflect changes in the identity or title of responsible officials.

III. Description of Changes to Systems of Records

The Postal Service is modifying one system of records listed below. Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed modifications has been sent to Congress and to the Office of Management and Budget for their evaluation. The Postal Service does not expect this amended notice to have any adverse effect on individual privacy rights. The affected system is as follows:

USPS 820.200

SYSTEM NAME:

Mail Management and Tracking Activity.

Accordingly, for the reasons stated, the Postal Service proposes changes in the existing system of records as follows:

USPS 820.200

SYSTEM NAME:

Mail Management and Tracking Activity.

CATEGORIES OF RECORDS IN THE SYSTEM:

[CHANGE TO READ]

1. *Customer information:* Customer or contact name, mail and email address(es), title or role, phone number(s), and cellphone carrier.

* * * * *

[CHANGE TO READ]

5. *Customer preference data:* Hold mail begin and end date, redelivery date, delivery options, shipping and pickup preferences, drop ship codes, comments and instructions, mailing frequency, preferred delivery dates, and preferred means of contact.

* * * * *

[ADD NEW TEXT]

7. *Mail Images:* Images of mail pieces captured during normal mail processing operations.

PURPOSE(S):

* * * * *

[CHANGE TO READ]

3. To provide customers with information about the status of mailings within the USPS network or other carrier networks.

[ADD NEW TEXT]

4. To provide business mailers with information about the status of mailings within the USPS mail processing network.

[RENUMBER REMAINING TEXT]

RETRIEVABILITY:

[CHANGE TO READ]

By customer name, customer ID(s), logon ID, mailing address(es), 11-digit ZIP Code, or any Intelligent Mail Barcode.

RETENTION AND DISPOSAL:

* * * * *

[ADD NEW TEXT]

5. Mailpiece images will be retained up to 3 days.

* * * * *

[RENUMBER REMAING TEXT AND ADD NEW TEXT]

7. USPS and other carrier network tracking records are retained for up to 30 days for mail and up to 90 days for packages and special services.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

[ADD NEW TEXT]

President, Digital Solutions, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

Chief Information Officer, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

[CHANGE TO READ]

Chief Marketing/Sales Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

* * * * *

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–18957 Filed 8–2–12; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–30156]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

July 27, 2012.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of July 2012. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 21, 2012, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street NE., Washington, DC 20549–8010.

Industry Leaders Fund [File No. 811–9150]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 25, 2012, applicant made a liquidating distribution to its shareholders, based

on net asset value. Expenses of $3,250 incurred in connection with the liquidation were paid by Claremont Investment Partners, LLC, applicant's investment adviser.

Filing Date: The application was filed on June 29, 2012.

Applicant's Address: 175 Oak Ridge Ave., Summit, NJ 07901.

Santa Barbara Group of Mutual Funds Inc. [File No. 811–7414]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 20, 2012, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $2,970 incurred in connection with the liquidation were paid by applicant and Hillcrest Wells Advisors, LLC, applicant's investment adviser.

Filing Date: The application was filed on June 11, 2012.

Applicant's Address: Hillcrest Wells Advisors, LLC, 1270 Hillcrest Ave., Pasadena, CA 91106.

Oppenheimer Principal Protected Trust III [File No. 811–21561]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Oppenheimer Main Street Funds, Inc. and, on January 21, 2012, made a final distribution to shareholders based on net asset value. Expenses of $44,850 incurred in connection with the reorganization were paid by applicant.

Filing Dates: The application was filed on May 2, 2012, and amended on July 3, 2012.

Applicant's Address: OppenheimerFunds Inc., 6803 S. Tucson Way, Centennial, CO 80112.

Morgan Stanley Real Estate Fund [File No 811–9117]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Morgan Stanley Institutional Fund, Inc. and, on November 14, 2011, made a final distribution to its shareholders based on net asset value. Expenses of approximately $155,387 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on June 13, 2012.

Applicant's Address: c/o Morgan Stanley Investment Management Inc., 522 Fifth Ave., New York, NY 10036.

Standard Insurance Company Separate Account C [File No. 811–9619]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant requests deregistration based on abandonment of registration. Applicant is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

Filing Dates: The application was filed on February 24, 2012, and amended on July 24, 2012.

Applicant's Address: 1100 SW. 6th Avenue, Portland, OR 97204–1093.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18973 Filed 8–2–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67527; File No. SR–ISE–2012–66]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISE Rule 2102 To Extend the Single Stock Circuit Breaker Pilot Program Until February 4, 2013

July 27, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 18, 2012, the International Securities Exchange, LLC (the ''Exchange'' or ''ISE'') 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 proposes to amend Rule 2102 (Hours of Business) to extend the expiration of the pilot rule.

The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend ISE Rule 2102 to extend the expiration of the pilot rule. Initial amendments to ISE Rule 2102 to allow the Exchange to pause trading in an individual stock when the primary listing market for such stock issues a trading pause were approved by the Securities and Exchange Commission (''Commission'') on June 10, 2010 on a pilot basis to end on December 10, 2010.[3] The pilot was then extended to expire on April 11, 2011.[4] On March 21, 2011, ISE Rule 2102 was amended to state that the pilot would expire on the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, would apply.[5] On August 9, 2011, ISE Rule 2102 was once again amended to extend the pilot to January 31, 2012.[6] On January 30, 2012, ISE Rule 2102 was amended to extend the pilot to July 31, 2012.[7]

On September 10, 2010, ISE Rule 2102 was amended to expand the pilot rule to apply to the Russell 1000® Index and other specified exchange traded products.[8] On June 23, 2011, ISE Rule 2102 was amended again to expand the

[3] *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–ISE–2010–48).

[4] *See* Securities Exchange Act Release No. 63506 (December 9, 2010), 75 FR 78301 (December 15, 2010) (SR–ISE–2010–117).

[5] *See* Securities Exchange Act Release No. 64193 (April 5, 2011), 76 FR 20062 (April 11, 2011) (SR–ISE–2011–17).

[6] *See* Securities Exchange Act Release No. 65072 (August 9, 2011), 76 FR 50513 (August 15, 2011) (SR–ISE–2011–52).

[7] *See* Securities Exchange Act Release No. 66271 (January 30, 2012), 77 FR 5587 (February 3, 2012) (SR–ISE–2012–05).

[8] *See* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–ISE–2010–66).

pilot rule to apply to all NMS Stocks.[9] The Exchange now proposes to extend the date by which this pilot rule will expire to February 4, 2013. Extending this pilot program will provide the exchanges with a continued opportunity to assess the effect of this rule proposal on the markets.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[10] which requires the rules of an exchange 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. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[11] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. Additionally, extending this pilot rule will allow this pilot to act as a stop-gap until the limit up/limit down mechanism to address extraordinary market volatility becomes operative on February 4, 2013.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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[12] and Rule 19b–4(f)(6) thereunder.[13] 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[14] and Rule 19b–4(f)(6)(iii) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6)[16] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. 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, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an Email to *rule-comments@sec.gov.* Please include File No. SR–ISE–2012–66 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–ISE–2012–66. 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 Commissions 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. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2012–66 and should be submitted by August 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18968 Filed 8–2–12; 8:45 am]

BILLING CODE 8011–01–P

[9] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–ISE–2011–028).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78k–1(a)(1).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and 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.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67528; File No. SR–ISE–2012–67]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISE Rule 2128 To Extend the Pilot Program Until February 4, 2013

July 27, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 18, 2012, the International Securities Exchange, LLC (the ''Exchange'' or ''ISE'') 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 proposes to amend Rule 2128 (Clearly Erroneous Trades) to extend the expiration of the pilot rule.

The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend ISE Rule 2128 (Clearly Erroneous Trades) to extend the expiration of the pilot rule. Amendments to ISE Rule 2128 to provide for uniform treatment of certain clearly erroneous execution reviews and transactions that occur before a trading pause is in effect on the Exchange were approved by the Securities and Exchange Commission (''Commission'') on September 10, 2010 on a pilot basis to end on April 11, 2011.[3] The Exchange then extended this pilot to expire upon the earlier of August 11, 2011 or the date on which the limit up/limit down mechanism to address extraordinary market volatility applies.[4] The Exchange then extended the pilot to January 31, 2012 [5] and, once again, extended the pilot to July 31, 2012.[6] The Exchange now proposes to extend the date by which this pilot rule will expire to February 4, 2013. Extending this pilot program will provide the exchanges with a continued opportunity to assess the effect of this rule proposal on the markets.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[7] which requires the rules of an exchange 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. The proposed rule change also is designed to support the principles of Section 11A(a)(1) [8] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes uniformity across markets concerning decisions relating to clearly erroneous trades in a security when there are significant price movements. Additionally, extending this pilot rule will allow this pilot to act as a stop-gap until the limit up/limit down mechanism to address extraordinary market volatility becomes operative on February 4, 2013.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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 [9] and Rule 19b–4(f)(6) thereunder.[10] 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 [11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii) [14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–ISE–2010–62) (Extending the pilot period to December 10, 2010); 63481 (December 9, 2010), 75 FR 78275 (December 15, 2010) (Extending the pilot period to April 11, 2011).

[4] *See* Securities and Exchange Act Release No. 64231 (April 7, 2011), 76 FR 20733 (April 13, 2011) (SR–ISE–2011–19).

[5] *See* Securities and Exchange Act Release No. 65061 (August 9, 2011), 76 FR 50503 (August 15, 2011) (SR–ISE–2011–51).

[6] *See* Securities and Exchange Act Release No. 66255 (January 26, 2012), 77 FR 5081 (February 1, 2012) (SR–ISE–2012–04).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78k-1(a)(1).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and 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.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

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, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–ISE–2012–67 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–ISE–2012–67. 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 Commissions 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. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2012–67 and should be submitted by August 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18969 Filed 8–2–12; 8:45 am]

BILLING CODE 8011–01–P

[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67533; File No. SR–CME–2012–31]

Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Make Clarifying Changes to CME Rule 819 and Certain Chapter 8F Rules

July 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 25, 2012, the Chicago Mercantile Exchange, Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which items have been prepared primarily by CME. The Commission is publishing this Notice and Order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CME proposes to make clarifying changes to CME Rule 819 and certain Chapter 8F Rules. The text of the proposed rule change is available at the CME's Web site at *http://www.cmegroup.com,* at the principal office of CME, 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, CME included statements concerning the purpose and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements and comments may be examined at the places specified in Item III below. CME has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of these statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CME proposes to make certain clarifying changes to CME Rule 819, 8F002, 8F004 and 8F008. The proposed changes do not affect CME's credit default swap clearing (''CDS'') offering. The proposed effective date for the revisions is August 1, 2012.

In order to clarify that the lien on collateral held by the CME clearing house includes both property of clearing members and customer performance bond, CME proposes to change language in both CME Rule 819 and Rule 8F008. The clarifying language is intended to align CME Rules 819 and 8F008 with current CME Rule 8H008, which governs CDS clearing and states, in pertinent part: ''Each CDS Clearing Member hereby grants to the Clearing House a first priority and unencumbered lien to secure all obligations of such CDS Clearing Member to the Clearing House against any property and collateral deposited with the Clearing House by the CDS Clearing Member.''

In addition, CME proposes to revise CME Rule 8F004 in order to: (a) Clarify that the minimum capital requirements for firms that clear credit default swaps and/or interest rate swaps are not governed by Rule 8F004 but rather by current Rules 8G004 and 8H004; and (b)

[3] The Commission has modified the text of the summaries prepared by CME.

make the minimum capital requirement $5 million for OTC Clearing Members that only clear agricultural swaps (and not other OTC Derivatives).

Finally, CME proposes a technical amendment to the definition of ''OTC Derivatives'' in CME Rule 8F002 to reflect that section 2(h) of the Commodity Exchange Act (''CEA'') no longer provides exemptive relief.

CME notes that it has already certified the proposed changes that are the subject of this filing to its primary regulator, the Commodity Futures Trading Commission (''CFTC''), in CME Submission 12–241.

CME believes the proposed changes are consistent with the requirements of the Exchange Act including Section 17A in that they make clarifying changes that will facilitate the prompt and accurate clearance and settlement of securities transactions and derivatives agreements, contracts and transactions and will help assure the safeguarding of securities and funds which are in the custody or control of the clearing agency and, in general, help to protect investors and the public interest.

CME further notes that the proposed changes are limited to its business as a derivatives clearing organization under the CEA and therefore do not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service. CME notes that the policies of the CEA with respect to clearing are comparable to a number of the policies underlying the Exchange Act, such as promoting market transparency for over-the-counter derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. 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 may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or send an email to *rule-comment@sec.gov*. Please include File No. SR–CME–2012–31 on the subject line.
- Paper comments should be sent 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–CME–2012–31. 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 CME. 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–CME–2012–31 and should be submitted on or before August 24, 2012.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Section 19(b) of the Act [4] 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. In particular, Section 17A(b)(3)(F) [5] of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds that are in the custody or control of the clearing agency, or for which it is responsible, and protect investors and the public interest. The Commission finds that the proposed clarifications are consistent with the requirements of Section 17A(b)(3)(F) of the Act because the clarifications should allow CME's Members to better monitor their financial status and risk-management procedures. This, in turn, should enhance CME's ability to safeguard the securities and funds in its custody or control, or for which it is responsible.[6]

In its filing, CME requested that the Commission approve these proposed rule changes prior to the thirtieth day after the date of publication of the notice of the filing. CME has articulated three reasons for so granting approval. First, CME notes that the products covered by this filing, and the CME's operations as a derivatives clearing organization for such products, are regulated by the CFTC under the CEA. Second, the proposed rule changes affect the futures and swaps that CME clears and therefore relate solely to its futures and swaps clearing activities and do not significantly relate to the CME's functions as a clearing agency for security-based swaps. Third, the clarifying changes will help promote the prompt and accurate clearance of transactions and therefore are designed to protect investors and the public interest.

The Commission finds good cause for granting approval of the proposed rule changes prior to the thirtieth day after publication of the notice of filing because: (i) The proposed rule changes do not significantly affect any of CME's securities clearing operations or any related rights or obligations of CME or persons using such service; (ii) CME has indicated that not providing accelerated approval would have a significant impact on its business as a designated clearing organization; and (iii) the activity relating to CME's non-security clearing operations for which CME is seeking approval is subject to regulation by another federal regulator.

[4] 15 U.S.C. 78s(b).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] *See* 15 U.S.C. 78q–1. In approving these proposed rule changes, the Commission has considered the proposed rule changes' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

V. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR–CME–2012–31) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18970 Filed 8–2–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67539; File No. SR–NASDAQ–2012–088]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Port Fees

July 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on July 19, 2012, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the port fees charged to members and non-members for ports used to enter orders into Nasdaq systems, in connection with the use of other trading telecommunication protocols.

The text of the proposed rule change is below. Proposed new language is in italics.[3]

* * * * *

7015. Access Services

(a)–(f) No change.

(g) Other Port Fees.

The following port fees shall apply in connection with the use of other trading telecommunication protocols:

- $500 per month for each port pair, other than Multicast ITCH® data feed pairs, for which the fee is $1000 per month *for software-based TotalView-ITCH or $2,500 per month for combined software- and hardware-based TotalView-ITCH.*
- An additional $200 per month for each port used for entering orders or quotes over the Internet.
- An additional $600 per month for each port used for market data delivery over the Internet.

(h) No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to amend Nasdaq Rule 7015 (Access Services) to modify the monthly fee it charges for ports used to enter orders in Nasdaq trading systems, such as the Nasdaq Market Center and the Nasdaq Options Market [sic], in connection with the use of other trading telecommunication protocols.

Specifically, the fee change is to establish an optional new $2,500 per month port fee for those customers that elect to take the hardware-based TotalView-ITCH equities depth feed that uses field-programmable gate array (''FPGA'') technology,[4] in addition to the software-based TotalView-ITCH version, to receive delivery of Nasdaq Depth-of-Book data, defined in Nasdaq Rule 7023 to include TotalView, OpenView, and NASDAQ Level 2 (collectively, ''Nasdaq Depth data''). In offering this new optional port fee using a hardware-delivery mechanism, Nasdaq is serving those customers requiring a predictable latency profile throughout the trading day. By taking advantage of hardware parallelism, FPGA technology is capable of processing more data packets during peak market conditions without the introduction of variable queuing latency.

Currently, in accordance with Nasdaq Rule 7015(g), customers receiving TotalView-ITCH pay $1,000 per multicast ITCH data feed port pair for the software-version of the depth feed. This optional new port fee enables a customer to opt to receive both the software- and hardware-based versions for a total of $2,500, meaning that for an additional $1,500 per month a customer can receive the hardware-based version. This new pricing option is available to all members and non-members and is in response to industry demand, as well as due to changes in the technology to distribute and consume market data.

Competition for depth data is considerable and the Exchange believes that this proposal clearly evidences such competition. The Exchange is offering a new port fee in order to keep pace with changes in the industry and evolving customer needs as new technologies emerge and products continue to develop and change. It is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The proposed port fee is based on pricing conventions and distinctions that exist in Nasdaq's current fee schedule, and the fee schedules of other exchanges. These distinctions for the proposed port fee for hardware-based delivery of Nasdaq Depth data are based on a careful analysis of empirical data and the application of time-tested pricing principles already accepted by the Commission and discussed in greater depth in the Statutory Basis section below. Also, the costs associated with the port fee using the hardware-based delivery system for Nasdaq Depth data are higher than a software-based solution due to increased operating expenditures associated with creating, shipping, installing and maintaining the new equipment and codebase. Because it uses a distinct technology, the overall costs of creation and maintenance of the hardware-based version of TotalView-ITCH are higher than the software-based version.

The proposed port fee for the hardware-based delivery of Nasdaq Depth data is completely optional. Accordingly, Nasdaq is offering his new port fee for the hardware-based delivery of Nasdaq Depth data so that customers may elect to receive Nasdaq direct data content in a predictable manner throughout the trading day.

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at *http://nasdaqomx.cchwallstreet.com.*

[4] *See* Securities Exchange Act Release No. 67297 (June 28, 2012), 77 FR 39752 (July 5, 2012) (SR–NASDAQ–2012–063).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(4) of the Act,[6] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of Nasdaq data. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[7]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well. Nasdaq Depth data is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

On July 21, 2010, President Barack Obama signed into law H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase ''on any person, whether or not the person is a member of the self-regulatory organization'' after ''due, fee or other charge imposed by the self-regulatory organization.'' As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Exchange Act to read, in pertinent part, ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, 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 this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.''

Nasdaq believes that these amendments to Section 19 of the Act reflect Congress' intent to allow the Commission to rely upon the forces of competition to ensure that fees for market data are reasonable and equitably allocated. Although Section 19(b) had formerly authorized immediate effectiveness for a ''due, fee or other charge imposed by the self-regulatory organization,'' the Commission adopted a policy and subsequently a rule stipulating that fees for data and other products available to persons that are not members of the self-regulatory organization must be approved by the Commission after first being published for comment. At the time, the Commission supported the adoption of the policy and the rule by pointing out that unlike members, whose representation in self-regulatory organization governance was mandated by the Act, non-members should be given the opportunity to comment on fees before being required to pay them, and that the Commission should specifically approve all such fees. Nasdaq believes that the amendment to Section 19 reflects Congress' conclusion that the evolution of self-regulatory organization governance and competitive market structure have rendered the Commission's prior policy on non-member fees obsolete. Specifically, many exchanges have evolved from member-owned not-for-profit corporations into for-profit investor-owned corporations (or subsidiaries of investor-owned corporations). Accordingly, exchanges no longer have narrow incentives to manage their affairs for the exclusive benefit of their members, but rather have incentives to maximize the appeal of their products to all customers, whether members or non-members, so as to broaden distribution and grow revenues. Moreover, we believe that the change also reflects an endorsement of the Commission's determinations that reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices. Simply put, the change reflects a presumption that all fee changes should be permitted to take effect immediately, since the level of all fees are constrained by competitive forces.

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoaliton* v. *SEC,* No. 09–1042 (D.C. Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' '' *NetCoaltion,* at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court's conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including market data fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or disapproved only where the Commission has concerns that the change may not be consistent with the Act.

For the reasons stated above, Nasdaq believes that the proposed fee is fair and equitable, and not unreasonably discriminatory. As described above, the proposed fee is based on pricing conventions and distinctions that exist in Nasdaq's current fee schedule, and the fee schedules of other exchanges. These distinctions (*e.g.,* internal versus external distribution and hardware-based versus software-based system for delivering Nasdaq Depth data) are based on principles of fairness and equity that have helped for many years to maintain fair, equitable, and not unreasonably

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

discriminatory fees, and that apply with equal or greater force to the current proposal. The optional port fee for the hardware-based delivery of Nasdaq Depth data is based on careful analysis of empirical data and the application of time-tested pricing principles already accepted by the Commission for many years.

As described in greater detail below, if Nasdaq has calculated improperly and the market deems the proposed fees to be unfair, inequitable, or unreasonably discriminatory, firms can diminish or discontinue the use of their data because the proposed fee is entirely optional to all parties. Firms are not required to purchase Nasdaq Depth data or to utilize any specific pricing alternative if they do choose to purchase Nasdaq Depth data. Nasdaq is not required to make depth data available or to offer specific pricing alternatives for potential purchases. Nasdaq can discontinue offering a pricing alternative (as it has in the past) and firms can discontinue their use at any time and for any reason (as they often do), including due to their assessment of the reasonableness of fees charged. Nasdaq continues to create new pricing policies aimed at increasing fairness and equitable allocation of fees among users, and Nasdaq believes this is another useful step in that direction.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the *NetCoaltion* court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. For the reasons discussed above, Nasdaq believes that the Dodd-Frank Act amendments to Section 19 materially alter the scope of the Commission's review of future market data filings, by creating a presumption that all fees may take effect immediately, without prior analysis by the Commission of the competitive environment. Even in the absence of this important statutory change, however, Nasdaq believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without the prospect of a taking order seeing and reacting to a posted order on a particular platform, the posting of the order would accomplish little. Without trade executions, exchange data products cannot exist. Data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and to maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it. Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decreases, for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable.

Thus, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition* at 24. However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platform may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and

setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. This would be akin to strictly regulating the price that an automobile manufacturer can charge for car sound systems despite the existence of a highly competitive market for cars and the availability of after-market alternatives to the manufacturer-supplied system.

The market for market data products is competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including ten self-regulatory organization (''SRO'') markets, as well as internalizing broker-dealers (''BDs'') and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including Nasdaq, NYSE, NYSE MKT, NYSEArca, and BATS.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Thomson Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. Nasdaq and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, and Thomson Reuters.

The court in *NetCoalition* concluded that the Commission had failed to demonstrate that the market for market data was competitive based on the reasoning of the Commission's *NetCoalition* order because, in the court's view, the Commission had not adequately demonstrated that the depth-of-book data at issue in the case is used to attract order flow. Nasdaq believes, however, that evidence not before the court clearly demonstrates that availability of data attracts order flow. For example, as of July 2010, 92 of the top 100 broker-dealers by shares executed on Nasdaq consumed Level 2/NQDS and 80 of the top 100 broker-dealers consumed TotalView. During that month, the Level 2/NQDS-users were responsible for 94.44% of the orders entered into Nasdaq and TotalView users were responsible for 92.98%.

Competition among platforms has driven Nasdaq continually to improve its platform data offerings and to cater to customers' data needs. For example, Nasdaq has developed and maintained multiple delivery mechanisms (IP, multi-cast, and compression) that enable customers to receive data in the form and manner they prefer and at the lowest cost to them. Nasdaq offers front end applications such as its ''Bookviewer'' to help customers utilize data. Nasdaq has created new products like TotalView Aggregate to complement TotalView-ITCH and Level 2/NQDS, because offering data in multiple formatting allows Nasdaq to better fit customer needs. Nasdaq offers data via multiple extranet providers, thereby helping to reduce network and total cost for its data products. Nasdaq has developed an online administrative system to provide customers transparency into their data feed requests and streamline data usage reporting. Nasdaq has also expanded its Enterprise License options that reduce the administrative burden and costs to firms that purchase market data.

Despite these enhancements and a dramatic increase in message traffic, Nasdaq's fees for market data have remained flat. In fact, as a percent of total customer costs, Nasdaq data fees have fallen relative to other data usage costs—including bandwidth,

programming, and infrastructure—that have risen. The same holds true for execution services; despite numerous enhancements to Nasdaq's trading platform, absolute and relative trading costs have declined. Platform competition has intensified as new entrants have emerged, constraining prices for both executions and for data.

The vigor of competition for depth information is significant and the Exchange believes that this proposal clearly evidences such competition. Nasdaq is offering a new port fee in order to keep pace with changes in the industry and evolving customer needs. It is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The Exchange has witnessed competitors creating new products and innovative pricing in this space over the course of the past year. Nasdaq continues to see firms challenge its pricing on the basis of the Exchange's explicit fees being higher than the zero-priced fees from other competitors such as BATS. In all cases, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with Nasdaq or other exchanges. Of course, the explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for this depth information is highly competitive and continually evolves as products develop and change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [8]. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–088 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–088. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–088 and should be submitted on or before August 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18999 Filed 8–2–12; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(a)(ii).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67540; File No. SR–NYSEArca–2012–77]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services

July 30, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 18, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (''Fee Schedule''). 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,

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule, as described below, and implement the fee changes on August 1, 2012.

The Exchange proposes to introduce a new Tier and corresponding credit in the Fee Schedule for ETP Holders, including Market Makers that execute an average daily volume (''ADV'') of ''Retail Orders'' during the particular month that is 0.40% or more of the U.S. Consolidated ADV (''CADV'').[4] For purposes of this proposed new ''Retail Order Tier'' and credit, a Retail Order would be an agency order that originates from a natural person and is submitted to the Exchange by an ETP Holder, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. An ETP Holder that qualifies for the proposed Retail Order Tier would receive a credit of $0.0032 per share for its Retail Orders that provide liquidity on the Exchange in Tape A, B and C securities. For all other fees and credits, Tiered or Basic Rates would apply based on the ETP Holder's qualifying levels.

The Exchange also proposes to specify in the Fee Schedule that an ETP Holder that qualifies for the Retail Order Tier will not be eligible to qualify for the Tape A, Tape B or Tape C Step Up Tier rates or the Tape C Step Up Tier 2 rate because these ETP Holders that qualify for the proposed Retail Order Tier would already receive a higher credit for Retail Orders that provide liquidity on the Exchange.

An ETP Holder would be required to designate certain of its order entry ports at the Exchange as ''Retail Order Ports'' and attest, in a form and/or manner prescribed by the Exchange, that all orders submitted to the Exchange via such Retail Order Ports are Retail Orders. An ETP Holder would be required to designate its Retail Order Ports, including adding new Retail Order Ports or removing existing Retail Order Ports that would no longer be used to submit Retail Orders, no later than the fifth trading day of the month in which the desired change is to become effective. The proposed Retail Order Tier would be optional for ETP Holders. Accordingly, an ETP Holder that does not opt to identify qualified orders as Retail Orders would choose not to (i) designate any of its ports as Retail Order Ports, (ii) make an attestation to the Exchange, or (iii) maintain the policies and procedures described below.

Additionally, an ETP Holder would be required to have written policies and procedures reasonably designed to assure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met. Such written policies and procedures must require the ETP Holder to (i) exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements specified by the Exchange, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. If the ETP Holder represents Retail Orders from another broker-dealer customer, the ETP Holder's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The ETP Holder must (i) obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements specified by the Exchange, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements.[5]

The Exchange further proposes that it may disqualify an ETP Holder from qualifying for the Retail Order Tier if the Exchange determines, in its sole discretion, that an ETP Holder has failed to abide by the requirements proposed herein, including, for example, if an ETP Holder designates orders submitted to the Exchange as Retail Orders but those orders fail to meet any of the requirements of Retail Orders. Tiered or Basic Rates would apply based on the ETP Holder's qualifying levels for an ETP Holder that is disqualified from qualifying for the Retail Order Tier.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(4) of the Act, in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it would encourage ETP Holders to send additional Retail Orders to the Exchange for execution in order to qualify for an incrementally higher credit for such executions that add liquidity on the Exchange. In this regard, the Exchange believes that maintaining or increasing the proportion of Retail Orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The Exchange believes that the rate proposed for the Retail Order Tier credit is reasonable because it is directly related to an ETP Holder's level of Retail Order executions during the month. The Exchange also believes that the proposed rate is reasonable because it is consistent with certain other credits, such as the Investor Tier 2 credit of $0.0032, available to ETP Holders that satisfy certain criteria that is related to the ETP Holder's level of trading activity on the Exchange. In this regard, the Exchange also believes that the proposed Retail Order Tier credit is equitable and not unfairly discriminatory because it would not be the only manner of qualifying for a credit of $0.0032 per share. Additionally, the Exchange believes that the proposed Retail Order Tier credit is equitable and not unfairly discriminatory because it would incentivize ETP Holders to submit Retail Orders to the Exchange and would result in a credit that is reasonably related to an exchange's market quality that is associated with higher volumes.

The Exchange believes that requiring an ETP Holder to submit an ADV of Retail Orders during a month of 0.40% or more of CADV is reasonable, equitable and not unfairly discriminatory because this percentage is within a range that the Exchange

[4] U.S. CADV means United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape and excludes volume on days when the market closes early.

[5] The Financial Industry Regulatory Authority, Inc. (''FINRA''), on behalf of the Exchange, will review an ETP Holder's compliance with these requirements through an exam-based review of the ETP Holder's internal controls.

believes would incentivize ETP Holders to submit Retail Orders to the Exchange in order to qualify for the applicable credit of $0.0032 per share. The Exchange notes that certain other existing pricing Tiers within the Fee Schedule make credits available to ETP Holders that are also based on the ETP Holder's level of activity as a percentage of CADV. These existing percentage thresholds, depending on other related factors and the level of the corresponding credits, are both higher and lower than the 0.40% proposed herein.[6] Moreover, like existing pricing on the Exchange that is tied to ETP Holder volume levels as a percentage of CADV, the proposed Retail Order Tier credit is equitable and not unfairly discriminatory because it would be available for all ETP Holders, including Market Makers, on an equal and non-discriminatory basis. Furthermore, the Exchange notes that the proposed Retail Order Tier would be optional for ETP holders.

The Exchange believes that excluding an ETP Holder that qualifies for the Retail Order Tier from the Tape A, Tape B and Tape C Step Up Tier rates and the Tape C Step Up Tier 2 rate is reasonable, equitable and not unfairly discriminatory because such orders would already receive a higher credit for such executions that provide liquidity on the Exchange.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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.

[6] For example, Investor Tier 1 requires, in part, that an ETP Holder provide liquidity of 0.45% or more of CADV in order to qualify for a credit of $0.0033 per share for orders that provide liquidity on the Exchange. Similarly, Investor Tier 2 requires, in part, that an ETP Holder provide liquidity of 0.60% or more of CADV in order to qualify for a credit of $0.0032 per share for orders that provide liquidity on the Exchange. Additionally, Investor Tier 3 requires, in part, that an ETP Holder provide liquidity of between 0.30% and 0.45% of CADV in order to qualify for a credit of $0.0030 per share for orders that provide liquidity on 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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[7] of the Act and subparagraph (f)(2) of Rule 19b-4[8] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number* SR–NYSEArca-2012–77 *on the subject line.*

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca-2012–77. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca-2012–77 and should be submitted on or before August 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19030 Filed 8–2–12; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b-4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67536; File No. SR–NASDAQ–2012–091]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of Amendments to the Clearly Erroneous Rule

July 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 2012, The NASDAQ Stock Market LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period of recent amendments to Rule 11890, concerning clearly erroneous transactions, so that the pilot will now expire on February 4, 2013.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

11890. Clearly Erroneous Transactions

The provisions of paragraphs (C), (c)(1), (b)(i), and (b)(ii) of this Rule, as amended on September 10, 2010, shall be in effect during a pilot period set to end on *February 4, 2013*[July 31, 2012]. If the pilot is not either extended or approved permanent by *February 4, 2013*[July 31, 2012], the prior versions of paragraphs (C), (c)(1), and (b) shall be in effect.

(a)–(f) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 10, 2010, the Commission approved, for a pilot period to end December 10, 2010, a proposed rule change submitted by the Exchange, together with related rule changes of the BATS Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, New York Stock Exchange LLC, NYSE MKT LLC (formerly, NYSE Amex LLC), NYSE Arca, Inc., and National Stock Exchange, Inc., to amend certain of their respective rules to set forth clearer standards and curtail discretion with respect to breaking erroneous trades.[3] The changes were adopted to address concerns that the lack of clear guidelines for dealing with clearly erroneous transactions may have added to the confusion and uncertainty faced by investors on May 6, 2010. On December 7, 2010, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on April 11, 2011.[4] On March 31, 2011, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[5] On August 5, 2011, the Exchange filed an immediately effective filing removed language from the rule that tied the expiration of the pilot to the adoption of a limit up/limit down mechanism to address extraordinary market volatility, and further extended the pilot period, so that the pilot would expire on January 31, 2012.[6] On August 8, 2011, the Exchange filed an immediately effective filing to amend Rule 11890 so that it would continue to operate in the same manner after changes to the single stock trading pause process became effective.[7] On January 12, 2012, the Exchange filed an immediately effective filing that extended the pilot to July 31, 2012.[8]

On May 31, 2012, the Commission approved, on a pilot basis, the National Market System Plan to Address Extraordinary Market Volatility.[9] This plan creates a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in NMS Stocks, which will be implemented on February 4, 2013. Once implemented, the plan will prevent execution of trades outside of certain trading bands, thus eliminating clearly erroneous transactions. The Exchange believes that the pilot program has been successful in providing greater transparency and certainty to the process of breaking erroneous trades. The Exchange also believes that an additional extension of the pilot is warranted so that it may continue to monitor the effects of the pilot on the markets and investors, and consider appropriate adjustments, as necessary. Extending the pilot to February 4, 2013, the implementation date of the market-wide limit up-limit down mechanism will permit the Exchange to continue to provide clear standards and curtail discretion with respect to breaking erroneous trades until the limit up/limit down mechanism, which is designed to prevent clearly erroneous transactions from occurring, is implemented.

Accordingly, the Exchange is filing to further extend the pilot program until February 4, 2012.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[10] which requires the rules of an exchange 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. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[11] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to break erroneous trades. In addition, the Exchange believes extending the pilot to February 4, 2013 is consistent with the requirement to protect investors because it will permit the pilot to continue to provide clearer standards and curtail discretion with respect to breaking erroneous trades until the limit up/limit down mechanism is implemented, thus eliminating need for the pilot.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[3] Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010).

[4] Securities Exchange Act Release No. 63489 (December 9, 2010), 75 FR 78281 (December 15, 2010) (SR–NASDAQ–2010–160).

[5] Securities Exchange Act Release No. 64238 (April 7, 2011), 76 FR 20780 (April 13, 2011) (SR–NASDAQ–2011–043).

[6] Securities Exchange Act Release No. 65068 (August 9, 2011), 76 FR 50508 (August 15, 2011) (SR–NASDAQ–2011–114).

[7] Securities Exchange Act Release No. 65104 (August 11, 2011), 76 FR 51076 (August 17, 2011) (SR–NASDAQ–2011–116).

[8] Securities Exchange Act Release No. 66225 (January 24, 2012), 77 FR 4602 (January 30, 2012) (SR–NASDAQ–2012–011).

[9] Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78k–1(a)(1).

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 [12] and Rule 19b–4(f)(6) thereunder.[13] 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 [14] and Rule 19b–4(f)(6)(iii) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii) [17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. 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, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[18]

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and 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.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml;*) or
- Send an Email to *rule-comments@sec.gov.* Please include File No. SR–NASDAQ–2012–091 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–091. 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 Commissions 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. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–091 and should be submitted by August 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19000 Filed 8–2–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67535; File No. SR–NASDAQ–2012–087]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of the Trading Pause for NMS Stocks Other Than Rights and Warrants

July 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 19, 2012, The NASDAQ Stock Market LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the 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 pilot period of the trading pause for individual NMS stocks other than rights and warrants, so that the pilot will now expire on February 4, 2013.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

4120. Trading Halts

(a) Authority To Initiate Trading Halts or Pauses

In circumstances in which Nasdaq deems it necessary to protect investors and the public interest, Nasdaq, pursuant to the procedures set forth in paragraph (c):

(1)–(10) No change.

(11) shall, between 9:45 a.m. and 3:35 p.m., or in the case of an early

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

scheduled close, 25 minutes before the close of trading, immediately pause trading for 5 minutes in any Nasdaq-listed security, other than rights and warrants, when the price of such security moves a percentage specified below within a 5-minute period.

(A) The price move shall be 10% or more with respect to securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products;

(B) The price move shall be 30% or more with respect to all NMS stocks not subject to section (a)(11)(A) of this Rule with a price equal to or greater than $1; and

(C) The price move shall be 50% or more with respect to all NMS stocks not subject to section (a)(11)(A) of this Rule with a price less than $1.

The determination that the price of a stock is equal to or greater than $1 under paragraph (a)(11)(B) above or less than $1 under paragraph (a)(11)(C) above shall be based on the closing price on the previous trading day, or, if no closing price exists, the last sale reported to the Consolidated Tape on the previous trading day.

At the end of the trading pause, Nasdaq will re-open the security using the Halt Cross process set forth in Nasdaq Rule 4753. In the event of a significant imbalance at the end of a trading pause, Nasdaq may delay the re-opening of a security.

Nasdaq will issue a notification if it cannot resume trading for a reason other than a significant imbalance.

Price moves under this paragraph will be calculated by changes in each consolidated last-sale price disseminated by a network processor over a five minute rolling period measured continuously. Only regular way in-sequence transactions qualify for use in calculations of price moves. Nasdaq can exclude a transaction price from use if it concludes that the transaction price resulted from an erroneous trade.

If a trading pause is triggered under this paragraph, Nasdaq shall immediately notify the single plan processor responsible for consolidation of information for the security pursuant to Rule 603 of Regulation NMS under the Securities Exchange Act of 1934. If a primary listing market issues an individual stock trading pause, Nasdaq will pause trading in that security until trading has resumed on the primary listing market or notice has been received from the primary listing market that trading may resume. If the primary listing market does not reopen within 10 minutes of notification of a trading pause, Nasdaq may resume trading the security.

The provisions of this paragraph shall be in effect during a pilot set to end on *February 4, 2013* [July 31, 2012].

(b)–(c) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*

On June 10, 2010, the Commission granted accelerated approval for a pilot period to end December 10, 2010, for a proposed rule change submitted by the Exchange, together with related rule changes of the BATS Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, New York Stock Exchange LLC (''NYSE''), NYSE MKT LLC (''NYSE MKT'') (formerly, NYSE Amex LLC), NYSE Arca, Inc. (''NYSE Arca''), and National Stock Exchange, Inc. (collectively, the ''Exchanges''), to pause trading during periods of extraordinary market volatility in S&P 500 stocks.[3] The rules require the Listing Markets[4] to issue five-minute trading pauses for individual securities for which they are the primary Listing Market if the transaction price of the security moves ten percent or more from a price in the preceding five-minute period. The Listing Markets are required to notify the other Exchanges and market participants of the imposition of a trading pause by immediately disseminating a special indicator over the consolidated tape. Under the rules, once the Listing Market issues a trading pause, the other Exchanges are required to pause trading in the security on their markets. On September 10, 2010, the Commission approved the respective rule filings of the Exchanges to expand application of the pilot to the Russell 1000® Index and specified Exchange Traded Products.[5] On December 7, 2010, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on April 11, 2011.[6] On March 31, 2011, the Exchange filed an immediately effective filing to extend the pilot period an additional four months, so that the pilot would expire on August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[7] On June 23, 2011, the Commission approved the expansion of the pilot to all NMS stocks, but with different pause-triggering thresholds.[8] On August 8, 2011, the Exchange filed an immediately effective filing that removed language from the rule that tied the expiration of the pilot to the adoption of a limit up/limit down mechanism to address extraordinary market volatility, and further extended the pilot period, so that the pilot would expire on January 31, 2012.[9] On November 18, 2011, the Exchange filed an immediately effective filing that excluded rights and warrants from the pilot.[10] On January 23, 2012, the Commission approved an extension of the pilot to July 31, 2012.[11]

On May 31, 2012, the Commission approved, on a pilot basis, the National Market System Plan to Address Extraordinary Market Volatility.[12] This plan creates a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in NMS Stocks, which will be implemented on February 4, 2013. Once

[3] Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–NASDAQ–2010–061).

[4] The term ''Listing Markets'' refers collectively to NYSE, NYSE MKT, NYSE Arca, and the Exchange.

[5] Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–NASDAQ–2010–079).

[6] Securities Exchange Act Release No. 63505 (December 9, 2010), 75 FR 78302 (December 15, 2010) (SR–NASDAQ–2010–162).

[7] Securities Exchange Act Release No. 64174 (April 4, 2011), 76 FR 19819 (April 8, 2011) (SR–NASDAQ–2011–042).

[8] Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–NASDAQ–2011–067, *et al.*).

[9] Securities Exchange Act Release No. 65094 (August 10, 2011), 76 FR 50779 (August 16, 2011) (SR–NASDAQ–2011–115).

[10] Securities Exchange Act Release No. 65814 (November 23, 2011), 76 FR 74084 (November 30, 2011) (SR–NASDAQ–2011–154).

[11] Securities Exchange Act Release No. 66214 (January 23, 2012), 77 FR 4593 (January 30, 2012) (SR–NASDAQ–2012–010).

[12] Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

implemented, the limit up/limit down mechanism to address extraordinary market volatility will render the current stock trading pause pilot duplicative and unnecessary. Accordingly, the Exchange is proposing to extend the single stock trading pause pilot so that it will now expire on February 4, 2013, when the limit up/limit down mechanism to address extraordinary market volatility is to be implemented.

The Exchange believes that the pilot program has been successful in reducing the negative impacts of sudden, unanticipated price movements in the securities covered by the pilot. The Exchange also believes that an additional extension of the pilot is warranted so that it may continue to apply the circuit breaker to reduce the negative impacts of sudden, unanticipated price movements until it is replaced by the limit up/limit down mechanism.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[13] which requires the rules of an exchange 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. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[14] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. In addition, the Exchange believes extending the pilot to February 4, 2013 is consistent with the requirement to protect investors because it will permit the circuit breaker to continue to reduce the negative impacts of sudden, unanticipated price movements until it is replaced by the preferred limit up/limit down mechanism.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78k–1(a)(1).

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[15] and Rule 19b–4(f)(6) thereunder.[16] 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[17] and Rule 19b–4(f)(6)(iii) thereunder.[18]

A proposed rule change filed under Rule 19b–4(f)(6)[19] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[20] 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, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[21]

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and 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.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an Email to *rule-comments@sec.gov*. Please include File No. SR–NASDAQ–2012–087 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–087. 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 Commissions 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. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–

NASDAQ–2012–087 and should be submitted by August 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18998 Filed 8–2–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67537; File No. SR–Phlx–2012–99]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of the Trading Pause for NMS Stocks Other Than Rights and Warrants

July 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 19, 2012, NASDAQ OMX PHLX LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the 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 pilot period of the trading pause for individual NMS stocks other than rights and warrants, so that the pilot will now expire on February 4, 2013.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 3100. Trading Halts on PSX

(a) Authority to Initiate Trading Halts or Pauses

In circumstances in which the Exchange deems it necessary to protect investors and the public interest, and pursuant to the procedures set forth in paragraph (c):

(1)–(3) No change.

(4) If a primary listing market issues an individual stock trading pause in any of the Circuit Breaker Securities, as defined herein, the Exchange will pause trading in that security until trading has resumed on the primary listing market. If, however, trading has not resumed on the primary listing market and ten minutes have passed since the individual stock trading pause message has been received from the responsible single plan processor, the Exchange may resume trading in such stock. The provisions of this paragraph (a)(4) shall be in effect during a pilot set to end on *February 4, 2013*[July 31, 2012]. During the pilot, the term ''Circuit Breaker Securities'' shall mean any NMS stock except rights and warrants.

(b)—(c) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 10, 2010, the Commission granted accelerated approval for a pilot period to end December 10, 2010, of proposed rule changes submitted by the BATS Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, The NASDAQ Stock Market LLC (''NASDAQ''), New York Stock Exchange LLC (''NYSE''), NYSE MKT LLC (''NYSE MKT'') (formerly, NYSE Amex LLC), NYSE Arca, Inc. (''NYSE Arca''), and National Stock Exchange, Inc. (collectively, the ''Exchanges''), to pause trading during periods of extraordinary market volatility in S&P 500 stocks.[3] The rules require the Listing Markets[4] to issue five-minute trading pauses for individual securities for which they are the primary Listing Market if the transaction price of the security moves ten percent or more from a price in the preceding five-minute period. The Listing Markets are required to notify the other Exchanges and market participants of the imposition of a trading pause by immediately disseminating a special indicator over the consolidated tape. Under the rules, once the Listing Market issues a trading pause, the other Exchanges are required to pause trading in the security on their markets. On September 10, 2010, the Commission approved the respective rule filings of the Exchanges to expand application of the pilot to securities comprising the Russell 1000® Index and specified Exchange Traded Products.[5]

In connection with its resumption of trading of NMS Stocks through the NASDAQ OMX PSX system, the Exchange adopted Rule 3100(a)(4) so that it could participate in the pilot program.[6] On September 29, 2010, the Exchange amended Rule 3100(a)(4) to include stocks comprising the Russell 1000® Index and specified Exchange Traded Products.[7] On December 7, 2010, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on April 11, 2011.[8] On March 31, 2011, the Exchange filed an immediately effective filing to extend the pilot period an additional four months, so that the pilot would expire on August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[9] On June 23, 2011, the Commission approved the expansion of the pilot to all NMS stocks, but with different pause-triggering thresholds.[10] On August 8, 2011, the Exchange filed an immediately effective filing that removed language from the rule that tied the expiration of the pilot to the adoption of a limit up/limit down mechanism to address extraordinary market volatility, and further extended the pilot period, so that the pilot would

[22] 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. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010).

[4] The term ''Listing Markets'' refers collectively to NYSE, NYSE MKT, NYSE Arca, and the Exchange.

[5] Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010).

[6] Securities Exchange Act Release No. 62877 (September 9, 2010), 75 FR 56633 (September 16, 2010) (SR–Phlx–2010–79).

[7] Securities Exchange Act Release No. 63004 (September 29, 2010), 75 FR 61547 (October 5, 2010) (SR–Phlx–2010–126).

[8] Securities Exchange Act Release No. 63504 (December 9, 2010), 75 FR 78304 (December 15, 2010) (SR–Phlx–2010–174).

[9] Securities Exchange Act Release No. 64175 (April 4, 2011), 76 FR 19823 (April 8, 2011) (SR–Phlx–2011–044).

[10] Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–Phlx–2011–064, *et al.*).

expire on January 31, 2012.[11] On November 18, 2011, the Exchange filed an immediately effective filing that excluded rights and warrants from the pilot.[12] On January 23, 2012, the Commission approved an extension of the pilot to July 31, 2012.[13]

On May 31, 2012, the Commission approved, on a pilot basis, the National Market System Plan to Address Extraordinary Market Volatility.[14] This plan creates a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in NMS Stocks, which will be implemented on February 4, 2013. Once implemented, the limit up/limit down mechanism to address extraordinary market volatility will render the current stock trading pause pilot duplicative and unnecessary. Accordingly, the Exchange is proposing to extend the single stock trading pause pilot so that it will now expire on February 4, 2013, when the limit up/limit down mechanism to address extraordinary market volatility is to be implemented.

The Exchange believes that the pilot program has been successful in reducing the negative impacts of sudden, unanticipated price movements in the securities covered by the pilot. The Exchange also believes that an additional extension of the pilot is warranted so that it may continue to apply the circuit breaker to reduce the negative impacts of sudden, unanticipated price movements until it is replaced by the limit up/limit down mechanism.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[15] which requires the rules of an exchange 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. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[16] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. In addition, the Exchange believes extending the pilot to February 4, 2013 is consistent with the requirement to protect investors because it will permit the circuit breaker to continue to reduce the negative impacts of sudden, unanticipated price movements until it is replaced by the preferred limit up/limit down mechanism.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[17] and Rule 19b–4(f)(6) thereunder.[18] 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[19] and Rule 19b–4(f)(6)(iii) thereunder.[20]

A proposed rule change filed under Rule 19b–4(f)(6)[21] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[22] 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, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an Email to *rule-comments@sec.gov*. Please include File No. SR–Phlx–2012–99 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–99. 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 Commissions Internet Web site (*http://www.sec.gov/*

[11] Securities Exchange Act Release No. 65083 (August 10, 2011), 76 FR 50801 (August 16, 2011) (SR–Phlx–2011–113).

[12] Securities Exchange Act Release No. 65813 (November 23, 2011), 76 FR 74113 (November 30, 2011) (SR–Phlx–2011–158).

[13] Securities Exchange Act Release No. 66216 (January 23, 2012), 77 FR 4385 (January 27, 2012) (SR–Phlx–2012–07).

[14] Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78k–1(a)(1).

[17] 15 U.S.C. 78s(b)(3)(A)(iii).

[18] 17 CFR 240.19b–4(f)(6).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires 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.

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6)(iii).

[23] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2012–99 and should be submitted by August 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18971 Filed 8–2–12; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67538; File No. SR–Phlx–2012–100]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of Amendments to the Clearly Erroneous Rule

July 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 2012, NASDAQ OMX PHLX LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period of amendments to Rule 3312, concerning clearly erroneous transactions, so that the pilot will now expire on February 4, 2013.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 3312. Clearly Erroneous Transactions

The provisions of paragraphs (a)(2)(C), (b), and (c)(1) of this Rule, as amended by SR–Phlx–2010–125, shall be in effect during a pilot period set to end on *February 4, 2013* [July 31, 2012]. If the pilot is not either extended or approved permanent by *February 4, 2013* [July 31, 2012], the prior versions of paragraphs (a)(2)(C), (b), and (c)(1) shall be in effect.

(a)–(f) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 10, 2010, the Commission approved, for a pilot period to end December 10, 2010, a proposed rule change submitted by the BATS Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC (formerly, NYSE Amex LLC), NYSE Arca, Inc., and National Stock Exchange, Inc. (collectively, the ''Exchanges''), to amend certain of their respective rules to set forth clearer standards and curtail discretion with respect to breaking erroneous trades.[3] The changes were adopted to address concerns that the lack of clear guidelines for dealing with clearly erroneous transactions may have added to the confusion and uncertainty faced by investors on May 6, 2010. In connection with its resumption of trading of NMS Stocks through PSX, the Exchange amended Rule 3312 to conform it to the newly-adopted changes to the Exchanges' clearly erroneous rules, so that it could participate in the pilot program.[4] On December 7, 2010, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on April 11, 2011.[5] On March 31, 2011, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[6] On August 5, 2011, the Exchange filed an immediately effective filing removed language from the rule that tied the expiration of the pilot to the adoption of a limit up/limit down mechanism to address extraordinary market volatility, and further extended the pilot period, so that the pilot would expire on January 31, 2012.[7] On August 8, 2011, the Exchange filed an immediately effective filing to amend Rule 3312 so that it would continue to operate in the same manner after changes to the single stock trading pause process became effective.[8] On January 12, 2012, the Exchange filed an immediately effective filing that extended the pilot to July 31, 2012.[9]

On May 31, 2012, the Commission approved, on a pilot basis, the National Market System Plan to Address Extraordinary Market Volatility.[10] This plan creates a market-wide limit up-

[3] Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010).

[4] Securities Exchange Act Release No. 63023 (September 30, 2010), 75 FR 61802 (October 6, 2010) (SR–Phlx–2010–125).

[5] Securities Exchange Act Release No. 63491 (December 9, 2010), 75 FR 78297 (December 15, 2010) (SR–Phlx–2010–173).

[6] Securities Exchange Act Release No. 64239 (April 7, 2011), 76 FR 20789 (April 13, 2011) (SR–Phlx–2011–45).

[7] Securities Exchange Act Release No. 65058 (August 9, 2011), 76 FR 50519 (August 15, 2011) (SR–Phlx–2011–110).

[8] Securities Exchange Act Release No. 65106 (August 11, 2011), 76 FR 51079 (August 17, 2011) (SR–Phlx–2011–114).

[9] Securities Exchange Act Release No. 66224 (January 24, 2012), 77 FR 4612 (January 30, 2012) (SR–Phlx–2012–08).

[10] Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

limit down mechanism that is intended to address extraordinary market volatility in NMS Stocks, which will be implemented on February 4, 2013. Once implemented, the plan will prevent execution of trades outside of certain trading bands, thus eliminating clearly erroneous transactions. The Exchange believes that the pilot program has been successful in providing greater transparency and certainty to the process of breaking erroneous trades. The Exchange also believes that an additional extension of the pilot is warranted so that it may continue to monitor the effects of the pilot on the markets and investors, and consider appropriate adjustments, as necessary. Extending the pilot to February 4, 2013, the implementation date of the market-wide limit up-limit down mechanism will permit the Exchange to continue to provide clear standards and curtail discretion with respect to breaking erroneous trades until the limit up/limit down mechanism, which is designed to prevent clearly erroneous transactions from occurring, is implemented.

Accordingly, the Exchange is filing to further extend the pilot program until February 4, 2013.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[11] which requires the rules of an exchange 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. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[12] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to break erroneous trades. In addition, the Exchange believes extending the pilot to February 4, 2013 is consistent with the requirement to protect investors because it will permit the pilot to continue to provide clearer standards and curtail discretion with respect to breaking erroneous trades until the limit up/limit down mechanism is implemented, thus eliminating need for the pilot.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78k–1(a)(1).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14] 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[15] and Rule 19b–4(f)(6)(iii) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6)[17] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[18] 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, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and 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.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

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 No. SR–Phlx–2012–100 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–100. 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 Commissions 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. Copies of such filing also will be available for inspection and copying at the principal office of the

[19] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2012–100 and should be submitted by August 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18972 Filed 8–2–12; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: 60 Day Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before October 2, 2012.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Nathaniel Bishop, Program Analyst, Office of Economic Development, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Nathaniel Bishop, Program Analyst, 202–205–7007 *nathaniel.bishop@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Part of the Government Performance Results Act (GPRA) mandated evaluation of Small Business Administration (SBA) business counseling and training programs and Small Business Administration strategic plan is to examine the impact of counseling and information services on nascent, start- up and in-business clients. The survey will measure effects on counseling and information transfer on the respondent's evaluation of the effectiveness, usefulness, and relevancy of the services provided and whether these services/actions led to the creation of jobs and an increase in business start-ups and gross revenue.

Title: ''Entrepreneurial Development Impact Study''.

Description of Respondents: Small Business Clients owners & employees prospective Entrepreneurs and other student of enterprise.

Form Number: 2214, SBDC, Score, WBC, Impact.

Annual Responses: 12,468.

Annual Burden: 2,494.

Curtis Rich,

Acting Chief, Administrative Information Branch.

[FR Doc. 2012–19041 Filed 8–2–12; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13103 and #13104]

Florida Disaster Number FL–00071

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Florida (FEMA–4068–DR), dated 07/03/2012.

Incident: Tropical Storm Debby.

Incident Period: 06/23/2012 and continuing through 07/26/2012.

Effective Date: 07/26/2012.

Physical Loan Application Deadline Date: 09/04/2012.

EIDL Loan Application Deadline Date: 04/03/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Florida, dated 07/03/2012 is hereby amended to establish the incident period for this disaster as beginning 06/23/2012 and continuing through 07/26/2012.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–19038 Filed 8–2–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13107 and #13108]

Florida Disaster Number FL–00072

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Florida (FEMA–4068–DR), dated 07/09/2012.

Incident: Tropical Storm Debby.

Incident Period: 06/23/2012 through 07/26/2012.

Effective Date: 07/26/2012.

Physical Loan Application Deadline Date: 09/07/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 04/09/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Florida, dated 07/09/2012, is hereby amended to establish the incident period for this disaster as beginning 06/23/2012 and continuing through 07/26/2012.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–19068 Filed 8–2–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Military Reservist Economic Injury Disaster Loans; Interest Rate for Fourth Quarter FY 2012

In accordance with the Code of Federal Regulations 13—Business Credit and Assistance § 123.512, the following interest rate is effective for Military Reservist Economic Injury Disaster Loans approved on or after July 20, 2012.

Military Reservist Loan Program .. 4.000%

Dated: July 30, 2012.

James E. Rivera,

Associate Administrator For Disaster Assistance.

[FR Doc. 2012–19040 Filed 8–2–12; 8:45 am]

BILLING CODE P

SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION

Office of Privacy, Records, and Disclosure; Privacy Act of 1974, as Amended

AGENCY: Special Inspector General for Afghanistan Reconstruction.

ACTION: Notice of Proposed Privacy Act Systems of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Special Inspector General for Afghanistan Reconstruction (SIGAR) gives notice of its intent to create the SIGAR system of records titled, SIGAR–11: Social Media Records, and SIGAR–12: Internal Electronic Collaboration Tools. The Social Media system will assist SIGAR by providing new ways to connect and share information, and solicit and receive feedback freely with the public. The Internal Electronic Collaboration Tools will collect information related to new procedures for the collection of information related to internal electronic collaboration tools which use Microsoft SharePoint, including the SIGAR Intranet and social media tools within the Internet.

DATES: Comments must be received no later than September 4, 2012. The new system of records will be effective October 2, 2012 unless SIGAR receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to Kate Gastner, Public Information Manager, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202–3934. Comments will be made available for inspection upon written request. SIGAR will make such comments available for public inspection in the Office of Privacy, Records, and Disclosure, 9th Floor, 1550 Crystal Drive, Arlington, VA 22202, on official business days between the hours of 9 a.m. and 5 p.m. Eastern time. You can make an appointment to inspect comments by telephoning (703) 545–6000. All comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Kate Gastner, Public Information Manager, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202–3934, (703) 545–5993.

SUPPLEMENTARY INFORMATION: On January 28, 2008, the President signed into law the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), which created the Special Inspector General for Afghanistan Reconstruction (SIGAR). SIGAR is responsible for coordinating and conducting audits and investigations to promote efficiency and effectiveness of reconstruction programs, and to detect and prevent waste, fraud, and abuse of taxpayers' dollars. Under 5 U.S.C. 301, heads of Executive or military departments may prescribe regulations governing the conduct of its employees and the custody, use, and preservation of the department's records, papers, and property. To facilitate SIGAR's audits, investigations, and other operations, it plans to create the following systems of records:

SIGAR–11 Social Media Records;

SIGAR–12 Internal Electronic Collaboration Tools.

The Report of the a new system of records, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000.

Sections 552a(e)(4) and (11) of title 5, United States Code, provide that an agency publish a notice of the establishment or revision of a record system which affords the public a 30-day period in which to submit comments. To meet this requirement, descriptions of the two new systems of records are published in their entirety below.

I. Social Media

SIGAR is creating the SIGAR Social Media system of records to allow SIGAR to interact with the public using third party or commercial social media applications. While SIGAR may use social media applications to connect with the public in an official capacity, information provided by an individual to register with the third party site is rarely shared with SIGAR. Information collected and stored by the social media applications is subject to the third party privacy policies posted on their Web sites. SIGAR may receive contact information from the third party site for individuals who wish to have further contact with SIGAR for addition communications such as dissemination of information for upcoming events, notification of an emergency or breaking news, or felicitation of feedback about a program.

Information provided by SIGAR on social media sites is also available on SIGARs public Web sites. If SIGAR is requesting feedback from the public through the use of social media site, an alternative SIGAR email address will also be provided so that the public may interact with SIGAR without having to use the social media site. When an individual submits an email to SIGAR, SIGAR will maintain that individual's email, and any other personal information provided in their email, in accordance with applicable records retention policies. All interactions by the public are voluntary.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Internal Electronic Collaboration Tools

SIGAR is implementing internal electronic collaboration tools utilizing the Microsoft SharePoint platform. These tools will upgrade SIGAR's intranet, allow users to set up team collaboration workspaces, facilitate sharing of documents, policies and information, and allow limited social networking through the SharePoint ''MySites'' feature. The Intranet, built on these tools, will include SIGAR policies, procedures, forms, organization charts, news clips, and links to other sites that are helpful to staff members. The intranet will include content regarding program offices, services and support, and projects and activities. The MySites feature will allow SIGAR users to set up a personal profile, identify subject matter areas about which they are knowledgeable, upload pictures, publics notes, tags, content, and messages that are similar to email. Users will be able to manually select ''colleagues'' which the colleague may approve or deny, and create and join groups. Overall, the internal collaboration tools will provide invaluable dissemination and exchange

of information, allowing users to stay connected within a dashboard that each user can personalize.

All SIGAR users will need to use the internal electronic collaboration tools to perform their official duties, for example, to use the Intranet to obtain business phone numbers of other SIGAR users, to view internal policies, to link to specific SharePoint sites containing SIGAR business information, or use SharePoint sites containing SIGAR business information, or use SharePoint workspaces with other team members. The use of MySites is purely voluntary; those who use MySites will have some control over which other users may see their personal information. However, Intranet sites administrators and other SIGAR staff members with a legitimate need to know the information for official purposes will have full access to view all content, including all personal content posted through MySites. Intranet users will be clearly informed, that if they use MySites, they have no reasonable expectation of privacy in any information they post, as with any other information passing through or stored on SIGAR equipment.

The Internal Electronic Collaboration Tools system of records will contain SIGAR business information, business contact information and photographs, at times personal contact information, and any personal information a user chooses to post within MySites.

Both systems will be effective as proposed at the end of the comment period (the comment period will end 30 days after the publication of this notice in the **Federal Register**), unless comments are received that would require a contrary determination. SIGAR will publish a revised notice if changes are made based upon a review of the comments received.

Dated: July 31, 2012.

John F. Sopko,

Inspector General.

SIGAR–11 Social Media Records

SYSTEM LOCATION:

Special Inspector General for Afghanistan Reconstruction (SIGAR), 9th Floor, 1550 Crystal Drive, Arlington, VA 22202–4135.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who contact SIGAR through a social media outlet or other electronic means, including submitting feedback to SIGAR, correspondent with SIGAR as a result of the agency's outreach using social networks, or requesting to be contacted by SIGAR.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system may contain information pass through a social media site to facilitate interaction with SIGAR such as, but not limited to: First name, last name, username, email address, home or work address, contact information, and phone numbers. It may also include input and feedback from the public, such as comments, emails, videos, and other images, which may include tags, geotags or geographic metadata. Depending on the circumstances of the individual's interaction and the social media site being used, it may include data provided to SIGAR such as date of birth, age, security questions, IP addresses, passwords, financial data, educational, business, or volunteer affiliation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Presidential Memorandum to the Heads of Executive Departments and Agencies on Transparency and Open Government, January 21, 2009. OMB M–10–06, Open Government Directive, Dec. 8, 2009. OMB M–10–23, Guidance for Agency Use of Third-Party Web sites and Application, June 25, 2010.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The purpose of this system is to allow SIGAR to interact with the public and provide additional transparency to the public through the use of social media. Registration information, username, comments, and suggestions made by the public on third party social networks where SIGAR has an official presence may be collected by third party social networks for registration or use of social media sites. Information and comments provided may be utilized by SIGAR to facilitate interaction with the public, to disseminate information regarding an upcoming event, to notify the public of an emergency or breaking news, or solicit feedback about SIGAR's programs. SIGAR may also respond to information received directly from individuals who provide feedback from social media outreach using alternate methods, such as an email directly to SIGAR.

Disclosures outside SIGAR may be made without the consent of the individual to whom the record pertains under the routine uses listed:

(1) (a) To any of the following entities or individuals, when the circumstances set forth in paragraph (b) are met:

(i) The U.S. Department of Justice (DOJ);

(ii) A court or an adjudicative or other administrative body;

(iii) A party in litigation before a court or an adjudicative or other administrative body; or

(iv) Any SIGAR employee acting in his or her individual capacity if SIGAR or DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When:

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) SIGAR or any component of SIGAR;

(B) Any other Federal agency appearing before the Office of Hearings and Appeals;

(C) Any SIGAR employee acting in his or her official capacity;

(D) Any SIGAR employee acting in his or her individual capacity if SIGAR or DOJ has agreed to represent that employee or pay for private representation of the employee;

(E) The United States, when DOJ determines that SIGAR is likely to be affected by the proceeding; and

(ii) SIGAR deems the disclosure to be:

(A) Relevant and necessary to the proceeding; and

(B) Compatible with the purpose for which the records were compiled.

(2) To a congressional office in response to a written inquiry that an individual covered by the system, or the heir of such individual if the covered individual is deceased, has made to the office.

(3) To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible for which the records are collected or maintained.

(4) To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, Tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

(5) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(6) To Federal, state, territorial, local, Tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance,

license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

(7) To representatives of the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

(8) To state and local governments and Tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

(9) To an expert, consultant, or contractor (including employees of the contractor) of SIGAR that performs services requiring access to these records on SIGAR's behalf to carry out the purposes of the system.

(10) To appropriate agencies, entities, and persons when:

(a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; and

(b) SIGAR has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by SIGAR or another agency or entity) that rely upon the compromised information; and

(c) The disclosure is made to such agencies, entities and persons who are reasonably necessary to assist in connection with SIGAR's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(11) To the Office of Management and Budget during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

(12) To the Department of the Treasury to recover debts owed to the United States.

(13) To a consumer reporting agency if the disclosure requirements of the Debt Collection Act, as outlined at 31 U.S.C. 3711(e)(1), have been met.

(14) To the news media and the public, with the approval of the Public Affairs Officer in consultation with Counsel and the Senior Agency Official for Privacy, where there exists a legitimate public interest in the disclosure of the information, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are contained in file folders in file cabinets; electronic records are contained in removable drives, computers, email, and electronic databases.

RETRIEVABILITY:

Information may be retrieved by full-text search, names, image, video, email address, user name, or date received.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established SIGAR computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with SIGAR social media proposed records schedule. The disposition is temporary, and records will be destroyed when no longer needed for agency business.

SYSTEM MANAGER AND ADDRESS:

Policy official is the Director for Communications and Congressional Relations, 2530 Crystal Drive, Arlington, VA 22202–3934.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Office of the Special Inspector General for Afghanistan Reconstruction, Headquarters, Privacy Act Officer, 2530 Crystal Drive, Arlington, VA 22202.

The request should include the requestor's complete name, time period for which records are sought, and the office location(s) where the requestor believes the records are located.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Privacy, Records and Disclosure, Office of the Special Inspector General for Afghanistan Reconstruction, Headquarters, 2530 Crystal Drive, Arlington, VA 22202. The request should include the requestor's complete name, time period for which records are sought, and the office location(s) where the requestor believes the records are located.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Individuals who interact with SIGAR through social media networks or who communicate electronically with SIGAR in response to public outreach.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SIGAR–12

SYSTEM NAME:

Internal Electronic Collaboration Tools.

SYSTEM LOCATION:

Office of the Special Inspector General for Afghanistan Reconstruction (SIGAR), 9th Floor, 1550 Crystal Drive, Arlington, VA 22202–4135, and in SIGAR field offices in Afghanistan.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SIGAR employees, interns, contractors, consultants and detailees who are given access to the SIGAR network.

CATEGORIES OF RECORDS IN THE SYSTEM:

SIGAR user name, title, business and personal contact information, and organizational chart and hierarchy information. Those users who elect to participate in MySites will be able to publish additional personal information, such as personal photographs, information about their family status (such as whether they are married or have children), their hobbies, subject matter areas of SIGAR business about which they are knowledgeable, personal activities, notes, messages and other content. Also, the Internal Electronic Collaboration Tools will contain documents in electronic form covered by other SIGAR Privacy Act System of Record Notices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 110–181, Section 1229, National Defense Authorization Act for Fiscal Year 2008; 5 U.S.C. App. 3, Inspector General Act of 1978, as amended; 40 U.S.C. 524, Section 202(b), Federal Property and Administrative Services Act of 1949; and 5 U.S.C. Section 301, Government Organization and Employees.

PURPOSE(S):

The purpose of the new system of records is to enhance and improve efficiencies in the dissemination and exchange of information within SIGAR and allow colleagues to connect with each other. The internal electronic

collaboration tools, utilizing the Microsoft SharePoint platform, will upgrade SIGAR's intranet, allow users to set up team collaboration workspaces, facilitate sharing of documents, policies and information, and allow limited social networking through the SharePoint ''MySites'' feature. The new intranet will include SIGAR policies, procedures, forms, organization charts, news clips, links to other sites that are helpful for staff members, and links to other SIGAR SharePoint sites containing shared documents and other information. The intranet will include content regarding program offices, services and support, and projects and activities. By connecting to a SIGAR network administration database, the intranet will display a directory of all SIGAR users, including titles, contact information and the photograph used for SIGAR credentials for all employees, interns, volunteers, consultants and contractors (collectively ''users''). The MySites feature will allow SIGAR users to set up a personal profile, upload pictures, and publish content and messages that are similar to email. MySites also allows users to join groups, connect with colleagues and receive a newsfeed when new information is posted.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in this system will be routinely used by SIGAR users to disseminate and share information, collaborate and communicate with each other with the goal of more efficiently conducting SIGAR business. Also, the Internal Electronic Collaboration Tools system will contain documents in electronic form covered by other System of Record Notices, and the routine uses for those System of Record Notices apply. In addition, information in this system may be disclosed in accordance with the blanket routine uses that appear in the SIGAR's Privacy Act Systems of Records Notices, see, *e.g.,* 77 FR 22626 (April 16, 2012) and 77 FR 38363 (June 27, 2012).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records, including emails, spreadsheet, PDF files, other documents and content maintained in or through this system are stored on the SIGAR network and other electronic media as needed, such as encrypted hard drives and back-up media. Print-outs of records in the system are stored in file folders, binders, and similar filing methods.

RETRIEVABILITY:

Records are retrieved by name of the employee, intern, consultant, or contractor who has access to the SIGAR network.

SAFEGUARDS:

Electronic records are controlled through established SIGAR computer center procedures (personnel screening and physical security), and are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

The records will be maintained and dispositioned in accordance with records disposition schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Management and Support, 2530 Crystal Drive, Arlington, VA 22202–3934.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Privacy, Records and Disclosure, Office of the Special Inspector General for Afghanistan Reconstruction, Headquarters, 2530 Crystal Drive, Arlington, VA 22202.

The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Director, Privacy, Records and Disclosure, Office of Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202.

The request should include the requestor's complete name, time period for which records are sought, and the office location(s) where the requestor believes the records are located.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Internal Electronic Collaboration Tools system will contain documents in electronic form covered by other System of Record Notices, and the exemptions for those Systems of Record Notices apply.

[FR Doc. 2012–19006 Filed 8–2–12; 8:45 am]

BILLING CODE 3710–L9–P

DEPARTMENT OF STATE

[Public Notice 7968]

Culturally Significant Objects Imported for Exhibition Determinations: ''Nicolai Fechin''

AGENCY: Department of State.

ACTION: Notice, correction.

SUMMARY: On April 4, 2012, notice was published on page 20476 of the **Federal Register** (volume 77, number 65) of determinations made by the Department of State pertaining to the exhibition ''Nicolai Fechin.'' The referenced notice is corrected here to include additional objects as part of the exhibition. Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the additional objects to be included in the exhibition ''Nicolai Fechin,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The additional objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Russian Art, Minneapolis, Minnesota, from on or about August 18, 2012, until on or about January 13, 2013, the Frye Art Museum, Seattle, Washington, from on or about February 2, 2013, until on or about April 7, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the additional objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: July 30, 2012.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–19028 Filed 8–2–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Funding Availability for the Small Business Transportation Resource Center Program; Closing and Award Dates Extended

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; Extension of closing and award dates

SUMMARY: This action extends the closing and award dates for a Notice of Funding Availability for the Small Business Transportation Resource Center that was published on July19, 2012, 77 FR 36034. USDOT OSDBU is extending the closing date to allow eligible entities time to adequately submit a proposal.

DATES: The submission period for the Notice of Funding Availability published on July 19, 2012 closing on July 31, 2012 is extended until August 13, 2012, 5:00pm Eastern Standard Time. Also, the notice of award for the competed region on or before August 16, 2012 is extended until August 27, 2012.

ADDRESSES: Proposals 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, 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. Email: *patricia.martin@dot.gov.*

SUPPLEMENTARY INFORMATION: In the June 19, 2012 document (Notice No. USDOT–OST–OSDBU–SBTRC2012–10; Docket Number: DOT–OST–2009–0092), 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 Central Region.

Issued in Washington, DC on July 30, 2012.

Brandon Neal,

Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, U.S. Department of Transportation.

[FR Doc. 2012–19022 Filed 8–2–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–26367]

Motor Carrier Safety Advisory Committee: Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of meeting of Motor Carrier Safety Advisory Committee (MCSAC).

SUMMARY: FMCSA announces that MCSAC will hold a meeting on Monday–Wednesday, August 27–29, 2012. On Monday, August 27, 2012, MCSAC will be provided with briefings on the major motor carrier safety provisions of the recently enacted Moving Ahead for Progress in the 21st Century (MAP–21) [Pub. L. 112–140] surface transportation act and the Agency's Compliance, Safety, and Accountability (CSA) program and assigned a new task concerning CSA. Additionally, the MCSAC will establish a subcommittee on CSA to provide concepts, ideas, and recommendations on the program. On Monday afternoon, the Cross-Border Trucking Pilot Subcommittee will convene for a status update from the Agency. On Tuesday, August 28, 2012, MCSAC will be given a new task to provide ideas and concepts concerning the Regulatory Flexibility Act Section 610 review process and will hear presentations on that topic. Wednesday morning, August 29, 2012, will be reserved for MCSAC's Motorcoach Hours-of-Service (HOS) subcommittee. All three days of the meeting will be open to the public.

DATES: *Time and Dates:* The meetings will be held on Monday–Tuesday, August 27–28, 2012, from 8:30 a.m. to 5 p.m., Eastern Daylight Time (E.D.T.), and on Wednesday, May 29, 2012, from 8:30 a.m. to 12:00 p.m., E.D.T. The meetings will be held at the Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314 in the Washington and Jefferson Rooms on the 2nd floor. The Hilton Alexandria Old Town is located across the street from the King Street Metro station.

Copies of all MCSAC Task Statements and an agenda for the entire meeting will be made available in advance of the meeting at *http://mcsac.fmcsa.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Senior Advisor to the Associate Administrator for Policy, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 385–2395, *mcsac@dot.gov.*

Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Elizabeth Turner at (617) 494–2068, *elizabeth.turner@dot.gov*, by Wednesday, August 15, 2012.

SUPPLEMENTARY INFORMATION:

I. Background

MCSAC

Section 4144 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Public Law 109–59, 119 Stat. 1144, August 10, 2005) required the Secretary of Transportation to establish the MCSAC. The MCSAC provides advice and recommendations to the FMCSA Administrator on motor carrier safety programs and regulations, and operates in accordance with the Federal Advisory Committee Act (FACA, 5 U.S.C. App 2).

II. Meeting Participation

Oral comments from the public will be heard during the last half-hour of the meetings on Monday and Tuesday and during the last 15 minutes of the meeting on Wednesday. Should all public comments be exhausted prior to the end of the specified period, the comment period will close. Members of the public may submit written comments on the topics to be considered during the meeting by Wednesday, May 16, 2012, to Federal Docket Management System (FDMC) Docket Number FMCSA–2006–26367 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., E.T. Monday through Friday, except Federal holidays.

Issued on: July 27, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–18901 Filed 8–2–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2012–0029]

Notice of Request to Rescind Buy America Waiver for Minivans and Minivan Chassis

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request to rescind Buy America waiver and call for comments.

SUMMARY: The Vehicle Production Group LLC (VPG) has asked the Federal Transit Administration (FTA) to rescind the Buy America non-availability waiver it issued on June 21, 2010, for minivans and minivan chassis. According to VPG, it manufactures minivans and minivan chassis that comply with all Buy America requirements under 49 CFR 661.11, including the final assembly requirement that was the subject of the June 2010 waiver. FTA seeks public comment before deciding whether to grant the request. If granted, the waiver would no longer apply; all minivans and minivan chassis purchased with federal funds would have to comply with the final assembly requirement of 49 CFR 661.11.

DATES: Comments must be received by September 4, 2012. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FTA–2012–0029:

1. *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site.

2. *Fax:* (202) 493–2251.

3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the ''Federal Transit Administration'' and include docket number FTA–2012–0029. Due to the security procedures in effect since October 2011, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to *http://www.regulations.gov.* For more information, you may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477), or you may visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mary J. Lee, FTA Attorney-Advisor, at (202) 366–0985 or *mary.j.lee@dot.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this notice is to seek public comment on whether the Federal Transit Administration (FTA) should rescind the non-availability waiver it issued on June 21, 2010 (75 FR 35123). The waiver exempts minivans and minivan chassis from the Buy America final assembly requirements outlined at 49 CFR part 661, stating that it would remain in effect until such a time as a domestic source became available. If this waiver is rescinded, all minivans or minivan chassis purchased with Federal funds must comply with all Buy America requirements of 49 U.S.C. 5323(j), as implemented at 49 CFR 661.11. Among other things, compliance would require that final assembly for all minivans and minivan chassis take place in the United States.

The Vehicle Production Group LLC (VPG) asked FTA to rescind the minivan waiver. VPG manufactures the MV–1, a minivan assembled by AM General LLC (AM General) at AM General's plant in Mishawaka, Indiana. VPG certifies that the MV–1 complies with Buy America requirements for both domestic content and final assembly. Moreover, VPG maintains that it manufactures its MV–1 minivans in sufficient quantity to meet the current and future demand on FTA-funded projects.

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless ''the steel, iron, and manufactured goods used in the project are produced in the United States.'' 49 U.S.C. 5323(j)(1). One exception, or waiver, is allowed if ''the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality.'' 49 U.S.C. 5323(j)(2)(B). FTA issued a non-availability waiver on June 21, 2010, for minivans and minivan chassis after finding that these items were not available from a domestic source that was willing and able to provide U.S.-made minivans and minivan chassis to FTA grantees in compliance with the Buy America rules.

Although FTA is not required to publish a notice in the **Federal Register** before waiving its Buy America requirements on the basis of non-availability, or to rescind such a waiver, FTA sought comment from all interested parties regarding the availability of domestically manufactured minivans and minivan chassis in order to fully determine the absolute necessity of a waiver. Upon finding that minivans and minivan chassis are not available from a domestic source, FTA issued a waiver from its Buy America final assembly requirement under 49 CFR 661.11. However, FTA has continued to require compliance with FTA's domestic content requirement as well as the pre-award and post-delivery audit requirements under 49 CFR part 663.

The purpose of this notice is to publish VPG's request and to seek comment from all interested parties. Comments will help FTA to understand completely the facts surrounding VPG's request. Therefore, FTA seeks comment from all interested parties regarding a potential rescission of the waiver, the merits of VPG's request, and any effects such an action may have. A full copy of VPG's request has been placed in docket number FTA–2012–0029.

Issued on July 30, 2012.

Dorval R. Carter, Jr.,

Chief Counsel.

[FR Doc. 2012–19023 Filed 8–2–12; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2012 0081]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel MISS TRISS; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before September 4, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0081. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MISS TRISS is:

Intended Commercial Use of Vessel: ''Sunset and sightseeing cruises.''

Geographic Region: ''Florida, Alabama, Texas, Puerto Rico.''

The complete application is given in DOT docket MARAD–2012–0081 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: July 26, 2012.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–19020 Filed 8–2–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Information Collection; Comment Request

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)).

DATES: Written comments should be received on or before October 2, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, or copies of the information collection and instructions, or copies of any comments received, contact Elaine Christophe, at (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and the Internal Revenue Service, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to take this opportunity to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*).

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments will become a matter of public record. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has 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 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 the requested information.

Information Collections Open for Comment

Currently, the IRS is seeking comments concerning the following forms, and reporting and record-keeping requirements:

Title: Election of $10 Million Limitation on Exempt Small Issues of

Industrial Development Bonds; Supplemental Capital Expenditure Statements.

OMB Number: 1545–0940.

Regulation Project Number: LR–185–84.

Abstract: This regulation liberalizes the procedure by which a state or local government issuer of an exempt small issue of tax-exempt bonds elects the $10 million limitation upon the size of such issue and deletes the requirement to file certain supplemental capital expenditure statements.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 10,000.

Estimated Time per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 1,000.

Title: Return of Excise Tax on Undistributed Income of Regulated Investment Companies.

OMB Number: 1545–1016.

Form Number: 8613.

Abstract: Form 8613 is used by regulated investment companies to compute and pay the excise tax on undistributed income imposed under Internal Revenue Code section 4982. IRS uses the information to verify that the correct amount of tax has been reported.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,500.

Estimated Time per Respondent: 11 hours, 53 minutes.

Estimated Total Annual Burden Hours: 17,820.

Title: Disclosure of Returns and Return Information to Designee of Taxpayer.

OMB Number: 1545–1816.

Regulation Project Number: TD 9054.

Abstract: Under section 6103(a), returns and return information are confidential unless disclosure is otherwise authorized by the Code. Section 6103(c), as amended in 1996 by section 1207 of the Taxpayer Bill of Rights II, Public Law 104–168 (110 Stat. 1452), authorizes the IRS to disclose returns and return information to such person or persons as the taxpayer may designate in a request for or consent to disclosure, or to any other person at the taxpayer's request to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. Disclosure is permitted subject to such requirements and conditions as may be prescribed by regulations. With the amendment in 1996, Congress eliminated the longstanding requirement that disclosures to designees of the taxpayer must be pursuant to the written request or consent of the taxpayer.

Current Actions: There is no change to this final regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Individuals or households, business or other not-for-profit institutions, farms, and Federal, State, local or tribal governments.

Estimated Number of Respondents: 4,000.

Estimated Time per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 800.

Title: Section 1031 LKE (Like-Kind Exchanges) Auto Leasing Programs.

OMB Number: 1545–1834.

Revenue Procedure Number: Revenue Procedure 2003–39.

Abstract: Revenue Procedure 2003–39 provides safe harbors for certain aspects of the qualification under § 1031 of certain exchanges of property pursuant to LKE Programs for Federal income tax purposes.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 8,600.

Estimated Average Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 8,600.

Title: Credit for Production From Advanced Nuclear Facilities.

OMB Number: 1545–2000.

Form Number: Notice 2006–40.

Abstract: This notice provides the time and manner for a taxpayer to apply for an allocation of the national megawatt capacity limitation under § 45J of the Internal Revenue Code. This information will be used to determine the portion of the national megawatt capacity limitation to which a taxpayer is entitled. The likely respondents are corporations and partnerships.

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: Revision of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 15.

Estimated Time per Respondent: 40 hours.

Estimated Total Annual Burden Hours: 600.

Title: Application for Tentative Refund.

OMB Number: 1545–0098.

Form Number: 1045.

Abstract: Form 1045 is used by individuals, estates, and trusts to apply for a quick refund of taxes due to carry-back of a net operating loss, unused general business credit, or claim of right adjustment under Internal Revenue Code section 1341(b). The information obtained is used to determine the validity of the application.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 17,503.

Estimated Time per Respondent: 29 hours, 26 minutes.

Estimated Total Annual Burden Hours: 515,114.

Title: Application for Approval of Prototype or Employer Sponsored Individual Retirement Account.

OMB Number: 1545–0390.

Form Number: 5306.

Abstract: This application is used by employers who want to establish an individual retirement account trust to be used by their employees. The application is also used by banks and insurance companies that want to establish approved prototype individual retirement accounts or annuities. The data collected are used to determine if the individual retirement account trust or annuity contract meets the requirements of Code section 408(a), 408(b), or 408(c) so that the IRS may issue an approval letter.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 600.

Estimated Time per Respondent: 13 hours, 44 minutes.

Estimated Total Annual Burden Hours: 8,244.

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.

Approved: July 23, 2012.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–18946 Filed 8–2–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Information Collection Comment Request

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)).

DATES: Written comments should be received on or before October 2, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, or copies of the information collection and instructions, or copies of any comments received, contact Elaine Christophe, at (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION: The Department of the Treasury and the Internal Revenue Service, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to take this opportunity to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*).

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments will become a matter of public record. Please do not include any confidential or inappropriate material in your comments.

We Invite Comments on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has 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 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 the requested information.

Information Collections Open for Comment

Currently, the IRS is seeking comments concerning the following forms, and reporting and record-keeping requirements:

Title: Election and Notice Procedures for Multiemployer Plans under Sections 204 and 205 of WRERA.

OMB Number: 1545–2141.

Notice Number: Notice 2009–31 and Revenue Procedure 2009–43.

Abstract: Notice 2009–31 provides guidance for sponsors of multiemployer defined benefit plans relating to the elections described in sections 204 and 205 of the Worker, Retiree, and Employer Recovery Act of 2008, Public Law 110–458 (WRERA), and on the notice required to be provided if a plan sponsor makes an election under section 204. Revenue Procedure 2009–43 provides follow-up guidance to Notice 2009–31. This new guidance describes procedures for revoking elections under WRERA.

Current Actions: There is no change to the burden hours needed by this collection.

Type of Review: Extension of an information collection currently approved by OMB.

Affected Public: State, local, or tribal governments.

Estimated Number of Respondents: 1,600.

Estimated Average Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,600.

Title: Alternative Minimum Tax—Corporations.

OMB Number: 1545–0175.

Form Number: 4626.

Abstract: Section 55 of the Internal Revenue Code imposes an alternative minimum tax. The tax is 20% of the amount by which a corporation's taxable income adjusted by the items listed in sections 56 and 58, and by the tax preference items listed in section 57, exceed an exemption amount. This result is reduced by the alternative minimum tax foreign tax credit. If this result is more than the corporation's regular tax liability before all credits (except the foreign tax and possessions tax credits), the difference is added to the tax liability. Form 4626 provides a line-by-line computation of the alternative minimum tax.

Current Actions: There are no changes being made to Form 4626 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 60,000.

Estimated Time per Respondent: 43 hrs., 52 minutes.

Estimated Total Annual Burden Hours: 2,611,200.

Title: At-Risk Limitations.

OMB Number: 1545–0712.

Form Number: Form 6198.

Abstract: Internal Revenue Code section 465 requires taxpayers to limit their at-risk loss to the lesser of the loss or their amount at risk. Form 6198 is used by taxpayers to determine their deductible loss and by IRS to verify the amount deducted.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals, not-for-profit institutions, and farms.

Estimated Number of Respondents: 230,332.

Estimated Time per Respondent: 3 hrs. 16 min.

Estimated Total Annual Burden Hours: 914,419.

Title: Registration Requirements With Respect to Debt Obligations.

OMB Number: 1545–0945.

Regulation Project Number: FI–255–82.

Abstract: These regulations require an issuer of a registration-required obligation and any person holding the obligation as a nominee or custodian on behalf of another to maintain ownership records in a manner which will permit examination by the Internal Revenue Service in connection with enforcement of the Internal Revenue laws.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations and, state, local or tribal governments.

Estimated Number of Record-keepers: 50,000.

Estimated Time per Record-keeper: 1 hour.

Estimated Total Annual Burden Hours: 50,000.

Title: Allocation of Estimated Tax Payments to Beneficiaries.

OMB Number: 1545–1020.

Form Number: 1041–T.

Abstract: This form allows a trustee of a trust or an executor of an estimate to make an election under Internal Revenue Code section 643(g) to allocate any payment of estimated tax to a beneficiary. The IRS uses the information on the form to determine the correct amounts that are to be transferred from the fiduciary's account to the individual's account.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 1,000.

Estimated Number of Respondents: 59 minutes.

Estimated Total Annual Burden Hours: 990.

Title: Information Reporting on Transactions With Foreign Trusts and on Large Foreign Gifts.

OMB Number: 1545–1538.

Notice Number: Notice 97–34.

Abstract: Notice 97–34 provides guidance on the foreign trust and foreign gift information reporting provisions contained in the Small Business Job Protection Act of 1996.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 5,000.

Estimated Time per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 3,750.

Title: Commercial Revitalization Deduction.

OMB Number: 1545–1818.

Revenue Procedure Number: Revenue Procedure 2003–38.

Abstract: Pursuant to § 1400I of the Internal Revenue Code, Revenue Procedure 2003–38 provides the time and manner for states to make allocations of commercial revitalization expenditures to a new or substantially rehabilitated building that is placed in service in a renewal community.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local and tribal governments, and business or other for-profit organizations.

Estimated Number of Respondents: 80.

Estimated Average Time per Respondent: 2 hours, 30 minutes.

Estimated Total Annual Burden Hour: 200.

Title: Agreement to Mediate.

OMB Number: 1545–1844.

Form Number: 13369.

Abstract: Fast Track Mediation is a dispute resolution process designed to expedite case resolution. In order to avail themselves of this process, taxpayers and Compliance must complete the Agreement to Mediate (Form 13369) once an examination or collection determination is made. Once signed by both parties, the Agreement to Mediate will be forwarded to Appeals to schedule a mediation session.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit organizations, non-profit institutions, Federal, state, local or tribal governments.

Estimated Number of Respondents: 300.

Estimated Number of Respondents: 3 minutes.

Estimated Total Annual Burden Hours: 15.

Title: Report of Cash Payments Over $10,000 Received in a Trade or Business.

OMB Numbers: 1545–0892.

Form Number: 8300 and 8300–SP.

Abstract: Internal Revenue Code section 6050I requires any person in a trade or business who, in the course of the trade or business, receives more than $10,000 in cash or foreign currency in one or more related transactions to report it to the IRS and provide a statement to the payer. Form 8300 and 8300–SP are used for this purpose.

Section 365 of the USA Patriot Act of 2001 (Pub. L. 107–56), adding new section 5331 to title 31 of the United States Code, authorized the Financial Crimes Enforcement Network to collect the information reported on Form 8300 and 8300–SP. In a joint effort to develop a dual use form, IRS and FinCEN worked together to ensure that the transmission of the data collected to FinCEN on Forms 8300 and 8300–SP do not violate the provisions of section 6103. FinCEN makes the Forms 8300 and 8300–SP available to law enforcement through its Bank Secrecy Act information sharing agreements.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, farms, and the Federal government.

Estimated Number of Respondents: 210,000.

Estimated Total Annual Burden Hours: 87,757.

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.

Approved: July 23, 2012.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–18948 Filed 8–2–12; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 77 Friday,

No. 150 August 3, 2012

Part II

Nuclear Regulatory Commission

10 CFR Parts 2, 12, 51 et al.

Amendments to Adjudicatory Process Rules and Related Requirements; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 12, 51, 54, and 61

[NRC–2008–0415]

RIN 3150–AI43

Amendments to Adjudicatory Process Rules and Related Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is amending its adjudicatory rules of practice. This rule makes changes to the NRC's adjudicatory process that the NRC believes will promote fairness, efficiency, and openness in NRC adjudicatory proceedings. This rule also corrects errors and omissions that have been identified since the major revisions to the NRC's rules of practice in early 2004.

DATES: The effective date is September 4, 2012.

ADDRESSES: Please refer to Docket ID NRC–2008–0415 when contacting the NRC about the availability of information for this final rule. You may access information and comment submittals related to this final rule, which the NRC possesses and are publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0415.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Tison Campbell, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–8579, email: *tison.campbell@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Effectiveness of the Final Rule
III. Responses to Public Comments
  A. Responses to Specific Requests for Comments
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I. Background

In a final rulemaking published in the **Federal Register** on January 14, 2004, 69 FR 2181 (2004 part 2 revisions), the NRC substantially modified its rules of practice governing agency adjudications—Title 10 of the *Code of Federal Regulations* (10 CFR) Part 2. In the years that followed, the NRC concluded that further changes to its rules of practice and procedure were warranted.

On February 28, 2011, the NRC proposed amendments to its rules of practice and procedure in 10 CFR Part 2. (76 FR 10781). After evaluating public comments on the proposed rule and making some modifications, the NRC is promulgating a final rule. These changes will promote fairness, efficiency, and openness in NRC adjudicatory proceedings. The final rule corrects errors and omissions that have been identified since the 2004 major revisions to the NRC's rules of practice.

II. Effectiveness of the Final Rule

The new and amended requirements in the final rule will not be retroactively applied to presiding officer determinations and decisions issued prior to the effective date of the final rule (e.g., a presiding officer order in response to a petition or motion), nor will these requirements be retroactively imposed on participants, such that a participant would have to compensate for past activities that were accomplished in conformance with the requirements in effect at the time, but would no longer meet the new or amended requirements in the final rule. Further, in ongoing adjudicatory proceedings, if there is a dispute over an adjudicatory obligation or situation arising prior to the effective date of the new rule, the former rule provisions would be used. However, the new or amended requirements will be effective and govern all obligations and disputes that arise after the effective date of the final rule. For example, if a Board issues a scheduling order before the effective date of the final rule that incorporates § 2.336(d), which currently requires parties to update their disclosures every 14 days, that obligation would change to every month on a day specified by the Board (unless the parties agree otherwise) once the effective date of the rule is reached. Therefore, Licensing Boards should be aware of the effective date of the final rule and take the necessary steps to notify parties of their obligations once the final rule becomes effective.

III. Responses to Public Comments

The public comment period for the proposed rule closed on May 16, 2011. In response to the proposed rule, the NRC received three comment letters—one from an organization representing industry (Agencywide Documents Access and Management System (ADAMS) Accession No. ML11137A119), one from a public interest group that has participated in NRC proceedings (ADAMS Accession No. ML11137A118), and one from an individual with experience participating in NRC proceedings (ADAMS Accession No. ML11119A231). None of the commenters supported the rule exactly as proposed. One commenter suggested changes to the proposed rule, responded to the NRC's questions for public comments, commented on the NRC's proposed changes to part 2, and provided one comment that is outside the scope of this rulemaking. Another

commenter suggested changes to the proposed rule, responded to some of the NRC's questions for public comment, commented on the NRC's proposed changes to part 2,and provided additional comments that are outside the scope of this rulemaking. The final commenter provided one comment that is outside the scope of this rulemaking. Copies of the comment letters with the NRC's comment identifiers (which are listed after each comment summary in this **Federal Register** notice) can be found in ADAMS at Accession No. ML12005A227.

A. Responses to Specific Requests for Comments

In Section VI of the Supplementary Information section of the proposed rule, the NRC presented two issues for which it solicited stakeholder comments. The following paragraphs restate these issues, summarize the comments received from stakeholders, and present the NRC's resolution of the public comments.

1. Scope of Mandatory Disclosures

Section 2.336 contains the general procedures governing disclosure of information before a hearing in contested NRC adjudicatory proceedings. Under current § 2.336(b)(3), the NRC staff must disclose all documents supporting the staff's review of the application or proposed action that is the subject of the proceeding without regard to whether the documents are relevant to the parties' admitted contentions. In the proposed rule, the NRC solicited public comment on whether it should revise § 2.336(b)(3) to limit the staff's mandatory disclosure obligations to documents that are relevant to the admitted contentions.

After reviewing the public comments and considering the proposal to make changes to the scope of the staff's disclosure obligations, the NRC has decided to adopt a revised § 2.336 that will limit the scope of the staff's mandatory disclosures to documents relevant to the admitted contentions. The NRC believes that this change will reduce the burden on both the NRC staff and other parties to NRC proceedings. This change will allow participants to focus on the issues in dispute instead of being forced to sort through thousands of pages of documents that are not relevant to the matters being adjudicated. The NRC staff will continue to provide documents to the public through public ADAMS, and nothing in this rulemaking affects the scope of the staff's ongoing record-retention and disclosure obligations outside the adjudicatory process. This change affects only the scope of the documents that must be included in the staff's mandatory disclosures in NRC proceedings.

The NRC also requested comments on whether it should add a new requirement to the end of § 2.336(d) to clarify that the duty of mandatory disclosure with respect to new information or documents relevant to an admitted contention ends when the presiding officer issues a decision resolving the contention or at a time specified by the presiding officer or the Commission. None of the commenters objected to this proposal. The NRC is adopting this change.

(a) *Would applying NRC staff disclosures under § 2.336(b)(3) to documents related only to the admitted contentions aid parties other than the NRC staff by reducing the scope of documents that they receive and review through the mandatory disclosures?*

Comment: The commenter supports narrowing the staff's disclosure obligations and agrees that the staff's ''voluminous'' disclosures burden the other parties. The commenter believes that the NRC's proposal would ''aid parties other than the NRC Staff by reducing the scope of documents'' that must be reviewed. (NEI-Q1a)

NRC Response: As previously discussed, the NRC has considered this issue and has decided to narrow the NRC staff's disclosure obligations. The NRC believes that limiting the staff's mandatory disclosures to only documents relevant to the admitted contentions will reduce the burden on both the NRC staff and the other parties to the proceeding. The NRC staff will have to produce fewer documents and the other parties will have to review fewer documents. Further, the documents provided to the parties by the NRC staff will be relevant to the admitted contentions, which will allow parties to focus on the disputed issues in the proceeding without having to review documents with no relevance to the admitted contentions.

This change does not affect the NRC staff's continued obligation to provide documents to the public through public ADAMS, the NRC's official agency records system, outside the adjudicatory process. Additional information about using public ADAMS to find documents related to a specific licensing action or licensee is discussed in the NRC's response to the comments on Question 1(b).

Comment: The NRC staff is not meeting its current disclosure obligations. Further, no documents are actually ''produced.'' Instead, the staff provides a list of ADAMS accession numbers that are supposed to (but sometimes don't) link to the documents. Staff could more effectively reduce the burdens of disclosure by implementing a more effective process and by more efficiently using computers and electronic documents. Staff should also better integrate public disclosure of all non-confidential and non-privileged documents into its routine work.

If the scope of disclosures is reduced and if the staff continues its ''crabbed interpretation'' of its disclosure obligations, then public participants will have no choice but to file weekly Freedom of Information Act (FOIA) requests for all NRC staff documents. (Roisman-Q1a)

NRC Response: As previously discussed, the NRC has decided to adopt the proposal regarding the scope of the staff's disclosure obligations. Nothing in this proposal reduces the scope of the staff's obligations to disclose documents through public ADAMS outside the adjudicatory process. The NRC recently updated public ADAMS to make it easier for interested stakeholders to find NRC documents.

Disclosure of documents through public ADAMS is not a new practice, and if parties believe that incorrect ADAMS references have been provided, they should contact the NRC staff to obtain a correct ADAMS reference or a copy of the document (if the ADAMS reference cannot be provided).

(b) *Is the broad disclosure obligation imposed on the NRC staff by current § 2.336(b) warranted in light of (a) the other parties' more limited disclosure obligations and (b) the parties' ability to find these same documents in an ADAMS search?*

Comment: The commenter believes that the staff's broad disclosure obligations do not appear to be warranted because of the other parties' more limited obligations and the availability of documents through ADAMS. (NEI-Q1b)

NRC Response: As discussed in the responses to the comments on Question 1(a), the NRC agrees with the commenter and has adopted the revised disclosure obligations in the final rule.

Comment: The premise of this question is incorrect; the staff does not satisfy its disclosure obligations under § 2.336(b). Further, ADAMS is neither comprehensive nor reliable; finding documents is laborious, and the search features in ADAMS are still inadequate. Members of the public are required to review hundreds of irrelevant documents to find what they're seeking. And the disclosure of documents

through ADAMS is inconsistent: Documents suddenly appear in the system months or years after they were created. These problems make it ''impossible to rely on ADAMS as a source of all relevant documents on any subject.'' Nor can parties rely upon the Electronic Hearing Docket, which is often incomplete. The NRC has not established procedures for when documents will be added to the Docket and which documents will be posted. Similarly, the staff's Hearing File is incomplete and limited to ADAMS accession numbers without any description of the documents that are being disclosed. The NRC's disclosures are in disarray and are neither comprehensive nor reliable, and, therefore, ''cannot be a substitute for full disclosure of documents in individual licensing proceedings by Staff.'' (Roisman-Q1b)

NRC Response: Adopting this proposal will reduce the number of irrelevant documents that members of the public need to review to find what they're seeking. Public ADAMS is a search tool separate from the Electronic Hearing Docket. Public ADAMS contains the NRC's non-sensitive official agency records. In contrast, the Electronic Hearing Docket contains only the non-sensitive adjudicatory filings, as well as the staff's non-privileged disclosures related to ongoing adjudicatory proceedings (i.e., under this final rule, those documents that are relevant to the admitted contentions or disputed issues in ongoing adjudicatory proceedings). All of the documents in the Electronic Hearing Docket are also in public ADAMS. Therefore, if a member of the public wants to search for a document that has been disclosed in an ongoing adjudicatory proceeding (i.e., a document that is relevant to an admitted contention or disputed issue in an ongoing adjudicatory proceeding), then that person can search for this document on the Electronic Hearing Docket or in public ADAMS. If a member of the public wants to find a document that might not have been included in the staff's disclosures in an ongoing adjudicatory proceeding, then that person should search in public ADAMS.

Further, the NRC has recently updated public ADAMS and the Electronic Hearing Docket, which should make it easier for members of the public to find documents. The new public ADAMS is incorporated into the NRC's public Web site search, which allows the public to search for ADAMS documents from the NRC's homepage using simple Google-like searches. The new public ADAMS (available at *http://wba.nrc.gov:8080/wba/*) also allows the public to browse documents by release date and to perform simple and advanced searches. The advanced search engine in public ADAMS allows the public to search by docket or license number, which provides an easy way to limit queries to documents related to a specific facility or proceeding. The Electronic Hearing Docket's new interface allows the public to search all ongoing adjudicatory proceedings for adjudicatory documents, including the staff's public disclosures in these proceedings.

(c) *Would a shorter, more relevant privilege log aid parties to the proceeding?*

Comment: The commenter has no objection to the use of a shorter, more relevant privilege log. (NEI-Q1c)

NRC Response: As discussed in the responses to Questions 1(a) and (b), the NRC agrees with the commenter and has adopted the revised disclosure obligations in the final rule. The reduced scope of NRC staff disclosures will result in shorter, more relevant privilege logs.

Comment: This question is unclear. If the NRC is asking whether staff should withhold fewer documents, then the answer is yes. But if the NRC is asking whether the staff should withhold the same number of documents but include fewer of them on the privilege log, then the answer is no. And if the NRC is asking whether the staff should be given more discretion to decide what is relevant, then the answer is no, unless the staff can demonstrate that it is ''actually committed to full disclosure of all relevant documents.'' The NRC should provide improved privilege logs with more detailed descriptions of the documents being withheld. Further, the privilege logs in the Indian Point proceeding have not included the recipients of the privileged documents, which makes it difficult to determine if the privilege is valid (the initial disclosures did contain this information, but it has not been provided since).

The NRC should consult with experts in discovery, such as law professors or the Sedona Conference, to develop a more efficient and effective process for disclosing documents. (Roisman-Q1c)

NRC Response: The NRC disagrees with this comment. All non-sensitive official NRC records pertinent to the application will remain available via public ADAMS. Shorter privilege logs are a natural result of limiting the scope of documents subject to disclosure under the mandatory disclosure provisions to those relevant to the admitted contentions. The final rule will not change anything about the content or scope of privilege logs; the ratio of documents disclosed to privileged documents should not change, and the total number of documents should be reduced.

This rulemaking is not the proper forum to raise problems with the staff's disclosures in a specific proceeding. If a party has concerns about staff disclosures in a specific proceeding, those concerns should be raised with the presiding officer for that proceeding.

(d) *Would potential parties prefer to maintain the status quo?*

Comment: No. There are substantial problems with part 2. ''It needs to be changed in major ways.'' (Roisman-Q1d)

NRC Response: This comment is outside the scope of this rulemaking. The purpose of this rulemaking is to correct errors and omissions in the NRC rules and to make changes that will promote fairness, efficiency, and openness in NRC proceedings. A wholesale change to part 2 is not the intent of this rulemaking effort. The NRC may consider making other changes to part 2 in a future rulemaking.

(e) *Would limiting the mandatory disclosures of documents as described in Federal Rule of Civil Procedure 26(a)(1)(A)(ii) be the preferred option?*

Comment: The commenter believes that limiting the scope of the NRC staff's disclosure obligations to be consistent with the Federal Rules of Civil Procedure ''is the preferred alternative.'' Further, the commenter suggests that if the NRC makes this change, it should be applied to all parties to NRC proceedings. (NEI-Q1e)

NRC Response: The NRC considered modifying its disclosure obligations for all proceedings to mirror the Federal Rules of Civil Procedure. But after considering this option, the NRC has decided not to adopt Federal-Rules-style discovery at this time. The scope of the change that would be required to adopt Federal-Rules-style discovery is too broad for a limited rulemaking like this one. The NRC may, however, consider adopting Federal-Rules-style discovery as part of a future comprehensive revision to part 2.

Comment: No. The NRC should focus on implementing and enforcing the current obligations. An even better option would be a wholesale revision to the entire part 2 process to provide for increased public participation from the beginning of the process. This increased participation would solve much of the ''disclosure problem'' because public participants would be actively involved in the process from the beginning and documents would be routinely available to the public. Under this proposal, the

disclosure obligations that track the Federal Rules would already have been satisfied by the time a hearing notice is issued. (Roisman-Q1e)

NRC Response: As discussed in the previous comment responses, the NRC has decided to limit the scope of NRC staff disclosures to documents relevant to the admitted contentions. The primary purpose of this limited-scope rulemaking is to correct specified errors and omissions in the NRC rules based on the agency's experience in operating under the 2004 part 2 revisions. This rulemaking is not intended to be a wholesale revision to the NRC's adjudicatory rules of practice. The changes proposed in this comment go well beyond the intended scope of this rulemaking and would be more appropriate for a future major revision to part 2.

2. Alternative Approaches on Interlocutory Appeals

The NRC requested public comments regarding possible amendments to § 2.311. Section 2.311 provides requirements for the interlocutory review of rulings by a presiding officer granting or denying a hearing request or intervention petition, including requests or petitions filed after the deadline in § 2.309(b). Current § 2.311(c) allows the requestor or petitioner to appeal an order wholly denying an intervention petition or hearing request. Therefore, if the presiding officer grants the intervention petition and denies the admissibility of one or more proposed contentions, the petitioner may not appeal the denial of any proposed contentions until the presiding officer issues a final initial decision at the end of the proceeding. Conversely, any party other than the petitioner may immediately appeal the order on the grounds that the requestor or petitioner lacks standing or that all of the petitioner's proposed contentions were inadmissible. Although this basic scheme for interlocutory review of intervention petitions and hearing requests has been in place since 1972 (*see* 37 FR 28710; December 29, 1972), there have been some suggestions that a change to the current practice might be warranted either to provide earlier appellate review of contention admissibility or to discourage frivolous appeals. The NRC proposed two options for public comment: Option 1 would have amended § 2.311(c) and (d) to allow any party to appeal an order granting a hearing request or intervention petition, in whole or in part, within 25 days of the issuance of the order; and Option 2 would have deleted § 2.311(d)(1) to remove the right of parties other than the petitioner to appeal orders granting an intervention petition. The NRC requested comment on these options, possible rule language that would implement each option, and the resource implications of both options for all participants and for the Commission.

After reviewing the two options and the one public comment received on this proposal, the NRC has decided not to modify its standards for interlocutory appeals. The one public comment received on this issue (from an industry group) did not support changing the appeals process. The lack of public comments on this issue suggests that there is not a clamor for a change in the standards for interlocutory appeals. Thus, while an argument can be made in support of a change, the NRC finds no compelling justification to change the current process.

Comment: The commenter does not believe that any changes to the NRC's interlocutory review provisions are necessary. But if the NRC does change these provisions, the commenter would support Option 1. The commenter believes that the benefits of Option 1 might not outweigh the potential delays that could be caused by the increased workload for the Commission.

Further, the commenter does not support Option 2 because Commission review of initial decisions on petitions to intervene is important to ensure timely and efficient hearings. The commenter believes that this option would result in a significant expansion of the number and type of contentions litigated before licensing boards. These additional contentions would be contrary to the NRC's goal of increasing the efficiency of the hearing process. This option would also remove the ''harmonizing'' effect of Commission review, which corrects for the differences between licensing boards. (NEI-Q2)

NRC Response: As previously discussed, the NRC agrees with the commenter and has decided not to change its interlocutory appeals standards.

B. Responses to Remaining Comments

Section 2.305—Service of Documents; Methods; Proof

Comment: The commenter disagrees with the NRC's proposal to clarify that it is inadequate to include a certificate of service stating only that the document is being served through the NRC's E-Filing system; instead, the commenter believes that parties can include a certificate of service stating nothing more than that the document has been served through the E-Filing system. The submitting party cannot know whether the other parties' email addresses are correct or if the system has functioned properly. Therefore, the submitting party cannot state with confidence anything more than that the party uploaded the document to the E-Filing system. The NRC should, therefore, not require parties to attest to having performed service on the other parties when they have no control over whether the system is working correctly or contains the parties' up-to-date contact information. (NEI-1)

NRC Response: The NRC has considered this issue and has decided to adopt a modified version of the commenter's proposal. After the effective date of this rule, parties will no longer be required to include names and contact information in certificates of service for documents served through only the NRC E-Filing system. If a document is served on participants through only the E-Filing system, then the certificate of service need only state that the document has been served through the E-Filing system. If the document is served on participants by only a method other than the E-Filing system, then the document must be accompanied by a certificate of service that includes the name, address, and method and date of service for the participants served. And if the document is served on some participants through the E-Filing system and other participants by another method of service, then the certificate of service must include a list of participants served through the E-filing system, and it must state the name, address, and method and date of service for all participants served by the other method of service. Further, the NRC notes that it retains a record of all of the parties and participants who receive a filing submitted through the E-Filing system.

Section 2.309—Hearing Requests, Petitions to Intervene, Requirements for Standing, and Contentions

Comment: The commenter believes that the NRC should not eliminate the eight late-filed factors, especially not for late-filed hearing requests or intervention petitions. The commenter is concerned that simplifying the late-filed criteria could result in additional litigation of late-filed contentions, which could broaden the scope of a proceeding at a late date with no benefit to the development of a sound record. The simplified late-filed criteria could also result in the admission of additional contentions that duplicate the concerns of already-admitted

parties. The removal of the other late-filed criteria increases the likelihood that new requests or petitions would be granted late in the process. The current approach does not preclude the filing of new contentions, petitions, or requests, and would continue to allow the admission of legitimate late-filed contentions, requests, and petitions. (NEI-2)

NRC Response: The NRC disagrees with the commenter. The commenter believes that the simplification of the standards for filings after the deadline to focus solely on good cause would depart from longstanding Commission practice and could lead to additional hearing requests, intervention petitions, and contentions being granted or admitted. In the final rule, a filing after the deadline may be granted only if the participant demonstrates good cause by satisfying the current three § 2.309(f)(2) factors. As the NRC explained in the proposed rule, whether filings after the deadline are deemed to have met the current § 2.309(c)(1) requirements has usually depended on the existence of good cause, not the other factors. The commenter has not supported its assertion that this revision could result in additional hearing requests, intervention petitions, and contentions being granted or admitted; the commenter does not identify any cases where a petitioner demonstrated good cause but its filing was denied based on the other factors. The NRC is adopting this change because it will allow participants in NRC proceedings to focus on the most relevant question with regard to whether a filing after the deadline will be granted—whether the filing has demonstrated good cause by meeting the three factors from current § 2.309(f)(2).

Comment: The commenter believes that the proposed three-step ''good-cause'' test could lead to the admission of many contentions that would be inadmissible under the current eight-factor late-filed test. At the very least, the NRC should clarify that where the agency uses old information in a new document (e.g., an NRC National Environmental Policy Act (NEPA) document that cites information from an applicant's environmental report), the ''old information'' in a new document cannot be used to satisfy the good-cause criteria. (NEI-3)

NRC Response: The first part of this comment—whether many contentions inadmissible under the current rules would be admitted under the revised standards for filings after the deadline—is addressed in the previous comment response. As for the second part of this comment, the commenter is correct that in most cases where the NRC compiles or uses previously available information in a new document, the previously available information cannot be used as the basis for a new or amended contention filed after the deadline. This idea is captured in current § 2.309(f)(2)(i), which this rulemaking moves to final § 2.309(c)(1)(i).

The Commission recently reinforced this point in *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI–10–27, 71 NRC 481 (Sept. 30, 2010). In this decision, the Commission overruled an Atomic Safety and Licensing Board decision that admitted a contention based on previously available information (or ''old information,'' using the commenter's terms) that was compiled for the first time in the Staff's Safety Evaluation Report (SER). The Commission stated that, had it upheld the Board's decision, the ''ruling would effectively allow a petitioner or intervenor to delay filing a contention until a document becomes available that collects, summarizes and places into context the facts supporting that contention. To conclude otherwise would turn on its head the regulatory requirement that new contentions be based on 'information * * * not previously available.' Further, such an interpretation is inconsistent with our longstanding policy that a petitioner has an 'iron-clad obligation to examine the publicly available documentary material * * * with sufficient care to enable it to uncover any information that could serve as the foundation for a specific contention.' '' *Id.* at 496 (internal citations, footnotes, and emphasis omitted).

This Commission decision does not mean that all contentions based on previously available information are inadmissible; rather, this decision focuses on a document that ''collects, summarizes and places into context the facts [or previously available information] supporting [a] contention.'' *Id.* Where previously available information provides the basis for a new conclusion or analysis, such as in an NRC NEPA document, a participant might be able to construct a legitimate contention challenging the new conclusion or analysis without explicitly basing the contention on the previously available information. For example, an NRC NEPA document with a new conclusion based on previously available information not contained in the applicant's environmental report, such as information from a previously available, but unreferenced, study, might be a proper subject for a contention. Under final § 2.309(c)(1), a contention that challenges a new NRC staff conclusion must, in addition to meeting the other § 2.309(c)(1) factors, still demonstrate that new information encompassed in the new conclusion is ''materially'' different from information that was previously available.

Comment: The commenter agrees with the proposed revision, but believes that the revision should also not allow ''new contentions based on information that became available to the parties during the course of the NRC Staff's review.'' The commenter believes that this proposal will ensure that parties or potential parties raise issues in a timely fashion after the information first becomes available, instead of waiting for the staff to complete its review.

The NRC should also clarify that the requirements in this section are in addition to the § 2.309(c) criteria and also apply to NRC SERs. (NEI–4)

NRC Response: This comment is outside the scope of this rulemaking. The NRC is making specific amendments to its adjudicatory procedures to update the standards for filings after the deadline, refine the mandatory disclosure process, and make other minor process improvements and corrections. The suggestions presented in this comment go well beyond the limited changes that are being made in this rulemaking and would likely result in further delay because a new proposed rule would have to be prepared before a final rule implementing these suggestions could be adopted. Many of the changes in this final rule are being adopted to correct problems identified within the current rules.

The NRC included § 2.309(c)(5) in the proposed rule to provide clarity to the participants about an issue that has caused confusion for both participants and presiding officers. After further reflection, the NRC has decided not to adopt this change as part of the final rule. Instead, the NRC has added a clarifying discussion to this **Federal Register** notice that should make it clear to the participants and presiding officers that the standards in final § 2.309(c) apply to both environmental and safety contentions filed after the deadline in § 2.309(b).

Further, the NRC wants to make it clear to participants in its adjudicatory proceedings that when a draft or final NRC NEPA document contains information that was previously available and that is not significantly different from information in the applicant's environmental report, there is a presumption that the participant could have used that information to support a contention challenging the environmental report. Similarly, if

information becomes available during the staff's review that a participant could use as the basis for challenging the environmental report, the participant must file a timely request under § 2.309 for admission of a new or amended contention after the deadline and cannot await the issuance of the staff's NEPA analysis to initiate the challenge. However, a participant may file a contention based on a significant difference between the environmental report and the draft or final NRC NEPA document if the participant files a timely contention after the NRC NEPA document's issuance and the contention is based on new information that is materially different from previously available information; thus, the contention would satisfy the standards in final § 2.309(c)(1) for new or amended contentions.

Finally, the NRC disagrees with the commenter that proposed § 2.309(c)(5) or a similar standard should apply to SERs. It is well-established in NRC case law that safety contentions must challenge the adequacy of the application, not the adequacy of the staff's review. *See, e.g., Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI–01–12, 53 NRC 459, 472 (2001); *Curators of the Univ. of Mo.* (TRUMP–S Project), CLI–95–1, 41 NRC 71, 121 (1995). Generally, any information in the SER that could provide material support for a new contention is in the application (or the applicant's responses to requests for additional information), and is, thus, available prior to publication of the SER. Conversely, intervenors are expected to challenge the NRC's NEPA process, which means that contentions can challenge the adequacy of the staff's NEPA review. Section 2.309(f)(2) merely states that when possible, NEPA contentions must be based on the applicant's environmental report. Therefore, the rationale for allowing new or amended contentions filed after the deadline based on a significant difference between the environmental report and a draft or final NRC NEPA document does not apply to NRC SERs.

Comment: The current process places undue focus on the procedural technicalities of § 2.309(f), which destroys the public's ability to participate in the process. The proposed amendments do little to address the fundamental problems with part 2. The rules should be amended to allow public participation from the day the applicant starts the license application or license amendment process. The commenter provided proposed rule language to implement this suggestion. (Roisman-1)

NRC Response: This comment is outside the scope of this rulemaking. This rulemaking is not intended to be a wholesale revision to the NRC's adjudicatory rules of practice. The changes proposed in this comment go well beyond the intended scope of this rulemaking and would be more appropriate for a future major revision to part 2.

Comment: The contention submission deadline should be extended until 30 days after the applicant and the NRC staff have completed their work on the application and its review. The commenter provided proposed rule language to implement this suggestion. (Roisman-2)

NRC Response: This comment is outside the scope of this rulemaking. The purpose of this rulemaking is to correct errors and omissions in the NRC rules and to make changes that will promote fairness, efficiency, and openness in NRC proceedings. This rulemaking is not intended to be a wholesale revision to the NRC's adjudicatory rules of practice. The changes proposed in this comment go well beyond the intended scope of this rulemaking and would be more appropriate for a future major revision to part 2.

Section 2.323—Motions

Comment: The time for filing motions in § 2.323(a) should be changed to 30 days after the ''occurrence or circumstance from which the motion arises'' and § 2.323(a) should be amended to clarify that this timing requirement applies to all motions. (Roisman-4)

NRC Response: The first part of this comment is outside the scope of this rulemaking—the proposal to extend the timing for filing motions to 30 days, instead of 10 days, after the ''occurrence or circumstance from which the motion arises.'' This proposal is a substantial change, which should be subject to notice and comment. Because this proposal is outside the scope of this rulemaking and has not been subject to notice and comment, the NRC has decided not to make this change as part of this final rulemaking. The proposal might be considered as part of future revisions to part 2.

The NRC agrees with the second part of this comment—that § 2.323(a) should be amended to clarify that the timing requirement applies to all motions. As previously stated, the purpose of this rulemaking is to correct errors and omissions in the NRC rules. The NRC is thus amending § 2.323(a) to state that ''all motions,'' instead of ''a motion,'' must be made within ten days after the occurrence or circumstance from which the motion arises. However, because, in practice, § 2.309(c) motions (e.g., motions for leave to file new or amended contentions) have not been subject to the motion requirements in § 2.323, the NRC is amending § 2.323 to clarify that these motions are not subject to the requirements of this section. For instance, the 10-day timing requirement in § 2.323(a) does not apply to § 2.309(c) motions, but rather final § 2.309(c)(1) does.

Section 2.335—Consideration of Commission Rules and Regulations in Adjudicatory Proceedings

Comment: The commenter believes that the NRC should expand the requirements in this section to adopt the four-part test from NRC case law for deciding whether to grant a waiver. See, e.g., Dominion Nuclear Conn., Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI–05–24, 62 NRC 551, 560 (2005):

1. The rule's strict application would not serve the purposes for which it was adopted.
2. The person seeking the waiver has alleged ''special circumstances'' that were not considered, either explicitly or by necessary implication, in the rulemaking proceeding leading to the rule.
3. Those circumstances are ''unique'' to the facility rather than common to a large class of facilities.
4. A waiver of the rule is necessary to reach a significant safety or environmental problem. (NEI–5)

NRC Response: This comment is outside the scope of this rulemaking. The purpose of this rulemaking is to correct errors and omissions in the NRC rules and to make changes that will promote fairness, efficiency, and openness in NRC proceedings. Because this proposal is outside the scope of this rulemaking, the NRC has decided not to make this change as part of this final rulemaking. The proposal might be considered as part of future revisions to part 2.

Section 2.336—General Discovery

Comment: The NRC needs to clarify the staff's discovery obligations in contested proceedings. This clarification should note that (1) the staff must comply with the disclosure obligations in Section 2.336(a) with respect to any contention where the staff is participating as a party; and (2) the staff must comply with its disclosure obligations under § 2.336(b)(3) for all documents in its possession or possessed by staff experts or consultants that were reviewed or generated as part

of the analysis of the application. (Roisman-5)

NRC Response: As discussed in the response to the comments on Question 1, the NRC has decided to limit the staff's mandatory disclosure obligations to documents that are relevant to the admitted contentions. Further, the NRC notes that, by its terms, § 2.336(a) applies to ''all parties, other than the NRC staff.''

Comment: The commenter agrees with the NRC's proposal to expand the 14-day disclosure period in § 2.336. But the commenter believes that a ''monthly'' update would be easier for the parties than the ''30-day'' requirement in the proposed rule. (NEI–6)

NRC Response: The NRC agrees with the commenter that a ''monthly'' disclosure makes more sense than a 30-day requirement. The NRC has therefore adopted a modified version of the commenter's suggestion. Under the final rule, parties will be required to produce monthly disclosures on a day determined by the presiding officer, unless the parties agree otherwise. Documents obtained, discovered, or generated in the two weeks before an update do not need to be included in that update, but must be included in the following disclosure update.

Comment: The Commenter believes that the five-business-day cutoff for capturing documents for disclosure does not provide enough time for parties to complete their review of documents prior to disclosure. Instead of the five-business-day cutoff, the commenter suggests a time period for disclosures of ''15 days before the last disclosure update to 15 days before the filing of the update.'' (NEI–7)

NRC Response: The NRC agrees with the commenter that more time might be needed to review documents prior to disclosure. As discussed in the response to the previous comment, the NRC is adopting a modified version of the commenter's suggestion.

Section 2.341—Review of Decisions and Actions of a Presiding Officer

Comment: The commenter does not believe that the NRC has a ''compelling rationale'' for expanding the time allowed for the Commission to act on a decision of a presiding officer or a petition for review. The commenter believes that 90 days is more appropriate than the 120 days proposed by the NRC because the Commission should be expected to act quickly if it has reason to review a presiding officer's decision on its own motion. (NEI–9)

NRC Response: The NRC disagrees with the commenter. The 120 days in the proposed rule is a reasonable amount of time for Commission review. The 40-day time frame in current § 2.341(a)(2) has necessitated extensions of time in most proceedings, as 30 days is provided for the briefing period (i.e., for petitions for review, answers, and reply briefs), which often leaves the Commission insufficient time for an effective review of the filings. A 120-day Commission review period provides for a reasonable time period to review the filings without the unintended consequence of frequent or lengthy extensions. As has always been the case, the Commission may act before the end of the 120-day review period if the review takes less time. The NRC has retained the 120-day review period in the final rule.

Comment: The commenter supports the NRC's proposal to add a ''deemed denied'' provision to part 2, but believes that 120 days for Commission review is too long. Instead, the commenter believes that the Commission review period should be 90 days. (NEI–8)

NRC Response: The NRC disagrees with the commenter. The 120 days in the proposed rule is a reasonable amount of time for Commission review. As a practical matter, the 30-day time frame in the prior deemed denied provision necessitated extensions of time in most proceedings, as 30 days is provided for the briefing period (i.e., for petitions for review, answers, and reply briefs). A 120-day Commission review period allows sufficient time to review the filings at the outset, without the unintended consequence of frequently needing extensions. As noted in the proposed rule, the Commission may act before the end of the 120-day review period if the review takes less time. The NRC has retained the 120-day review period in the final rule.

Section 2.704—Discovery-Required Disclosures

Comment: The commenter does not support this proposed amendment because it would shorten the time to complete discovery-related disclosures, which would increase the burden on the parties. Further, the commenter believes that the additional discovery methods available in subpart G reduce the need for automatic disclosure supplements.

If the NRC adopts these changes in the final rule, the commenter requests that the relevant time period for disclosures mirror that in the final § 2.336 proposed by the commenter. (NEI–10)

NRC Response: The NRC agrees with the commenter and has reconsidered its proposal to alter the deadline for initial disclosures under subpart G. After further consideration, the NRC has decided not to change the subpart G deadline for mandatory disclosures: Initial disclosures in subpart G proceedings are due 45 days after the issuance of a prehearing conference order following the initial prehearing conference specified in § 2.329. The NRC has determined that shortening the time for initial disclosures would not result in greater efficiency in subpart G proceedings and could effectively reduce the flexibility that subpart G presently gives parties to develop a proposed discovery plan for their subpart G proceeding.

The 45-day period in the current rule provides a deadline by which mandatory disclosures must be made should the parties not agree on a proposed discovery plan. Subpart G allows the parties to agree on changes to, among other things, the ''timing, form, or requirement for disclosures under § 2.704, including a statement as to when disclosures under § 2.704(a)(1) were made or will be made.'' *See* 10 CFR 2.705(f)(1)(i). The parties must also confer and determine ''what changes should be made in the limitations on discovery imposed under these rules.'' 10 CFR 2.705(f)(1)(iii). The 45-day period in the rule provides a default deadline for initial disclosures should the parties not agree on a proposed discovery plan within the time frame specified in § 2.705(f). Section 2.705(f) requires the parties to meet and develop a proposed discovery plan no more than 30 days after the issuance of a prehearing conference order and to submit to the presiding officer a written report outlining the plan within ten days of the meeting. Thus, the parties currently have up to 40 days from the issuance of a prehearing conference order to file an agreed-upon proposed discovery plan. Should the time period for mandatory disclosures be reduced from 45 days to 30 days, parties may be required to make their initial disclosures before the time by which subpart G permits them to file an agreed-upon proposed discovery plan for the proceeding.

The NRC has also considered the commenter's concerns about mandatory disclosure supplements, and has decided to adopt modified disclosure update provisions in final §§ 2.704 and 2.709. The final disclosure update provisions in §§ 2.704 and 2.709 parallel the schedule in § 2.336(d). Final §§ 2.704 and 2.709, like final § 2.336(d), require monthly disclosure updates on a date specified by the presiding officer, unless the parties agree to a different date or frequency. These sections allow

the parties to agree (e.g., in the proposed discovery plan) to change the date and frequency for disclosure updates. Thus, if the parties in a subpart G proceeding prefer the scheme used in current subpart G, they can agree to use the current process, under which parties are not required to do monthly updates on a specified date. If the parties don't want to be required to provide monthly disclosure updates, they can agree to a different update frequency. Regardless, the NRC expects that most disclosures will be up-to-date by the time pretrial disclosures are due under § 2.704(c); § 2.704(c)(2) requires pretrial disclosures to be made at least 30 days before commencement of the hearing at which the issue is to be presented, unless otherwise directed by the presiding officer or the Commission.

The NRC is also amending § 2.709(a)(6) to contain the same 45-day period as in current § 2.704(a)(3). In addition, the NRC is amending § 2.336(b) to exclude all subpart G proceedings from the § 2.336 disclosure provisions, which parallels the exclusion in § 2.336(a).

Section 2.1205—Summary Disposition

Comment: Part 2 currently contains separate language to describe the summary disposition process under subparts G and L. The regulations should be amended to provide one set of summary-disposition criteria for both subparts. (Roisman-3)

NRC Response: The NRC agrees with the commenter and is modifying subpart L to mirror the requirements in subpart G. Affidavits will no longer be required with motions for summary disposition filed in subpart L proceedings. As discussed in the section-by-section analysis, the NRC strongly recommends that parties to NRC proceedings, particularly those conducted under subpart L, continue to include affidavits with their motions for summary disposition.

Section 2.1407—Appeal and Commission Review of Initial Decision

Comment: The commenter does not believe that it's necessary to extend the time to file an appeal in subpart N proceedings because these proceedings are typically ''narrow, expedited proceedings.'' Alternatively, the commenter suggests that any extension be left to the discretion of the Commission. (NEI–11)

NRC Response: The NRC disagrees with the comment. The additional 10 days provided by the final rule will allow parties additional time to prepare more thoughtful, focused briefs, which will help the Commission to resolve appeals in a more timely manner. Further, the additional 10 days will not result in excessive delays in the completion of licensing actions.

Comment: The regulations should be amended to allow pleadings in support of motions only when the supporting pleading is making a new argument or point and only if the party filing the supporting pleading first attempts to have the proponent of the motion include its argument or point in the initial pleading. Similar changes should be made to ''pleadings in opposition.'' (Roisman-6)

NRC Response: This comment is outside the scope of this rulemaking. This rulemaking is not intended to be a wholesale revision to the NRC's adjudicatory rules of practice. The changes proposed in this comment go well beyond the intended scope of this rulemaking and would be more appropriate for a future major revision to part 2. Because this proposal is outside the scope of this rulemaking, the NRC has decided not to make this change as part of this final rulemaking.

Miscellaneous Comments

Comment: One commenter submitted a law review article as part of his comment submission. The article argued that the NRC's current hearing process is neither efficient nor fair because the current regulations were intended to prevent or severely restrict the public's participation in the decision-making process. The article also proposed a number of steps that the NRC could take to address these problems and implement a more fair and efficient process: (1) The NRC staff should decline to accept license applications that are not complete in all material respects. Post-docketing amendments and NRC staff requests for additional information (RAI) would still be allowed, but should be reduced by this proposal. (2) The NRC should amend the regulations to require increased and earlier disclosures from the applicant. The application could be treated like a complaint in a lawsuit subject to Federal Rule of Civil Procedure 26(a)(1), which would result in the disclosure of all information in the applicant's possession or control that is relevant to the ''allegations contained in the application.'' (3) The NRC should allow potential intervenors 120 days after the disclosures described in step 2 to file contentions. Potential intervenors should be required to include a ''high degree of specificity'' in their proposed contentions. (4) Responses to the petition to intervene would be allowed to reference only facts or opinions from the original application and disclosures. (5) Parties on the same side of an issue (including the NRC staff and States) would be required to file a single brief. (6) Any license amendments or responses to requests for additional information would be required to be accompanied by all the disclosures that would have been included had the information been included with the original application. (7) If amendments or RAI responses are based on information that could have been included with the application and its disclosures, then the potential and current intervenors would be allowed another 120 days to file new or amended contentions or new petitions to intervene. (8) Amendments to the application would be subject to the same timeliness requirements as new or amended contentions. (9) Upon demonstration that full discovery is the best or most efficient way to obtain the needed information and that additional discovery or cross-examination is needed to fully develop the record, parties would be entitled to the ''full panoply of discovery allowed in federal court.'' (10) Public parties (other than governmental entities) would be entitled to $150,000 ''technical assistance'' grants to pay for the assistance of experts. (Roisman-7)

NRC Response: This comment is outside the scope of this rulemaking proceeding. The NRC is making specific amendments to its adjudicatory procedures to update the standards for filings after the deadline, refine the mandatory disclosure process, and make other minor process improvements and corrections. The suggestions presented in this article go well beyond the limited changes that are being made in this rulemaking and would require a complete rewrite of the NRC's adjudicatory procedures, which is not the purpose of this rulemaking effort.

Implementing these wholesale changes to the NRC's adjudicatory procedures would result in further delay because a new proposed rule would have to be prepared before a final rule implementing these suggestions could be adopted. Many of the changes in this final rulemaking are being adopted to correct problems identified within the current rules. For example, in most proceedings, the parties negotiate around the 14-day disclosure requirement to provide additional time to prepare disclosure updates. This final rule addresses this problem and provides additional guidance to parties by providing for monthly disclosure updates that capture all of the documents produced or obtained two weeks before the deadline.

The NRC may, however, consider these proposals when it next considers a comprehensive revision to its rules of practice and procedure—where these major changes would more appropriately be considered.

Comment: The Commission's parallel rulemaking process for reactor design certifications, which separates design issues from the combined license (COL) hearings, violates Section 189a of the Atomic Energy Act and 10 CFR Part 52. The Commission should amend its regulations to require the design certification rulemaking to be complete before the start of the COL application process. Under the current process, the scope of issues that can be adjudicated in a license application hearing is limited, illogical, and unfair.

The North Anna COL proceeding, where the applicant changed reactor designs after the hearing started, is an extreme example of this practice. The NRC is ''subverting the letter and intent'' of 10 CFR Part 52 and is depriving the public of its opportunity to review and comment on the licensing proceedings. Notice of the publication of the Design Control Document for the new design, which is effectively a new application, should have been published in the **Federal Register**. The publication of this notice should have triggered another opportunity for the public to intervene in the proceeding. Why has the Commission not published a notice of opportunity for hearing for this new application? (BREDL–1)

NRC Response: This comment is outside the scope of this rulemaking. Specific adjudications, such as the North Anna COL proceeding, are outside the scope of this rulemaking. In addition, the wholesale change to the process requested by this commenter is outside of the scope of this rulemaking. The NRC is making specific amendments to its adjudicatory procedures to update the standards for filings after the deadline, refine the mandatory disclosure process, and make other minor process improvements and corrections. The Commission adopted the part 52 licensing procedures in 1989 (54 FR 15372; April 18, 1989) and amended the procedures in 2007 (72 FR 49351; August 28, 2007). This update to the NRC's adjudicatory process is not intended to change the basic licensing framework established in the 1989 rulemaking.

IV. Discussion of Changes and Corrections of Errors

A. Part 2—Title

The current title of 10 CFR Part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders,'' does not accurately reflect the scope of part 2, nor does it track the language of the Administrative Procedure Act (APA). The NRC is adopting a new title for 10 CFR Part 2, ''Agency Rules of Practice and Procedure,'' which better reflects the scope of the subparts and mirrors the language of the APA.

B. Subpart C—Sections 2.300 through 2.390

1. Section 2.305—Service of Documents; Methods; Proof

Current § 2.305(c)(4) refers to ''any paper,'' which could be interpreted to exclude electronic documents filed through the NRC's E-Filing system. To eliminate this ambiguity, final § 2.305(c)(4) will refer to ''each document,'' instead of ''any paper.'' The NRC has evaluated the public comments received on this issue and has decided to amend this section to allow participants to file limited certificates of service with documents filed through the E-Filing system. This limited certificate of service for documents served through only the E-Filing system does not need to contain the names and addresses of the participants served; a simple statement that the document has been served through the E-Filing system is all that is required. Documents that are not filed through the E-Filing system must include a traditional certificate of service—complete with the names, addresses, and method and date of service for all participants served. And documents that are served through both the E-Filing system and another method of service must include both a list of participants served through the E-Filing system and the name, address, and method and date of service for anyone served by the other method.

The NRC retains a record of all participants served through the E-Filing system. Further, after a participant serves a document through the E-Filing system, the system sends to all served participants a notification email, which contains the names and email addresses of all the participants that were served the document through the E-Filing system. The NRC also encourages the presiding officer and all participants to keep a record of the attorneys and representatives of record for each party to the proceeding. This practice will allow parties to quickly identify the appropriate contact for other parties without having to search in the Electronic Hearing Docket or ADAMS.

Further, the NRC notes that § 2.304 requires that electronic documents be signed using a participant's digital certificate; in such circumstances, it is not necessary to submit an electronic copy of the document that includes a traditional signature.

Current paragraph 2.305(g)(1) does not provide an address for service upon the NRC staff when a filing is not being made through the E-Filing system and no attorney representing the NRC staff has filed a notice of appearance in the proceeding. Final paragraph (g)(1) is amended to provide addresses to be used to accomplish service on the NRC staff when a filing is not being made through the E-Filing system and no attorney representing the NRC staff has filed a notice of appearance in the proceeding.

2. Section 2.309—Hearing Requests, Petitions to Intervene, Requirements for Standing, and Contentions

Section 2.309 contains the generally applicable procedures for requesting hearings and submitting petitions to intervene in NRC proceedings, and sets forth the requirements for submitting contentions and establishing legal standing to participate in NRC proceedings. The NRC is making several changes to § 2.309.

a. Section 2.309(b)—Timing

After reviewing the proposed rule, which would have added a cross-reference to the timing provision in § 2.205 to § 2.309(b)(5), the NRC realized that there are other sections in part 2 that impose different filing deadlines than those found in current § 2.309(b). Current § 2.309(b)(5) references orders issued under § 2.202, but does not reference other sections that might impose different deadlines to file a request for a hearing, a demand for a hearing, or a petition to intervene. For example, § 2.205 notices of violation, like § 2.202 orders, provide ''twenty (20) days * * * or other time specified in the notice'' for individuals to file an answer. This provision does not match the 60 days allowed by § 2.309(b), which could be interpreted as applying to § 2.205 notices of violation. Because there are a number of provisions in part 2 that impose different filing deadlines, the NRC is removing § 2.309(b)(5) and amending § 2.309(b) to clarify that the more specific provisions of part 2, such as §§ 2.103(b), 2.202, and 2.205, control when there is a discrepancy between the specific and general timing provisions.

b. Sections 2.309(c) and (f)—Filings After the Deadline; Submission of Intervention Petition, Hearing Request, or Motion for Leave To File New or Amended Contentions

Current § 2.309(c)(1) contains eight balancing factors that determine whether to grant or admit ''nontimely'' hearing requests, intervention petitions, or contentions. These factors include the three factors for standing—also found at § 2.309(d)(1)(ii) through (iv)—and the following five factors: good cause for the failure to file on time; the availability of other means to protect the requestor's or petitioner's interest; the extent to which the requestor's or petitioner's interest will be represented by other parties; the extent to which the requestor's or petitioner's interest will broaden the issues or delay the proceeding; and the extent to which the requestor's or petitioner's participation may reasonably be expected to assist in developing a sound record.

In practice, whether a ''nontimely'' hearing request, intervention petition, or contention is granted or admitted usually depends on whether the participant has shown good cause. The ''good cause'' factor is given the most weight out of the current factors, and ''[i]f a petitioner cannot show good cause, then its demonstration on the other factors must be 'compelling.''' *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI–05–24, 62 NRC 551, 564–65 (2005) (footnote with citation omitted). A showing that many of the other factors support granting the request or admitting the contention is rarely sufficient to overcome a lack of good cause. *See, e.g., Tenn. Valley Auth.* (Watts Bar Nuclear Plant, Unit 2), CLI–10–12, 71 NRC 319, 323 (2010) (the Commission noted that ''it would be a rare case where we would excuse a non-timely petition absent good cause''); *Private Fuel Storage* (Independent Spent Fuel Storage Installation), LBP–00–28, 52 NRC 226, 239–40 (2000). Good cause is not defined in the regulations, but has been defined by the NRC in case law as a showing that the petitioner ''not only * * * could not have filed within the time specified in the notice of opportunity for hearing, but also that it filed as soon as possible thereafter.'' *Millstone,* CLI–05–24, 62 NRC at 564–65.

In addition, current § 2.309(f)(2) identifies three factors to be considered in determining whether to admit a new or amended contention filed after the initial filing. These factors include whether the new or amended contention is based on information that was not previously available, whether the information that was not previously available is materially different from information that was previously available, and whether the new or amended contention has been submitted in a timely fashion after the availability of the new information.

The similarity between §§ 2.309(c)(1) and (f)(2) has created some confusion and resulted in differing approaches to evaluating filings filed after the deadline in § 2.309(b). For example, in *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP–05–32, 62 NRC 813 (2005), an Atomic Safety and Licensing Board questioned whether it was necessary for new or amended contentions filed after the deadline to satisfy both §§ 2.309(c)(1) and (f)(2). However, in *Florida Power & Light Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI–06–21, 64 NRC 30, 33 (2006), the Commission evaluated whether the intervenors met *both* the ''stringent requirements for untimely filings (10 CFR 2.309(c)) and late-filed contentions (10 CFR 2.309(f)(2)).'' This rulemaking presents an opportunity to resolve any ambiguity in the application of these standards. Because good cause is the factor given the most weight, the Commission is focusing on this factor and clarifying the requirements as explained below.

This final rule simplifies the requirements governing hearing requests, intervention petitions, and motions for leave to file new or amended contentions filed after the deadline in § 2.309(b) by (1) referring to ''nontimely filings'' as ''filings after the deadline;'' (2) clarifying the applicability of § 2.307 to certain filings (i.e., hearing requests, intervention petitions, and motions for leave to file new or amended contentions) that might be or are being filed after the deadline; (3) amending § 2.309(c) to permit filings after the deadline only if the filing satisfies the three factors found in current § 2.309(f)(2)(i) through (iii); (4) clarifying that the general requirements for motions in § 2.323 do not apply to § 2.309(c) filings; and (5) adding clarifying information regarding the need to address interest and standing.

As of this final rule, the NRC will no longer use the terms ''late-filed'' or ''nontimely'' with regard to filings (i.e., hearing requests, intervention petitions, and motions for leave to file new or amended contentions) and will instead focus on whether the filing was filed before or after the deadline in § 2.309(b). Therefore, the NRC will refer to contentions previously referred to as ''late-filed contentions'' as new or amended contentions filed after the deadline and ''late-filed'' hearing requests and intervention petitions as new hearing requests or new intervention petitions filed after the deadline. The current NRC case law using the terms ''late-filed'' or ''nontimely'' continues to apply in ruling on filings after the deadline. The NRC will discontinue using the terms ''late-filed'' or ''nontimely'' with regard to contentions for two reasons: (1) To avoid the potential negative implication created by these terms and instead to place emphasis on the fact-specific determination required by final § 2.309(c)(1); and (2) to allow all the requirements for filings after the deadline (currently contained in §§ 2.309(c) and 2.309(f)(2)) to be combined into one place in the regulations (in final § 2.309(c)(1)). The NRC is also making a conforming change to § 2.326(d) to replace the reference to nontimely filings with a reference to new or amended contentions filed after the deadline in § 2.309(b).

Final § 2.309(c) also clarifies that participants must file a motion for leave to file new or amended contentions after the deadline. Because a new petitioner is not a party to the proceeding, new hearing requests and new intervention petitions filed after the deadline do not need to be accompanied by or included in a motion for leave to file. The petitioner must, however, still show standing and demonstrate that it has satisfied the three factors in final § 2.309(c)(1) before its contentions will be considered.

The revisions to § 2.309 do not affect participants' ability to request modifications to deadlines under § 2.307, including the deadline in § 2.309(b) for filing a hearing request, intervention petition, or new or amended contention. A participant may file such a request under § 2.307 in advance of a deadline—for example, if the participant is unable to meet a deadline because of health issues—or shortly after a deadline—for example, if unanticipated events, such as a weather event or unexpected health issues, prevented the participant from filing for a reasonable period of time after the deadline. The NRC notes that ''good cause'' in § 2.307 does not share the same definition that is used for ''good cause'' in final § 2.309(c), so certain extraordinary circumstances such as a weather event or health issues might meet the definition of ''good cause'' in § 2.307 (even though these circumstances would not satisfy the definition of ''good cause'' in final § 2.309(c)). Final § 2.309(c)(2) makes clear that participants should file such

requests for extending a filing deadline due to reasons not related to the substance of the filing under § 2.307, not § 2.309. It should be emphasized that the weather events and health issues described in this paragraph are examples that might satisfy the ''good cause'' standard in § 2.307. The presiding officer will ultimately determine on a case-by-case basis whether a participant has demonstrated good cause for a § 2.307 request to extend a filing deadline.

After a § 2.307 request to extend a filing deadline is granted, assuming the participant files by the new deadline (i.e., the extended date), the participant must only satisfy the requirements that would have applied had the participant filed by the original deadline (i.e., the deadline that was extended). In other words, if a participant is granted a § 2.307 extension and files by the new deadline, the participant's filing is treated as if it were filed by the original deadline. Therefore, as an example, a participant would not need to satisfy final § 2.309(c)(1) if the participant requested under § 2.307 to extend the applicable deadline in § 2.309(b), this request was granted, and the participant filed by the new deadline. The participant would not need to satisfy final § 2.309(c)(1) under these circumstances because the participant's filing would be treated as if it were filed before the deadline in § 2.309(b) and thus final § 2.309(c)(1) would not be triggered. In contrast, a participant would need to satisfy final § 2.309(c)(1) if the participant requested under § 2.307 to extend a specific deadline and the participant filed by the new deadline. The participant would need to satisfy final § 2.309(c)(1) under these circumstances because the § 2.309(b) deadline would have passed with or without the § 2.307 extension.

Final § 2.309(c) requires all filings after the deadline in § 2.309(b) to satisfy the current § 2.309(f)(2)(i)–(iii) factors. In the proposed rule, the NRC proposed making good cause the sole factor in § 2.309(c) for filings after the deadline and adopting the three factors found in current § 2.309(f)(2) as the standard for determining whether good cause exists under § 2.309(c). After further consideration, the NRC has decided that while the three factors from current § 2.309(f)(2) will be the sole bases for deciding whether to consider filings after the deadline with respect to the substance of the filing; a clarification will be added to final § 2.309(c)(2) to make it clear that requests to change the deadline itself should be made under § 2.307.

The change to current § 2.309(c) and current § 2.309(f)(2) simplifies the review of filings after the deadline. Assuming that a participant or party has demonstrated standing under § 2.309(d), all of the standards for filings after the deadline are in final § 2.309(c). By eliminating the factors in current § 2.309(c)(1)(v)–(viii) and consolidating the standards for filings after the deadline in final § 2.309(c), the final rule allows the parties, participants, and presiding officer to focus their resources on the most relevant questions with regard to whether a filing after the deadline will be considered—whether the filing meets the three factors from current § 2.309(f)(2).

Further, final § 2.309(c)(2) clarifies that § 2.323, which contains the general requirements for motions, does not apply to hearing requests, intervention petitions, or motions for leave to file new or amended contentions filed after the deadline in § 2.309(b). Section 2.309 governs hearing requests, intervention petitions, and motions for leave to file new or amended contentions filed after the deadline. For example, the provisions in final § 2.309(i) (not those in § 2.323(c)) apply to answers (and replies to answers) to hearing requests, intervention petitions, and motions for leave to file new or amended contentions filed after the deadline.

Final paragraph (c)(3) makes it clear that, apart from satisfying the current § 2.309(f)(2) factors, a petitioner seeking admission to the proceeding after the deadline in § 2.309(b) needs to satisfy the standing and contention admissibility requirements. Final paragraph (c)(4) applies to a participant or a party who seeks admission of a new or amended contention filed after the deadline, and who has already satisfied the standing requirements in § 2.309(d).

Final § 2.309(f)(2) continues to clarify that all contentions must be based on the documents or other information available at the time the petition is filed. This section makes it clear that, if possible, participants must file environmental contentions arising under NEPA based on the applicant's environmental report. This section further clarifies that a petitioner or participant may file new or amended environmental contentions after the deadline in § 2.309(b) (e.g., based on a draft or final NRC environmental impact statement, environmental assessment, or any supplements to these documents) if the contention complies with the requirements in final § 2.309(c).

As part of the proposed rule, the NRC included a new § 2.309(c)(5), which would have required (similar to the language in current § 2.309(f)(2)) new or amended contentions challenging a draft or final NRC NEPA document to show that there is a significant difference between the applicant's environmental report and the NRC NEPA document. This proposed section would have treated the ''significant difference'' language in current § 2.309(f)(2) as an additional requirement, beyond the proposed § 2.309(c) requirements, for environmental contentions filed after the deadline. After further consideration, the NRC has decided not to adopt proposed § 2.309(c)(5) and instead is clarifying that the ''significant difference'' language in current § 2.309(f)(2) is not a separate standard, but is captured by the three factors in final § 2.309(c)(1). Under the final rule, participants are still required to file their initial environmental contentions on the applicant's environmental report, even though the NRC staff's NEPA documents are the subject of the environmental portion of the hearing. New or amended environmental contentions filed after the deadline, like new or amended safety contentions filed after the deadline, need to satisfy the requirements in final § 2.309(c). The NRC does not believe that there should be an additional requirement that must be satisfied for new or amended environmental contentions filed after the deadline.

As previously specified in current § 2.309(f)(2), participants may file a new or amended contention after the deadline in § 2.309(b) based on a draft or final NRC NEPA document if the participant demonstrates good cause by (1) showing that the information that is the subject of the new or amended contention was not previously available; (2) showing that there is information in the draft or final NRC NEPA document (i.e., environmental impact statement, environmental assessment, or any supplements to these documents) that differs significantly (i.e., is ''materially different'') from the information in the applicant's documents; and (3) filing the contention in a timely manner after the NRC NEPA document's issuance.

c. Section 2.309(d)—Standing

Current § 2.309(d) sets forth the standing requirements and also contains some requirements that do not generally relate to standing. To clarify and to better articulate the generally applicable standing requirements, the NRC is making several revisions to § 2.309(d). The general standing criteria in § 2.309(d)(1) remain the same. Final § 2.309(d)(2) adopts the requirements of the first sentence of current § 2.309(d)(3), which requires the

presiding officer to consider the paragraph (d)(1) factors when determining whether a petitioner has an interest affected by the proceeding. Final paragraph (d)(3) retains the existing provision that in enforcement proceedings, the licensee or other person against whom the action is taken is deemed to have standing. Current § 2.309(d)(2) contains special requirements for States, local governmental bodies, and Federally-recognized Indian Tribes that seek status as parties in proceedings. But some of these requirements (e.g., the need to propose one or more contentions, and the need to designate a single representative) do not relate to standing. The current § 2.309(d)(2) provisions are revised and moved to a new § 2.309(h), which is discussed in the next section.

i. Section 2.309(d)(2) Moved to 2.309(h)—State, Local Governmental Body, and Federally-recognized Indian Tribe

As stated, the current § 2.309(d)(2) provisions for government participation, which do not contain generally applicable standing requirements like the rest of § 2.309, are revised and moved to a new § 2.309(h). Final § 2.309(h)(1), which is based on the existing § 2.309(d)(2)(i), requires any State, local governmental body, or Federally-recognized Indian Tribe seeking to participate as a party to submit at least one admissible contention. This section also includes the requirement that each governmental entity must designate a single representative for the hearing. If a request for hearing or petition to intervene is granted, the NRC would admit as a party a single designated representative of the State, a single designated representative for each local governmental body (county, municipality, or other subdivision), and a single designated representative for each Federally-recognized Indian Tribe, as applicable. This section also requires, as provided in the statement of considerations for the 2004 part 2 revisions, that:

> Where a State's constitution provides that both the Governor and another State official or State governmental body may represent the interests of the State in a proceeding, the Governor and the other State official/government body will be considered separate potential parties. Each must separately satisfy the relevant contention requirement, and each must designate its own representative (that is, the Governor must designate a single representative, and the State official must separately designate a representative).

(69 FR 2182, 2222; January 14, 2004).

Final § 2.309(h)(2) is based on the existing § 2.309(d)(2)(ii), which states that in any potential proceeding for a facility (the term ''facility'' is defined in § 2.4) located within its boundaries, the State, local governmental body, or Federally-recognized Indian Tribe seeking party status need not further establish its standing. As revised, final §§ 2.309(h)(1) and (h)(2) delete the word ''affected'' from the phrase ''Federally-recognized Indian Tribe.'' The use of ''affected'' in this context is proper only in a high-level radioactive waste disposal proceeding. *See* 10 CFR 2.1001 (definition of ''party'' includes an ''affected'' Indian Tribe as defined in section 2 of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. § 10101)). For the same reason, the NRC is removing ''affected'' from final § 2.315(c) (regarding interested government participation) and from the definition of ''Participant'' added to § 2.4 in the E-Filing Rule (August 28, 2007; 49139, 49149). Current § 2.309(d)(2)(iii) is redesignated as § 2.309(h)(3).

ii. Section 2.309(h) Moved to 2.309(i)—Answers to Hearing Requests, Intervention Petitions, and Motions for Leave To File New or Amended Contentions

Current § 2.309(h), which governs the filing of answers (and replies to answers) to hearing requests and petitions to intervene, is redesignated as § 2.309(i) and is further revised. Current § 2.309(h)(1) refers to ''proffered contentions,'' has a preamble limiting paragraph (h) to filing deadlines for hearing requests and intervention petitions, and does not include a clear reference to new or amended contentions filed after the deadline in § 2.309(b). The same deadlines should apply to answers (and replies to answers) to motions for leave to file new or amended contentions filed after the deadline in § 2.309(b) as apply to answers (and replies to answers) to intervention petitions and hearing requests filed after the deadline. The NRC is therefore amending this section to include answers (and replies to answers) to motions for leave to file new or amended contentions after the deadline. Because this change covers filings after the deadline in § 2.309(b), the reference to ''proffered contentions'' in final paragraph (i)(1) (current paragraph (h)(1)) is no longer necessary and is removed. The reference in current paragraph (h)(1) to ''paragraphs (a) through (g)'' is changed to ''paragraphs (a) through (h)'' due to the addition of new paragraph (h).

d. Section 2.309(i) Moved to New 2.309(j)—Decision on Request/Petition

Current § 2.309(i) is redesignated as § 2.309(j). Final § 2.309(j) contains a new citation reference made necessary by the new § 2.309(h). Current § 2.309(i) provides that the presiding officer will, in most cases, issue a decision on requests for hearing and petitions to intervene within 45 days after service of the request or petition, absent an extension of time from the Commission. Since this rule was introduced in 2004, however, presiding officers have not expressly sought extensions from the Commission; rather, the practice has been to issue a notice of the expected date that a decision will be issued. *See, e.g.,* Notice (Expected Date for Decision on Hearing Requests) (Jan. 3, 2011) (unpublished) (ADAMS Accession No. ML110030120). Section 2.309(j) is therefore revised to reflect this practice. The revised rule also extends the time for action by the presiding officer, and provides that if the presiding officer cannot issue a decision on each hearing request or intervention petition within 45 days of the conclusion of the pre-hearing conference, the presiding officer shall issue a notice advising the Commission and the parties as to when the decision will issue. If no pre-hearing conference is conducted, the 45-day period begins after the filing of answers and replies under current § 2.309.

3. Section 2.311—Interlocutory Review of Rulings on Requests for Hearings/Petitions To Intervene, Selection of Hearing Procedures, and Requests by Potential Parties for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI)

Current § 2.311(b) allows parties to appeal orders of the presiding officer to the Commission concerning a request for hearing, petition to intervene, or a request to access SUNSI or SGI within ten days after the service of the order. Any party who opposes the appeal may file a brief in opposition within ten days after service of the appeal. Experience has demonstrated that the filing time provided under this section is unnecessarily short, and sometimes results in superficial appellate briefs. Most adjudicatory bodies allow substantially more time for litigants to frame appellate arguments and to perform the necessary research and analysis. Well-considered briefs enable the appellate body, here the Commission, to make faster and better-reasoned decisions. The NRC is therefore extending the time to file an appeal and a brief in opposition to an

appeal from ten to 25 days. The NRC does not expect the change in appeal deadlines to result in any delays in making licensing decisions. Some Commission appeals of presiding officer initial decisions are completed before there is a final decision on the proposed action, and thus would not affect the timing of the final agency action. For example, this could occur when an appeal on the contested portion of a reactor licensing hearing (part 52 COL or part 50 construction permit) is completed before the Commission holds the mandatory hearing. Further, the NRC believes that the increased time to develop higher quality briefs may assist in shortening the time for Commission review in situations where the timing of a final agency action might be affected by the appellate process.

4. Section 2.314—Appearance and Practice Before the Commission in Adjudicatory Proceedings

Current paragraph 2.314(c)(3) allows anyone disciplined under § 2.314(c) to file an appeal with the Commission within ten days after issuance of the order. Experience since the 2004 revisions of part 2 has demonstrated that ten days frequently is not adequate for parties to prepare quality appeals. The NRC is therefore extending the time to file an appeal of an order disciplining a party from ten to 25 days. The NRC believes that extending the time for appeals will result in higher-quality appeals.

5. Section 2.315—Participation by a Person Not a Party

Current § 2.315(c) allows interested State, local governmental bodies, and Federally-recognized Indian Tribes that have not been admitted as parties under § 2.309 a reasonable opportunity to participate in hearings. The NRC is amending § 2.315(c) to clarify that States, local governmental bodies, or Federally-recognized Indian Tribes that are allowed to participate in hearings take the proceeding as they find it, consistent with longstanding NRC case law. *See, e.g., Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), CLI–86–20, 24 NRC 518, 519 (1986); *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB–600, 12 NRC 3, 8 (1980).

6. Section 2.319—Power of the Presiding Officer

Section 2.319(l) is updated to clarify the scope of the power of the presiding officer to refer rulings or certify questions to the Commission, consistent with the change to § 2.323, discussed in the next section.

7. Section 2.323—Motions

The NRC is amending § 2.323(a) to clarify that § 2.309(c) motions (e.g., motions for leave to file new or amended contentions filed after the deadline in § 2.309(b)) are not subject to the requirements of this section. Section 2.309(b) motions are subject to the requirements in § 2.309. For example, the 10-day timing requirement in § 2.323(a) does not apply to motions for leave to file new or amended contentions filed after the deadline; instead, the presiding officer must make a fact-specific determination under final § 2.309(c)(1) as to whether the participant had good cause for filing the motion after the deadline or whether the participant submitted the filing in a timely fashion after the information upon which the contention is based became available.

The NRC is also amending § 2.323(f) to clarify the criteria for referrals in this paragraph, and to make the referral criteria consistent with the Commission's standards for consideration of these referrals. The criterion on ''prompt decision * * * necessary to prevent detriment to the public interest or unusual delay or expense'' is removed. The second criterion on ''the decision or ruling involves a novel issue that merits Commission review'' is revised to make clear that (1) this criterion concerns the *presiding officer's* decision, and (2) the presiding officer's decision must raise or create ''significant and novel'' issues that may be either ''legal or policy'' in nature.

8. Section 2.335—Consideration of Commission Rules and Regulations in Adjudicatory Proceedings

Section 2.335 details the procedures through which a challenge to the Commission's regulations may be raised as part of an adjudicatory proceeding. The current text of the rule limits these challenges to ''a party to an adjudicatory proceeding,'' which would seem to exclude petitioners from challenging the Commission's regulations. The Commission recognizes that challenges to the Commission's regulations are frequently contained in petitions to intervene and requests for hearing. Further, the Commission recognizes that petitioners may have a legitimate interest in raising such challenges before they are granted party status and that Atomic Safety and Licensing Boards have allowed petitioners to raise these concerns before being admitted as parties. *See, e.g., Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Unit 1), LBP–07–11, 66 NRC 41, 57–58 (2007).

> Also, a contention that challenges any Commission rule is outside the scope of the proceeding because, absent a waiver, 'no rule or regulation of the Commission * * * is subject to attack * * * in any adjudicatory proceeding.' Similarly, any contention that amounts to an attack on applicable statutory requirements must be rejected by a licensing board as outside the scope of the proceeding. A petitioner may, however, within the adjudicatory context submit a request for waiver of a rule under 10 CFR 2.335, and outside the adjudicatory context file a petition for rulemaking under 10 CFR 2.802 or a request that the NRC Staff take enforcement action under 10 CFR 2.206.

Id. (citations omitted). The NRC is therefore amending this section to clarify that, in accordance with NRC practice, ''participants to an adjudicatory proceeding,'' not just parties, may seek a waiver or an exception for a particular proceeding.

9. Section 2.336—General Discovery

Current § 2.336(b) contains the NRC staff's mandatory disclosure obligations. For instance, under current § 2.336(b)(3), the NRC staff must disclose all documents supporting the staff's review of the application or proposed action that is the subject of the proceeding without regard to whether the documents are relevant to the admitted contentions.

The 2004 revision to part 2 imposed mandatory disclosure requirements on all parties that were intended to reduce the overall burden of discovery in NRC adjudicatory proceedings. The NRC is concerned that the overall burden of discovery in NRC proceedings has not actually been reduced. The NRC believes that the primary source of the burden stems from the NRC staff's disclosure of hundreds or thousands of documents that are not relevant to any admitted contention. Disclosure of voluminous material by the staff also burdens other parties to the proceeding with having to search through hundreds or thousands of irrelevant documents to find the material that is relevant to the admitted contentions (other parties' disclosures are already limited to documents relevant to the admitted contentions; the staff's disclosures are not).

All parties also are required to produce privilege logs (a list of discoverable documents that are not being disclosed because the party asserts a privilege to protect the documents). Due to the large number of documents that are captured by the current regulations, the NRC staff must prepare a log of privileged documents,

most of which are completely irrelevant to the admitted contentions. Limiting the NRC staff's disclosure obligations to the admitted contentions will reduce the number of documents produced by the NRC staff, and also will provide the other parties to the proceeding with a list of relevant documents that were withheld, which will make it easier for the parties to identify any withheld documents that they may seek to obtain. This change also will align the scope of the NRC staff's disclosure obligations with those of the other parties to the proceeding. At the same time, the parties' opportunity to obtain publicly available documents will not be affected because these changes will not affect the scope of documents that will be available to parties and other members of the public through public ADAMS outside the adjudicatory process.

The NRC is therefore amending § 2.336(b) to limit the scope of the staff's mandatory disclosure obligations to documents relevant to the initially admitted contentions and admitted new or amended contentions filed after the deadline in § 2.309(b). As a general matter, § 2.336(b) applies to all documents meeting the description in that provision whenever they're created, whether that be before or after the submission of the application.

Current § 2.336(d) requires parties to update their mandatory disclosures every 14 days. Experience with adjudications since early 2004 has demonstrated that the current disclosure provisions are much more burdensome for litigants than was initially anticipated. Part of the burden is the frequency of required updates to the mandatory disclosures. The NRC is therefore replacing the requirement to disclose information or documents within 14 days of discovery with a continuing duty to provide a monthly disclosure update. Final § 2.336(d) directs the presiding officer to select a day during the month (e.g., the first day of the month or the first Thursday in the month) when disclosure updates will be due. Alternatively, the parties may agree to a different due date or frequency for the disclosure updates.

Each disclosure update under final § 2.336(d) includes documents subject to disclosure under this section that have not been disclosed in a prior update. Documents that are developed, obtained, or discovered during the two weeks before the due date are not required to be included in that update (but if they are not included in the first update after they are discovered, then they must be included in the next update).

This change to § 2.336(d) will reduce the burden and increase the usefulness of updated disclosures. The NRC is also adding a sentence to the end of § 2.336(d), to clarify that the duty to update disclosures relevant to an admitted contention ends when the presiding officer issues a decision resolving the contention, or when otherwise specified by the presiding officer or the Commission.

10. Section 2.340—Initial Decision in Certain Contested Proceedings; Immediate Effectiveness of Initial Decisions; Issuance of Authorizations, Permits, and Licenses

Current §§ 2.340(a) and (b) currently imply that the presiding officer must reach a decision prior to the issuance of a license or license amendment, but this is not necessarily always the case. For operating licenses associated with production and utilization facilities, both the Atomic Energy Act and the NRC's regulations allow for the issuance of a license amendment upon a determination of ''no significant hazards consideration.'' *See, e.g.,* 42 U.S.C. 2239, 10 CFR 50.91. Further, 10 CFR Part 2 Subparts L and N allow the staff to act on certain applications prior to the completion of any contested hearing, assuming that all other relevant regulatory requirements are met. *See* 10 CFR 2.1202(a), 2.1210(c)(3), and 2.1403(a). The NRC is revising § 2.340 to clarify that production and utilization facility applications for license amendment—to amend a construction permit, operating license, or renewed license—where the NRC has made a determination of no significant hazards consideration may be acted upon prior to the completion of a contested hearing. The NRC also revised § 2.340 to clarify that the NRC may not act on the application until the presiding officer issues an initial decision in contested proceedings for the initial issuance or renewal of a construction permit, operating license, or renewed license, and in proceedings for the amendment of an operating or renewed license where the NRC has not made a determination of no significant hazards consideration. The NRC is also making conforming amendments to paragraphs (d) and (e) of this section to clarify that in proceedings involving a manufacturing license under 10 CFR Part 52 subpart C, and in proceedings not involving production and utilization facilities, the NRC staff—provided it is able to make all of the necessary findings associated with the licensing action—may act on a license, permit, or license amendment prior to the completion of a contested hearing.

Finally, this section is amended to clarify that the presiding officer may make findings of fact and conclusions of law on any matter not put into controversy by the parties, but only to the extent that the presiding officer determines that a serious safety, environmental, or common defense and security matter exists, and only to the extent that the Commission, upon a required referral by the presiding officer, approves an examination of and decision on the referred matters.

11. Section 2.341—Review of Decisions and Actions of a Presiding Officer

a. Section 2.341(a)—Time To Act on a Petition for Review

Section 2.341(a)(2) currently provides the Commission with 40 days to act on a decision of a presiding officer or a petition for review. The current 40-day time frame has necessitated extensions of time in most proceedings, as 30 days is provided for the briefing period (i.e., for petitions for review, answers, and reply briefs), which often leaves the Commission insufficient time for an effective review of the filings. A 120-day Commission review period provides for a reasonable time period to review the filings without the unintended consequence of frequent or lengthy extensions. The NRC therefore is extending the time for Commission review from 40 days to 120 days. As has always been the case, the Commission may act before that time or extend that period as it deems necessary.

b. Section 2.341(b)—Petitions for Review

Section 2.341 contains requirements pertaining to the review of decisions and actions of a presiding officer by the Commission. Current § 2.341(b)(1) allows parties to file a petition for review of a full or partial initial decision by a presiding officer or any other decision or action by a presiding officer with respect to which a petition for review is authorized by this part. Under the current regulations, a petition for review must be filed with the Commission within 15 days of service of the decision. Similarly, current § 2.341(b)(3) allows other parties to file an answer supporting or opposing Commission review within ten days after service of a petition for review. And the petitioning party is allowed to file a reply brief within five days of service of any answer. Experience has demonstrated that the time allowed by the NRC's rules for petitions for review of a presiding officer's order (15 days) is unnecessarily short, and sometimes results in superficial appellate briefs.

Most adjudicatory bodies allow substantially more time for litigants to frame appellate arguments and to perform the necessary research and analysis. Well-considered briefs enable the appellate body, here the Commission, to make faster and better-reasoned decisions. The NRC is therefore extending the time to file a petition for review and an answer to the petition from 15 days and ten days to 25 days. The NRC is also extending the time to file a reply to an answer from five to ten days.

The NRC does not expect the change in appeal deadlines to result in any unnecessary delays in making licensing decisions. Some Commission appeals of presiding officer initial decisions are completed before there is a final decision on the proposed action, and thus would not affect the timing of the final agency action. For example, this could occur when an appeal on the contested portion of a reactor licensing hearing (part 52 COL or part 50 construction permit) is completed before the Commission holds the mandatory hearing. Further, the NRC believes that the increased time to develop higher quality briefs may assist in shortening the time for Commission review in situations where the timing of a final agency action might be affected by the appellate process. Finally, even when a final presiding-officer decision approving a license comes before the Commission on a petition for review, the license can be issued immediately, notwithstanding the pendency of a petition for review. *See* 10 CFR 2.340(f), 2.341(e).

c. Section 2.341(c)—Petitions for Review Not Acted Upon Deemed Denied

As stated in the 2004 part 2 revisions, § 2.341 was intended to essentially restate the provisions of former § 2.786 (*see* 69 FR 2225; January 14, 2004). But the provisions of former § 2.786(c), under which petitions for Commission review not acted upon were deemed denied, were inadvertently omitted from § 2.341. Accordingly, the NRC is adding a new § 2.341(c)(1); current § 2.341(c)(1) is redesignated as § 2.341(c)(2), and current § 2.341(c)(2) is redesignated as § 2.341(c)(3). Final § 2.341(c)(1) adopts the deemed denied provisions of the former § 2.786(c) with the exception of the 30-day time limit, which is extended to allow 120 days for Commission review. As a practical matter, the 30-day time frame necessitated extensions of time in most proceedings, as 30 days is provided for the briefing period (i.e., for petitions for review, answers, and reply briefs). A 120-day Commission review period allows sufficient time to review the filings at the outset, without the unintended consequence of frequently needing extensions. The NRC therefore is adopting the deemed denied provisions of former § 2.786 with a 120-day time limit as final § 2.341(c)(1).

d. Section 2.341(f)—Standards for Atomic Safety and Licensing Board Certifications and Referrals

The NRC is revising paragraph (f) of this section to address a perceived inconsistency in the standards for Atomic Safety and Licensing Board certifications and referrals to the Commission and Commission review of these issues. Current § 2.323(f) allows a presiding officer to refer a ruling to the Commission if a prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense, or if the presiding officer determines that the decision or ruling involves a novel issue that merits Commission review at the earliest opportunity. By contrast, current § 2.341(f) states that referred or certified rulings ''will be reviewed'' by the Commission only if the referral or certification ''raises significant and novel legal or policy issues, *and* resolution of the issues would materially advance the orderly disposition of the proceeding'' (emphasis added). In essence, the current rules set forth different standards for presiding officers to apply when determining whether to certify a question or refer a ruling, from those that the Commission will use to determine whether it will accept review of a certified question or referred ruling. Further, this language has been interpreted to allow the Commission to accept referrals or certifications only if both standards in current § 2.341(f) are met, even though current § 2.323(f) allows a presiding officer to refer or certify a ruling if any of the criteria in current § 2.323(f) is met. *Tenn. Valley Auth.* (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI–09–3, 69 NRC 68, 72 (2009). To remedy the inconsistency between the two regulations, as discussed with respect to § 2.323(f), the standards for referral by the presiding officer are revised to parallel the standards the Commission will consider in determining whether to take review of a certified question or referred ruling. Final § 2.341(f) provides the Commission with maximum flexibility by allowing, but not requiring, the Commission to review an issue if it raises significant legal or policy issues, or if resolution of the issue would materially advance the orderly disposition of the proceeding.

12. Section 2.346—Authority of the Secretary

Current § 2.346(j) authorizes the Secretary to ''[t]ake action on minor procedural matters.'' Section 2.346(j) has served an important function because the need for the Commission to issue orders and hold affirmation sessions to dispose of adjudicatory matters can sometimes result in undesirable delays in resolving minor matters before the Commission. Many of these minor matters, by their very nature, do not have the precedential or policy significance that reasonably warrants Commission attention. Thus, by delegating authority to the Secretary to decide certain minor matters that come before the Commission, § 2.346(j) has promoted efficiency in NRC adjudications.

However, the rule's current language (i.e., ''take action on minor procedural matters'') could be read to suggest that the Secretary's authority includes a more limited set of matters than intended, as matters must be both ''minor'' and ''procedural'' to qualify. To clarify the regulation, in the proposed rule, the NRC proposed amending § 2.346(j) to read as follows: ''[t]ake action on procedural and other minor matters.'' However, proposed § 2.346(j) could suggest that all procedural matters—no matter their precedential or policy significance—are appropriate for resolution by the Secretary. Upon further consideration, the NRC has decided to revise proposed § 2.346(j) to avoid misleading interpretations, without altering its intended meaning. Final § 2.346(j) thus reads: ''[t]ake action on other minor matters.'' This revision is designed to clearly authorize the range of minor matters that are appropriate for resolution by the Secretary.

Under the final rule, the Secretary will have authority to decide ''other minor matters'' (matters not covered by the other provisions in § 2.346) that come before the Commission, whether procedural or otherwise. The question of whether a given matter is ''minor'' will depend upon the matter's precedential or policy significance. Accordingly, even a matter that might arguably not be considered minor from a purely procedural standpoint, such as an unopposed withdrawal of a construction and operating license application, may fall within the scope of final § 2.346(j) because of its lack of precedential or policy significance. A number of recent orders issued by the Secretary informed the NRC's decision to adopt final § 2.346(j):

• March 10, 2011 order in the *Vermont Yankee* license renewal case denying a petition to stay final Commission decisions in the case and provide an opportunity for a hearing on license renewal application amendments filed by the applicant after the close of the hearing record. The Secretary's order recognized the petition as effectively a petition to reopen the record and submit new or amended contentions filed after the deadline, with an associated stay request to allow time for these desired actions. Because the petition made no attempt to address the necessary criteria for either reopening the record or admitting new or amended contentions filed after the deadline, the Secretary's order denied the petition on the ground that it was procedurally defective on its face. *See* Order of the Secretary (Mar. 10, 2011) (unpublished) (ADAMS Accession No. ML110691322).

• September 10, 2010 order in the *GE–Hitachi* uranium enrichment case designating an Office of Nuclear Security Incident Response (NSIR) employee to serve as an advisor to the licensing board pursuant to 10 CFR 2.904. *See* Order of the Secretary (Sept. 10, 2010) (unpublished) (ADAMS Accession No. ML102530358).

• March 30, 2010 order in the *Comanche Peak* combined license case granting a ''housekeeping stay'' of a licensing board order. The board order, which the NRC staff was appealing to the Commission, had (among other things) directed the staff to make certain disclosures to the intervenors. The staff had requested a stay of the board order's effectiveness pending the Commission's review of the staff's appeal, and the Secretary's ''housekeeping stay'' allowed the staff to hold off on making the disclosures—and thereby preserve the *status quo ante*—until the Commission could act on the stay request. *See* Order of the Secretary (Mar. 30, 2010) (unpublished) (ADAMS Accession No. ML100890634).

• March 5, 2010 order in the *Powertech* uranium recovery matter denying a prospective petitioner's request that the Commission order the NRC staff to place three hard copies of the application materials (rather than two hard copies) in South Dakota reading rooms. *See* Order of the Secretary (Mar. 5, 2010) (unpublished) (ADAMS Accession No. ML100640426).

• September 11, 2009 order in the *Pa'ina* materials licensing proceeding extending the period of time for filing a petition for review of a licensing board order where a petition for reconsideration of that board order was still pending before the board. *See* Order of the Secretary (Sept. 11, 2009) (unpublished) (ADAMS Accession No. ML092540322).

• September 4, 2009 order in the *South Texas* combined license case tolling the running of the time for appealing licensing board contention admissibility decisions to the Commission, where the board had bifurcated its decision on an initial intervention petition, ruling on some of the contentions but not others, and where seven additional new or amended contentions filed after the deadline were also pending before the board. *See* Order of the Secretary (Sept. 4, 2009) (unpublished) (ADAMS Accession No. ML092470592).

• April 27, 2009 order in the *Comanche Peak* combined license case, denying a petition seeking a Commission stay of the adjudication pending completion of the design certification rulemaking for the design being referenced in the application. The Secretary denied the petition on the ground that the Commission, in accord with a Commission policy expressed in its Final Policy Statement on the Conduct of New Reactor Licensing Proceedings, had recently denied comparable requests in two other recent cases (CLI–09–4—*Fermi;* CLI–08–15—*Shearon Harris*). *See* Order of the Secretary (Apr. 27, 2009) (unpublished) (ADAMS Accession No. ML091170518).

• September 11, 2008 order in the *Shearon Harris* combined license case denying a facially defective motion for reconsideration. NRC regulations require that leave to file a motion for reconsideration be obtained from the Commission before such a motion is filed, but the movant had neither sought nor obtained Commission leave to file the motion. In addition, NRC regulations require motions for reconsideration to address a compelling circumstance rendering the prior decision invalid, but the movant had simply restated its previous arguments and incorporated by reference its previous filings on the matter. *See* Order of the Secretary (Sept. 11, 2008) (unpublished) (ADAMS Accession No. ML082550620).

• February 13, 2008 order in the *South Texas* combined license case withdrawing the hearing notice in light of the staff's decision to suspend its review of portions of the application that the applicant was not yet prepared to support. This hearing notice withdrawal had the effect of indefinitely postponing the deadline for filing petitions to intervene in the case. *See* Order of the Secretary (Feb. 13, 2008) (unpublished) (ADAMS Accession No. ML080450208).

There are a number of procedural matters that would not be considered minor, due to their precedential or policy significance, and thus would not fall within the Secretary's authority under final § 2.346(j). The following Commission decisions are examples of procedural matters that were not considered minor:

• January 24, 2011 order denying the request in a petition for rulemaking to suspend all license renewal proceedings where applications were submitted ten years in advance of license expiration, pending review of the petition for rulemaking. Resolving the suspension request required the Commission's analysis of the legal standard for suspending a proceeding. *See* Petition for Rulemaking to Amend 10 CFR 54.17(c), CLI–11–01, 73 NRC _____ (Jan. 24, 2011) (slip op.).

• January 7, 2010, July 23, 2009, October 7, 2004, and January 30, 2004 notices of hearing and orders in the *GE–Hitachi Global Laser Enrichment GLE Commercial Facility, AREVA Enrichment Services Eagle Rock Enrichment Facility, USEC American Centrifuge Plant,* and *Louisiana Energy Services National Enrichment Facility* materials license proceedings. In these hearing notices, the Commission included not only case management direction, but also specific guidance to the licensing boards on certain non-minor matters. *See GE–Hitachi Global Laser Enrichment* (GLE Commercial Facility), CLI–10–04, 71 NRC 56 (2010); *AREVA Enrichment Servs.* (Eagle Rock Enrichment Facility), CLI–09–15, 70 NRC 1 (2009); *USEC, Inc.* (American Centrifuge Plant), CLI–04–30, 60 NRC 426 (2004); *La. Energy Servs., L.P.* (National Enrichment Facility), CLI–04–3, 59 NRC 10 (2004).

• September 23, 2009 order in the *Pa'ina* materials license proceeding denying a request to transfer the case from the licensing board to the Commission. Resolving the transfer request required the Commission's own determination as to whether it, rather than the licensing board, would conduct the remainder of the proceeding. *See Pa'ina Hawaii, LLC* (Materials License Application), CLI–09–19, 70 NRC 864 (2009).

• June 5, 2008 order in the High-Level Waste Repository proceeding denying a motion to disqualify a law firm from representing the applicant due to conflicts of interest. Resolving the motion to disqualify required Commission analysis on whether the claimed conflicts of interest jeopardized the NRC's statutory responsibility to protect public health and safety. *See U.S. Dep't of Energy* (High-Level Waste

Repository), CLI–08–11, 67 NRC 379 (2008).

When exercising the authority delegated to issue orders under § 2.346(j), the Secretary provides the Commissioners' offices with a draft of the order (generally three business days before the Secretary's action on the order). Internal Commission Procedures at I–2 (ADAMS Accession No. ML11269A125). This prior notification provides the Commission with an opportunity to issue the order itself if the Commission disagrees with the Secretary's determination that the matter at issue is ''minor.''

In addition to amending § 2.346(j) to clarify the Secretary's authority over minor matters, the NRC is removing the reference to § 2.311 in § 2.346(e). Moreover, there are no deadlines for Commission action on appeals under final § 2.311.

13. Section 2.347—*Ex Parte* Communications

Section 2.347 prohibits what are known as *ex parte* communications between persons outside the NRC and NRC adjudicatory personnel on matters relevant to the merits of an ongoing hearing; this section currently applies to § 2.204 demands for information. Unlike the NRC actions subject to §§ 2.104(a), 2.105(e)(2), 2.202(c), 2.205(e), and 2.312 (which continue to be referenced in final §§ 2.347(e)(1)(i) and (ii)), hearing rights do not attach to a demand for information because it is not an order; it is a pre-enforcement document requesting information. (56 FR 40663, 40670, 40682; August 15, 1991). The NRC is therefore amending the *ex parte* communication provisions in §§ 2.347(e)(1)(i) and (ii) by deleting the two references to § 2.204. Formerly, § 2.204 pertained to orders for modification of licenses and orders to show cause, and these orders did involve the right to a hearing. (50 FR 38113; September 20, 1985). Thus, when the NRC promulgated § 2.780—the precursor to § 2.347—in 1988, the references to § 2.204 were proper. But in 1991, the references became erroneous when the provisions for orders for modification of licenses were deleted and replaced by the § 2.204 provisions regarding demands for information. Accordingly, the NRC is making conforming changes to §§ 2.347(e)(1)(i) and (ii).

14. Section 2.348—Separation of Functions

The separation of functions provisions in § 2.348 prohibit certain communications between specified sets of NRC personnel on matters relevant to the merits of an ongoing adjudicatory hearing. Similar to the § 2.347 amendment discussed in the previous section, the NRC is correcting the separation of functions provisions in §§ 2.348(d)(1)(i) and (ii) by deleting the two references to § 2.204. As previously explained, unlike the other specified NRC actions, hearing rights do not attach to a demand for information. When the NRC promulgated § 2.781—the precursor to § 2.348—in 1988, the references to § 2.204 were proper. But the references became erroneous in 1991 for the reasons stated in the previous section with respect to §§ 2.347(e)(1)(i) and (ii). Accordingly, the NRC is now making conforming changes to §§ 2.348(d)(1)(i) and (ii).

C. Subpart G—Sections 2.700 Through 2.713

1. Section 2.704—Discovery—Required Disclosures

Current § 2.704(a) through (c) set forth the required disclosures that parties other than the NRC staff must make in formal NRC adjudications (proceedings conducted under subpart G of 10 CFR Part 2).

In the proposed rule, the NRC suggested an amendment to this section that would have changed the due date for initial disclosures in subpart G proceedings from 45 days after the issuance of a prehearing conference order following the initial prehearing conference to 30 days after the order granting a hearing. After further consideration, and review of the public comments on this proposal, the NRC has decided not to change the deadline for initial disclosures in subpart G proceedings. The NRC has determined that modifying the 45-day period would have limited the time available to the parties to develop a proposed discovery plan and could have resulted in situations where initial disclosures would be due before the due date for the parties to submit a proposed discovery plan to the presiding officer in subpart G proceedings.

The NRC has, however, decided to adopt a modified disclosure update provision in final § 2.704(a)(3), which is similar to the proposed rule and parallels the timing provisions in final § 2.336(d). Current § 2.704(e) requires a party that has made a disclosure under § 2.704 to supplement its disclosures ''at appropriate intervals * * * within a reasonable time'' after the party learns that in some material respect the information disclosed was incomplete or incorrect (provided the additional or new information was not made available to other parties during the discovery process or in writing). Final § 2.704(a)(3) directs the presiding officer to select a day during the month (e.g., the first day of the month or the first Thursday in the month) when disclosure updates will be due, but allows the parties to agree to a different due date or frequency for disclosure updates. Documents that are developed, obtained, or discovered during the two weeks before the due date are not required to be included in the update (but if they are not included in the first update after they're discovered, then they must be included in the next update). Final § 2.704(e)(1) clarifies that supplemental disclosures must be made in accordance with the schedule established in final § 2.704(a)(3).

This change to § 2.704 will reduce the burden and increase the usefulness of updated disclosures. The NRC is also adding a sentence to the end of § 2.704, to clarify that a party's duty to update disclosures relevant to a disputed issue end when the presiding officer issues a decision resolving that disputed issue, or when otherwise specified by the presiding officer or the Commission.

2. Section 2.705—Discovery—Additional Methods

Current § 2.705(b)(2) allows the presiding officer to ''alter the limits in these rules on the number of depositions and interrogatories.'' But the rules do not limit the number of depositions or interrogatories. The NRC is therefore amending this section to allow the presiding officer to set reasonable limits on the number of interrogatories and depositions. This change removes the confusion in this section and improves the efficiency of NRC adjudicatory proceedings.

3. Sections 2.709—Discovery Against NRC Staff—and 2.336—General Discovery

a. Sections 2.709(a)(6)—Required Initial Disclosures in Enforcement Proceedings—and 2.336—General Discovery

The NRC is amending the NRC staff's mandatory disclosure obligations for proceedings conducted under part 2 subpart G. Current § 2.336(b) applies to NRC staff disclosures in subpart G proceedings, while § 2.336(a) (discovery for parties other than the NRC staff) does not apply to any proceeding conducted under subpart G. Section 2.336(b) requires initial disclosures to be made in NRC proceedings within 30 days of the issuance of the order granting a hearing request or intervention petition. Because subpart G (final §§ 2.704 and 2.709) requires initial

disclosures to be made within 45 days of the issuance of the prehearing conference order following the initial prehearing conference (not within 30 days of the order granting a hearing), the NRC is amending § 2.336(b) to remove subpart G proceedings from the general discovery requirements in that paragraph. This exclusion in final § 2.336(b) parallels the exclusion in current § 2.336(a).

A corresponding amendment is being made to § 2.709 to specify the NRC staff's disclosure obligations in a subpart G proceeding, including the 45-day period for initial disclosures. The new section—final § 2.709(a)(6)—parallels the initial document disclosure requirements in §§ 2.704(a)(2) and (a)(3) for parties other than the NRC staff. Mirroring the language in § 2.704(a)(2), final § 2.709(a)(6)(i) requires the staff to disclose all NRC staff documents, data compilations, or other tangible things in possession, custody, or control of the NRC staff that are relevant to the disputed issues alleged with particularity in the pleadings, unless the NRC staff asserts a claim of privilege or protected status over the document, data compilation, or other tangible thing. The NRC notes that the references to ''pleadings'' in this section and other sections of part 2 include answers to orders, petitions to intervene, and requests for hearing. Although parties other than the NRC staff are also required by § 2.704(a)(1) to identify individuals likely to have discoverable information relevant to disputed issues, the NRC considers a similar disclosure requirement for the NRC staff to be unnecessary. The discoverable portions of any pertinent Office of Investigations report or related inspection report should identify many of the individuals likely to have discoverable information relevant to disputed issues. Final § 2.709(a)(6)(i) also requires that if a claim of privilege or protected status is made by the NRC staff for any documents, a list of these documents must be provided with sufficient information for assessing the claim of privilege or protected status.

Final § 2.709(a)(6)(ii) requires the NRC staff to provide monthly disclosure updates. Final § 2.709(a)(6)(ii) directs the presiding officer to select a day during the month (e.g., the first day of the month or the first Thursday in the month) when disclosure updates will be due. Alternatively, the parties may agree to a different due date or frequency for the disclosure updates. Documents that are developed, obtained, or discovered during the two weeks before the due date are not required to be included in that update. But if they are not included in the first update after they're discovered, then they must be included in the next update.

This change to § 2.709 will reduce the burden and increase the usefulness of updated disclosures. The NRC is also adding a sentence to the end of § 2.709, to clarify that the duty to update disclosures relevant to a disputed issue ends when the presiding officer issues a decision resolving that disputed issue, or when otherwise specified by the presiding officer or the Commission.

b. Section 2.709(a)(7)—Form and Type of NRC Staff Disclosures

Section 2.709(a)(7) specifies the manner in which the NRC staff may disclose information in subpart G proceedings. For publicly available documents, data compilations, or other tangible things, the NRC staff meets its duty to disclose such information to the other parties and the presiding officer by identifying the location, the title, and a page reference to the subject information. If the publicly available documents, data compilations, or other tangible things can be accessed at either the NRC Web site, *http://www.nrc.gov,* or at the NRC Public Document Room, the staff will provide the parties and the presiding officer with any citations necessary to access this information. This paragraph parallels § 2.704(a)(2) for disclosures by parties other than the NRC Staff.

D. Subpart L—Sections 2.1200 Through 2.1213

1. Subpart L—Title

Part 2 subpart L contains the adjudicatory procedures that the NRC uses to conduct most of its licensing proceedings. The procedures in subpart L were substantially revised in 2004 (69 FR 2182; January 14, 2004), and are intended to be used with the generally applicable provisions in subpart C. Under the provisions of part 2 as revised in 2004, a hearing conducted under subpart L meets the APA requirements for an ''on the record'' or ''formal'' hearing. *Citizens Awareness Network, Inc.* v. *NRC,* 391 F.3d 338, 351 (1st Cir. 2004). Subpart L hearings are therefore ''formal,'' even though the NRC provides more formal adjudicatory procedures under subpart G. The NRC inadvertently failed to change the title of subpart L in 2004. To eliminate any confusion caused by the current title of subpart L, the NRC is revising the title of subpart L to ''Simplified Hearing Procedures for NRC Adjudications.'' The revised title reflects that these proceedings are less formal than the formal part 2 subpart G hearings, but are still formal ''on the record'' hearings under the APA, and not ''informal'' hearings as might be inferred from the current title.

2. Section 2.1202—Authority and Role of NRC Staff

Section 2.1202 pertains to the authority and role of the NRC staff in less formal hearings. The introductory text of current § 2.1202(a) could be erroneously interpreted as suggesting that the staff is required to advise the presiding officer on the merits of contested matters. The NRC is therefore revising § 2.1202(a) to require that in subpart L proceedings, the staff's notice to parties regarding relevant staff licensing actions must include an explanation of why the public health and safety is protected and why the action is in accord with the common defense and security, despite the ''pendency of the contested matter before the presiding officer.''

A conforming change to the introductory text of § 2.1403(a) is also being made to require the NRC staff to provide this explanation when the same situation arises in subpart N proceedings.

3. Sections 2.1205 and 2.710—Summary Disposition; Motions for Summary Disposition; Authority of the Presiding Officer To Dispose of Certain Issues on the Pleadings

The summary-disposition motion requirements in subpart L (current § 2.1205) do not require the inclusion of a statement of material facts—an inadvertent omission during the 2004 part 2 revisions. Before the 2004 amendments to 10 CFR Part 2, the NRC's requirements governing motions for summary disposition required these motions to be accompanied by a ''separate, short and concise statement of material facts as to which the moving party contends that there is no genuine issue to be heard.'' Final § 2.1205 restores the requirement for a statement of material facts for which the moving party contends that there is no genuine issue. This section does not include the requirement for a ''separate'' statement of material facts in dispute, as the rule already requires that the statement be ''attached'' to the motion. The NRC is making a conforming change to § 2.710 to remove the word ''separate,'' which makes §§ 2.710 and 2.1205 identical in this regard

Further, the NRC received public comments asking for the removal of the affidavit requirement from § 2.1205 to make the affidavit requirements consistent for motions for summary disposition under subparts G and L.

After considering the public comments, the NRC has decided to remove the affidavit requirement from § 2.1205. Despite the removal of this affidavit requirement, the NRC strongly recommends that parties to NRC proceedings, particularly those conducted under subpart L, continue to include affidavits with their motions for summary disposition.

4. Section 2.1209—Findings of Fact and Conclusions of Law

Section 2.712(c) specifies the format for proposed findings of fact and conclusions of law in subpart G proceedings, but a similar format provision does not exist in subpart L. The NRC, therefore, is amending § 2.1209 by adding the format requirements now contained in § 2.712(c). These format requirements will aid presiding officers in subpart L proceedings by ensuring that proposed findings of fact and conclusions of law clearly and precisely communicate the parties' positions on the material issues in the proceeding, with citations to the factual record.

4. Section 2.1210—Initial Decision and Its Effect

In 2007, the NRC removed § 2.1211 from its regulations (72 FR 49483; August 28, 2007). Paragraph 2.1210(d) contains a reference to this section, and should have been amended as part of the 2007 rulemaking. The NRC is therefore amending this section to remove the reference to § 2.1211.

5. Section 2.1213—No Significant Hazards Consideration Determinations Not Subject to Stay Provisions

The NRC is adding a new paragraph (f) to § 2.1213. Final paragraph (f) excludes, from the stay provisions, matters limited to whether a no significant hazards consideration determination for a power reactor license amendment was proper. No significant hazards consideration determinations may be made in license amendment proceedings for production or utilization facilities that are subject to the 10 CFR Part 50 requirements; challenges to these determinations are not allowed in accordance with 10 CFR 50.58(b)(6). Excluding no significant hazards consideration determinations from the stay provisions also is consistent with federal case law holding that these findings, which are not appealable to the Commission, are final agency actions. *Ctr. for Nuclear Responsibility, Inc.* v. *NRC,* 586 F. Supp. 579, 580–81 (D.D.C. 1984).

E. Subpart M—Sections 2.1300 Through 2.1331

The following changes are being made to subpart M of 10 CFR Part 2, which sets forth the procedures that are applicable to hearings on license transfer applications.

1. Sections 2.1300 and 2.1304—Provisions Governing Hearing Procedures for Subpart M Hearings

Current § 2.1300 states that the provisions of subpart M, together with subpart C, govern all adjudicatory proceedings on license transfers, but current § 2.1304 states that the procedures in subpart M ''will constitute the exclusive basis for hearings on license transfer applications.'' Current § 2.1304, part of the original subpart M, was effectively replaced by current § 2.1300 in the 2004 part 2 revisions, and could have been removed as part of that rulemaking. The NRC is now removing § 2.1304 and amending § 2.1300 to clarify that in subpart M hearings on license transfers, both the generally applicable intervention provisions in subpart C and the specific subpart M hearing procedures govern.

2. Section 2.1316—Authority and Role of NRC Staff

Section 2.1316(c) provides the procedures for the NRC staff to participate as a party in subpart M hearings. The NRC is updating these procedures to mirror the requirements of § 2.1202(b)(2) and (3), which set forth the NRC staff's authority and role in subpart L hearings. Final § 2.1316(c)(1) requires the NRC staff—within 15 days of the issuance of the order granting requests for hearing or petitions to intervene and admitting contentions—to notify the presiding officer and the parties whether it desires to participate as a party in the proceeding. If the staff decides to participate as a party, its notice will identify the contentions on which it will participate as a party. If the NRC staff later desires to be a party, the NRC staff would notify the presiding officer and the parties, and identify the contentions on which it wished to participate as a party, and would make the disclosures required by § 2.336(b)(3) through (5) unless accompanied by an affidavit explaining why the disclosures cannot be provided to the parties with the notice. Once the NRC staff chooses to participate as a party in a subpart M license transfer proceeding, it would have all the rights and responsibilities of a party with respect to the admitted contention or matter in controversy on which the staff chose to participate. As with § 2.1202, ''the NRC staff must take the proceeding in whatever posture the hearing may be at the time that it chooses to participate as a party.'' (69 FR 2228; January 14, 2004).

3. Section 2.1321—Participation and Schedule for Submission in a Hearing Consisting of Written Comments

Current § 2.1321 contains a typographical error in paragraph (b). The NRC is amending this paragraph to correct the typographical error.

F. Subpart N—Sections 2.1400 Through 2.1407

Section 2.1407—Appeal and Commission Review of Initial Decision

Current § 2.1407(a)(1) allows parties to appeal orders of the presiding officer to the Commission within 15 days after the service of the order. Similarly, current § 2.1407(a)(3) allows parties opposing an appeal to file a brief in opposition within 15 days of the filing of the appeal. Experience has demonstrated that the time allowed by the NRC's rules for appeals from a presiding officer's order is unnecessarily short, and sometimes results in superficial appellate briefs. Most adjudicatory bodies allow substantially more time for litigants to frame appellate arguments and to perform the necessary research and analysis. Well-considered briefs enable the appellate body, here the Commission, to make faster and better-reasoned decisions. The NRC is therefore extending the time to file an appeal and a brief in opposition to an appeal from 15 to 25 days. The NRC does not expect the proposed change in appeal deadlines to result in any delays in making licensing decisions. Some Commission appeals of presiding officer initial decisions are completed before there is a final decision on the proposed action, and thus would not affect the timing of the final agency action. For example, this could occur when an appeal on the contested portion of a reactor licensing hearing (part 52 COL or part 50 construction permit) is completed before the Commission holds the mandatory hearing. Further, the NRC believes that the increased time to develop higher quality briefs may assist in shortening the time for Commission review in situations where the timing of a final agency action might be affected by the appellate process.

G. Other Changes

1. Section 2.4—Definitions

The current definition of ''Participant'' applies to an ''individual or organization,'' and does not explicitly

apply to governmental entities that have petitioned to intervene in a proceeding. The NRC is correcting this definition by adding a parenthetical reference to ''individual or organization,'' so that it reads: ''individual or organization (including governmental entities).''

The current definition of ''NRC personnel'' in § 2.4 contains outdated references to §§ 2.336 and 2.1018. The revision of ''NRC personnel'' updates this definition by removing references to §§ 2.336 and 2.1018, neither of which references the term ''NRC personnel.''

2. Section 2.101—Filing of Application

In 2005, § 2.101 was amended to remove paragraph (e) and redesignate paragraphs (f) and (g) as paragraphs (e) and (f). (70 FR 61887; October 27, 2005). The internal references to paragraph (g) were not updated to reflect the new paragraph designations. References in this section to § 2.101(g) are being corrected to reference § 2.101(f). There are no references to former § 2.101(f) in this section.

In 2007, the NRC revised § 2.101 by adding a new paragraph (a)(9) and reserving paragraphs (a)(6)–(8). As part of this revision, the NRC should have moved paragraph (a–1) to follow paragraph (a)(9). (72 FR 57415; October 9, 2007). Because the current placement of paragraph (a–1) could cause confusion, the NRC is moving paragraph (a–1) to follow paragraph (a)(9). This change does not alter the meaning or intent of this regulation.

3. Section 2.105—Notice of Proposed Action

The NRC is making three changes to § 2.105: (1) The introductory text of paragraph (a) is revised by inserting a reference to the NRC's Web site; (2) the introductory text of paragraph (b) is revised to clarify that the referenced notice pertains to one published in the **Federal Register**; and (3) the introductory text of paragraph (d) is corrected to reference § 2.309(b).

4. Section 2.802—Petition for Rulemaking

Section 2.802(d), in accordance with the new definition of ''Participant'' in final § 2.4 and the amendment to the procedures for challenging the NRC's regulations in final § 2.335, is amended to replace the word ''party'' with ''participant.''

5. Corrections of Other Outdated and Incorrect References

In 2008, the NRC amended its regulations to reflect the reorganization of the Office of Nuclear Materials Safety and Safeguards and the creation of the Office of Federal and State Materials and Environmental Management Programs. (73 FR 5709; January 31, 2008). As part of these amendments, the NRC made a number of changes to part 2, but these changes were incomplete. The NRC is therefore amending §§ 2.101(a)(3) and (4), 2.106(a), 2.106(d), 2.107(c), 2.108(a), 2.108(b), 2.108(c), 2.318(b), 2.337(g)(1), (2), and (3), and 2.811(c) to include references to the Office of Federal and State Materials and Environmental Management Programs or to the Director of the Office of Federal and State Materials and Environmental Management Programs, or to replace references to the Office of Nuclear Materials Safety and Safeguards with references to the Office of Federal and State Materials and Environmental Management Programs, as appropriate.

In 2007, the NRC amended § 2.104 and removed and consolidated a number of paragraphs, including the redesignation of paragraph (e) as paragraph (c). (72 FR 49472; August 28, 2007). The NRC did not correct all of the cross-references to former paragraph (e), which should have been updated to reference current paragraph (c). The NRC is therefore amending §§ 2.103(a), 2.106(a), (c), and (d), and 61.25(c) to provide the correct reference to § 2.104(c) instead of the former § 2.104(e).

Current § 51.102(c) contains an outdated reference to ''Subpart G of Part 2.'' The reference is corrected to refer generally to part 2. Also, the reference to the former Atomic Safety and Licensing Appeal Board is removed from current § 51.102.

Current §§ 51.4, 51.34, 51.109(f), and 51.125 contain outdated references to the former Appeal Board, which are being removed from these sections.

6. Section 12.308—Agency Review

Current § 12.308(a) contains an outdated reference to § 2.786, which was redesignated as § 2.341 in 2004. The NRC is replacing the now incorrect reference to § 2.786 with the correct reference to § 2.341. This section also references the 40-day review period in current § 2.341, which the NRC is increasing to 120 days in this rulemaking. To avoid any inconsistencies between the time for Commission review in final § 2.341 and § 12.308, the NRC is expanding the review period in § 12.308 from 40 to 120 days.

7. Section 54.27—Hearings

Current § 54.27 (pertaining to license renewal hearings for nuclear power reactors) contains an outdated reference to a 30-day period to request a hearing. As discussed in the 2004 part 2 revisions, the time in which to request a hearing under § 2.309(b) was extended to 60 days from the date a notice of opportunity for hearing is published (either in the **Federal Register** or on the NRC's Web site). (January 4, 2004; 69 FR 2200). Final § 54.27 is corrected to reflect the proper 60-day period to request a hearing, and a reference to § 2.309 is added. Final § 54.27 retains the provision that in the absence of any hearing requests, a renewed operating license may be issued without a hearing upon 30-day notice and publication in the **Federal Register**.

8. Part 2—Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders

Throughout part 2, the terms ''Presiding Officer'' and ''presiding officer'' are used interchangeably, but with different capitalization, unlike part 51, which uses the term ''presiding officer'' uniformly without capitalization. The NRC is changing all references to the term ''Presiding Officer'' to ''presiding officer'' to make part 2 consistent with part 51.

V. Section-by-Section Analysis

A. Introductory Provisions—Sections 2.1 Through 2.8

Section 2.4—Definitions

This section modifies the definition of *Participant* in § 2.4, which currently applies to individuals or organizations that petition to intervene or request a hearing, but are not yet parties. The new definition clarifies that any individual or organization—including States, local governments, and Federally-recognized Indian Tribes—that petitions to intervene or requests a hearing shall be considered a participant. Further, Federally-recognized Indian Tribes do not have to be ''affected'' Federally-recognized Indian Tribes to participate in NRC licensing actions. The term ''affected'' is reserved for Federally-recognized Indian Tribes that seek to participate in the high-level waste proceeding; it does not apply to the NRC's other licensing actions.

The current definition also indicates that States, local governmental bodies, or affected Federally-recognized Indian Tribes that seek to participate under § 2.315(c) shall be considered participants. This section does not grant these governmental bodies § 2.315(c) participant status; this status is obtained only when the interested governmental body is afforded the opportunity to participate in the proceeding by the presiding officer. Governmental bodies that have requested § 2.315(c)

participant status, but have not yet been granted or denied such status by the presiding officer, are considered only a § 2.4 participant until their § 2.315(c) request is approved. This section also removes incorrect references to §§ 2.336 and 2.1018 in the definition of *NRC personnel.*

B. Subpart A—Sections 2.100 Through 2.111

1. Section 2.101—Filing of Application

This section is amended to move paragraph (a–1) to follow paragraph (a)(9) and to correct typographical errors in paragraphs (a)(3) and (a)(4), and incorrect references to § 2.101(g), which should reference § 2.101(f). These changes do not alter the meaning or intent of this regulation.

2. Section 2.103—Action on Applications for Byproduct, Source, Special Nuclear Material, Facility and Operator Licenses

This section is amended to correct an outdated reference to § 2.104(e), which should reference § 2.104(c). This change does not alter the meaning or intent of this regulation.

3. Section 2.105—Notice of Proposed Action

This section is updated to include a reference to the NRC's Web site. Paragraph (b) of this section is updated to clarify that the referenced ''notice'' is one that is published in the **Federal Register**, and paragraph (d) is amended to include a reference to the time period in § 2.309(b).

4. Section 2.106—Notice of Issuance

Paragraph (a) is amended to add a reference to the Director, Office of Federal and State Materials and Environmental Management Programs. Paragraph (d) is amended to replace the reference to the Director, Office of Nuclear Material Safety and Safeguards, with a reference to the Director, Office of Federal and State Materials and Environmental Management Programs.

Paragraphs (a), (c), and (d) are amended to correct an outdated reference to § 2.104(e), which should reference § 2.104(c). This change does not alter the meaning or intent of these paragraphs.

5. Section 2.107—Withdrawal of Application

Paragraph (c) is amended to add a reference to the Director, Office of Federal and State Materials and Environmental Management Programs.

6. Section 2.108—Denial of Application for Failure To Supply Information

Paragraphs (a), (b), and (c) are amended to add references to the Director, Office of Federal and State Materials and Environmental Management Programs.

C. Subpart C—Sections 2.300 Through 2.390

1. Section 2.305—Service of Documents; Methods; Proof

Section 2.305, which currently requires any paper served in an NRC proceeding to include a signed certificate of service, is amended to clarify that filings not submitted through the E-Filing system must include a signed certificate of service that provides the name, address, and method and date of service for every participant served with the document. Final § 2.305 provides that if a document is submitted through only the E-Filing system, then its certificate of service must state only that the document was submitted through the E-Filing system. If the document is served through both the E-Filing system and some other method of service, then its certificate of service must include both a list of participants served through the E-Filing system and the name, address, and method and date of service for all participants served through the other method.

Under § 2.304(d)(1), persons submitting electronic documents to the NRC through the E-Filing system do not need to physically sign their documents; signature with a participant's digital ID certificate satisfies the requirement that a document be signed.

Section 2.305(g)(1), which does not currently provide an address for service upon the NRC staff when a filing is not being made through the E-Filing system and no attorney representing the NRC staff has filed a notice of appearance, is updated to provide participants with an address to use in these circumstances.

2. Section 2.309—Hearing Requests, Petitions To Intervene, Requirements for Standing, and Contentions

a. Section 2.309(b)—Timing

The NRC is removing § 2.309(b)(5) and amending § 2.309(b) to clarify that the more specific timing provisions of part 2, such as §§ 2.103(b), 2.202, and 2.205, control when there is a discrepancy between a more specific timing provision and the general timing provisions in § 2.309(b).

b. Section 2.309(c) and (f)—Filings After the Deadline; Submission of Intervention Petition, Hearing Request, or Motion for Leave To File New or Amended Contentions

Section 2.309(c) is updated to consolidate the requirements for filings after the deadline and to clarify the intent of the regulations. Final § 2.309(c) incorporates the current § 2.309(f)(2)(i) through (iii) factors into final § 2.309(c)(1)(i) through (iii). Final § 2.309(c)(1) requires that a filing after the deadline (i.e., an intervention petition, hearing request, or motion for leave to file new or amended contentions filed after the deadline) must demonstrate that the three final § 2.309(c)(1)(i)–(iii) factors have been met. Meeting the final § 2.309(c)(1)(i)–(iii) factors demonstrates the existence of good cause justifying the filing after the deadline in § 2.309(b).

Final § 2.309(c)(1)(i) is met if the participant demonstrates that the information upon which the new or amended contention is based was not previously available. Final § 2.309(c)(1)(ii) is satisfied if the information that supports the filing after the deadline (and was not previously available) is materially different from previously available information. And final § 2.309(c)(1)(iii) is satisfied if a participant submits this filing in a timely fashion based on the availability of the subsequent information.

Final § 2.309(c)(2) clarifies that changes to a deadline based on good cause considerations not related to the substance of the filings continue to be governed by § 2.307, and that § 2.323, which contains the general requirements for motions, does not apply to hearing requests, intervention petitions, or motions for leave to file new or amended contentions filed after the deadline in § 2.309(b).

Final § 2.309(c)(3) clarifies that a hearing request or intervention petition filed after the deadline must specify at least one contention if the petitioner seeks admission as a party, and requires a petitioner to meet the standing and contention admissibility requirements in §§ 2.309(d) and (f); a petitioner who has already satisfied the § 2.309(d) standing requirements does not have to do so again (as specified in final § 2.309(c)(4)).

Final § 2.309(c)(4) requires that any new or amended contentions filed by a party or participant after the deadline must meet the admissibility requirements in § 2.309(f), and clarifies that a party or participant who has already demonstrated standing does not

need to address the standing requirements in § 2.309(d) again.

Final § 2.309(f)(2) continues to require that all contentions be based on the documents available at the time when the petition is filed. Final § 2.309(f)(2) clarifies that environmental contentions must be based on the applicant's environmental report, but new or amended environmental contentions may be filed after the deadline in § 2.309(b) in accordance with the requirements in final § 2.309(c) (e.g., based on a draft or final NRC environmental impact statement, environmental assessment, or any supplements to these documents).

c. Section 2.309(h)—Requirements Applicable to States, Local Governmental Bodies, and Federally-Recognized Indian Tribes Seeking Party Status

Current paragraphs (d)(2)(i) and (ii) apply only to ''affected'' Federally-recognized Indian Tribes, which is proper only in the context of a high-level radioactive waste disposal proceeding. Final § 2.309(h), which is the current § 2.309(d)(2), is revised to clarify that, in the case of § 2.309(h)(1) and (2), any Federally-recognized Indian Tribe that wishes to participate in any potential proceeding for a facility located within its boundaries does not need to further establish its standing. Final § 2.309(h)(3), which is the current § 2.309(d)(2)(iii), applies only to a high-level waste disposal proceeding and retains the references to affected Federally-recognized Indian Tribes; the references in this section mirror the language used in the § 2.1001 definition of *Party.*

d. Section 2.309(i)—Answers to Hearing Requests, Intervention Petitions, and Motions for Leave To File New or Amended Contentions

Current § 2.309(h) is redesignated as § 2.309(i) and is amended to clarify that it includes answers (and replies to answers) to intervention petitions and hearing requests filed after the deadline in § 2.309(b). Further, the reference to ''proffered contentions'' in paragraph (i)(1) is amended to reference ''motions for leave to file new or amended contentions'' because contentions filed before the deadline will be part of an intervention petition or hearing request. Finally, cross references to other paragraphs in § 2.309 are updated to reflect the addition of new paragraph (h).

e. Section 2.309(j)—Decision on Request/Petition

Current § 2.309(i) is redesignated as § 2.309(j) and is updated to reflect new § 2.309(h). Further, this section is revised to require a presiding officer to advise the Commission and the parties if a decision on a hearing request or intervention petition cannot be issued within 45 days of the conclusion of the pre-hearing conference. The presiding officer's notification must also notify the parties when a decision will be issued.

3. Section 2.311—Interlocutory Review of Rulings on Requests for Hearings/Petitions To Intervene, Selection of Hearing Procedures, and Requests by Potential Parties for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information

Final § 2.311(b) extends the time to file an appeal and a brief in opposition to an appeal from ten to 25 days.

4. Section 2.314—Appearance and Practice Before the Commission in Adjudicatory Proceedings

Final § 2.314(c)(3) extends the time to file an appeal to an order disciplining a party from ten to 25 days.

5. Section 2.315—Participation by a Person Not a Party

Final § 2.315(c) clarifies that interested States, local government bodies, and Federally-recognized tribes, who are not parties admitted to a hearing under § 2.309 and who seek to participate in the hearing, must take the proceeding as they find it. Consistent with NRC case law, these participants (under final § 2.315(c)) cannot raise issues related to contentions or issues that were resolved prior to their entry as participants in the proceeding—if a State, local governmental body, or Federally-recognized Indian Tribe chooses to participate in a proceeding late in the process, their participation is subject to any orders already issued and should not interfere with the schedule established for the proceeding.

6. Section 2.318—Commencement and Termination of Jurisdiction of Presiding Officer

Paragraph (b) is amended to add a reference to the Director, Office of Federal and State Materials and Environmental Management Programs

7. Section 2.319—Power of the Presiding Officer

Final § 2.319(r) reincorporates former § 2.1014(h) without any changes to the original language or intent. This section requires that an admitted contention that constitutes pure issues of law, as determined by the presiding officer, must be decided on the basis of briefs or oral argument.

8. Section 2.323—Motions

Final § 2.323(a) is amended to clarify that § 2.309(c) motions are not subject to the requirements of § 2.323.

Final § 2.323(f) allows the presiding officer to independently, or in response to a petition from a party, certify questions or refer rulings to the Commission if the issue satisfies one of the two § 2.323(f)(1) criteria. In each case, the presiding officer would make the initial determination as to whether the issue or petition raises significant and novel legal or policy issues, or if prompt decision by the Commission is necessary to materially advance the orderly disposition of the proceeding.

9. Section 2.326—Motions to Reopen

Final § 2.326(d) is updated to replace a reference to ''nontimely contentions'' with a reference to ''new or amended contentions filed after the deadline in § 2.309(b).'' As previously discussed, the NRC is no longer using the term ''nontimely contentions,'' which has been replaced with the term ''new or amended contentions filed after the deadline in § 2.309(b).''

10. Section 2.335—Consideration of Commission Rules and Regulations in Adjudicatory Proceedings

Current § 2.335 limits the requests for waivers or exceptions from NRC regulations to parties to a proceeding. Final § 2.335 clarifies that participants to an adjudicatory proceeding, including petitioners, may seek a waiver or exception from the NRC's regulations for a particular proceeding. This change adopts the NRC's practice of allowing petitions to intervene and requests for hearing to contain § 2.335 requests for waivers or exceptions from the NRC's regulations.

11. Section 2.336—General Discovery

This section is amended to change the scope of the NRC staff's disclosure obligations in § 2.336(b). The disclosure obligations in final § 2.336(b) mirror those in § 2.336(a), which do not apply to proceedings conducted under subparts G and J and are limited to documents related to the admitted contentions. The NRC is therefore amending § 2.336(b)(1) through (4) to limit the documents that must be disclosed to those ''that are relevant to the admitted contentions.''

This section is amended to require the filing of monthly mandatory disclosure updates, with the disclosure due date to be selected by the presiding officer;

though, the parties to a proceeding may agree to a different due date or disclosure frequency. These updates include all disclosable documents and information not included in a prior update. Documents and information that are discovered, obtained, or developed in the two weeks prior to a disclosure update may be included in the next update. Parties not disclosing any documents are expected to file an update informing the presiding officer and the other parties that the party is disclosing no documents that month. The duty to update disclosures relevant to an admitted contention ends when the presiding officer issues a decision resolving the contention, or as specified by the presiding officer or the Commission.

12. Section 2.337—Evidence at a Hearing

Paragraph (g) is amended to add references to the Director, Office of Federal and State Materials and Environmental Management Programs.

13. Section 2.340—Initial Decision in Certain Contested Proceedings; Immediate Effectiveness of Initial Decisions; Issuance of Authorizations, Permits, and Licenses

Final § 2.340 clarifies that in some circumstances, the NRC may act on a license, renewed license, or license amendment prior to the completion of any contested hearing. Paragraphs (a) and (b) concern construction and operating licenses, renewed licenses, combined licenses, and amendments to these licenses. These paragraphs are amended to clarify that, in the case of a license amendment involving a power reactor, the NRC may complete action on the amendment request without waiting for the presiding officer's initial decision once the NRC makes a determination that the amendment involves no significant hazards consideration. In proceedings for the initial issuance or renewal of a construction permit, operating license, or renewed license, and proceedings for the amendment of an operating or renewed license where the NRC has not made a determination of no significant hazards consideration, these paragraphs are amended to clarify that the NRC may not act on the application until the presiding officer issues an initial decision in the contested proceeding.

Paragraph (c), which deals with initial decisions under 10 CFR 52.103(g), is amended to clarify that the presiding officer may make findings of fact and conclusions of law on the matters put into controversy by the parties, and any matter designated by the Commission to be decided by the presiding officer. Further, the amended paragraph clarifies that matters not put into controversy by the parties shall be referred to the Commission for its consideration. The Commission could, in its discretion, treat any of these referred matters as a request for action under § 2.206 and would process the matter in accordance with § 52.103(f).

Paragraphs (d) and (e), which concern manufacturing licenses under 10 CFR Part 52 and proceedings not involving production or utilization facilities, are amended to clarify that the NRC will issue, deny, or condition any permit, license, or amendment in accordance with a presiding officer's initial decision. These paragraphs are also amended to clarify that the NRC may issue a license amendment before a presiding officer's initial decision becomes effective.

This revision clarifies that in all cases, the presiding officer is limited to matters placed into controversy by the parties, and serious matters not put into controversy by the parties that concern safety, common defense and security, or the environment that the Commission has approved for review upon the presiding officer's referral of the matter.

Finally, paragraph (f) is amended to correct an inadvertent omission in the 2004 part 2 revisions. Final § 2.340(f) now includes a decision directing the issuance of a renewed license under part 54 in the list of initial decisions that are immediately effective upon issuance unless the presiding officer finds that good cause has been shown by a party why the initial decision should not become immediately effective.

14. Section 2.341—Review of Decisions and Actions of a Presiding Officer

a. Extension of Time To File a Petition for Review, Answer, and Reply

Final § 2.341(b) extends the time to file a petition for review and an answer to a petition from 15 to 25 days, and extends the time to file a reply to an answer from five to ten days.

b. Petitions for Commission Review Not Acted Upon Deemed Denied

Final § 2.341 reincorporates the ''deemed denied'' provision of former § 2.786(c), with an additional 90 days for Commission review before petitions for review are deemed denied. The additional 90 days would allow the Commission 120 days of review time before a petition for review is deemed denied.

Similarly, the time for the Commission to act on a decision of a presiding officer or a petition for review is expanded to 120 days to bring this section into alignment with the new timeline in final § 2.341(c)(1).

c. Interlocutory Review

Final § 2.341(f) allows, but does not require, the Commission to review certifications or referrals that meet any of the standards in this paragraph.

15. Section 2.346—Authority of the Secretary

This section clarifies the Secretary's authority under § 2.346(j). For matters that fall within § 2.346(j), the Secretary may decide them without further Commission action, thus avoiding the need for formal Commission orders and affirmation sessions. Under current § 2.346(j), the Secretary's authority covers ''minor procedural matters.'' To clarify the broader intent of this rule, the NRC proposed replacing ''minor procedural matters'' with ''procedural and other minor matters.'' After further consideration, the NRC has decided to adopt a modified version of the proposed rule, which will now authorize the Secretary to take action on ''other minor matters'' (not covered by the other provisions in § 2.346). The final rule retains the same meaning as the proposed rule, but avoids any misleading impressions that the proposed rule might have created. Also, the reference to § 2.311 is removed from § 2.346(e) because appeals under § 2.311 do not have deadlines for Commission action.

16. Sections 2.347 and 2.348—*Ex Parte* Communications; Separation of Functions

These sections currently reference § 2.204 demands for information, which are not orders and do not entail hearing rights. Because demands for information are not adjudicatory matters, the restrictions on *ex parte* communications and the separation-of-functions limitations do not apply. The references to § 2.204 are removed from both sections.

D. Subpart G—Sections 2.700 Through 2.713

1. Section 2.704—Discovery—Required Disclosures

This section, which continues to require initial disclosures to be made within 45 days after the issuance of a prehearing conference order following the initial prehearing conference, is amended to require the filing of monthly mandatory disclosure updates on a date specified by the presiding officer, though the parties to a proceeding may agree to a different due

date or disclosure frequency. These disclosure updates include all disclosable documents not included in a prior update. Documents that are discovered, obtained, or developed in the two weeks prior to a disclosure update may be included in the next update. Parties not disclosing any documents are expected to file an update informing the presiding officer and the other parties that the party is disclosing no documents for the period covered by that update. The duty to update disclosures relevant to a disputed issue ends when the presiding officer issues a decision resolving that disputed issue, or as specified by the presiding officer or the Commission.

The NRC is also updating § 2.704(e)(1) to clarify that a party's disclosures must be supplemented in accordance with the schedule in final § 2.704(a)(3).

2. Section 2.705—Discovery—Additional Methods

This section, which currently states that the ''presiding officer may alter the limits * * * on the number of depositions and interrogatories,'' is amended to remove any implication created by the word ''alter'' that these rules impose a limit on the number of depositions and interrogatories; the rules do not impose any such limitation. Instead, the final rule clarifies that the presiding officer ''may set limits on the number of depositions and interrogatories.''

3. Section 2.709—Discovery Against NRC Staff

a. Section 2.709(a)(6)—Initial Disclosures

This new paragraph requires the NRC staff to provide initial disclosures within 45 days after the issuance of a prehearing conference order following the initial prehearing conference. The NRC staff disclosures include all NRC staff documents relevant to disputed issues alleged with particularity in the proceedings (except for those documents, data compilations, or other tangible things, for which there is a claim of privilege or protected status), including any Office of Investigations Report and supporting Exhibits, and any Office of Enforcement documents regarding the order. The staff is also required to file a monthly disclosure update, with the disclosure due date to be selected by the presiding officer; however, the parties to a proceeding may agree to a different due date or disclosure frequency. These disclosure updates include all disclosable documents not included in a prior update. Documents that are discovered, obtained, or developed in the two weeks prior to a disclosure update may be included in the next update. Parties not disclosing any documents are expected to file an update informing the presiding officer and the other parties that that party is disclosing no documents for the period covered by that update. The duty to update disclosures relevant to a disputed issue ends when the presiding officer issues a decision resolving that disputed issue, or as specified by the presiding officer or the Commission. The staff is also required to provide, with initial disclosures and disclosure updates, a privilege log that lists the withheld documents and includes sufficient information to assess the claim of privilege or protected status. These requirements parallel the final § 2.704 requirements for parties other than the NRC staff.

4. Section 2.710—Motions for Summary Disposition

This section is amended to conform to the amendments to final § 2.1205, which requires parties to attach a statement of material facts to a motion for summary disposition. This change has no effect on the current practice of including a statement of material facts with a motion; it clarifies that the statement needs to be attached to the motion and does not have to be ''separate.''

E. Subpart H—Sections 2.800 Through 2.819

1. Section 2.802—Petition for Rulemaking

This section currently allows petitioners for a rulemaking to request the suspension of an adjudicatory proceeding to which they are a party. This section is amended to allow any petitioner for a rulemaking that is a participant in a proceeding (as defined by § 2.4) to request suspension of that proceeding.

2. Section 2.811—Filing of Standard Design Certification Application; Required Copies

Paragraph (c) is amended to add a reference to the Director, Office of Federal and State Materials and Environmental Management Programs.

F. Subpart L—Sections 2.1200 Through 2.1213

1. Section 2.1202—Authority and Role of NRC Staff

This section currently requires the NRC staff to include its position on the matters in controversy when it notifies the presiding officer of its decision on a licensing action, which could be incorrectly interpreted as requiring the staff to advise the presiding officer on the merits of the contested matters. This amended section clarifies the authority and role of the NRC staff in less formal hearings; staff notices regarding licensing actions have to include an explanation of why the public health and safety is protected and why the action is in accord with the common defense and security, despite the ''pendency of the contested matter before the presiding officer.''

2. Section 2.1205—Summary Disposition

This section is amended to remove the requirement that parties submit an affidavit with motions for summary disposition, which makes the affidavit requirements in final § 2.1205 consistent with the requirements in § 2.710. Despite the removal of this affidavit requirement, the NRC strongly recommends that parties to NRC proceedings, particularly those conducted under subpart L, continue to include affidavits with their motions for summary disposition.

3. Section 2.1209—Findings of Fact and Conclusions of Law

This section currently does not specify the formatting requirements for findings of fact and conclusions of law. Final § 2.1209 incorporates the § 2.712(c) formatting requirements for findings of fact and conclusions of law to ensure that proposed findings of fact and conclusions of law clearly and precisely communicate the parties' positions on the material issues in the proceeding, with exact citations to the factual record.

4. Section 2.1210—Initial Decision and Its Effect.

Paragraph (d) of this section is amended to remove a reference to a regulation that no longer exists; this change does not alter the meaning or intent of this regulation.

5. Section 2.1213—Application for a Stay

Current § 2.1213 does not exclude, from the stay provisions, matters limited to whether a ''no significant hazards consideration'' determination for a power reactor license amendment was proper. Section 50.58(b)(6) prohibits challenges to these determinations; section 2.1213 is therefore amended to exclude, from the stay provisions, matters limited to whether a no significant hazards consideration determination was proper.

G. Subpart M—Sections 2.1300 Through 2.1331

1. Section 2.1300—Scope of Subpart M

The NRC is removing § 2.1304 and amending § 2.1300 to clarify that the generally applicable intervention provisions in subpart C and the specific provisions in subpart M govern in subpart M proceedings.

2. Section 2.1304—Hearing Procedures

The NRC is removing § 2.1304 and amending § 2.1300 to clarify that the generally applicable intervention provisions in subpart C and the specific provisions in subpart M govern in subpart M proceedings.

3. Section 2.1316—Authority and Role of NRC Staff

This section currently allows the NRC staff to submit a simple notification at any point in the proceeding to become a party. The NRC is adopting the requirements in § 2.1202(b)(2) and (3) that require the NRC staff, within 15 days of the issuance of the order granting requests for hearing or petitions to intervene and admitting contentions, to notify the presiding officer and the parties whether it desires to participate as a party in the proceeding. The staff's notice must identify the contentions on which it will participate as a party; the staff can join the proceeding at a later stage by providing notice to the presiding officer, identifying the contentions on which it wishes to participate as a party, and making the disclosures required by final § 2.336(b)(3) through (5).

4. Section 2.1321—Participation and Schedule for Submission in a Hearing Consisting of Written Comments

The second sentence of paragraph (b) is amended to correct a typographical error; this change does not alter the meaning or intent of this regulation.

H. Subpart N—Sections 2.1400 Through 2.1407

1. Section 2.1403—Authority and Role of the NRC Staff

This section, which is essentially identical to § 2.1202, is amended to mirror the changes made to that section.

This section is also updated to correct the reference to § 2.101(f)(8), which should reference § 2.101(e)(8); this change does not alter the meaning or intent of this regulation.

2. Section 2.1407—Appeal and Commission Review of Initial Decision

Proposed § 2.1407(a) extends the time to file an appeal and an answer to an appeal from 15 to 25 days.

I. Parts 12, 51, 54, and 61

1. Section 12.308—Agency Review

This section is amended to expand the time for the Commission to review an initial decision on a fee application, either at the request of the applicant, the NRC counsel, or on its own initiative, to 120 days, which aligns this section with the new timeline in final § 2.341(c)(1).

This section is also amended to correct an outdated reference to § 2.786, which should reference § 2.341. This change does not alter the meaning or intent of this regulation.

2. Section 51.4—Definitions

This section is amended to remove an outdated reference to the former Atomic Safety and Licensing Appeal Board in the definition of *NRC Staff.* This change does not alter the meaning or intent of this regulation.

3. Section 51.34—Preparation of Finding of No Significant Impact

This section is amended to remove outdated references to ''Subpart G of Part 2'' and to the former Atomic Safety and Licensing Appeal Board. These changes do not alter the meaning or intent of this regulation.

4. Section 51.102—Requirement to Provide a Record of Decision; Preparation

This section is amended to remove outdated references to ''Subpart G of Part 2'' and to the former Atomic Safety and Licensing Appeal Board. These changes do not alter the meaning or intent of this regulation.

5. Section 51.109—Public Hearings in Proceedings for Issuance of Materials Licensed With Respect to a Geologic Repository

This section is amended to remove an outdated reference to the former Atomic Safety and Licensing Appeal Board. This change does not alter the meaning or intent of this regulation.

6. Section 51.125—Responsible Official

This section is amended to remove outdated references to ''Subpart G of Part 2'' and to the former Atomic Safety and Licensing Appeal Board. These changes do not alter the meaning or intent of this regulation.

7. Section 54.27—Hearings

This section replaces an outdated reference to a 30-day period to request a hearing with a reference to the correct 60-day period to request a hearing. This section retains the provision that in the absence of any hearing requests, a renewed operating license may be issued without a hearing upon 30-day notice published in the **Federal Register.**

8. Section 61.25—Changes

This section is amended to correct an outdated reference to § 2.104(e), which should reference § 2.104(c). This change does not alter the meaning or intent of this regulation.

VI. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883).

VII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed by voluntary, private sector, consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this rule, the NRC is approving changes to its procedures for the conduct of hearings in 10 CFR Part 2. This action does not constitute the establishment of a government-unique standard as defined in Office of Management and Budget (OMB) Circular A–119 (1998).

VIII. Environmental Impact: Categorical Exclusion

This rule involves an amendment to 10 CFR Part 2, and thus qualifies as an action for which no environmental review is required under the categorical exclusion set forth in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rulemaking.

IX. Paperwork Reduction Act Statement

This rule does not contain any information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

X. Regulatory Analysis

This rule emanates from the desire to make corrections, clarifications, and conforming changes to the NRC's rules of practice and to improve the hearing process. Those amendments that merely reflect either clarifications or corrections to the adjudicatory regulations are not changes to the existing processes. These amendments would not result in a cost to the NRC or to participants in NRC adjudicatory proceedings, and a benefit would accrue to the extent that potential confusion over the meaning of the NRC's regulations is removed.

The more substantial changes in this rule do not impose costs upon either the NRC or participants in NRC adjudications, but instead bring benefits. Allowing monthly disclosure updates under § 2.336(d) will reduce burdens on participants. Fairness and equitable treatment are furthered by the changes made to the 10 CFR 2.309 filing provisions and to the 10 CFR Part 2 discovery provisions. These discovery amendments improve adjudicatory efficiency, as do the amendments made to the format requirements for findings in final § 2.1209.

The option of preserving the status quo is not preferred. Failing to correct errors and clarify ambiguities will result in continuing confusion over the meaning of the rules, which could lead to the unnecessary waste of resources. Also, experience has shown that the agency hearing process can be improved through appropriate rule changes. The NRC believes that this rule improves the fairness, efficiency, and openness of NRC hearings without imposing costs on either the NRC or participants in NRC adjudicatory proceedings.

XI. Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act, as amended, 5 U.S.C. 605(b), the NRC certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule applies in the context of NRC adjudicatory proceedings concerning nuclear reactors or nuclear materials. Reactor licensees are large organizations that do not fall within the definition of a small business found in Section 3 of the Small Business Act, 15 U.S.C. 632, within the small business standards set forth in 13 CFR Part 121, or within the size standards established by the NRC (10 CFR 2.810). Based upon the historically low number of requests for hearings involving materials licensees, it is not expected that this rule will have any significant economic impact on a substantial number of small businesses.

XII. Backfit Analysis

The NRC has determined that the backfit rule does not apply to this rule because the amendments do not involve any provisions that would impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis is not required for this rule.

XIII. Congressional Review Act

This rule is not a major rule under the Congressional Review Act of 1996.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 12

Adversary adjudications, Award, Equal Access to Justice Act, Final disposition, Net worth, Party.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 54

Administrative practice and procedure, Age-related degradation, Backfitting, Classified information, Criminal penalties, Environmental protection, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 61

Criminal penalties, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 2, 12, 51, 54, and 61.

PART 2—AGENCY RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 2 continues to read as follows:

Authority: Atomic Energy Act secs.161, 181, 191 (42 U.S.C. 2201, 2231, 2241); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); 5 U.S.C. 552; Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

Section 2.101 also issued under Atomic Energy Act secs. 53, 62, 63, 81, 103, 104 (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); Nuclear Waste Policy Act sec. 114(f) (42 U.S.C. 10143(f)); National Environmental Policy Act sec. 102 (42 U.S.C. 4332); Energy Reorganization Act sec. 301 (42 U.S.C. 5871).

Sections 2.102, 2.103, 2.104, 2.105, 2.321 also issued under Atomic Energy Act secs. 102, 103, 104, 105, 183i, 189 (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Sections 2.200–2.206 also issued under Atomic Energy Act secs. 161, 186, 234 (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, as amended by section 3100(s), Pub. L. 104–134 (28 U.S.C. 2461 note). Subpart C also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239). Section 2.301 also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.712 also issued under 5 U.S.C. 557. Section 2.340 also issued under Nuclear Waste Policy Act secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.390 also issued under 5 U.S.C. 552. Sections 2.600–2.606 also issued under sec. 102 (42 U.S.C. 4332). Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553; Atomic Energy Act sec. 29 (42 U.S.C. 2039). Subpart K also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154). Subpart L also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239). Subpart M also issued under Atomic Energy Act sec. 184, 189 (42 U.S.C. 2234, 2239). Subpart N also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239).

■ 2. The heading for part 2 is revised to read as set forth above.

■ 3. In part 2, remove the phrase ''Presiding Officer'' wherever it appears and add in its place the phrase ''presiding officer''.

■ 4. In § 2.4, paragraph (2) of the definition of ''NRC personnel'' and the definition of ''Participant'' are revised to read as follows:

§ 2.4 Definitions.

* * * * *

NRC personnel means:

* * * * *

(2) For the purpose of §§ 2.702 and 2.709 only, persons acting in the capacity of consultants to the Commission, regardless of the form of the contractual arrangements under which such persons act as consultants to the Commission; and

* * * * *

Participant means an individual or organization (including a governmental entity) that has petitioned to intervene in a proceeding or requested a hearing but that has not yet been granted party status by an Atomic Safety and

Licensing Board or other presiding officer. Participant also means a party to a proceeding and any interested State, local governmental body, or Federally-recognized Indian Tribe that seeks to participate in a proceeding under § 2.315(c). For the purpose of service of documents, the NRC staff is considered a participant even if not participating as a party.

* * * * *

■ 5. In § 2.101, paragraph (a–1) is moved to follow paragraph (a)(9) and republished, and paragraphs (a)(3) introductory text, (a)(4), (b), (d), (f)(2)(i)(D), (f)(2)(ii), and (f)(5) are revised to read as follows:

§ 2.101 Filing of application.

(a) * * *

(3) If the Director, Office of Nuclear Reactor Regulation, Director, Office of New Reactors, Director, Office of Federal and State Materials and Environmental Management Programs, or Director, Office of Nuclear Material Safety and Safeguards, as appropriate, determines that a tendered application for a construction permit or operating license for a production or utilization facility, and/or any environmental report required pursuant to subpart A of part 51 of this chapter, or part thereof as provided in paragraphs (a)(5) or (a–1) of this section are complete and acceptable for docketing, a docket number will be assigned to the application or part thereof, and the applicant will be notified of the determination. With respect to the tendered application and/or environmental report or part thereof that is acceptable for docketing, the applicant will be requested to:

* * * * *

(4) The tendered application for a construction permit, operating license, early site permit, standard design approval, combined license, or manufacturing license will be formally docketed upon receipt by the Director, Office of New Reactors, Director, Office of Nuclear Reactor Regulation, Director, Office of Federal and State Materials and Environmental Management Programs, or Director, Office of Nuclear Material Safety and Safeguards, as appropriate, of the required additional copies. Distribution of the additional copies shall be deemed to be complete as of the time the copies are deposited in the mail or with a carrier prepaid for delivery to the designated addresses. The date of docketing shall be the date when the required copies are received by the Director, Office of New Reactors, Director, Office of Nuclear Reactor Regulation, Director, Office of Federal and State Materials and Environmental Management Programs, or Director, Office of Nuclear Material Safety and Safeguards, as appropriate. Within 10 days after docketing, the applicant shall submit to the Director, Office of New Reactors, Director, Office of Nuclear Reactor Regulation, Director, Office of Federal and State Materials and Environmental Management Programs, or Director, Office of Nuclear Material Safety and Safeguards, as appropriate, an affidavit that distribution of the additional copies to Federal, State, and local officials has been completed in accordance with requirements of this chapter and written instructions furnished to the applicant by the Director, Office of New Reactors, Director, Office of Nuclear Reactor Regulation, Director, Office of Federal and State Materials and Environmental Management Programs, or Director, Office of Nuclear Material Safety and Safeguards, as appropriate. Amendments to the application and environmental report shall be filed and distributed and an affidavit shall be furnished to the Director, Office of New Reactors, Director, Office of Nuclear Reactor Regulation, Director, Office of Federal and State Materials and Environmental Management Programs, or Director, Office of Nuclear Material Safety and Safeguards, as appropriate, in the same manner as for the initial application and environmental report. If it is determined that all or any part of the tendered application and/or environmental report is incomplete and therefore not acceptable for processing, the applicant will be informed of this determination, and the respects in which the document is deficient.

* * * * *

(9) * * *

(a–1) *Early consideration of site suitability issues.* An applicant for a construction permit under part 50 of this chapter or a combined license under part 52 of this chapter for a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specified in § 50.21(b)(2) or (3) or § 50.22 of this chapter or is a testing facility, may request that the Commission conduct an early review and hearing and render an early partial decision in accordance with subpart F of this part on issues of site suitability within the purview of the applicable provisions of parts 50, 51, 52, and 100 of this chapter.

(1) *Construction permit.* The applicant for the construction permit may submit the information required of applicants by the provisions of this chapter in three parts:

(i) Part one shall include or be accompanied by any information required by §§ 50.34(a)(1) and 50.30(f) of this chapter which relates to the issue(s) of site suitability for which an early review, hearing, and partial decision are sought, except that information with respect to operation of the facility at the projected initial power level need not be supplied, and shall include the information required by §§ 50.33(a) through (e) and 50.37 of this chapter. The information submitted shall also include:

(A) Proposed findings on the issues of site suitability on which the applicant has requested review and a statement of the bases or the reasons for those findings,

(B) A range of postulated facility design and operation parameters that is sufficient to enable the Commission to perform the requested review of site suitability issues under the applicable provisions of parts 50, 51, and 100, and

(C) Information concerning the applicant's site selection process and long-range plans for ultimate development of the site required by § 2.603(b)(1).

(ii) Part two shall include or be accompanied by the remaining information required by §§ 50.30(f), 50.33, and 50.34(a)(1) of this chapter.

(iii) Part three shall include the remaining information required by §§ 50.34a and (in the case of a nuclear power reactor) 50.34(a) of this chapter.

(iv) The information required for part two or part three shall be submitted during the period the partial decision on part one is effective. Submittal of the information required for part three may precede by no more than 6 months or follow by no more than 6 months the submittal of the information required for part two.

(2) *Combined license under part 52.* An applicant for a combined license under part 52 of this chapter may submit the information required of applicants by the provisions of this chapter in three parts:

(i) Part one shall include or be accompanied by any information required by §§ 52.79(a)(1) and 50.30(f) of this chapter which relates to the issue(s) of site suitability for which an early review, hearing, and partial decision are sought, except that information with respect to operation of the facility at the projected initial power level need not be supplied, and shall include the information required by §§ 50.33(a) through (e) and 50.37 of this chapter. The information submitted shall also include:

(A) Proposed findings on the issues of site suitability on which the applicant

has requested review and a statement of the bases or the reasons for those findings;

(B) A range of postulated facility design and operation parameters that is sufficient to enable the Commission to perform the requested review of site suitability issues under the applicable provisions of parts 50, 51, 52, and 100; and

(C) Information concerning the applicant's site selection process and long-range plans for ultimate development of the site required by § 2.621(b)(1).

(ii) Part two shall include or be accompanied by the remaining information required by §§ 50.30(f), 50.33, and 52.79(a)(1) of this chapter.

(iii) Part three shall include the remaining information required by §§ 52.79 and 52.80 of this chapter.

(iv) The information required for part two or part three shall be submitted during the period the partial decision on part one is effective. Submittal of the information required for part three may precede by no more than 6 months or follow by no more than 6 months the submittal of the information required for part two.

(b) After the application has been docketed, each applicant for a license for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee, except applicants under part 61 of this chapter, which must comply with paragraph (f) of this section, shall serve a copy of the application and environmental report, as appropriate, on the chief executive of the municipality in which the activity is to be conducted or, if the activity is not to be conducted within a municipality on the chief executive of the county, and serve a notice of availability of the application or environmental report on the chief executives of the municipalities or counties which have been identified in the application or environmental report as the location of all or part of the alternative sites, containing the docket number of the application; a brief description of the proposed site and facility; the location of the site and facility as primarily proposed and alternatively listed; the name, address, telephone number, and email address (if available) of the applicant's representative who may be contacted for further information; notification that a draft environmental impact statement will be issued by the Commission and will be made available upon request to the Commission; and notification that if a request is received from the appropriate chief executive, the applicant will transmit a copy of the application and environmental report, and any changes to such documents which affect the alternative site location, to the executive who makes the request. In complying with the requirements of this paragraph the applicant should not make public distribution of those parts of the application subject to § 2.390(d). The applicant shall submit to the Director, Office of Nuclear Material Safety and Safeguards or Director, Office of Federal and State Materials and Environmental Management Programs, as appropriate, an affidavit that service of the notice of availability of the application or environmental report has been completed along with a list of names and addresses of those executives upon whom the notice was served.

* * * * *

(d) The Director, Office of Nuclear Reactor Regulation, Director, Office of New Reactors, Director, Office of Federal and State Materials and Environmental Management Programs, or Director, Office of Nuclear Material Safety and Safeguards, as appropriate, will give notice of the docketing of the public health and safety, common defense and security, and environmental parts of an application for a license for a facility or for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee, except that for applications pursuant to part 61 of this chapter, paragraph (f) of this section applies to the Governor or other appropriate official of the State in which the facility is to be located or the activity is to be conducted and will publish in the **Federal Register** a notice of docketing of the application, which states the purpose of the application and specifies the location at which the proposed activity would be conducted.

* * * * *

(f) * * *

(2) * * *

(i) * * *

(D) Serve a notice of availability of the application and environmental report on the chief executives or governing bodies of the municipalities or counties which have been identified in the application and environmental report as the location of all or part of the alternative sites if copies are not distributed under paragraph (f)(2)(i)(C) of this section to the executives or bodies.

(ii) All distributed copies shall be completely assembled documents identified by docket number. However, subsequently distributed amendments may include revised pages to previous submittals and, in these cases, the recipients will be responsible for inserting the revised pages. In complying with the requirements of paragraph (f) of this section the applicant may not make public distribution of those parts of the application subject to § 2.390(d).

* * * * *

(5) The Director, Office of Nuclear Material Safety and Safeguards or Director, Office of Federal and State Materials and Environmental Management Programs, as appropriate, will cause to be published in the **Federal Register** a notice of docketing which identifies the State and location of the proposed waste disposal facility and will give notice of docketing to the governor of that State and other officials listed in paragraph (f)(3) of this section and will, in a reasonable period thereafter, publish in the **Federal Register** a notice under § 2.105 offering an opportunity to request a hearing to the applicant and other potentially affected persons.

■ 6. In § 2.103, paragraph (a) is revised to read as follows:

§ 2.103 Action on applications for byproduct, source, special nuclear material, facility and operator licenses.

(a) If the Director, Office of Nuclear Reactor Regulation, Director, Office of New Reactors, Director, Office of Federal and State Materials and Environmental Management Programs, or Director, Office of Nuclear Material Safety and Safeguards, as appropriate, finds that an application for a byproduct, source, special nuclear material, facility, or operator license complies with the requirements of the Act, the Energy Reorganization Act, and this chapter, he will issue a license. If the license is for a facility, or for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee, or for a construction authorization for a HLW repository at a geologic repository operations area under parts 60 or 63 of this chapter, or if it is to receive and possess high-level radioactive waste at a geologic repository operations area under parts 60 or 63 of this chapter, the Director, Office of Nuclear Reactor Regulation, Director, Office of New Reactors, Director, Office of Nuclear Material Safety and Safeguards, or Director, Office of Federal and State Materials and Environmental Management Programs, as appropriate, will inform the State, Tribal and local officials specified in § 2.104(c) of the issuance of the license. For notice of issuance requirements for licenses

issued under part 61 of this chapter, see § 2.106(d).

* * * * *

■ 7. In § 2.105, the introductory text of paragraphs (a), (b), and (d) are revised to read as follows:

§ 2.105 Notice of proposed action.

(a) If a hearing is not required by the Act or this chapter, and if the Commission has not found that a hearing is in the public interest, it will, before acting thereon, publish in the **Federal Register**, as applicable, or on the NRC's Web site, *http://www.nrc.gov,* or both, at the Commission's discretion, either a notice of intended operation under § 52.103(a) of this chapter and a proposed finding that inspections, tests, analyses, and acceptance criteria for a combined license under subpart C of part 52 have been or will be met, or a notice of proposed action with respect to an application for:

* * * * *

(b) A notice of proposed action published in the **Federal Register** will set forth:

* * * * *

(d) The notice of proposed action will provide that, within the time period provided under § 2.309(b):

* * * * *

■ 8. In § 2.106, paragraphs (a) introductory text, (c), and (d) are revised to read as follows:

§ 2.106 Notice of issuance.

(a) The Director, Office of New Reactors, Director, Office of Nuclear Reactor Regulation, Director, Office of Federal and State Materials and Environmental Management Programs, or Director, Office of Nuclear Material Safety and Safeguards, as appropriate, will inform the State and local officials specified in § 2.104(c) and publish a document in the **Federal Register** announcing the issuance of:

* * * * *

(c) The Director of Nuclear Material Safety and Safeguards will also cause to be published in the **Federal Register** notice of, and will inform the State, local, and Tribal officials specified in § 2.104(c) of any action with respect to an application for construction authorization for a high-level radioactive waste repository at a geologic repository operations area, a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to parts 60 or 63 of this chapter, or an amendment to such license for which a notice of proposed action has been previously published.

(d) The Director, Office of Federal and State Materials and Environmental Management Programs will also cause to be published in the **Federal Register** notice of, and will inform the State and local officials or tribal governing body specified in § 2.104(c) of any licensing action with respect to a license to receive radioactive waste from other persons for disposal under part 61 of this chapter or the amendment of such a license for which a notice of proposed action has been previously published.

■ 9. In § 2.107, paragraph (c) is revised to read as follows:

§ 2.107 Withdrawal of application.

* * * * *

(c) The Director, Office of Nuclear Reactor Regulation, Director, Office of New Reactors, Director, Office of Federal and State Materials and Environmental Management Programs or Director, Office of Nuclear Material Safety and Safeguards, as appropriate, will cause to be published in the **Federal Register** a notice of the withdrawal of an application if notice of receipt of the application has been previously published.

■ 10. Section 2.108 is revised to read as follows:

§ 2.108 Denial of application for failure to supply information.

(a) The Director, Office of Nuclear Reactor Regulation, Director, Office of New Reactors, Director, Office of Federal and State Materials and Environmental Management Programs, or Director, Office of Nuclear Material Safety and Safeguards, as appropriate, may deny an application if an applicant fails to respond to a request for additional information within thirty (30) days from the date of the request, or within such other time as may be specified.

(b) The Director, Office of Nuclear Reactor Regulation, Director, Office of New Reactors, Director, Office of Federal and State Materials and Environmental Management Programs, or Director, Office of Nuclear Material Safety and Safeguards, as appropriate, will cause to be published in the **Federal Register** a notice of denial when notice of receipt of the application has previously been published, but notice of hearing has not yet been published. The notice of denial will provide that, within thirty (30) days after the date of publication in the **Federal Register**.

(1) The applicant may demand a hearing, and

(2) Any person whose interest may be affected by the proceeding may file a petition for leave to intervene.

(c) When both a notice of receipt of the application and a notice of hearing have been published, the presiding officer, upon a motion made by the staff under § 2.323, will rule whether an application should be denied by the Director, Office of Nuclear Reactor Regulation, Director, Office of New Reactors, Director, Office of Federal and State Materials and Environmental Management Programs, or Director, Office of Nuclear Material Safety and Safeguards, as appropriate, under paragraph (a) of this section.

■ 11. In § 2.305, the heading and paragraphs (c)(4) and (g)(1) are revised to read as follows:

§ 2.305 Service of documents, methods, proof.

* * * * *

(c) * * *

(4) Each document served (as may be required by law, rule, or order of the presiding officer) upon a participant to the proceeding must be accompanied by a signed certificate of service.

(i) If a document is served on participants through only the E-filing system, then the certificate of service must state that the document has been filed through the E-Filing system.

(ii) If a document is served on participants by only a method other than the E-Filing system, then the certificate of service must state the name, address, and method and date of service for all participants served.

(iii) If a document is served on some participants through the E-Filing system and other participants by another method of service, then the certificate of service must include a list of participants served through the E-filing system, and it must state the name, address, and method and date of service for all participants served by the other method of service.

* * * * *

(g) * * *

(1) Service shall be made upon the NRC staff of all documents required to be filed with participants and the presiding officer in all proceedings, including those proceedings where the NRC staff informs the presiding officer of its determination not to participate as a party. Service upon the NRC staff shall be by the same or equivalent method as service upon the Office of the Secretary and the presiding officer, e.g., electronically, personal delivery or courier, express mail, or expedited delivery service. If no attorney representing the NRC Staff has filed a notice of appearance in the proceeding and service is not being made through the E-Filing System, service will be made using the following addresses, as

applicable: by delivery to the Associate General Counsel for Hearings, Enforcement & Administration, One White Flint North, 11555 Rockville Pike, Rockville MD 20852–0001; by mail addressed to the Associate General Counsel for Hearings, Enforcement & Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; by email to *OgcMailCenter.Resource@nrc.gov;* or by facsimile to 301–415–3725.

* * * * *

■ 12. In § 2.309:

■ a. Paragraphs (b) introductory text, (c), (d)(2), (d)(3), and (f)(2) are revised,

■ b. Paragraphs (h) and (i) are redesignated as paragraphs (i) and (j), and revised;

■ c. A new paragraph (h) is added; and

■ d. Paragraph (b)(5) is removed.

The revisions and addition read as follows:

§ 2.309 Hearing requests, petitions to intervene, requirements for standing, and contentions.

* * * * *

(b) *Timing.* Unless specified elsewhere in this chapter or otherwise provided by the Commission, the request or petition and the list of contentions must be filed as follows:

* * * * *

(c) *Filings after the deadline; submission of hearing request, intervention petition, or motion for leave to file new or amended contentions*—(1) *Determination by presiding officer.* Hearing requests, intervention petitions, and motions for leave to file new or amended contentions filed after the deadline in paragraph (b) of this section will not be entertained absent a determination by the presiding officer that a participant has demonstrated good cause by showing that:

(i) The information upon which the filing is based was not previously available;

(ii) The information upon which the filing is based is materially different from information previously available; and

(iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.

(2) *Applicability of §§ 2.307 and 2.323.* (i) Section 2.307 applies to requests to change a filing deadline (requested before or after that deadline has passed) based on reasons not related to the substance of the filing.

(ii) Section 2.323 does not apply to hearing requests, intervention petitions, or motions for leave to file new or amended contentions filed after the deadline in paragraph (b) of this section.

(3) *New petitioner.* A hearing request or intervention petition filed after the deadline in paragraph (b) of this section must include a specification of contentions if the petitioner seeks admission as a party, and must also demonstrate that the petitioner meets the applicable standing and contention admissibility requirements in paragraphs (d) and (f) of this section.

(4) *Party or participant.* A new or amended contention filed by a party or participant to the proceeding must also meet the applicable contention admissibility requirements in paragraph (f) of this section. If the party or participant has already satisfied the requirements for standing under paragraph (d) of this section in the same proceeding in which the new or amended contentions are filed, it does not need to do so again.

* * * * *

(d) * * *

(2) *Rulings.* In ruling on a request for hearing or petition for leave to intervene, the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on such requests must determine, among other things, whether the petitioner has an interest affected by the proceeding considering the factors enumerated in paragraph (d)(1) of this section.

(3) *Standing in enforcement proceedings.* In enforcement proceedings, the licensee or other person against whom the action is taken shall have standing.

* * * * *

(f) * * *

(2) Contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner. On issues arising under the National Environmental Policy Act, participants shall file contentions based on the applicant's environmental report. Participants may file new or amended environmental contentions after the deadline in paragraph (b) of this section (e.g., based on a draft or final NRC environmental impact statement, environmental assessment, or any supplements to these documents) if the contention complies with the requirements in paragraph (c) of this section.

* * * * *

(h) *Requirements applicable to States, local governmental bodies, and Federally-recognized Indian Tribes seeking party status.* (1) If a State, local governmental body (county, municipality or other subdivision), or Federally-recognized Indian Tribe seeks to participate as a party in a proceeding, it must submit a request for hearing or a petition to intervene containing at least one admissible contention, and must designate a single representative for the hearing. If a request for hearing or petition to intervene is granted, the Commission, the presiding officer or the Atomic Safety and Licensing Board ruling on the request will admit as a party to the proceeding a single designated representative of the State, a single designated representative for each local governmental body (county, municipality or other subdivision), and a single designated representative for each Federally-recognized Indian Tribe. Where a State's constitution provides that both the Governor and another State official or State governmental body may represent the interests of the State in a proceeding, the Governor and the other State official/government body will be considered separate participants.

(2) If the proceeding pertains to a production or utilization facility (as defined in § 50.2 of this chapter) located within the boundaries of the State, local governmental body, or Federally-recognized Indian Tribe seeking to participate as a party, no further demonstration of standing is required. If the production or utilization facility is not located within the boundaries of the State, local governmental body, or Federally-recognized Indian Tribe seeking to participate as a party, the State, local governmental body, or Federally-recognized Indian Tribe also must demonstrate standing.

(3) In any proceeding on an application for a construction authorization for a high-level radioactive waste repository at a geologic repository operations area under parts 60 or 63 of this chapter, or an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area under parts 60 or 63 of this chapter, the Commission shall permit intervention by the State and local governmental body (county, municipality or other subdivision) in which such an area is located and by any affected Federally-recognized Indian Tribe as defined in parts 60 or 63 of this chapter if the requirements of paragraph (f) of this section are satisfied with respect to at least one contention. All other petitions for intervention in any such proceeding must be reviewed under the provisions

of paragraphs (a) through (f) of this section.

(i) *Answers to hearing requests, intervention petitions, and motions for leave to file new or amended contentions filed after the deadline.* Unless otherwise specified by the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on the request, petition, or motion—

(1) The applicant/licensee, the NRC staff, and other parties to a proceeding may file an answer to a hearing request, intervention petition, or motion for leave to file amended or new contentions filed after the deadline in § 2.309(b) within 25 days after service of the request, petition, or motion. Answers should address, at a minimum, the factors set forth in paragraphs (a) through (h) of this section insofar as these sections apply to the filing that is the subject of the answer.

(2) Except in a proceeding under § 52.103 of this chapter, the participant who filed the hearing request, intervention petition, or motion for leave to file new or amended contentions after the deadline may file a reply to any answer. The reply must be filed within 7 days after service of that answer.

(3) No other written answers or replies will be entertained.

(j) *Decision on request/petition.* (1) In all proceedings other than a proceeding under § 52.103 of this chapter, the presiding officer shall issue a decision on each request for hearing or petition to intervene within 45 days of the conclusion of the initial pre-hearing conference or, if no pre-hearing conference is conducted, within 45 days after the filing of answers and replies under paragraph (i) of this section. With respect to a request to admit amended or new contentions, the presiding officer shall issue a decision on each such request within 45 days of the conclusion of any pre-hearing conference that may be conducted regarding the proposed amended or new contentions or, if no pre-hearing conference is conducted, within 45 days after the filing of answers and replies, if any. In the event the presiding officer cannot issue a decision within 45 days, the presiding officer shall issue a notice advising the Commission and the parties, and the notice shall include the expected date of when the decision will issue.

(2) The Commission, acting as the presiding officer, shall expeditiously grant or deny the request for hearing in a proceeding under § 52.103 of this chapter. The Commission's decision may not be the subject of any appeal under § 2.311.

■ 13. In § 2.311, paragraph (b) is revised to read as follows:

§ 2.311 Interlocutory review of rulings on requests for hearing/petitions to intervene, selection of hearing procedures, and requests by potential parties for access to sensitive unclassified non-safeguards information and safeguards information.

* * * * *

(b) These appeals must be made as specified by the provisions of this section, within 25 days after the service of the order. The appeal must be initiated by the filing of a notice of appeal and accompanying supporting brief. Any party who opposes the appeal may file a brief in opposition to the appeal within 25 days after service of the appeal. The supporting brief and any answer must conform to the requirements of § 2.341(c)(2). No other appeals from rulings on requests for hearing are allowed.

* * * * *

■ 14. In § 2.314, paragraph (c)(3) is revised to read as follows:

§ 2.314 Appearance and practice before the Commission in adjudicatory proceedings.

* * * * *

(c) * * *

(3) Anyone disciplined under this section may file an appeal with the Commission within 25 days after issuance of the order. The appeal must be in writing and state concisely, with supporting argument, why the appellant believes the order was erroneous, either as a matter of fact or law. The Commission shall consider each appeal on the merits, including appeals in cases in which the suspension period has already run. If necessary for a full and fair consideration of the facts, the Commission may conduct further evidentiary hearings, or may refer the matter to another presiding officer for development of a record. In the latter event, unless the Commission provides specific directions to the presiding officer, that officer shall determine the procedure to be followed and who shall present evidence, subject to applicable provisions of law. The hearing must begin as soon as possible. In the case of an attorney, if no appeal is taken of a suspension, or, if the suspension is upheld at the conclusion of the appeal, the presiding officer, or the Commission, as appropriate, shall notify the State bar(s) to which the attorney is admitted. The notification must include copies of the order of suspension, and, if an appeal was taken, briefs of the parties, and the decision of the Commission.

* * * * *

■ 15. In § 2.315, paragraph (c) is revised to read as follows:

§ 2.315 Participation by a person not a party.

* * * * *

(c) The presiding officer will afford an interested State, local governmental body (county, municipality or other subdivision), and Federally-recognized Indian Tribe that has not been admitted as a party under § 2.309, a reasonable opportunity to participate in a hearing. The participation of any State, local governmental body, or Federally-recognized Indian Tribe shall be limited to unresolved issues and contentions, and issues and contentions that are raised after the State, local governmental body, or Federally-recognized Indian Tribe becomes a participant. Each State, local governmental body, and Federally-recognized Indian Tribe shall, in its request to participate in a hearing, designate a single representative for the hearing. The representative shall be permitted to introduce evidence, interrogate witnesses where cross examination by the parties is permitted, advise the Commission without requiring the representative to take a position with respect to the issue, file proposed findings in those proceedings where findings are permitted, and petition for review by the Commission under § 2.341 with respect to the admitted contentions. The representative shall identify those contentions on which they will participate in advance of any hearing held.

* * * * *

■ 16. In § 2.318, paragraph (b) is revised to read as follows:

§ 2.318 Commencement and termination of jurisdiction of presiding officer.

* * * * *

(b) The Director, Office of Nuclear Reactor Regulation, Director, Office of New Reactors, the Director, Office of Federal and State Materials and Environmental Management Programs, or the Director, Office of Nuclear Material Safety and Safeguards, as appropriate, may issue an order and take any otherwise proper administrative action with respect to a licensee who is a party to a pending proceeding. Any order related to the subject matter of the pending proceeding may be modified by the presiding officer as appropriate for the purpose of the proceeding.

■ 17. In § 2.319, paragraph (l) is revised, paragraph (r) is redesignated as paragraph (s), and a new paragraph (r) is added to read as follows:

§ 2.319 Power of the presiding officer.

* * * * *

(l) Refer rulings to the Commission under § 2.323(f)(1), or certify questions to the Commission for its determination, either in the presiding officer's discretion, or on petition of a party under § 2.323(f)(2), or on direction of the Commission.

* * * * *

(r) Establish a schedule for briefs and oral arguments to decide any admitted contentions that, as determined by the presiding officer, constitute pure issues of law.

* * * * *

■ 18. In § 2.323, paragraphs (a) and (f) are revised to read as follows:

§ 2.323 Motions.

(a) *Scope and general requirements*—(1) *Applicability to § 2.309(c).* Section 2.309 motions for new or amended contentions filed after the deadline in § 2.309(b) are not subject to the requirements of this section. For the purposes of this section the term ''all motions'' includes any motion *except* § 2.309 motions for new or amended contentions filed after the deadline.

(2) *Presentation and disposition.* All motions must be addressed to the Commission or other designated presiding officer. All motions must be made no later than ten (10) days after the occurrence or circumstance from which the motion arises. All written motions must be filed with the Secretary and served on all parties to the proceeding.

* * * * *

(f) *Referral and certifications to the Commission.* (1) If, in the judgment of the presiding officer, the presiding officer's decision raises significant and novel legal or policy issues, or prompt decision by the Commission is necessary to materially advance the orderly disposition of the proceeding, then the presiding officer may promptly refer the ruling to the Commission. This standard also applies to matters certified to the Commission. The presiding officer shall notify the parties of the referral or certification either by announcement on-the-record or by written notice if the hearing is not in session.

(2) A party may petition the presiding officer to certify a question to the Commission for early review. The presiding officer shall apply the criteria in § 2.341(f)(1) in determining whether to grant the petition for certification. No motion for reconsideration of the presiding officer's ruling on a petition for certification will be entertained.

* * * * *

■ 19. In § 2.326, paragraph (d) is revised to read as follows:

§ 2.326 Motions to reopen.

* * * * *

(d) A motion to reopen that relates to a contention not previously in controversy among the parties must also satisfy the § 2.309(c) requirements for new or amended contentions filed after the deadline in § 2.309(b).

■ 20. In § 2.335, paragraphs (b), (c), and (e) are revised to read as follows:

§ 2.335 Consideration of Commission rules and regulations in adjudicatory proceedings.

* * * * *

(b) A participant to an adjudicatory proceeding subject to this part may petition that the application of a specified Commission rule or regulation or any provision thereof, of the type described in paragraph (a) of this section, be waived or an exception be made for the particular proceeding. The sole ground for petition of waiver or exception is that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which the rule or regulation was adopted. The petition must be accompanied by an affidavit that identifies the specific aspect or aspects of the subject matter of the proceeding as to which the application of the rule or regulation (or provision of it) would not serve the purposes for which the rule or regulation was adopted. The affidavit must state with particularity the special circumstances alleged to justify the waiver or exception requested. Any other participant may file a response by counter-affidavit or otherwise.

(c) If, on the basis of the petition, affidavit, and any response permitted under paragraph (b) of this section, the presiding officer determines that the petitioning participant has not made a *prima facie* showing that the application of the specific Commission rule or regulation (or provision thereof) to a particular aspect or aspects of the subject matter of the proceeding would not serve the purposes for which the rule or regulation was adopted and that application of the rule or regulation should be waived or an exception granted, no evidence may be received on that matter and no discovery, cross examination, or argument directed to the matter will be permitted, and the presiding officer may not further consider the matter.

* * * * *

(e) Whether or not the procedure in paragraph (b) of this section is available, a participant to an initial or renewal licensing proceeding may file a petition for rulemaking under § 2.802.

■ 21. In § 2.336, paragraphs (b) introductory text, (b)(1) through (4), and (d) are revised to read as follows:

§ 2.336 General discovery.

* * * * *

(b) Except for proceedings conducted under subparts G and J of this part or as otherwise ordered by the Commission, the presiding officer, or the Atomic Safety and Licensing Board assigned to the proceeding, the NRC staff must, within 30 days of the issuance of the order granting a request for hearing or petition to intervene and without further order or request from any party, disclose or provide to the extent available (but excluding those documents for which there is a claim of privilege or protected status):

(1) The application (if applicable) and applicant or licensee requests that are relevant to the admitted contentions and are associated with the application or proposed action that is the subject of the proceeding;

(2) NRC correspondence with the applicant or licensee that is relevant to the admitted contentions and associated with the application or proposed action that is the subject of the proceeding;

(3) All documents (including documents that provide support for, or opposition to, the application or proposed action) that both support the NRC staff's review of the application or proposed action that is the subject of the proceeding and are relevant to the admitted contentions;

(4) Any NRC staff documents that both represent the NRC staff's determination on the application or proposal that is the subject of the proceeding and are relevant to the admitted contentions; and

* * * * *

(d) The duty of disclosure under this section is continuing. Parties must update their disclosures every month after initial disclosures on a due date selected by the presiding officer in the order admitting contentions, unless the parties agree upon a different due date or frequency. The disclosure update shall be limited to documents subject to disclosure under this section and does not need to include documents that are developed, obtained, or discovered during the two weeks before the due date. Disclosure updates shall include any documents subject to disclosure that were not included in any previous disclosure update. The duty to update

disclosures relevant to an admitted contention ends when the presiding officer issues a decision resolving the contention, or at such other time as may be specified by the presiding officer or the Commission.

* * * * *

■ 22. In § 2.337, paragraphs (g)(1), (g)(2), and (g)(3) are revised to read as follows:

§ 2.337 Evidence at a hearing.

* * * * *

(g) * * *

(1) Facility construction permits. In a proceeding involving an application for construction permit for a production or utilization facility, the NRC staff shall offer into evidence any report submitted by the ACRS in the proceeding in compliance with section 182(b) of the Act, any safety evaluation prepared by the NRC staff, and any environmental impact statement prepared in the proceeding under subpart A of part 51 of this chapter by the Director, Office of Nuclear Reactor Regulation, Director, Office of New Reactors, Director, Office of Federal and State Materials and Environmental Management Programs, or Director, Office of Nuclear Material Safety and Safeguards, as appropriate, or his or her designee.

(2) Other applications where the NRC staff is a party. In a proceeding involving an application for other than a construction permit for a production or utilization facility, the NRC staff shall offer into evidence:

(i) Any report submitted by the ACRS in the proceeding in compliance with section 182(b) of the Act;

(ii) At the discretion of the NRC staff, a safety evaluation prepared by the NRC staff and/or NRC staff testimony and evidence on the contention or contested matter prepared in advance of the completion of the safety evaluation;

(iii) Any NRC staff statement of position on the contention or contested matter provided to the presiding officer under § 2.1202(a); and

(iv) Any environmental impact statement or environmental assessment prepared in the proceeding under subpart A of part 51 of this chapter by the Director, Office of Nuclear Reactor Regulation, Director, Office of New Reactors, Director, Office of Federal and State Materials and Environmental Management Programs, or Director, Office of Nuclear Material Safety and Safeguards, as appropriate, or his or her designee if there is any, but only if there are admitted contentions or contested matters with respect to the adequacy of the environmental impact statement or environmental assessment.

(3) Other applications where the NRC staff is not a party. In a proceeding involving an application for other than a construction permit for a production or utilization facility, the NRC staff shall offer into evidence, and (with the exception of an ACRS report) provide one or more sponsoring witnesses, for:

(i) Any report submitted by the ACRS in the proceeding in compliance with section 182(b) of the Act;

(ii) At the discretion of the NRC staff, a safety evaluation prepared by the NRC staff and/or NRC staff testimony and evidence on the contention or contested matter prepared in advance of the completion of the safety evaluation;

(iii) Any NRC staff statement of position on the contention or contested matter under § 2.1202(a); and

(iv) Any environmental impact statement or environmental assessment prepared in the proceeding under subpart A of part 51 of this chapter by the Director, Office of Nuclear Reactor Regulation, Director, Office of New Reactors, Director, Office of Federal and State Materials and Environmental Management Programs, or Director, Office of Nuclear Material Safety and Safeguards, as appropriate, or his or her designee if there is any, but only if there are admitted contentions or contested matters with respect to the adequacy of the environmental impact statement or environmental assessment.

■ 23. Section 2.340 is revised to read as follows:

§ 2.340 Initial decision in certain contested proceedings; immediate effectiveness of initial decisions; issuance of authorizations, permits, and licenses.

(a) *Initial decision—production or utilization facility operating license.* (1) Matters in controversy; presiding officer consideration of matters not put in controversy by parties. In any initial decision in a contested proceeding on an application for an operating license or renewed license (including an amendment to or renewal of an operating license or renewed license) for a production or utilization facility, the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties and any matter designated by the Commission to be decided by the presiding officer. The presiding officer shall also make findings of fact and conclusions of law on any matter not put into controversy by the parties, but only to the extent that the presiding officer determines that a serious safety, environmental, or common defense and security matter exists, and the Commission approves of an examination of and decision on the matter upon its referral by the presiding officer under, inter alia, the provisions of §§ 2.323 and 2.341.

(2) *Presiding officer initial decision and issuance of permit or license.*

(i) In a contested proceeding for the initial issuance or renewal of a construction permit, operating license, or renewed license, or the amendment of an operating or renewed license where the NRC has not made a determination of no significant hazards consideration, the Commission, the Director, Office of Nuclear Reactor Regulation, or the Director, Office of New Reactors, as appropriate, after making the requisite findings, shall issue, deny, or appropriately condition the permit or license in accordance with the presiding officer's initial decision once that decision becomes effective.

(ii) In a contested proceeding for the amendment of a construction permit, operating license, or renewed license where the NRC has made a determination of no significant hazards consideration, the Commission, the Director, Office of Nuclear Reactor Regulation, or the Director, Office of New Reactors, as appropriate (appropriate official), after making the requisite findings and complying with any applicable provisions of § 2.1202(a) or § 2.1403(a), may issue the amendment before the presiding officer's initial decision becomes effective. Once the presiding officer's initial decision becomes effective, the appropriate official shall take action with respect to that amendment in accordance with the initial decision. If the presiding officer's initial decision becomes effective before the appropriate official issues the amendment, then the appropriate official, after making the requisite findings, shall issue, deny, or appropriately condition the amendment in accordance with the presiding officer's initial decision.

(b) *Initial decision—combined license under 10 CFR part 52.* (1) Matters in controversy; presiding officer consideration of matters not put in controversy by parties. In any initial decision in a contested proceeding on an application for a combined license under part 52 of this chapter (including an amendment to or renewal of combined license), the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties and any matter designated by the Commission to be decided by the presiding officer. The presiding officer shall also make findings of fact and conclusions of law on any matter not put into controversy by the parties, but only to the extent that the presiding officer determines that a serious safety, environmental, or

common defense and security matter exists, and the Commission approves of an examination of and decision on the matter upon its referral by the presiding officer under, inter alia, the provisions of §§ 2.323 and 2.341.

(2) *Presiding officer initial decision and issuance of permit or license.* (i) In a contested proceeding for the initial issuance or renewal of a combined license under part 52 of this chapter, or the amendment of a combined license where the NRC has not made a determination of no significant hazards consideration, the Commission, the Director, Office of Nuclear Reactor Regulation, or the Director, Office of New Reactors, as appropriate, after making the requisite findings, shall issue, deny, or appropriately condition the permit or license in accordance with the presiding officer's initial decision once that decision becomes effective.

(ii) In a contested proceeding for the amendment of a combined license under part 52 of this chapter where the NRC has made a determination of no significant hazards consideration, the Commission, the Director, Office of Nuclear Reactor Regulation, or the Director, Office of New Reactors, as appropriate (appropriate official), after making the requisite findings and complying with any applicable provisions of § 2.1202(a) or § 2.1403(a), may issue the amendment before the presiding officer's initial decision becomes effective. Once the presiding officer's initial decision becomes effective, the appropriate official shall take action with respect to that amendment in accordance with the initial decision. If the presiding officer's initial decision becomes effective before the appropriate official issues the amendment, then the appropriate official, after making the requisite findings, shall issue, deny, or appropriately condition the amendment in accordance with the presiding officer's initial decision.

(c) *Initial decision on findings under 10 CFR 52.103 with respect to acceptance criteria in nuclear power reactor combined licenses.* In any initial decision under § 52.103(g) of this chapter with respect to whether acceptance criteria have been or will be met, the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties, and any matter designated by the Commission to be decided by the presiding officer. Matters not put into controversy by the parties, but identified by the presiding officer as matters requiring further examination, shall be referred to the Commission for its determination; the Commission may, in its discretion, treat any of these referred matters as a request for action under § 2.206 and process the matter in accordance with § 52.103(f) of this chapter.

(d) *Initial decision—manufacturing license under 10 CFR part 52.* (1) Matters in controversy; presiding officer consideration of matters not put in controversy by parties. In any initial decision in a contested proceeding on an application for a manufacturing license under subpart C of part 52 of this chapter (including an amendment to or renewal of a manufacturing license), the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties and any matter designated by the Commission to be decided by the presiding officer. The presiding officer also shall make findings of fact and conclusions of law on any matter not put into controversy by the parties, but only to the extent that the presiding officer determines that a serious safety, environmental, or common defense and security matter exists, and the Commission approves of an examination of and decision on the matter upon its referral by the presiding officer under, inter alia, the provisions of §§ 2.323 and 2.341.

(2) *Presiding officer initial decision and issuance of permit or license.* (i) In a contested proceeding for the initial issuance or renewal of a manufacturing license under subpart C of part 52 of this chapter, or the amendment of a manufacturing license, the Commission, the Director, Office of Nuclear Reactor Regulation, or the Director, Office of New Reactors, as appropriate, after making the requisite findings, shall issue, deny, or appropriately condition the permit or license in accordance with the presiding officer's initial decision once that decision becomes effective.

(ii) In a contested proceeding for the initial issuance or renewal of a manufacturing license under subpart C of part 52 of this chapter, or the amendment of a manufacturing license, the Commission, the Director, Office of Nuclear Reactor Regulation, or the Director, Office of New Reactors, as appropriate, may issue the license, permit, or license amendment in accordance with § 2.1202(a) or § 2.1403(a) before the presiding officer's initial decision becomes effective. If, however, the presiding officer's initial decision becomes effective before the license, permit, or license amendment is issued under § 2.1202 or § 2.1403, then the Commission, the Director, Office of Nuclear Reactor Regulation, or the Director, Office of New Reactors, as appropriate, shall issue, deny, or appropriately condition the license, permit, or license amendment in accordance with the presiding officer's initial decision.

(e) *Initial decision—other proceedings not involving production or utilization facilities*—(1) *Matters in controversy; presiding officer consideration of matters not put in controversy by parties.* In a proceeding not involving production or utilization facilities, the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties to the proceeding, and on any matters designated by the Commission to be decided by the presiding officer. Matters not put into controversy by the parties, but identified by the presiding officer as requiring further examination, must be referred to the Director, Office of Nuclear Material Safety and Safeguards, or the Director, Office of Federal and State Materials and Environmental Management Programs, as appropriate. Depending on the resolution of those matters, the Director, Office of Nuclear Material Safety and Safeguards or the Director, Office of Federal and State Materials and Environmental Management Programs, as appropriate, after making the requisite findings, shall issue, deny, revoke or appropriately condition the license, or take other action as necessary or appropriate.

(2) *Presiding officer initial decision and issuance of permit or license.* (i) In a contested proceeding under this paragraph (e), the Commission, the Director, Office of Nuclear Material Safety and Safeguards, or the Director, Office of Federal and State Materials and Environmental Management Programs, as appropriate, shall issue, deny, or appropriately condition the permit, license, or license amendment in accordance with the presiding officer's initial decision once that decision becomes effective.

(ii) In a contested proceeding under this paragraph (e), the Commission, the Director, Office of Nuclear Material Safety and Safeguards, or the Director, Office of Federal and State Materials and Environmental Management Programs, as appropriate, may issue the permit, license, or amendment in accordance with § 2.1202(a) or § 2.1403(a) before the presiding officer's initial decision becomes effective. If, however, the presiding officer's initial decision becomes effective before the permit, license, or amendment is issued under § 2.1202 or § 2.1403, then the Commission, the Director, Office of Nuclear Material Safety and Safeguards, or the Director, Office of Federal and State Materials and Environmental

Management Programs, as appropriate, shall issue, deny, or appropriately condition the permit, license, or amendment in accordance with the presiding officer's initial decision.

(f) *Immediate effectiveness of certain presiding officer decisions.* A presiding officer's initial decision directing the issuance or amendment of a limited work authorization under § 50.10 of this chapter, an early site permit under subpart A of part 52 of this chapter, a construction permit or construction authorization under part 50 of this chapter, an operating license under part 50 of this chapter, a combined license under subpart C of part 52 of this chapter, a manufacturing license under subpart F of part 52 of this chapter, a renewed license under part 54, or a license under part 72 of this chapter to store spent fuel in an independent spent fuel storage facility (ISFSI) or a monitored retrievable storage installation (MRS), an initial decision directing issuance of a license under part 61 of this chapter, or an initial decision under § 52.103(g) of this chapter that acceptance criteria in a combined license have been met, is immediately effective upon issuance unless the presiding officer finds that good cause has been shown by a party why the initial decision should not become immediately effective.

(g)–(h) [Reserved]

(i) *Issuance of authorizations, permits, and licenses—production and utilization facilities.* The Commission, the Director, Office of New Reactors, or the Director, Office of Nuclear Reactor Regulation, as appropriate, shall issue a limited work authorization under § 50.10 of this chapter, an early site permit under subpart A of part 52 of this chapter, a construction permit or construction authorization under part 50 of this chapter, an operating license under part 50 of this chapter, a combined license under subpart C of part 52 of this chapter, or a manufacturing license under subpart F of part 52 of this chapter within 10 days from the date of issuance of the initial decision:

(1) If the Commission or the appropriate Director has made all findings necessary for issuance of the authorization, permit or license, not within the scope of the initial decision of the presiding officer; and

(2) Notwithstanding the pendency of a petition for reconsideration under § 2.345, a petition for review under § 2.341, or a motion for stay under § 2.342, or the filing of a petition under § 2.206.

(j) *Issuance of finding on acceptance criteria under 10 CFR 52.103.* The Commission, the Director, Office of New Reactors, or the Director, Office of Nuclear Reactor Regulation, as appropriate, shall make the finding under § 52.103(g) of this chapter that acceptance criteria in a combined license are met within 10 days from the date of the presiding officer's initial decision:

(1) If the Commission or the appropriate director is otherwise able to make the finding under § 52.103(g) of this chapter that the prescribed acceptance criteria are met for those acceptance criteria not within the scope of the initial decision of the presiding officer;

(2) If the presiding officer's initial decision—with respect to contentions that the prescribed acceptance criteria have not been met—finds that those acceptance criteria have been met, and the Commission or the appropriate director thereafter is able to make the finding that those acceptance criteria are met;

(3) If the presiding officer's initial decision—with respect to contentions that the prescribed acceptance criteria will not be met—finds that those acceptance criteria will be met, and the Commission or the appropriate director thereafter is able to make the finding that those acceptance criteria are met; and

(4) Notwithstanding the pendency of a petition for reconsideration under § 2.345, a petition for review under § 2.341, or a motion for stay under § 2.342, or the filing of a petition under § 2.206.

(k) *Issuance of other licenses.* The Commission, the Director, Office of Nuclear Material Safety and Safeguards, or the Director, Office of Federal and State Materials and Environmental Management Programs, as appropriate, shall issue a license, including a license under part 72 of this chapter to store spent fuel in either an independent spent fuel storage facility (ISFSI) located away from a reactor site or at a monitored retrievable storage installation (MRS), within 10 days from the date of issuance of the initial decision:

(1) If the Commission or the appropriate Director has made all findings necessary for issuance of the license, not within the scope of the initial decision of the presiding officer; and

(2) Notwithstanding the pendency of a petition for reconsideration under § 2.345, a petition for review under § 2.341, or a motion for stay under § 2.342, or the filing of a petition under § 2.206.

■ 24. In § 2.341, paragraphs (a), (b)(1), (b)(3), (c), and (f)(1) are revised to read as follows:

§ 2.341 Review of decisions and actions of a presiding officer.

(a)(1) Review of decisions and actions of a presiding officer are treated under this section; provided, however, that no party may request further Commission review of a Commission determination to allow a period of interim operation under § 52.103(c) of this chapter. This section does not apply to appeals under § 2.311 or to appeals in the high-level waste proceeding, which are governed by § 2.1015.

(2) Within 120 days after the date of a decision or action by a presiding officer, or within 120 days after a petition for review of the decision or action has been served under paragraph (b) of this section, whichever is greater, the Commission may review the decision or action on its own motion, unless the Commission, in its discretion, extends the time for its review.

(b)(1) Within 25 days after service of a full or partial initial decision by a presiding officer, and within 25 days after service of any other decision or action by a presiding officer with respect to which a petition for review is authorized by this part, a party may file a petition for review with the Commission on the grounds specified in paragraph (b)(4) of this section. Unless otherwise authorized by law, a party to an NRC proceeding must file a petition for Commission review before seeking judicial review of an agency action.

* * * * *

(3) Any other party to the proceeding may, within 25 days after service of a petition for review, file an answer supporting or opposing Commission review. This answer may not be longer than 25 pages and should concisely address the matters in paragraph (b)(2) of this section to the extent appropriate. The petitioning party may file a reply brief within 10 days of service of any answer. This reply brief may not be longer than 5 pages.

* * * * *

(c)(1) If within 120 days after the filing of a petition for review the Commission does not grant the petition, in whole or in part, the petition is deemed to be denied, unless the Commission, in its discretion, extends the time for its consideration of the petition and any answers to the petition.

(2) If a petition for review is granted, the Commission may issue an order specifying the issues to be reviewed and designating the parties to the review proceeding. The Commission may, in its

discretion, decide the matter on the basis of the petition for review or it may specify whether any briefs may be filed.

(3) Unless the Commission orders otherwise, any briefs on review may not exceed 30 pages in length, exclusive of pages containing the table of contents, table of citations, and any addendum containing appropriate exhibits, statutes, or regulations. A brief in excess of 10 pages must contain a table of contents with page references and a table of cases (alphabetically arranged), cited statutes, regulations, and other authorities, with references to the pages of the brief where they are cited.

* * * * *

(f) * * *

(1) A ruling referred or question certified to the Commission under §§ 2.319(l) or 2.323(f) may be reviewed if the certification or referral raises significant and novel legal or policy issues, or resolution of the issues would materially advance the orderly disposition of the proceeding.

* * * * *

■ 25. In § 2.346, paragraphs (e) and (j) are revised to read as follows:

§ 2.346 Authority of the Secretary.

* * * * *

(e) Extend the time for the Commission to grant review on its own motion under § 2.341;

* * * * *

(j) Take action on other minor matters.

■ 26. In § 2.347, paragraphs (e)(1)(i) and (e)(1)(ii) are revised to read as follows:

§ 2.347 Ex parte communications.

* * * * *

(e)(1) * * *

(i) When a notice of hearing or other comparable order is issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c), 2.205(e), or 2.312; or

(ii) Whenever the interested person or Commission adjudicatory employee responsible for the communication has knowledge that a notice of hearing or other comparable order will be issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c), 2.205(e), or 2.312.

* * * * *

■ 27. In § 2.348, paragraphs (d)(1)(i) and (d)(1)(ii) are revised to read as follows:

§ 2.348 Separation of functions.

* * * * *

(d)(1) * * *

(i) When a notice of hearing or other comparable order is issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c), 2.205(e), or 2.312; or

(ii) Whenever an NRC officer or employee who is or has reasonable cause to believe he or she will be engaged in the performance of an investigative or litigating function or a Commission adjudicatory employee has knowledge that a notice of hearing or other comparable order will be issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c), 2.205(e), or 2.312.

* * * * *

■ 28. In § 2.704, paragraphs (a)(3) and (e)(1) are revised to read as follows:

§ 2.704 Discovery-required disclosures.

(a) * * *

(3) Unless otherwise stipulated by the parties or directed by order of the presiding officer, these disclosures must be made within 45 days after the issuance of a prehearing conference order following the initial prehearing conference specified in § 2.329. A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully completed its investigation of the case, because it challenges the sufficiency of another party's disclosures, or because another party has not made its disclosures. The duty of disclosure under this section is continuing. A disclosure update must be made every month after initial disclosures on a due date selected by the presiding officer, unless the parties agree upon a different due date or frequency. The disclosure update shall be limited to documents subject to disclosure under this section and does not need to include documents that are developed, obtained, or discovered during the two weeks before the due date. Disclosure updates shall include any documents subject to disclosure that were not included in any previous disclosure update. The duty to update disclosures relevant to a disputed issue ends when the presiding officer issues a decision resolving that disputed issue, or at such other time as may be specified by the presiding officer or the Commission.

* * * * *

(e) * * *

(1) When a party learns that in some material respect the information disclosed under paragraph (a) of this section is incomplete or incorrect, and if additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing, a party shall supplement its disclosures in accordance with the disclosure update schedule in paragraph (a)(3) of this section.

* * * * *

■ 29. In § 2.705, paragraph (b)(2) introductory text is revised to read as follows:

§ 2.705 Discovery-additional methods.

* * * * *

(b) * * *

(2) Upon his or her own initiative after reasonable notice or in response to a motion filed under paragraph (c) of this section, the presiding officer may set limits on the number of depositions and interrogatories, and may also limit the length of depositions under § 2.706 and the number of requests under §§ 2.707 and 2.708. The presiding officer shall limit the frequency or extent of use of the discovery methods otherwise permitted under these rules if he or she determines that:

* * * * *

■ 30. In § 2.709, paragraphs (a)(6) and (a)(7) are added to read as follows:

§ 2.709 Discovery against NRC staff.

(a)* * *

(6)(i) The NRC staff shall, except to the extent otherwise stipulated or directed by order of the presiding officer or the Commission, provide to the other parties within 45 days after the issuance of a prehearing conference order following the initial prehearing conference specified in § 2.329 and without awaiting a discovery request:

(A) Except for those documents, data compilations, or other tangible things for which there is a claim of privilege or protected status, all NRC staff documents, data compilations, or other tangible things in possession, custody, or control of the NRC staff that are relevant to disputed issues alleged with particularity in the pleadings, including any Office of Investigations report and supporting exhibits, and any Office of Enforcement documents, data compilations, or other tangible things regarding the order. When any document, data compilation, or other tangible thing that must be disclosed is publicly available from another source, such as the NRC Web site, *http://www.nrc.gov,* or the NRC Public Document Room, a sufficient disclosure would be the location, the title, and a page reference to the relevant document, data compilation, or tangible thing; and

(B) A list of all documents, data compilations, or other tangible things otherwise responsive to paragraph (a)(6)(i)(A) of this section for which a claim of privilege or protected status is being made, together with sufficient information for assessing the claim of privilege or protected status of the documents.

(ii) The duty of disclosure under this section is continuing. A disclosure

update must be made every month after initial disclosures on a due date selected by the presiding officer, unless the parties agree upon a different due date or frequency. The disclosure update shall be limited to documents subject to disclosure under this section and does not need to include documents that are developed, obtained, or discovered during the two weeks before the due date. Disclosure updates shall include any documents subject to disclosure that were not included in any previous disclosure update. The duty to update disclosures relevant to a disputed issue ends when the presiding officer issues a decision resolving that dispute issue, or at such other time as may be specified by the presiding officer or the Commission.

(7) When any document, data compilation, or other tangible thing that must be disclosed is publicly available from another source, such as at the NRC Web site, *http://www.nrc.gov,* and/or the NRC Public Document Room, a sufficient disclosure would identify the location (including the ADAMS accession number, when available), the title and a page reference to the relevant document, data compilation, or tangible thing.

* * * * *

■ 31. In § 2.710, paragraph (a) is revised to read as follows:

§ 2.710 Motions for summary disposition.

(a) Any party to a proceeding may move, with or without supporting affidavits, for a decision by the presiding officer in that party's favor as to all or any part of the matters involved in the proceeding. Summary disposition motions must be filed no later than 20 days after the close of discovery. The moving party shall attach to the motion a short and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard. Any other party may serve an answer supporting or opposing the motion, with or without affidavits, within 20 days after service of the motion. The party shall attach to any answer opposing the motion a short and concise statement of the material facts as to which it is contended there exists a genuine issue to be heard. All material facts set forth in the statement required to be served by the moving party will be considered to be admitted unless controverted by the statement required to be served by the opposing party. The opposing party may, within 10 days after service, respond in writing to new facts and arguments presented in any statement filed in support of the motion. No further supporting statements or responses to the motion will be entertained.

* * * * *

■ 32. In § 2.802, paragraph (d) is revised to read as follows:

§ 2.802 Petition for rulemaking.

* * * * *

(d) The petitioner may request the Commission to suspend all or any part of any licensing proceeding to which the petitioner is a participant pending disposition of the petition for rulemaking.

* * * * *

■ 33. In § 2.811, paragraph (c) is revised to read as follows:

§ 2.811 Filing of standard design certification application; required copies.

* * * * *

(c) *Capability to provide additional copies.* The applicant shall maintain the capability to generate additional copies of the general information and the safety analysis report, or part thereof or amendment thereto, for subsequent distribution in accordance with the written instructions of the Director, Office of New Reactors, the Director, Office of Nuclear Reactor Regulation, the Director, Office of Federal and State Materials and Environmental Management Programs, or the Director, Office of Nuclear Material Safety and Safeguards, as appropriate.

* * * * *

Subpart L—Simplified Hearing Procedures for NRC Adjudications

■ 34. The heading of subpart L is revised to read as set forth above:

■ 35. In § 2.1202, the introductory text of paragraph (a) is revised to read as follows:

§ 2.1202 Authority and role of NRC staff.

(a) During the pendency of any hearing under this subpart, consistent with the NRC staff's findings in its review of the application or matter which is the subject of the hearing and as authorized by law, the NRC staff is expected to promptly issue its approval or denial of the application, or take other appropriate action on the underlying regulatory matter for which a hearing was provided. When the NRC staff takes its action, it must notify the presiding officer and the parties to the proceeding of its action. That notice must include the NRC staff's explanation why the public health and safety is protected and why the action is in accord with the common defense and security despite the pendency of the contested matter before the presiding officer. The NRC staff's action on the matter is effective upon issuance by the staff, except in matters involving:

* * * * *

■ 36. In § 2.1205, paragraph (a) is revised to read as follows:

§ 2.1205 Summary disposition.

(a) Unless the presiding officer or the Commission directs otherwise, motions for summary disposition may be submitted to the presiding officer by any party no later than 45 days before the commencement of hearing. The motions must be in writing and must include a written explanation of the basis of the motion. The moving party must attach a short and concise statement of material facts for which the moving party contends that there is no genuine issue to be heard. Motions for summary disposition must be served on the parties and the Secretary at the same time that they are submitted to the presiding officer.

* * * * *

■ 37. Section 2.1209 is revised to read as follows:

§ 2.1209 Findings of fact and conclusions of law.

Each party shall file written post-hearing proposed findings of fact and conclusions of law on the contentions addressed in an oral hearing under § 2.1207 or a written hearing under § 2.1208 within 30 days of the close of the hearing or at such other time as the presiding officer directs. Proposed findings of fact and conclusions of law must conform to the format requirements in § 2.712(c).

■ 38. In § 2.1210, paragraph (d) is revised to read as follows:

§ 2.1210 Initial decision and its effect.

* * * * *

(d) Pending review and final decision by the Commission, an initial decision resolving all issues before the presiding officer is immediately effective upon issuance except as otherwise provided by this part (*e.g.,* § 2.340) or by the Commission in special circumstances.

* * * * *

■ 39. In § 2.1213, paragraph (f) is added to read as follows:

§ 2.1213 Application for a stay.

* * * * *

(f) Stays are not available on matters limited to whether a no significant hazards consideration determination was proper in proceedings on power reactor license amendments.

■ 40. Section 2.1300 is revised to read as follows:

§ 2.1300 Scope of subpart M.

The provisions of this subpart, together with the generally applicable intervention provisions in subpart C of this part, govern all adjudicatory proceedings on an application for the direct or indirect transfer of control of an NRC license when the transfer requires prior approval of the NRC under the Commission's regulations, governing statutes, or pursuant to a license condition. This subpart provides the only mechanism for requesting hearings on license transfer requests, unless contrary case specific orders are issued by the Commission.

§ 2.1304 [Removed]

■ 41. Section 2.1304 is removed.

■ 42. In § 2.1316, paragraph (c) is revised to read as follows:

§ 2.1316 Authority and role of NRC staff.

* * * * *

(c)(1) Within 15 days of the issuance of the order granting requests for hearing/petitions to intervene and admitting contentions, the NRC staff must notify the presiding officer and the parties whether it desires to participate as a party, and identify the contentions on which it wishes to participate as a party. If the NRC staff desires to be a party thereafter, the NRC staff must notify the presiding officer and the parties, and identify the contentions on which it wishes to participate as a party, and make the disclosures required by § 2.336(b)(3) through (b)(5) unless accompanied by an affidavit explaining why the disclosures cannot be provided to the parties with the notice.

(2) Once the NRC staff chooses to participate as a party, it will have all the rights and responsibilities of a party with respect to the admitted contention/matter in controversy on which the staff chooses to participate.

■ 43. In § 2.1321, paragraph (b) is revised to read as follows:

§ 2.1321 Participation and schedule for submission in a hearing consisting of written comments.

* * * * *

(b) Written responses, rebuttal testimony with supporting affidavits directed to the initial statements and testimony of other participants, and proposed written questions for the Presiding Officer to consider for submittal to persons sponsoring testimony submitted under paragraph (a) of this section. These materials shall be filed within 20 days of the filing of the materials submitted under paragraph (a) of this section, unless the Commission or Presiding Officer directs otherwise. Proposed written questions directed to rebuttal testimony for the Presiding Officer to consider for submittal to persons offering such testimony shall be filed within 7 days of the filing of the rebuttal testimony.

* * * * *

■ 44. In § 2.1403, the introductory text of paragraph (a) is revised to read as follows:

§ 2.1403 Authority and role of the NRC staff.

(a) During the pendency of any hearing under this subpart, consistent with the NRC staff's findings in its review of the application or matter that is the subject of the hearing and as authorized by law, the NRC staff is expected to promptly issue its approval or denial of the application, or take other appropriate action on the matter that is the subject of the hearing. When the NRC staff takes its action, it must notify the presiding officer and the parties to the proceeding of its action. That notice must include the NRC staff's explanation why the public health and safety is protected and why the action is in accord with the common defense and security despite the pendency of the contested matter before the presiding officer. The NRC staff's action on the matter is effective upon issuance, except in matters involving:

* * * * *

■ 45. In § 2.1407, paragraphs (a)(1) and (a)(3) are revised to read as follows:

§ 2.1407 Appeal and Commission review of initial decision.

(a)(1) Within 25 days after service of a written initial decision, a party may file a written appeal seeking the Commission's review on the grounds specified in paragraph (b) of this section. Unless otherwise authorized by law, a party must file an appeal with the Commission before seeking judicial review.

* * * * *

(3) Any other party to the proceeding may, within 25 days after service of the appeal, file an answer supporting or opposing the appeal. The answer may not be longer than 20 pages and should concisely address the matters specified in paragraph (a)(2) of this section. The appellant does not have a right to reply. Unless it directs additional filings or oral arguments, the Commission will decide the appeal on the basis of the filings permitted by this paragraph.

* * * * *

PART 12—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS

■ 46. The authority citation for part 12 continues to read as follows:

Authority: Equal Access to Justice Act sec. 203(a)(1) (5 U.S.C. 504 (c)(1)).

■ 47. In § 12.308, paragraphs (a), (b)(1), and (b)(2) are revised to read as follows:

§ 12.308 Agency review.

(a) Either the applicant or the NRC counsel may seek review of the initial decision on the fee application, or the Commission may decide to review the decision on its own initiative, in accordance with the Commission's review procedures set out in 10 CFR 2.341. The filing of a petition for review is mandatory for a party to exhaust its administrative remedies before seeking judicial review. If neither the applicant nor NRC counsel seeks review and the Commission does not take review on its own initiative, the initial decision on the application shall become a final decision of the NRC 120 days after it is issued.

(b) * * *

(1) The expiration of the 120 day period provided in paragraph (a) of this section; or

(2) If within the 120 day period provided in paragraph (a) of this section the Commission elects to review the decision, the Commission's issuance of a final decision on review of the initial decision.

* * * * *

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

■ 48. The authority citation for part 51 continues to read as follows:

Authority: Atomic Energy Act sec. 161, 1701 (42 U.S.C. 2201, 2297f); Energy Reorganization Act secs. 201, 202, 211 (42 U.S.C. 5841, 5842, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note). Subpart A also issued under National Environmental Policy Act secs. 102, 104, 105 (42 U.S.C. 4332, 4334, 4335); Pub. L. 95–604, Title II, 92 Stat. 3033–3041; Atomic Energy Act sec. 193 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80. and 51.97 also issued under Nuclear Waste Policy Act secs. 135, 141, 148 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under Atomic Energy Act sec. 274 (42 U.S.C. 2021) and under Nuclear Waste Policy Act sec. 121 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act sec. 114(f) (42 U.S.C. 10134(f)).

■ 49. In § 51.4, the definition of *NRC staff* is revised to read as follows:

§ 51.4 Definitions.

* * * * *

NRC staff means any NRC officer or employee or his/her authorized representative, except a Commissioner, a member of a Commissioner's immediate staff, an Atomic Safety and Licensing Board, a presiding officer, an administrative judge, an administrative law judge, or any other officer or employee of the Commission who performs adjudicatory functions.

* * * * *

■ 50. In § 51.34, paragraph (b) is revised to read as follows:

§ 51.34 Preparation of finding of no significant impact.

* * * * *

(b) When a hearing is held on the proposed action under the regulations in part 2 of this chapter or when the action can only be taken by the Commissioners acting as a collegial body, the appropriate NRC staff director will prepare a proposed finding of no significant impact, which may be subject to modification as a result of review and decision as appropriate to the nature and scope of the proceeding. In such cases, the presiding officer, or the Commission acting as a collegial body, as appropriate, will issue the final finding of no significant impact.

■ 51. In § 51.102, paragraph (c) is revised to read as follows:

§ 51.102 Requirement to provide a record of decision; preparation.

* * * * *

(c) When a hearing is held on the proposed action under the regulations in part 2 of this chapter or when the action can only be taken by the Commissioners acting as a collegial body, the initial decision of the presiding officer or the final decision of the Commissioners acting as a collegial body will constitute the record of decision. An initial or final decision constituting the record of decision will be distributed as provided in § 51.93.

■ 52. In § 51.109, paragraph (f) is revised to read as follows:

§ 51.109 Public hearings in proceedings for issuance of materials license with respect to a geologic repository.

* * * * *

(f) In making the determinations described in paragraph (e) of this section, the environmental impact statement will be deemed modified to the extent that findings and conclusions differ from those in the final statement prepared by the Secretary of Energy, as it may have been supplemented. The initial decision will be distributed to any persons not otherwise entitled to receive it who responded to the request in the notice of docketing, as described in § 51.26(c). If the Commission reaches conclusions different from those of the presiding officer with respect to such matters, the final environmental impact statement will be deemed modified to that extent and the decision will be similarly distributed.

* * * * *

■ 53. Section 51.125 is revised to read as follows:

§ 51.125 Responsible official.

The Executive Director for Operations shall be responsible for overall review of NRC NEPA compliance, except for matters under the jurisdiction of a presiding officer, administrative judge, administrative law judge, Atomic Safety and Licensing Board, or the Commission acting as a collegial body.

PART 54—REQUIREMENTS FOR RENEWAL OF OPERATING LICENSES FOR NUCLEAR POWER PLANTS

■ 54. The authority citation for part 54 continues to read as follows:

Authority: Atomic Energy Act secs. 102, 103, 104, 161, 181, 182, 183, 186, 189, 223, 234 (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2231, 2232, 2233, 2236, 2239, 2273, 2282); Energy Reorganization Act secs 201, 202, 206 (42 U.S.C. 5841, 5842); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

Section 54.17 also issued under E.O.12829, 3 CFR, 1993 Comp., p.570; E.O. 13526, as amended, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR, 1995 Comp., p.391.

■ 55. Section 54.27 is revised to read as follows:

§ 54.27 Hearings.

A notice of an opportunity for a hearing will be published in the **Federal Register** in accordance with 10 CFR 2.105 and 2.309. In the absence of a request for a hearing filed within 60 days by a person whose interest may be affected, the Commission may issue a renewed operating license or renewed combined license without a hearing upon a 30-day notice and publication in the **Federal Register** of its intent to do so.

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

■ 56. The authority citation for part 61 continues to read as follows:

Authority: Atomic Energy Act secs. 53, 57, 62, 63, 65, 81, 161, 181, 182, 183, 223, 234 (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2231, 2232, 2233, 2273, 2282); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846), sec. 211, Pub. L. 95–601, sec. 10, as amended by Pub. L. 102–486, sec. 2902 (42 U.S.C. 5851). Pub. L. 95–601, sec. 10, 14, 92 Stat. 2951, 2953 (42 U.S.C. 2021a, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 57. In § 61.25, paragraph (c) is revised to read as follows:

§ 61.25 Changes.

* * * * *

(c) The Commission shall provide a copy of the notices of opportunity for hearing provided in paragraph (a)(1) of this section to State and local officials or tribal governing bodies specified in § 2.104(c) of this chapter.

Dated at Rockville, Maryland this 20th day of July 2012.

For the Nuclear Regulatory Commission.

Kenneth R. Hart,

Acting Secretary of the Commission.

[FR Doc. 2012–18278 Filed 8–2–12; 8:45 am]

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